



IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI
BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.3835/Mum./2011
(Assessment Year : 2007-08)

Amersey Exports Pvt. Ltd.
Arvind House, Darukhana
Quay Street, Reay Road (E)
Mumbai 400 010 PAN – AABCA3914B

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-6(1), Mumbai

..... Respondent

ITA no.4745/Mum./2011
(Assessment Year : 2007-08)

Asstt. Commissioner of Income Tax
Circle-6(1), Mumbai

..... Appellant

v/s

Amersey Exports Pvt. Ltd.
Arvind House, Darukhana
Quay Street, Reay Road (E)
Mumbai 400 010 PAN – AABCA3914B

..... Respondent

Revenue by : Shri Rajesh Kumar Yadav
Assessee by : Shri Hiro Rai a/s

Date of Hearing – 09.10.2017

Date of Order – 03.11.2017

ORDER

PER SAKTIJIT DEY, J.M.

Aforesaid cross appeals arise out of order dated 28th March 2011, passed by the learned Commissioner (Appeals)-14, Mumbai, for the assessment year 2007-08.

2. The first issue, which is common in both the appeals, relates to the decision of the Commissioner(Appeals) in partly sustaining / deleting the disallowance of expenditures made by the Assessing Officer.

3. Brief facts are, the assessee a resident company is engaged in the business of manufacturing, trading and exporting readymade garments. For the assessment year under consideration, assessee filed its return of income on 26th March 2009, declaring loss of ₹ 1,38,83,103. During the assessment proceedings, the Assessing Officer called upon the assessee to furnish details of expenses incurred above ₹ 1,00,000. As alleged by the Assessing Officer, the assessee failed to comply to the queries raised. Therefore, the Assessing Officer observed that the expenses incurred could not be verified, hence, element of inflating the expenses cannot be ruled out. Accordingly, he disallowed on ad-hoc basis 30% out of the total expenditure claimed, which worked to ₹ 1,99,25,250. This resulted in determination of positive income of ₹ 60,42,147. Assessee challenged the disallowance before the first appellate authority.

4. The learned Commissioner (Appeals) after considering the submissions of the assessee and going through the materials on record found that, though, the turnover of the assessee in the relevant previous year compared to the preceding previous year has reduced by 30.35%, however, payment of labour charges increased from ₹ 185.92 lakh to ₹ 198.86 lakh. He found that while the labour charges for the preceding assessment year was 10.98% of the turnover, in the impugned assessment year it has increased to 38.70% of the turnover. He also found that major portion of the labour charges were paid in cash. Similarly, misc. expenses increased from ₹ 12.29 lakh in the preceding assessment year to ₹ 30.63 lakh in the impugned assessment year. Freight, coolie and cartage charges have increased from ₹ 25.03 lakh in the preceding assessment year to ₹ 27.70 lakh in the impugned assessment year despite drastic reduction in sales. Though, the learned Commissioner (Appeals) accepted the contention of the assessee that it already having made disallowance of ₹ 44,15,107 under section 40A(3) of the Act, no further disallowance of the said amount should be made and though, he also agreed that ad-hoc disallowance @ 30% of all the expenditure is not justifiable, however, he also did not accept assessee's claim that the expenditures debited to the Profit & Loss account should be allowed. The learned Commissioner (Appeals) observed, though, there is decrease in sales

turnover compared to the preceding assessment year, however, there is increase in claim of expenditure by the assessee under certain heads for which the assessee has not offered any plausible explanation. Accordingly, he held that excess expenditure incurred on account of labour charges, misc. expenditure and freight, coolie and cartage has to be disallowed. Accordingly, on the basis of expenditure claimed in the preceding assessment year, the learned Commissioner (Appeals) worked out the excess expenditure claimed by the assessee as under:-

Sr. no	Nature of Expenditure	Amount (₹)	Expenditure as a % of sales in 31.03.06	Expenditure as a % of sales in 31.03.07	Excess % expenditure in comparison to last year	Excess Expenditure [(3x6)/5]
1.	Labour charges	19886631	10.98%	38.70%	27.72%	1,42,44,378
2.	Freight, Coolie & Cartage	2770788	1.50%	5.39%	3.89%	19,99,697
3.	Misc. Expenses	3063202	0.73%	5.96%	5.23%	26,88,011
						1,89,32,086

5. The learned Commissioner (Appeals) observed, since, the assessee has already disallowed an amount of ₹ 39,04,600 out of labour charges it is entitled for relief of 20% of the excess expenditure incurred on account of labour charges. Thus, ultimately, the learned Commissioner (Appeals) quantified the disallowance of expenditure at ₹ 1,60,83,210.

6. Learned Authorised Representative submitted, in course of assessment proceedings in response to the query raised by the Assessing Officer the assessee has produced all supporting evidences in respect of expenditures claimed. He submitted, as far as payment of labour charges are concerned, the assessee has furnished all the details including name of the persons, their addresses and details of payment made. He, submitted, before the learned Commissioner (Appeals) also the assessee from time to time produced every single detail relating to claim of labour charges along with supporting evidences. In this context, he drew our attention to the written submissions filed before the learned Commissioner (Appeals) on various dates. The learned Authorised Representative submitted, while the Assessing Officer has not assigned any cogent reason for making disallowance of expenditure on ad-hoc basis, the learned Commissioner (Appeals) sustained part of the disallowance merely for the reason that expenditures under certain heads as a percentage of the sales turnover has increased in the impugned assessment year in comparison to the preceding assessment year. The learned Authorised Representative submitted, at no stage, either in the assessment proceedings or first appellate proceeding the assessee was ever asked to explain the reason for increase in expenditure compared to the preceding assessment year. The learned Authorised Representative

submitted, had the first appellate authority called for necessary explanation from the assessee in this regard, the doubts entertained by him could have been removed. Further explaining, the learned Authorised Representative submitted, in preceding assessment year, the assessee has undertaken trading activity of cotton garments. Whereas, in the impugned assessment year there is no such trading activity at all. He submitted, in the impugned assessment year, the assessee was only engaged in manufacturing activity which is evident from volume of fabric purchased during the year. In this context, the learned Authorised Representative referred to Schedule-F of the Balance Sheet as on 31st March 2008. He further submitted, since the assessee was engaged only in manufacturing activity for the impugned assessment year, for sale of its products it has to offer rebate and discounts. The learned Authorised Representative submitted, these factors resulted in reduction in sales turnover of the assessee. He submitted, for that reason alone, the expenditure claimed by the assessee cannot be disallowed on ad-hoc basis when no adverse material has been brought on record to establish the fact that the expenditures claimed by the assessee are not justified. He, therefore, submitted, disallowance sustained by the learned Commissioner (Appeals) should be deleted.

7. Learned Departmental Representative submitted, the assessee before the Departmental Authorities has neither produced supporting evidences to justify the claim of expenditure nor the reasonableness of such expenditure. He submitted, when the learned Commissioner (Appeals) has found that compared to the preceding assessment year there is huge increase in the expenditures claimed in the current year despite substantial reduction in sales turnover, he should have sustained the addition made by the Assessing Officer.

8. We have considered rival contentions and perused the material on record. The observations of the Assessing Officer in the assessment order while making ad-hoc disallowance of expenditure claimed are contradictory. When the Assessing Officer acknowledges that the assessee had filed the details called for, we fail to understand how again he can allege that there was very little compliance on the part of the assessee in furnishing the details of expenses incurred above ₹ 1,00,000. The Assessing Officer has not mentioned what are the details called for which the assessee has failed to comply. Be that as it may, from the statement of facts filed along with the memorandum of appeal before the learned Commissioner (Appeals), it appears that in course of assessment proceedings, the assessee has furnished the details of expenditure above ₹ 1,00,000 which also included expenditure relating to labour charges, with name and address of

persons to whom it was paid. Further, the assessee has furnished the details of purchase and sales along with supporting evidences. The details of exports made by the assessee were also furnished. No discussion has been made by the Assessing Officer in the assessment order in respect of the aforesaid evidences submitted by the assessee. Further, it is evident, in the course of proceedings before the learned Commissioner (Appeals) the assessee has appeared from time to time and furnished supporting evidences in respect of the expenditure claimed, and in particular, payment of labour charges. This is evident from the written submissions filed before the learned Commissioner (Appeals) on 12th November 2010, 18th January 2011, 9th February 2011, 10th March 2011 and 23rd March 2011, copies of which have been placed in the paper book filed before us. Thus, as can be seen, the assessee has furnished all supporting evidences, at least, in relation to payment of labour charges before the Assessing Officer as well as the learned Commissioner (Appeals). No adverse comment has either been made by the Assessing Officer or Commissioner (Appeals) on the supporting evidences submitted by the assessee nor has any adverse material been brought on record to establish that the claim made by the assessee is not genuine. In fact, acceptance of major part of the expenditure by the Departmental Authorities establishes assessee's claim of expenditure to be genuine. A reading of the order

of the learned Commissioner (Appeals) certainly gives an impression that only for the reason that compared to the preceding assessment year, the expenditures under certain heads have increased in the impugned assessment year, whereas, sales have reduced, the learned Commissioner (Appeals) has sustained part of the disallowance made by the Assessing Officer. The learned Commissioner (Appeals) has not expressed any doubt with regard to the genuineness of the expenditure claimed. As it appears, the learned Commissioner (Appeals) was completely swayed away by the increase in the quantum of expenditure under certain head as a percentage of sales. However, as submitted before us by the learned Authorised Representative, there is a good reason for reduction of sales turnover in the impugned assessment year and increase in payment of labour charges. On a perusal of Schedule-F of the Balance Sheet of the assessee as on 31st March 2007, we have found that while in the preceding assessment year, assessee was engaged in purchase and sale (trading) of cotton garments and had a turnover of ₹ 12,39,98,730 from such activity, in the impugned assessment year there is no such trading activity. Whereas, the manufacturing activity has increased substantially which is evident from the purchases of fabrics which has increased to ₹ 2,77,87,885=45 in the impugned assessment year from ₹ 1,22,78,146 in the preceding assessment

year. This fact, in our view, explains the reason for reduction of sales turnover and increase in payment of labour charges. Had learned Commissioner (Appeals) examined this aspect by raising this issue before the assessee, his doubts could have been clarified. Therefore, in our considered view, the assessee having produced necessary supporting evidences in respect of payment of labour charges which have not been found to be non-genuine or defective, no disallowance in respect of labour charges can be made on ad-hoc basis. More so, when the assessee has suo-motu disallowed a part of the labour charges in terms of section 40A(3). That being the case, we delete the addition made on account of payment of labour charges. However, as far as expenditure incurred towards misc. expenses and freight, coollie and cartage charges are concerned, after perusing the material on record we are of the view that the assessee was unable to fully establish the claim with supporting evidence. Therefore, inflation of expenditure under this head by the assessee cannot be completely ruled out. Hence, to take care of such situation, we direct the Assessing Officer to disallow 15% out of the total expenditure claimed by the assessee under the aforesaid two heads viz. misc. expenses and freight, coollie & cartage expenses. Accordingly, Ground no.1, raised by the assessee is partly allowed and grounds raised by the Revenue on the issue are dismissed.

9. In ground no.2, the assessee has challenged disallowance of deduction claimed of ₹ 2,48,507.

10. As could be seen, the aforesaid amount is a part of the disallowance voluntarily made by the assessee. It is also necessary to observe, the learned Commissioner (Appeals) has sustained disallowance only in respect of labour charges, misc. expenses and freight, coolie & cartage expenses. In further appeal before us, we have deleted the addition in respect of payment of labour charges while directing disallowance of 15% out of expenditure claimed under the head misc. expenses and freight, coolie and cartage. In view of the aforesaid, no further relief can be granted to the assessee. This ground is dismissed.

11. In the result, assessee's appeal is partly allowed and Revenue's appeal is dismissed.

Order pronounced in the open Court on 03.11.2017

Sd/-
G.S. PANNU
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 03.11.2017

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai