

आयकर अपीलीय अधिकरण, ' सी ' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No. 3327/Mds/2016

निर्धारण वर्ष/Assessment Year : 2012-13

Montane Shipping (P) Ltd.,
108/64, II Floor, Catholic Centre,
Armenian Street,
Chennai – 600 001.

Deputy Commissioner of Income Tax
Vs. (OSD),
Corporate Circle -4(1),
Chennai.

[PAN: AAECM 0886H]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri V.S. Jayakumar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri Murugaboopathy, JCIT

सुनवाई की तारीख/Date of Hearing

: 15.05.2017

घोषणा की तारीख/Date of Pronouncement

: 11.07.2017

आदेश / O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-8, Chennai in ITA No. 154/2015-16 dated 30.09.2016.

2. M/s. Montane Shipping (P) Ltd., the assessee, is in the business of steamer liner agent. While completing the assessment for assessment year 2011-12, the Assessing Officer found that the assessee has claimed Rs. 40 lakhs in P&L Account as expenses and claimed that these payments were made to certain persons towards non-compete fee. The Assessing Officer found, inter alia, that on record, the assessee created pucca evidence by following procedures of bank transactions, MOU, filing return of income etc, as a colourable device to reduce the profit etc. The AO, primarily disallowed the assessee's claim for the following reasons:

- i. Non production of copies of Return of Income of other percipients with assessment details, where aborts.
- ii. Production of those persons, financials of firms, unauthenticated copies of MOU one hearing and copies MOU with signatures on other date of hearing.
- iii. Confirmation of employment of Mr. Tiwari and Mrs. Jisa in the assessee company during period from 01.04.2011 to 31.03.2012 but claimed as partners of APCL subsequently by Draft MOU and claiming payment of non compete fee and non production of other 3 persons who are recipient of so called non-compete fee etc. Confirms that there was a malafide intention to do such act so as to siphon off the profit of the assessee.
- iv. The claim in non-compete compensation in Return and not fee as submitted.

3. Aggrieved, the assessee filed an appeal before the CIT(A). The CIT(A) confirmed such disallowance, inter alia, for the following reasons:

"a. It is seen that the compensation was to be paid to the APCL/Partners for offering their services to the appellant and for relinquishing their rights over the business they were carrying on. Therefore, it cannot be concluded that the amount of Rs. 40,00,000/- was paid towards non-compete fee if at all. Both, Mr. Sriprakash Tiwari and Ms. Jisa Kolapran took employment with the appellant and continued to render services.

b. The furnishing of a copy of MOU signed only by Shri Prakash Tiwari, to the exclusion of other partners of the APCL, itself lays that foundation for questioning the genuineness of the entire transaction and the production of a copy of the MOU signed by all the partners more than a week later does not remedy the situation

c. Apart from the amount of Rs. 40,00,000/- paid to the partners, the MOU also states at para 2.2 as follows:

In addition, Mr. Rajan Nair, the husband of the 1st of the parties of the second part and mediator herein who is in defacto management of the partnership firm of Atlantic and Pacific Container Line will be given a lump sum payment of Rs. 500,000/- (Rupees Five Lakhs Only) in recognition of his extensive contribution to the growth of the firm and the goodwill he has generated for the business of the firm

There is no reason why the appellant should pay any party unrelated to the transaction between the appellant company and the partnership firm.

d. *On verification of the returns of income of Mr. Sriprakash Tiwari and Ms. Jisa Kolapran – furnished by the appellant the amounts of Rs. 10,00,000/- are shown to be commission received' by them in their returns of income for the assessment year 2012-13. This only goes on to prove that the amounts the partners of APCL, received had nothing to do with any non-compete fee as claimed by the appellant.*

e. *Last but not least, the appellant's inability to produce either Mr. Tiwari and Mr. Nair to be examined by the Assessing Officer or the financial and other details for the assessment year under consideration has rightly lead the Assessing Officer to conclude that the transaction was only intended to siphon off the funds of the appellant."*

4. Aggrieved against the CIT(A) order, the assessee filed this appeal.

Before us, it submitted, inter alia, as under:

"2. I have filed a paper book before this Hon'ble tribunal consisting of various documents to support the claim of payments to few persons belonging to the firm M/s. Atlantic and Pacific Container Line in Mumbai amounting to Rs. 40,00,000/- towards non-compete fees.

3. I could produce only few documents before the Assessing Officer at the time of assessment as some of those persons of the Mumbai firm were on travel and the no person to furnish us the details called for by us. Subsequent to the passing of the assessment order and the order of the CIT(A), on advice from our professional advisors, we approached the Mumbai party and we could gather some more relevant papers from the said Mumbai Firm in support of our claim to prove that the expenditure was genuine.

4. *The delay in producing these evidences /papers are not wanton or deliberate but due to the circumstances beyond the control of the appellant the same could not be gathered at the assessment stage.*

5. *I also submit that we could not produce the parties concerned who are partners of the Mumbai firm as also the Mediator to appear before the Assessing Officer to substantiate the facts relating to the payment made to the persons, namely,*

<i>a. Mrs. Daisy Rajan Nair</i>	<i>Rs.20 Lakhs;</i>
<i>b. Mr.Nitin</i>	<i>Rs.10 Lakhs;</i>
<i>c. Mrs. Jisa</i>	<i>Rs. 10 Lakhs;</i>
<i>d. Mr.Sriprakash</i>	<i>Rs.10 Lakhs.</i>

6. *I am willing to co-operate by producing those persons before the Assessing Officer and prove that the expenditure has been genuinely incurred by the company. The respective names and addresses are enclosed along with this affidavit.*

7. *I therefore, request this Hon'ble Tribunal to take this affidavit on record and give the appellant an opportunity of being heard and decide the matter accordance with law and render justice."*

The DR supported the orders of the Assessing Officer & the CIT(A) and argued that as per the ratio laid by the Supreme Court in XXVII ITR 34 in the case of Assam Bengal Cement Co. Vs CIT, West Bengal, the impugned expenditure is nothing but a capital expenditure and hence the disallowance made is sustainable on the admitted facts.

5. We heard the rival submissions. Since, the assessee is willing to cooperate by producing those persons before the AO and prove that

the expenditure has been genuinely incurred by the company etc., we are of the view that, in the interest of justice, this issue should be remitted back to the AO for due examination and verification, afresh, and for passing an appropriate order in accordance with law, after affording due opportunity to the assessee and accordingly do so.

6. In the result, the assessee's appeal is treated as allowed for statistical purpose.

Order pronounced on Tuesday, the 11th day of July, 2017 at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/Judicial Member

Sd/-

(एस जयरामन)

(S. JAYARAMAN)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 11th July, 2017

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |