

IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai
Before Shri B.R. Baskaran (AM)& Shri Pawan Singh (JM)

I.T.A. No. 4892/Mum/2016 (Assessment Year 2010-11)

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| DCIT CC8(2) 6 TH Floor, R.No. 658 Aayakar Bhavan M.K. Road Mumbai-400 020. | Vs. | M/s. Standard Galva Steel Pvt. Ltd. Shri Devang Gandhi A/303, Balaji Gardens Sector-11, Koparkhairne Navi Mumbai-400 709. PAN : AALCS6888E |
| (Appellant) | | (Respondent) |

I.T.A. No. 4893/Mum/2016 (Assessment Year 2010-11)

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| DCIT CC8(2) 6 TH Floor, R.No. 658 Aayakar Bhavan M.K. Road Mumbai-400 020. | Vs. | M/s. Standard Conduits Pvt. Ltd. Shri Devang Gandhi A/303, Balaji Gardens Sector-11, Koparkhairne Navi Mumbai-400 709. PAN : AADCS8686C |
| (Appellant) | | (Respondent) |

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| Assessee by | Shri Rakesh Joshi |
| Department by | Ms. S. Padmaja & Ms. Pooja Swaroop |
| Date of Hearing | 7.06.2018 |
| Date of Pronouncement | 7.06.2018 |

O R D E R

Per B.R. Baskaran (AM) :-

These appeals filed by Revenue relate to two different assessees and they are directed against the orders passed by the learned CIT(A)-50, Mumbai. Both appeals relate to A.Y. 2010-11. Since issues urged in these appeals are identical in nature, they were heard together and are being disposed of by this common order, for the sake of convenience.

2. Following issues are urged in these appeals :-

- (a) Taxability of refund of additional custom duty.
- (b) Disallowance of commission expenses.

3. We shall now take up the appeal filed by Standard Conduits P. Ltd. as a lead case. Facts relating thereto are discussed in brief. The assessee is engaged in dealing in iron and steel, plastic parts, lighting panel fittings etc. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has shown a sum of ₹ 965.41 lakhs as current asset in the balance sheet under the head 'refund received from customs authorities towards 4% of Special Additional Duty (SAD) claimed". The Assessing Officer called for the explanations from the assessee. The assessee submitted that it was entitled to refund under "4% of special additional duty refund scheme" of Customs department. It was submitted that when the assessee makes payment of customs duty, amount refundable under "4% of SAD refund scheme" is not charged to Profit and Loss account and taken to Balance sheet as a current asset and the remaining amount is debited to the profit and loss account. Whenever the custom duty is refunded by the Government of India, the same is credited to current assets account. The refund, if any, rejected is transferred to profit and loss account. Accordingly, the assessee submitted that the refund received by the assessee from Government of India towards 4% of SAD claim is not liable to tax, since the same is not claimed as expenditure in the year under consideration or in any of the earlier years. The Assessing Officer was not convinced with the explanations of the assessee and accordingly he assessed the outstanding refund claim of ₹ 965.41 lakhs as income of the assessee. However, while computing the income, the Assessing Officer erroneously added only ₹ 92.28 lakhs.

4. In the appellate proceedings, the assessee furnished the very same explanations along with the summary of ledger account of 4% of SAD refund account. The learned CIT(A) called for a remand report from the Assessing Officer. In the remand report the AO made the following observation:-

*(i). With regard to the treatment of the Special Additional Duty (SAD): On perusal of the relevant records of the assessee and based on the submissions made by them, **it is observed that the entire duty paid is not being debited to the Profit & Loss Account.** Only the amount of the SAD, claim for refund of which is not being allowed by the Customs Authorities is being debited to the Profit & Loss Account in the year of the rejection of the said claim. The payment of the SAD initially is being debited to the account of 'Amount Due as Refund of Additional Duty of Customs' which is appearing in the Balance Sheet on the Assets side as recoverable. For SAD not refundable, journal entries are being passed to transfer those sums to the Expense Account.*

5. The learned CIT(A) noticed that the assessee has not claimed 4% of SAD claimed amount as expenditure and instead debited the same as amount receivable from Government of India and was shown as current asset in the balance sheet. Accordingly, he deleted the addition made by the Assessing Officer.

6. We have heard the parties and perused the record. We noticed that the Assessing Officer, in the remand report, has accepted the fact that the assessee has not claimed the amount of 4% of SAD as deduction from the profit. The refund claim, if any, rejected by the Government of India, is transferred to profit and loss account. Under these set of facts, we are of the view that there is no justification in assessing the amount receivable from the Government of India as income of the assessee, since the assessee has not claimed the same as deduction earlier. Accordingly, we confirm the order passed by the learned CIT(A) on this issue.

7. Next issue relates to disallowance of commission expenses. The Assessing Officer noticed that the assessee has claimed commission expenses of ₹ 157.52 lakhs, which worked out to 0.70% of the sales value. The Assessing Officer noticed that the commission expenses claimed by the assessee in immediately preceding year worked out to 0.21% of the sales value. In view of the steep increase in the commission expenses claimed, the Assessing Officer asked the assessee to explain the same. The assessee submitted that the commission was paid as per the agreement entered with the agent and hence

genuine. The assessee also pointed out that the Assessing Officer has examined certain persons, who received commission and no adverse evidence was found during such examination. The Assessing Officer was not convinced with the explanations of the assessee and accordingly determined commission expenditure at 0.40% of the sales value and accordingly he disallowed a sum of ₹ 66.82 lakhs. The learned CIT(A) deleted the same and hence the revenue as filed this appeal.

8. We heard the parties and perused the record. We noticed that the learned CIT(A) has deleted this disallowance by making following observation :-

7.5 I have carefully gone through the assessment order and have also considered the submissions of the appellant. The AO has disallowed the commission payments because he considered the expenses unreasonable. He did not bring anything on record to prove that the payments were not genuine. In my view, in this case, the disallowance made by the AO is not in accordance with the provisions of the Act. There are certain provisions in the Act, which empowers the AO to disallow what he considers unreasonable or excessive expenditure subject to certain conditions. For example, under the provisions of section 40A(2), payments made by an individual to his relatives can be disallowed to the extent the AO considers it unreasonable. This implies that where the AO is not expressly empowered to do so, he cannot disallow part of an expenditure incurred by the appellant just because he considers that the quantum of expenditure is unreasonable. Had it not been so, the provisions of section 40A(2) of the Act would have been redundant. In view of the above and in view of the case law cited by the appellant, I am of the view that the disallowance made by the AO is not sustainable. Accordingly, I allow the expenditure of Rs. 67,42,510/- disallowed by the AO. In the result, the third ground of appeal is allowed.

9. We noticed that the Assessing Officer has not brought any material on record to show that the commission payment made by the assessee was bogus or non genuine. It was also not shown by the AO that the payments have been made to any relative covered by section 40A(2)(a) of the Act warranting disallowance of excess payment. The commission payment is made to several persons and it appears that the AO has examined certain persons and the results of the examination did not bring any adverse points. Further the AO has not given any reason or basis for adopting 0.40% of the sales value for

determining the quantum of commission expenses. Under these set of facts, we are of the view that the AO has made this disallowance only on surmises and conjectures. Hence the decision rendered by the learned CIT(A) on this issue does not call for any interference. Accordingly, we uphold the same.

10. In the case of another assessee i.e. Standard Galva Steel Pvt. Ltd., the Revenue is urging the very same grounds as discussed above. Following the decision taken by us in the earlier paragraphs we reject both the grounds of Revenue.

11. In the result, both the appeals of the Revenue are dismissed.

Order has been pronounced in the Court on 7.6.2018.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 7/6/2018

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,

Senior Private Secretary
ITAT, Mumbai

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