

आयकर अपीलिय अधीकरण, न्यायपीठ – “D” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “D” KOLKATA*

Before **Shri Waseem Ahmed, Accountant Member** and
Shri S.S. Viswanethra Ravi, Judicial Member

ITA No.2209/Kol/2016
Assessment Year :2009-10

Linde India Ltd. (formely BOC India Ltd) Oxygen House, P-43, Taratala Road, Kolkata-88 [PAN No.AAACB 2528 H]	V/s.	DCIT, Circle-12, Aayakar Bhawn, P-7, Chowringhee Square, Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri K. R. Vasudevan, Sr. Counsel
प्रत्यर्थी की ओर से/By Respondent	Shri Soumyajit Dasgupta, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	19-03-2018
घोषणा की तारीख/Date of Pronouncement	14-06-2018

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-18, Kolkata dated 12.09.2016. Assessment was framed by DCIT, Circle-12 Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated 25.03.2013 for assessment year 2009-10.

Shri K.R. Vasudevan, Ld. Senior Counsel appeared on behalf of assessee and Shri Soumyajit Dasgupta, Ld. Departmental Representative appeared on behalf of Revenue.

2. The assessee has taken the following grounds of appeal:-

“1. Addition of Rs.6,973,469/- towards unexplained expenditure

(a) That on the facts of the case the Ld. CIT(Appeals) erred in appreciating the fact that the amount paid to American Express Bank (‘Amex’) during Financial Year 2008-09

(b) That on the facts of the Ld. CIT(Appeals)erred in confirming addition of an amount of Rs.6,973,469 to the total income as unexplained expenditure.

(c) *That on the facts and circumstances of the case the Ld. CIT(Appeals) erred in disregarding the judicial pronouncements submitted by the appellant during the course of hearing as per which additions merely on account of mismatches in the AIR statement were liable to be deleted.*

2. *Levy of interest under section 234C of the Act amounting to Rs.174,522*

2.1 *That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) erred in considering the ground as infructuous even though no relief was given to the appellant.*

The appellant craves leave to add, alter, amend, amplify or modify any or all the of the above grounds of appeal at or before the time of hearing of the appeal.

The appellant submits that the above grounds are independent and without prejudice to one another.

3. First issue raised by assessee is as regards that Ld. CIT(A) erred in confirming the order of Assessing Officer by sustaining the disallowance of ₹6,973,469/- as unexplained expenditure.

4. Briefly stated facts are that assessee is a limited company and engaged in business of manufacturing and sale of various industrial and medical gases and cryogenic and non-cryogenic plant & vessels. The assessee in its books of account has shown payment of American Express Bank for credit card for ₹3,05,81,521/- only. However, AO in addition of AIR information observed that the payments have made for ₹3,75,54,990/-. Thus a discrepancy of ₹69,73,469/- was observed by AO which was not explained by assessee. Therefore, the same was added to the total income of assessee.

5. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that it has incurred an expense of ₹3,05,81,520/- only and therefore no addition on the basis of AIR can be made without bringing any additional evidence. The assessee in support of its claimed relied on the following case laws:-

“i) M/s Kroner Investments Ltd. vs. DCIT [ITA No.5125/M/2013]

ii) M/s ANS Law Associates vs. ACIT [ITA No.5181/M/2012](copy enclosed as Annexure 3)

iii) A.F.Ferguson & Co. JCIT [ITA No.5037/M/2012]

iv) DCIT Vs. Reliance Broadcast Network Ltd. [ITA No.3531/M/2013]

v) DCIT vs. Shri G. Selva Kumar [ITA No.868/Bang/2009]

vi) Mrs. Arati Raman vs. DCIT [ITA No.245/Bang/2012]

However, Ld. CIT(A) disregarded the contention of assessee and confirmed the order of AO by observing as under:-

“I have carefully considered the facts of the case and the submissions of the assessee. During appeal proceedings the AR was asked whether appellant had made any efforts in getting the information from American Express Bank regarding the expenditure reported by them, which was reflected in the AIR information. However, the AR explained that the appellant has not made any effort to get any clarification from the American Express Bank but insisted that it was the responsibility of the tax authorities to get additional evidences in support of the AIR information. In this regard I would like to add that things would have been simpler if the assessee had made little inquiry from American Express Bank. Being a valuable customer an otherwise also, bank would not have denied a clarification in this regard. Data in AIR information is furnished by the respective Banks. More often, mistake is on the part of the source which leads to such discrepancies. Hence, assessee’s insistence that only tax authorities should be making efforts is not justifiable. Now coming to the case laws relied on the appellant, it is seen that these case laws are regarding under reporting of income. assessee’s case is regarding expenditure from unexplained sources. Hence, the facts of assessee’s case are different. As assessee has failed to provide any explanation for excess expenditure of Rs.69,73,470/-, which was reported by American Express Bank, this expenditure is held to be from unexplained expenditure. Hence, addition of Rs.69,73,474/- is confirmed.”

Being aggrieved by this order of Ld. CIT(A) assessee came in second appeal before us.

6. Ld. AR for the assessee before us filed paper book which is running pages from 1 to 158 and submitted that all the expenditures incurred through American Express Bank credit cards were duly accounted for in the books of account. Ld. AR in support of assessee’s claim drew our attention on the details of the expenses incurred through credit card which is placed on page 19 of the paper book.

On the other hand, Ld. DR submitted that it was the duty of assessee to reconcile the difference as observed by AO between expenditure claimed by assessee vis-à-vis expenditure reported in AIR. He also submitted that cited case laws relied upon by Ld. AR are not applicable to the facts of the case on hand. Ld. DR further submitted that the matter can be restored back to the file of AO for the purpose of reconciliation.

7. We have heard the rival contentions of both the parties and perused and carefully considered the material on record; including the judicial pronouncements cited and placed reliance upon. In the instant case relates the disallowance made by AO on account of mismatch observed between the expenditure claimed by assessee

vis-à-vis expenditure reported in AIR. As such, the AIR has reported excess expenditure incurred by assessee for ₹69,73,470/- only. Therefore the addition made by the AO subsequently Ld. CIT(A) confirmed the order of AO.

7.1 From the foregoing discussion, we note that the addition has been made merely on the basis of mismatch in the figures of expenditure as discussed in the preceding paragraph. There was no evidence brought by AO for making the impugned addition other than the AIR information.

7.2 We also note that the assessee being the customer of American Express Bank credit card has sought information from American Express Bank and should have filed the reconciliation statement but assessee has failed to do so. In view of above, we note that both assessee as well as Revenue had not co-operate each other for making the reconciled of the expense as discussed above. Therefore, in the interest of natural justice and fair play we are inclined to restore the matter to the file of AO for fresh adjudication in accordance with law. Needless to say, assessee should file reconciliation to justify that it is not incurred expenditure over and above recorded in the business. Thus, ground of appeal is allowed for statistical purpose in terms of above.

In the result, appeal is allowed for statistical purpose.

Order pronounced in the open court _____/05/2018

(न्यायिक सदस्य)
(S.S. Viswanethra Ravi)
(Judicial Member)
Kolkata,
*Dkp, Sr.P.S

(लेखा सदस्य)
(Waseem Ahmed)
(Accountant Member)

दिनांक:- /05/2018 कोलकाता ।

आदेश की प्रतिलिपि अद्योषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Linde India Ltd (formerly BOC India Ltd) Oxygen House, P-43, Taratala Road, Kolkta-88
2. प्रत्यर्थी/Respondent-DCIT, Circle-12, Aayakar Bhawan, P-7, Chowringhee Sa. Kol-69
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

Sr. Private Secretary, Head of Office/DDO
आयकर अपीलीय अधिकरण, कोलकाता ।