

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI**

BEFORE SHRI G.S. PANNU (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 4227/MUM/2016
Assessment Year: 2008-2009**

The DCIT, Cent. Cir. – 6(4), Room No. 1925, 19 th Floor, Air India Building, Nariman Point, Mumbai - 400021	Vs.	M/s Contfreight Shipping Agency (I) Pvt. Ltd., 42/46, Nariman Bhawan, Nariman Point, Mumbai - 400021 PAN: AAACC1594L
(Appellant)		(Respondent)

&

**ITA No. 4245/MUM/2016
Assessment Year: 2007-2008**

The DCIT, Cent. Cir. – 6(4), Room No. 1925, 19 th Floor, Air India Building, Nariman Point, Mumbai - 400021	Vs.	M/s Contfreight Shipping Agency (I) Pvt. Ltd., 42/46, Nariman Bhawan, Nariman Point, Mumbai – 400021 PAN: AAACC1594L
(Appellant)		(Respondent)

Revenue by : Shri R.P. Meena (CIT DR)

Assessee by : Shri N.S. Goradhia &
Shri Harsh Shah (AR)

Date of Hearing: 26/10/2017
Date of Pronouncement: 31/10/2017

ORDER

PER RAM LAL NEGI, JM

These appeals have been preferred by the revenue against the two orders dated 21/03/2016 passed by the Ld. Commissioner of Income Tax (Appeals)-54, Mumbai, for the assessment years 2007-08 and 2008-09,

whereby the Ld. CIT (A) has partly allowed the appeals filed by the assessee against assessment orders passed u/s 143(3) read with section 153(A) of the Income Tax Act, 1961 (for short 'the Act') for the assessment years 2007-08 and 2008-09. Since both the appeals pertain to the same assessee and the issues involved in both the appeals are common, the same were clubbed, heard together and are being disposed of by this common order for the sake of convenience.

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2. Brief facts of the case are that assessee company engaged in the business of shipping agency, filed its return of income for the assessment year 2007-08 under section 139 of the Act, declaring total income of Rs. 4,98,71,972/-. The AO completed assessment under section 143(3) of the Act, determining the total income at Rs. 5,02,65,090/-.

3. Subsequently, a search action was carried out in the case of J.M. Baxi Group on 20.03.2012 including the premises of the assessee. Accordingly, notices u/s 153A, 143(2) and 142(1) were issued from time to time. In response to notice under section 153A, the assessee declared the income of Rs. 4,98,71,972/-. Taking into consideration the documents seized during search action and the submissions and explanations of the assessee, the AO *inter alia* made disallowance of Rs 52,22,886/- expenses claim by the assessee on account of contribution towards gratuity fund and further made disallowance of Rs. 75,000/- u/s 14A of the Act. In the first appeal, the Ld. CIT(A) deleted both the additions and the revenue is in appeal before the Tribunal against the said order.

4. The revenue has raised the following effective grounds of appeal against the impugned order passed by the Ld. CIT (A):-

- (i) *“Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition towards contribution of gratuity by relying on the decision of the Hon’ble Bombay High Court in the case of CIT Vs Continental Warehousing Corporation (Nhava Sheva) Ltd., by ignoring the fact that the department has not accepted the decision of the High Court and SLP is proposed to the Hon’ble Supreme Court.”*
- (ii) *Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition u/s 14A of the Income Tax Act, 1961 by relying on the decision of the Hon’ble Bombay High Court in the case of CIT Vs Continental Warehousing Corporation (Nhava Sheva) Ltd., by ignoring the fact that the department has not accepted the decision of the High Court and SLP is proposed to the Hon’ble Supreme Court.”*

5. As regards ground No 1 the Ld. Departmental representative submitted that though the issue involved in this ground is covered by the decision of the Hon’ble jurisdictional High court delivered in *CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd.*⁵⁸ *taxmann.com* 78, yet since the department has filed SLP against the judgment of the Hon’ble High court, the Ld CIT(A) ought to have disallowed the claim of the assessee.

6. On the other hand, the Ld. Counsel for the assessee submitted that the issue raised vide this ground of appeal is squarely covered by the judgment of the Honble jurisdictional High Court and since the Ld. CIT(A) has decided the identical issue by following the judgment of the Hon’ble jurisdictional High Court, there is no merit in the appeal of the department. Hence, the appeal is liable to be set aside on this score.

7. We have heard the rival submissions and also perused the material on record including the case law relied upon by the Ld. CIT(A). The Ld. CIT(A) has

decided this ground of appeal in favour of the assessee by following the ratio of law laid down by the Hon'ble Bombay High Court in *CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd. (supra)*. The relevant portion of the findings of the Ld. CIT(A) is reproduced below:

8.4.1 *I have considered the submissions of the appellant and perused the materials available on record. The appellant has requested to deleted the disallowance made by the Ld. AO of Rs. 52,22,886/- being contribution Gratuity fund maintained by LIC. The appellant main contentions are that it has subscribed to the Employees Group Cum Life Assurance Scheme with LIC and has executed a trust deed and the same has been filed with the Ld. Pr. Commissioner of Income Tax, Central-III, Mumbai for approval and considerable time has elapsed still approval has not been received. It was further argued that the sum of Rs. 52,22,886/- has been paid to such gratuity fund maintained with the LIC. The appellant has also raised preliminary objection that for the assessment year under consideration the assessment was already finalized u/s 143 (3) of the Act on 31.07.2009 and as on date of initiation of search no assessment proceedings for the relevant assessment year was pending and hence the assessment order u/s 143 (3) of the Act dated 31.07.2009 was not abated and hence had become final. It has also been argued that such completed assessment i.e. the assessment which does not get abated can only be disturbed on the basis of any incriminating document/material found during the course of search. In view of same it has further been argued that the Ld. AO ought not to have made disallowance/addition on account of gratuity payments under consideration while finalizing the assessment u/s 143 (3) rws 153A of the Act which is the subject matter of appeal. The Contentions of the appellant have been considered carefully. From the impugned assessment order U/s 143 (3) rws 153A of the Act dated 27.02.2014 it is observed that while making disallowance of gratuity payment of Rs. 52,22,886/- on the ground that such gratuity fund has not been approved by the Pr. CIT, Central-III, Mumbai, the Ld. AO has not made any reference to the books of account or other documents not produced in the course of original assessment but found in the*

course of search. As discussed above the Hon'ble Bombay High Court in the case of CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd. (sura), while defining the scope of assessment U/s 153A of the Act has held as under:

(a) In so far as pending assessments are concerned, the jurisdiction to make original assessment and assessment u/s 153A merge into one and only one assessment for each assessment year shall be made separately on the basis of the findings of the search and any other material existing or brought on the record of the AO.

(b) In respect of non-abated assessments, the assessment will be made on the basis of books of account or other documents not produced in the course of original assessment but found in the course of search, and undisclosed income or undisclosed property discovered in the course of search."

8. Since, no incriminating document/material was found during the course of search the Ld. CIT(A) has rightly deleted the addition by following the judgment delivered by the Hon'ble High in Court *CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd.* referred above. Hence, we do not find any reason to interfere with the findings of the Ld. CIT(A). Accordingly, we dismiss this ground of appeal of the revenue.

9. Vide second ground of appeal the revenue has challenged the Ld. CIT(A) in deleting the addition made by the AO u/s 14 of the Act. The Ld. DR submitted that CIT (A) has erred in deleting the addition u/s 14A of the Income Tax Act, 1961 by relying on the decision of the Hon'ble Bombay High Court in the case of *CIT Vs Continental Warehousing Corporation (Nhava Sheva) Ltd.* Since, the department has challenged the judgment of the Hon'ble High Court before the Hon'ble Supreme Court the Ld. CIT(A) ought to have confirmed the addition made by the AO.

10. On the other hand the Ld. counsel for the assessee submitted the since the findings of the Ld. CIT(A) is based on the law laid down by the Hon'ble jurisdictional Court, there is no merit in the contention of the revenue and this ground of appeal is also liable to be dismissed.

11. The Ld. CIT(A) has deleted the addition made u/s 14 A of the Act following the judgment of the Hon'ble Bombay High Court. The Ld. CIT(A) has deleted the addition in question holding as under:

“On this issue the appellant has submitted that the Ld. AO has grossly erred in making disallowance u/s 14 A of the Act. It was argued that no interest bearing funds were used for making investment, income from which is exempt. It is also been argued that the investments were made in group concerns and hence only minimal expenditure could be allocated towards the same. The appellant has also raised preliminary objection that for the assessment year under consideration assessment was already finalised under section 143 (3) of the Act on 31.07.2009 and as on date of initiation of search no assessment proceedings for the relevant assessment year was pending and hence the assessment order u/s 143(3) of the Act dated 31.07.2009 was not abated and hence had become final. It is also been argued that such completed assessment, i.e., the assessment which does not get abated can only be disturbed on the basis of any incriminating document/material found during the course of search proceedings and in respect of disallowance made u/s 14 A of the Act, no incriminating document/material was found during the course of search. In view of same it has further been argued that the Ld. AO ought not to have made disallowance/addition u/s 14 A of the Act under consideration while finalising the assessment u/s 14 A of the Act under consideration while finalising the assessment/s 143(3) rws 153A of the Act which is the subject matter of the appeal. The contentions of the appellant have been considered carefully. From the impugned assessment order u/s 143(3)rws 153A of the Act dated 27.02.2014 it is observed that while making

disallowance u/s 14 A of the act, the Ld. AO has not made any reference to the books of account or other documents not produced in the course of original assessment but found in the course of search. The facts and the circumstances of the said issue of disallowance under section 14 A are similar as to facts and circumstances discussed above in respect of disallowance made of contribution to gratuity fund. For detailed reasons mentioned above while deleting the disallowance made by the Ld. AO of contribution made to gratuity funds, it is held that the Ld. AO was not justified in disallowing a sum of RS 75, 000/-u/s 14 A of the act and the same is liable to be deleted without going into the merits of disallowance. Hence, the Ld. AO is directed to delete the said disallowance of Rs. 75,000/-made under section 14 A. ...”

12. The Ld. CIT(A) pointed out that AO has not made any reference to the books of account or other documents not produced in the course of original assessment but found in the course of search. Under these circumstances, the Ld CIT(A) has rightly followed the judgment of the Hon’ble Bombay High Court rendered in *CIT Vs Continental Warehousing Corporation (Nhava Sheva) Ltd (supra)*. Hence, we uphold the findings of the Ld. CIT (A) and dismiss this ground of appeal of the revenue.

ITA No. 4227/MUM/2016 (Assessment Year: 2008-2009)

In this case the revenue has raised the following effective grounds of appeal against the impugned order passed by the Ld. CIT (A):-

“Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition towards contribution of gratuity by relying on the decision of the Hon’ble Bombay High Court in the case of CIT Vs Continental Warehousing Corporation (Nhava Sheva) Ltd., by ignoring the fact that the

department has not accepted the decision of the High Court and SLP is proposed to the Hon'ble Supreme Court."

2. The sole grievance of the revenue in this case is that the Ld. CIT(A) has wrongly deleted the addition made by the AO. The facts of this case are identical to the facts of the assessee's own case for the assessment year 2007-08 except the amount of addition deleted by the Ld. CIT(A). The Ld. CIT (A) has deleted the addition in question by following the law laid down by the Hon'ble Bombay High Court in *CIT Vs Continental Warehousing Corporation (Nhava Sheva) Ltd (supra)*. Since, we have dismissed the identical ground of the appeal of the revenue in assessee's own case for the assessment year 2007-08, we dismiss this ground of appeal of the revenue for the same reasons.

In the result, appeals filed by the revenue for assessment years 2007-08 and 2008-09 are dismissed.

Order pronounced in the open court on 31st. October, 2017.

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक Dated: 31/10/2017

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Alindra PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,

ITAT, Mumbai

6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**