

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

BEFORE SHRI A. T VARKEY, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.1896/Kol/2014
(निर्धारणवर्ष / Assessment Year: 2011-12)

DCIT, Circle-10, Kolkata	Vs.	M/s Singhania & Sons Pvt. Ltd. 3D, Shakespeare Sarani, Duck Back House, Kolkata – 17.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AADCS 6078 A		
(APPELLANT)	..	(RESPONDENT)

Appellant by : Shri Kalyan Nath, ACIT, DR
Respondent by : Shri Manoj Kataruka, Advocate

सुनवाईकीतारीख/ **Date of Hearing** : **05/09/2017**

घोषणाकीतारीख/**Date of Pronouncement** : **04/12/2017**

आदेश / ORDER

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Revenue, pertaining to Assessment Year 2011-12, is directed against an order passed by the Id. Commissioner of Income Tax (Appeals)-XII, Kolkata in Appeal No.496/XII/Cir-10/13-14, dated 21.07.2014, which in turn arises out of an order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961, dated 07.03.2014.

2.The Revenue has raised the following grounds of appeal:

"1.That is the facts and in law of the case the Id. CIT(A) erred in deleting the deduction of Rs.96,78,546/- under the Service Tax claim

written off. The assessee had relinquished the impugned claim which therefore, cannot be termed as normal business loss or a bad debt.

2. That the appellant craves for leave to add, delete or modify any of the grounds of appeal before or all the time of hearing.”

3. The brief facts qua the issue are that the assessee filed its return of income, declaring total income of Rs.3,62,37,460/- for the Assessment Year 2011-12. The assessee's case was selected for scrutiny u/s 143(2) of the Act and Assessing Officer has completed the assessment by making disallowance of Rs.96,78,546/- on account of service tax claimed written off. During the assessment proceedings, the Assessing Officer observed that the assessee company had claimed service tax written off at Rs. Rs.96,78,546/- as business expense. During the assessment proceedings, the assessee was asked to explain why the same will not be disallowed being prior period item and as an item of the Balance Sheet. The details of such service tax are as follows:

SUMMARY OF SERVICE REFUND ACCOUNTED, CLAIMED,
REFUND RECEIVED AND AMOUNT W/OFF AS ON 31.03.2011

Sl.No.	Accounting year	Service tax amount accounted as refundable	Refund received as on 31.03.2011	Balance refund receivable as on 31.03.2011	Amount no longer W/off	Balance C/f as per Balance Sheet
1	2007-08	18,44,871.83	-	-	-	18,44,871.83
2.	2008-09	82,61,920.68	-	-	-	1,01,06,792.51
3.	2009-10	80,66,540.83	-	-	-	1,81,73,333.34
4.	2010-11	27,55,508.94	78,43,992.00	33,35,294.00	96,78,546.34	34,06,303.94
TOTAL		2,09,28,842.28	78,43,992.00	33,35,294.00	96,78,546.34	

The assessment orders passed by Service Tax Authority on different dates during the period 01.04.2010 to 31.03.2011 in respect of different vessels for which the service tax refund has been claimed by the assessee, were examined by AO. The Assessing Officer noted that the assessee has stated that no appeal is filed against the order passed by service tax authority

therefore it was a refusal on the part of the assessee to regain the receivable amount. This loss is not normal business loss and also not a kind of bad debt (business loss). The claim against the payment of service tax for the period prior to 01.04.2010 (though the assessee did not show the books of accounts for all the earlier assessment years to prove that the service tax, which was claimed to be deposited from own account really not debited within the profit & loss accounts of respective assessment years), had been made to the government and now declaring the same as written off without preferring any appeal (when the opportunity is there), is tantamount to a donation which is not eligible for deduction following any provision of the Income Tax Act, 1961. Further, the claim made by the assessee is not a kind of bad debt in trade where credit of the bad debt amount in any year, before claiming the same, within the books of accounts is only criteria as governed by the provisions of section 36(2) of the I.T Act, 1961. Here the service tax of Rs.1,81,73,333/ out of total claim of Rs.2,09,28,842/- pertains to the period before than 01.04.2010 and carried under "receivable" in the Balance Sheets only. Thus, the loss even at this stage, computed by the assessee in respect of refund claimed and received during this year in respect of earlier year should not be subject matter of this year, being prior period expenses. Further, the claim was surrendered by the assessee without any satisfactory logic and the loss computed for the same does not pertain to this year.

The assessing officer also observed that the service tax amount for this accounting year 2010-11 is claimed as "receivable" for Rs.27,55,508/- and against which the assessee has claimed refund of Rs.33,35,294/-.Therefore, no loss was actually incurred by the assessee for assessment year 2011-12. Therefore, based on the above facts the assessing officer disallowed Rs.96,78,546/- and added back to the returned income of assessee."

4. Aggrieved by the addition made by the Assessing Officer of Rs.96,78,546/- on account of service tax claimed written off, the assessee carried the matter

to the Id. CIT(A), who has allowed the claim of the assessee. The Id. CIT(A) noted that the service tax paid on various export related services such as GTA Transport Services, technical testing and analysis service, port services etc. paid during the Financial Year 2006-07 to 2010-11 were reflected in the Balance Sheet under the head Service Tax Refundable Account. The assessee was supposed to obtain refund on account of Service Tax payments made and therefore it had not debited in the Profit & Loss Account. Therefore, CIT(A) noted that such claims are allowable as per the provisions of section 37 of the I.T. Act

5. Not being satisfied with the order of the Id. CIT(A), the Revenue is in appeal before us. The Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

6. On the other hand, the Id. Counsel for the assessee has submitted before us that during the year under consideration, the assessee paid service tax on various export related services, such as GTA Transport Services, technical testing and analysis service, port services etc. paid during the Financial Year 2006-07 to 2010-11 were reflected in the Balance Sheet under the head Service Tax Refundable Account. The assessee was supposed to obtain refund on account of Service Tax payments made and therefore it had not debited in the Profit & Loss Account. The Id. Counsel pointed out that the assessee was following the mercantile system of accounting during the year. There was also no change in the accounting system from the previous year and the same system of accounting was being followed by the assessee since more than 15 years and subsequently years also. The Id. Counsel also

pointed out that under the mercantile system of accounting, expenses which accrues or arises even if the same is not paid, it is to be claimed as expenditure. The Assessing Officer has not allowed the claim of the assessee on the reasoning that the appeal was not filed by the assessee against the order passed by the Service Tax Officer and this should not be a ground to disallow the claim of the assessee. Therefore, this way the Id. Counsel has defended the order passed by the Id. CIT(A).

7. Having heard the rival submissions and perused the materials available on record, we note that the assessee claimed the expenditure as per mercantile system of accounting. During the Financial Year 2010-11, in the instant case of the assessee, the Service Tax Authorities have passed various orders and the total claim of refund had been allowed to the extent of Rs.78,43,992/- and the balance refund was not allowed, which is at Rs.96,78,546/-. The balance amount of refund at Rs. 96,78,546/-, which had been disallowed by the Service Tax Officer, therefore, the same amount had been written off by the assessee by debiting the same to the Profit & Loss Account. The Assessing Officer has not allowed the claim of the assessee on the reasoning that the appeal was not filed by the assessee against the order passed by the Service Tax Officer. We do not accept the argument of the Assessing Officer, due to the reason that orders passed by the Service Tax Officer are quasi-judicial orders as equivalent to an order of a Court and it is the duty of the assessee to follow the same. Filing of appeal is only a prerogative which is optional and which may or may not be exercised.

We also note that if the government does not refund the service tax, which is refundable to the assessee, then it would be a business loss to the assessee. That is, the assessee has entitlement on such amount and if the government does not refund him then it would be a loss in the hands of the assessee and in that situation the assessee write it off in the books and claims as bad debts.

Under the Income Tax Act, 1961 the expenses are allowed as per mercantile system of accounting as well as cash system of accounting. The assessee is following the mercantile system of accounting during the year. There is also no change in the accounting system from the previous year and the same system of accounting was being followed by the assessee since more than 15 years and subsequently also the same has been followed. Under the mercantile system of accounting, expenses which accrues or arises even if the same is not paid, it is to be claimed as expenditure. In the case of the assessee under consideration, the Service Tax was to be claimed as refund as per various notifications and the assessee was entitled to receive the said money from government. But in the assessment year under consideration, the assessee came to know that the government would not refund him, therefore he written off and claimed as bad debts in the books of accounts. We note that the Assessing Officer has not allowed the claim of the assessee on the reasoning that the appeal was not filed by the assessee against the order passed by the Service Tax Officer. We are of the view that the argument of the Assessing Officer is not tenable and cannot be accepted due to the reason that order passed by the Service Tax Officer are quasi-judicial orders as equivalent to an order of a Court and it is the duty for the assessee to follow the same. Filing of appeal is only a prerogative which is optional and which may or may not be exercised. Since the Service Tax officer denied the payment by his order therefore assessee has written it off as bad debts. Therefore, we are of the view that assessee may write it off by debiting the said amount in profit and loss account as bad debts. Hence, we

do not find any infirmity in the order passed by the Id. CIT(A) and we confirm the order passed by CIT(A).

8. In the result, the appeal filed by the Revenue, is dismissed.

Order pronounced in the open court on this **04/12/2017**.

Sd/-
(A. T. VARKEY)

Sd/-
(DR. A.L.SAINI)

न्यायिक सदस्य / JUDICIAL MEMBER लेखा सदस्य / ACCOUNTANT MEMBER
कोलकाता /Kolkata; दिनांक
Dated 04/12/2017
RS [SPS]

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant – DCIT, Circle-10, Kolkata
2. प्रत्यर्थी/ The Respondent- M/s Singhanian & Sons Pvt. Ltd.
3. आयकरआयुक्त(अपील) / The CIT(A), :Kolkata.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

//True Copy//

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.