

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH: KOLKATA

Before: **Shri P.M. Jagtap, Accountant Member** and
Shri S.S. Viswanethra Ravi, Judicial Member

I.T.A No. 1415/Kol/2015
(Assessment Year: 2008-09)

M/s R. Piyarelall Foods (P) Ltd.
PAN:[AADCR 5989 B]

Appellant

Vs

D.C.I.T, Cir-3, Kolkata

Respondent

For the Appellant : Shri Ashish Rustagi, FCA
For the Respondent : Shri Kalyan Nath, Addl. CIT

Date of hearing : 14.09.2017
Date of pronouncement : 29.11.2017

ORDER

Shri S.S.Viswanethra Ravi, JM:

This appeal by the assessee against the order dated 01.09.2015 of Commissioner of Income Tax (Appeals)-5, Kolkata for the assessment year 2008-09).

2. The Id. AR submits that Ground Nos.1 & 2 are general in nature and need no adjudication. Therefore, Ground Nos.1 & 2 are dismissed.

3. Ground No.3 is relating to addition of Rs.1,80,000/- on account of rent paid.

4. During the course of assessment proceedings, the AO found from Annexure-C of Tax Audit Report from the assessee that the assessee paid rent of Rs.1,80,000/- to one Shri Ramesh Kr. Agarwal. According to AO, the said Shri Ramesh Kr. Agarwal is a relative of the

Director of the assessee-company and sought explanation from the assessee how the said payment is related to its business. The assessee through its Authorized Representative submitted that the said amount was paid towards rent for room at 5, Gokhale Road, Kolkata which was taken by the assessee for official purpose temporarily. The AO directed the assessee to produce Trade Licence or similar authentic documents to prove the genuineness of the claim and for non-submission of the relevant evidence the amount claimed as rent was disallowed and added to the total income of the assessee.

5. Aggrieved, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee contended through its written submissions that the assessee conducted its business operations for the initial six (6) months at the said room at 5, Gokhale Road, Kolkata and accordingly, rent was paid at the rate of 30,000/- to the owner of the said premises i.e. Shri Ramesh Kr. Agarwal on a temporary use of said premises on rent. It was also contended that the said income was offered to tax at highest rate in the hands of said Shri Ramesh Kr. Agarwal. The CIT(A) opined that the assessee was failed to explain how the residential premise were used for business purposes and hence, the CIT(A) confirmed the addition made by the AO.

6. Before us, the Id. AR reiterated the same submissions as submitted before the CIT(A) in supporting of which the Id. AR placed on record a certified copy of minutes of the resolution passed at the Board meeting held on 16.05.2007 to show that the Board meeting was convened to inform and to resolve to conduct its operations at the premises at 5, Gokhale Road, Kolkata – 700 020 temporarily in view of the fact that the registered office of the assessee company would be operational in a short time and it was decided to pay Rs.30,000/- per month to be paid to Shri Ramesh Kr. Agarwal towards the rent for aforesaid premises and the Board accepted the

said proposal moved by the Chairman. The Id. AR argued that the assessee started its business in the previous year relevant to year under consideration initially at the time as there was no registered office ready by that time. Accordingly, in order to conduct its operations, the assessee availed the aforesaid premises from Shri Ramesh Kr. Agarwal on rent basis. Thereafter, the assessee moved to its registered office premises at 12, Government Place (East), Kolkata. Therefore, the rent as claimed by the assessee is incurred towards rent and is business expenditure and claimed as deduction.

7. The Id. DR relied on the order of AO.

8. Heard both and perused the materials available on record, we find that at the time of initial operations, the registered office of the assessee was not ready to conduct the business operations of the assessee as because the requisite infrastructure and facilities were not available at the said office. Therefore, the assessee availed the premises belonging to a relative of Chairman of assessee temporarily on rent basis in support of which the Id. AR brought on record the minutes of the Board meeting in accepting the proposal made by the Chairman. Admittedly, this document was not there before the AO and CIT(A) and it is seen from the order of AO and CIT(A) that for non-submission of any evidence to that effect that disallowance amount was confirmed by the CIT(A). Therefore, in view of the same, we deem it proper to remand the issue to the file of AO for his verification on an examination of the supporting document filed during the course of second appellate proceedings before us. The assessee is at liberty to file evidence, if any before the AO in support of its claim.

9. Ground No.4 is relating to disallowances made on account of transportation & labour charges and loading & unloading charges of godown and wreck totaling to Rs.1,97,145/-.

10. The AO found from Schedule 12 of the Profit & Loss A/c that the assessee claimed an amount of Rs.5,95,76,373/- under the head "Freight & Transport Charges". In explanation, the assessee furnished the details in support of his claim. According to AO, on verification of the said details, assessee had claimed an amount of Rs.1,30,19,266/- under the sub-head "transportation and labour charges of godown". On perusal of the party-wise details, the AO found that the assessee has paid a sum of Rs.1,11,659/- to "other transportation and labour charges of godown below Rs.50,000/-". Therefore, the AO was of the opinion that the assessee did not furnish actual details and an amount Rs.20,000/- was disallowed. Again the AO on perusal of the list under the basic head of "freight and transportation charges", the assessee claimed an amount of Rs.91,69,650/- under the sub-head "loading and unloading charges of godown and wreck". The AO on perusal of the details of party-wise chart found that the assessee disclosed expenses of Rs.17,71,446/- under the sub-head "other loading and unloading charges of godown and wreck below Rs.50,000/-". Therefore, the AO disallowed 10% of claim on 17,71,446/- to the extent of Rs.1,77,145/- was disallowed.

11. Aggrieved, the assessee challenged the action of the AO before the CIT(A). Before the CIT(A), it was contended that the expenses of Rs.1,77,145/- is the aggregate of such expenses each being less than 50,000/- and all the details were furnished to the AO and the AO considering the said amount as a consolidated and a single amount and disallowed the same which is actually incorrect, in fact the payments were paid to a number of parties. The CIT(A) considering the same for non-submission of genuine accounts before the AO as well as CIT(A) and confirmed the addition made by the AO.

12. Before us, the AR states that the assessee has made payments of Rs.91,69,650/- on account of "loading & unloading charges of godown and wreck" under the head "freight and transportation charges". The details of the same were furnished during the course of scrutiny assessment proceedings and to make the information simple an amount of Rs.17,71,446/- out of the above said expenses was shown as consolidated and a single figure as payments were made to a number of parties which were below Rs.50,000/- and which did not carry the liability to deduct TDS and for not showing the party-wise details of number of parties the AO arbitrarily disallowed 10% of these small amounts. The Id. AR submits that the payments aggregating to Rs.73,98,204/- constituting more than 80% of total expenditure, the details of parties with amount of tax deducted was furnished to the AO and was accepted without being any defect. The number of parties whose payments were below Rs.50,000/- were numerous and no TDS was deducted from payments made to them and the amounts were clubbed and shown as an aggregate amounts of Rs.17,71,446/-. The Id. AR further submits that small payments were consolidated to simplify the information to submit and AO did not find any defect in the 80% of payments. In respect of the balance 20%, no opportunity was given to the appellant to furnish further details and no details were asked for during the course of scrutiny proceedings. The CIT(A) without verifying the details of payments submitted before him simply confirmed the addition made by the AO which is in accordance with law. The Id. AR further submits with regard to addition of Rs.20,000/- under the head "transportation and labour charges of godown", in spite of having all the details but going by the consolidated single figure, the AO arbitrarily disallowed Rs.20,000/- which is not maintainable. The Id. AR prayed to allow the Ground No.4 in this regard. The Id. DR relied on the order of AO and CIT(A).

13. Heard both parties and perused the materials available on record. It is noticed as rightly pointed out by the Id. AR that the AO accepted 80% of total expenditure under the head "loading and unloading charges" but however, disallowed 10% on the remaining 20% of total payments. It was submitted by the Id. AR before us that all the payments under the head were below Rs.50,000/- which need not be deducted on TDS. Both the authorities below disallowed the said amount only on the impression that the assessee has shown the payments aggregating single figure incurred towards the loading and unloading charges and it is very difficult to give details of numerous parties to whom the payments were made below Rs.50,000/-. The said amount was shown in the accounts and was claimed in the assessment proceedings as an aggregating amount to simplify the information. In our opinion, as contended by the Id. AR that there was no opportunity for the assessee to produce the numerous details, payments attracting below Rs.50,000/-. We find that the total income of the assessee is Rs.1,21,84,444/- and there was no adverse remark in respect of 80% of total payments or books of accounts, taking into consideration the same disallowance on the basis of estimation is not permissible. Thus, the additions made on account of loading and unloading charges are liable to be deleted. Thus, the Ground No.4 raised by the assessee is allowed and accordingly, the additions made in the heads above are deleted.

14. In the result, the appeal filed by assessee is partly allowed.

Order pronounced in the open court on 29.11.2017.

Sd/-
P.M. Jagtap
Accountant Member

Sd/-
S.S. Viswanethra Ravi
Judicial Member

Dated : 29.11.2017
Place : Kolkata
RS (SPS)

Copy of the order forwarded to:

1. Appellant – **R. Piyarelall Foods Pvt. Ltd.**, 12,
Govt. Place(E), Kolkata - 700069
2. Respondent – **DCIT, Circle-3**, Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700 069.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

//True Copy//

By order,

Sr.PS/H.O.O
ITAT, Kolkata