

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5305/Mum/2016
Assessment Year: 2010-11**

Mr. Gavin Deryk Macfarland
Proprietor of M/s Zeus
Marcom Services, S-12,
Rosadel Enclave, Opp.
Income Tax, Near Old Session
Court, SGPDA, Margaon, Goa.
PAN No. AIPPM6376G

Vs. The Income Tax Officer,
Ward 31(1)(5), C-13,
Room No. 305,
Pratyakshakar Bhavan,
BKC, Bandra(E),
Mumbai-400051.

(Appellant)

(Respondent)

Assessee by : None
Revenue by : Mr. Rajesh Yadav, DR

Date of Hearing : 10/04/2018
Date of pronouncement: 26/04/2018

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-42, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. Though the case was fixed for hearing on 22.02.2018 and 01.04.2018 neither the assessee nor his authorized representative appeared before the Tribunal on the above dates. Hence, the appeal is

disposed off after going through the relevant documents and the arguments submitted by the Ld. DR.

3. The 1st ground of appeal is against the order of the Ld. CIT(A) confirming the disallowance of Rs.8,93,491/- made by the Assessing Officer (AO) u/s 40A(2)(b) of the Act.

3.1 Briefly stated, the facts of the case are that the assessee filed his return of income for the assessment year (AY) 2010-11 on 28.09.2010 declaring total income at Rs.12,29,700/-. During the course of assessment proceedings, the AO noticed that the assessee had paid professional fees (net of service tax) of Rs.50,34,386/- to N Link and Rs.3,46,970/- to Rashmi Enterprises, parties specified u/s 40A(2)(b). In response to a query raised by the AO, the assessee filed name and address of the party, amount paid, tax deducted thereon together with bills raised by the said parties. However, the assessee failed to file before the AO the exact nature of services rendered, reasonableness of rates charged, corresponding bills raised by the assessee and income earned thereon. Therefore, the AO made a disallowance of Rs.53,81,356/- u/s 37(1) of the Act.

3.2 Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). During the course of appellate proceedings, the assessee filed additional evidence. The Ld. CIT(A) called for a remand report from the AO after examining the said additional evidence. In the remand report dated 17.06.2015 sent to the Ld. CIT(A), the AO examined the submissions filed by the assessee and accepted that M/s N Links and M/s Rashmi Enterprises had rendered services to the assessee. However, the AO noted that the assessee was not in a

position to furnish the comparative profitability analysis to show that undue profits have not been allowed to be retained in M/s N Links and M/s Rashmi Enterprises. In the rejoinder, the assessee claimed that he had earned a gross profit of over 10% from sub-contracting job whereas his overall net profit from the business for the year is only about 6%. The Ld. CIT(A) thus held :

“In the assessee’s case the supplier of the manpower is itself sourcing the manpower from other suppliers. Further M/s Rashmi Enterprises is largely a mobile selling enterprise as per its Profit & Loss account. It is therefore held that the assessee was reasonably sure of earning 19.21% (gross) on the transaction with M/s Vodafone i.e. 11,82,817/- but the assessee declared a profit (gross) of Rs.2,89,326/- on the above transaction and allowed his sister concerns to retain the difference in their own hand. Therefore the difference of Rs.8,93,491/- is required to be additionally taxed in the hands of the assessee. As a result the additions of Rs.50,34,386/- and Rs.3,46,970/- totalling Rs.53,81,356/- is reduced to Rs.8,93,491/- giving a relief of Rs.44,87,865/- to the assessee.”

4. The 2nd ground raised by the assessee is against the order of the Ld. CIT(A) confirming the addition of Rs.77,726/- being interest paid on the amounts borrowed from the concern in which the assessee is a partner.

4.1 The assessee had earned share of profit from the partnership firm N-Link of Rs.14,01,712/- and claimed exemption u/s 10(2A). The assessee had incurred interest of Rs.77,726/- for earning the above exempt income from the said firm. However, no disallowance u/s 14A was made by the assessee for earning the above exempt income. Therefore, the AO made a disallowance of interest expenses of Rs.77,726/- u/s 14A of the Act.

4.2 In appeal, the Ld. CIT(A) found that the assessee had not given his date wise capital account in the Firm M/s N Links. In the capital account with the Firm, the assessee had been debited a sum of Rs.14,72,246/- on account of TDS of earlier years besides other debits. Therefore, the Ld. CIT(A) held that it could not be argued that interest paid on drawings was directly due to further drawings made by the assessee and utilized in his proprietary concern. Further, in M/s Zeus Marcom Services, the assessee already had a negative opening capital balance of Rs.19,71,522/- and the infusion of Rs.11,00,000/- from M/s N Links only went to reduce this negative balance. Thus there was no link of the above interest of Rs.77,726/- charged by M/s N Links to the taxable profits of the assessee.

Also the Ld. CIT(A) relying on the decision in Vishnu Anant Mahajan v. ACIT (2012) 137 ITD 189 (Ahd)(SB) and Hoshang D. Nanavati v. ACIT (2012) 25 taxmann.com 141 (Mum-Trib), held that since the share income of a partner from the partnership firm is not liable to tax u/s 10(2A), the provisions of section 14A would apply to disallow the expenditure incurred on earning said income.

In view of the above reasons, the Ld. CIT(A) confirmed the disallowance of Rs.77,726/- made by the AO.

5. The 3rd ground raised by the assessee is against the order of the Ld. CIT(A) confirming the addition of Rs.1,55,000/- made by the AO being the amount debited under the head 'rent expenses'.

5.1 The AO observed that the assessee had paid rent of Rs.6,74,000/- during the impugned assessment year. In response to a query raised by the AO, the assessee failed to file a copy of the rent agreement.

Therefore, the AO made a disallowance of the above sum of Rs.6,74,000/-.

5.2 In appeal, the Ld. CIT(A) held that (i) the assessee could not explain the source of security deposit of Rs.1,00,000/- given to the landlords of the Thane property, (ii) the assessee was not able to prove that the security deposit was not recoverable or that it was not recovered or adjusted against some other liability of the assessee.

Therefore, the Ld. CIT(A) confirmed the order of the AO in disallowing Rs.1,00,000/- as rent.

The Ld. CIT(A) further found that the assessee had claimed payment of rent of Rs.1,62,000/- to Shri B.B. Jadhav for a Pune property. However, as per the Leave and Licence agreement filed, the assessee had taken the premises i.e. Shop No. S.B.-3, Mezzanine Floor, Suresh Apartment on rent @ Rs.8,500/- pm inclusive of society charges for the first year and Rs.9,000/- pm for the second year. The agreement was entered into on 16.06.2008 w.e.f. 01.06.2008. Therefore, the rent payable by the assessee comes to Rs.1,07,000/- for the financial year 2009-10, instead of Rs.1,62,000/-. The assessee failed to explain the above difference by filing relevant documentary evidence. Therefore, the Ld. CIT(A) confirmed the above difference of Rs.55,000/-.

As regards the rent paid for the Goregaon (W) property to its five owners totalling Rs.4,12,000/-, the assessee had furnished the rent agreement and details of electricity expenses paid for the premises which have been accepted by the AO in the remand report. Therefore, the rent for Goregaon (W) property was allowed by the Ld. CIT(A).

Thus the Ld. CIT(A) reduced the disallowance of Rs.6,74,000/- out of rent paid to Rs.1,55,000/-.

6. Before us, the Ld. DR supports the order passed by the Ld. CIT(A).

7. We have heard the Ld. DR and perused the relevant materials on record. As narrated hereinbefore, the Ld. CIT(A) has restricted the disallowance of Rs.53,81,356/- to Rs.8,93,491/-. We refer here to page 4-8 of the order of the Ld. CIT(A) dated 24.05.2016.

Further the Ld. CIT(A) has confirmed the disallowance of Rs.77,726/- being interest paid as per reasons given by him at page 8-9 of his above order. The reasons given by him has been mentioned by us at para 4.2 hereinbefore.

Also the Ld. CIT(A) has restricted the disallowance of Rs.6,74,000/- as rent paid by the assessee to Rs.1,55,000/-. We refer here to page 9-11 of his order.

As the reasons given by the Ld. CIT(A) are based on proper appreciation of facts, we confirm the same.

8. In the result, the appeal is dismissed.

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

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 26/04/2018

Rajiv Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai