

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

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

आयकरअपीलसं./ITA No.1078/Kol/2015

(निर्धारणवर्ष / Assessment Year: 2010-11)

M/s. Mohan Impex 33-A, Chatterjee International 14 th Floor, Kolkata – 700 071.	Vs.	A.C.I.T, Cir-35, Kolkata 110, Shantipally Aayakar Purva Kolkata – 700 107.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. :AAHFM 3962 C		
(Appellant)	..	(Respondent)

Appellant by : Shri Subash Agarwal, Advocate
Respondent by : Shri Sallong Yaden, Addl. CIT(DR)

सुनवाईकीतारीख/ Date of Hearing : 10/04/2018

घोषणाकीतारीख/Date of Pronouncement : 26/04/2018

आदेश / ORDER

Per Dr. A. L. Saini:

The captioned appeal filed by the Assessee, pertaining to Assessment Year 2010-11, is directed against an order passed by the Ld. Commissioner of Income Tax (Appeals)-XX, Kolkata in Appeal No.116/CIT(A)-XX/Cir-35/2012-13/Kol, dated 12.06.2014, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), dated 23.01.2013.

2. The grievances raised by the assessee are as follows:

1. For that the Ld. CIT(A) was not justified in confirming the addition of Rs.7,35,554/- made by the Assessing Officer on account of travelling expenses.

2. For that the Ld. CIT(A) erred in confirming the addition of Rs.7,46,741/- made by the Assessing Officer on account of carriage inward expenses, break up addition made by the Assessing Officer is as under:

(a) Absence of Bills: Rs.74,808/-
(b) Invoices dated preceding year: Rs.5,15,313/-

(c)	20% estimated disallowance of misc. items:	<u>Rs.1,56,620/-</u>
<u>Total</u>		<u>Rs.7,46,741/-</u>

3.For that the appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing.”

3.Ground No.1 raised by the assessee relates to addition of Rs.7,35,554/- made by the Assessing Officer on account of travelling expenses. During the course of hearing, the Id. counsel for the assessee has fairly agreed that the said travelling expenses do not pertain to business of the assessee. After hearing the Id DR on the said issue, we are of the view that said travelling expenses has not been incurred by the assessee for the purpose of business therefore the assessee is not entitled to claim under section 37(1) of the Income Tax Act. We have perused the materials available on record and gone through the assessment order and appellate order passed by the Id CIT(A), we note that the findings given by the Assessing Officer and the Id. CIT(A) that the said expenses do not relate to assessee`s business and Id. counsel for the assessee has not controverted the findings of the Assessing Officer and Id CIT(A), therefore, we confirm the addition made by the Id. CIT(A).

4. Ground No.2(a) relates to disallowance to Rs.74,808/-. During the assessment proceedings the assessee did not submit relevant bills and vouchers to prove the bona fide of the said expenditure therefore the assessing officer made this addition and on appeal by the assessee, the Id CIT(A) confirmed the said addition. The Id. counsel for the assessee at the outset, brought to the notice of the Bench that the said ground is not pressed by the assessee. Since, the said ground has not been pressed by the assessee during the course of hearing therefore we dismiss the said ground as not pressed.

5. Ground No.2(b) relates to invoices relating to preceding year amounting to Rs.5,15,313/-.

Briefly stated, the facts of this issue are that during the assessment proceedings, the assessee submitted the previous year bills to the tune of Rs.5,15,313/-. The assessing officer noted that since the assessee was following mercantile system of accounting therefore, last year`s expenses can not be claimed in the current year and he disallowed the amount of Rs. 5,15,313/-. On appeal by the assessee, the Id CIT(A) confirmed the addition made by the assessing officer. Aggrieved by the order of Id CIT(A), the assessee is in appeal before us.

6. The Id. counsel for the assessee has submitted before us that although the expense may relate to the preceding year, the liability in this regard, however, arises in current year. The Counsel pointed out that it is an undisputed fact that this expenses was neither claimed nor allowed in the last year. The carriage inward is a direct expenses being charged to Profit & Loss Account in the year in which it has incurred. The entry is made only after the effect of the purchase is realized since the material proposed to be purchased in the last year was in transit till the last date of the accounting year corresponding to the last assessment year, the purchase entry could not be made in accounts in previous year. Actually, the materials were received in current year and thereafter the entry was made in the current year. The auditors also acknowledged the fact and passed the payment for current year only. Hence, there is no scope for making the disallowance simply by branding it to be related to the last year. In addition to this, the Id. counsel for the assessee has submitted before us that since the liability has crystallized this year and the payment of the liability has been made in the Assessment Year under consideration, therefore, the freight should be allowed in the Assessment Year under consideration. That is, since the liability has crystallized in the Assessment Year under consideration, therefore, expenses should be allowed in the Assessment Year under consideration.

7. On the other hand, the Id. 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.

8. We have given a careful consideration to the rival submissions and perused the materials available on record, we note that since the goods has been received in the Assessment Year under consideration, accounting entries of the freight expenses has been made by the assessee in the Assessment Year under consideration, therefore, the liability has crystallized in the Assessment Year under consideration and hence, the expenses should be allowed in the Assessment Year under consideration. Moreover, the said expenses to the tune of Rs. 5,15,313/- has not been recorded in the previous year`s books and has not been claimed by the assessee in the previous year. The accounting entry of the expenses has been made by the assessee in the assessment year under consideration therefore, the liability has crystallized in the assessment year under consideration hence the assessee is entitled to claim the said expenditure in the current assessment year. For that we rely on the judgment of Hon`ble Gujarat High Court in the case of **SAURASHTRA CEMENT & CHEMICAL INDUSTRIES LTD. Vs. COMMISSIONER OF INCOME TAX, 213 ITR 523**, wherein it was held as follows:

“Merely because an expense relates to a transaction of an earlier year it does not become a liability payable in the earlier year unless it can be said that the liability was determined and crystallized in the year in question on the basis of maintaining accounts on the mercantile basis. In each case where the accounts are maintained on mercantile basis it has to be found in respect of any claim, whether such liability was crystallized and quantified during the previous year so as to be required to be adjusted in the books of accounts of that previous year. If any liability, though relating to the earlier year, depends upon making a demand and its acceptance by the assessee and such liability has been actually claimed and paid in the later previous years cannot be disallowed as deduction merely on the basis the accounts are maintained on mercantile basis and that it related to a transaction of the previous year”

Therefore, respectfully following the judgment of Hon`ble Gujarat High Court in the case of **SAURASHTRA CEMENT & CHEMICAL INDUSTRIES LTD (supra)**,

we allow this ground of the assessee and the Assessing Officer is directed to delete the addition of Rs.5,15,313/-.

9. Ground No.2(c) raised by the assessee relates to 20% estimated disallowance of miscellaneous items amounting to Rs.1,56,620/-. At the outset, the Id. counsel for the assessee has submitted that 20% disallowance on estimated is too higher side and, therefore, it should be restricted to 10%. However, the Id. DR for the Revenue has opposed the proposition canvassed by the Id. counsel for the assessee.

10. We have given a careful consideration to the rival submissions and perused the materials available on record, we note that considering the turnover and nature of business of the assessee, the estimated disallowance @20% made by Id CIT(A), on account of miscellaneous expenses is too higher side. We note that the estimated disallowance should be proper, reasonable and it should be as per the principle of natural justice. Therefore, considering all these aspects and facts and circumstances of the assessee's case, we restrict the disallowance on account of miscellaneous expenses @10%. The Assessing Officer is directed to restrict the disallowance on account of miscellaneous expenses @10%. Therefore, we allow the assessee's ground partly.

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

Order is pronounced in the open court on 26/04/2018.

Sd/-
(A. T. VARKEY)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक Date: 26/04/2018

(RS, SPS)

Sd/-
(A.L. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेश की प्र ति लिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant- M/s Mohan Impex
2. प्रत्यर्थी/ The Respondent-A.C.I.T, Cir-35 Kolkata
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त/ CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता/ DR, ITAT,
Kolkata
6. गार्डफाईल / Guard file.
सत्यापित प्रति

True Copy

By Order

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