

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH : KOLKATA

[Before Hon’ble Shri A.T. Varkey, JM & Shri M.Balaganesh, AM]

I.T.A No. 1859/Kol/2016

Assessment Year : 2013-14

M/s Kunal Exim
[PAN: AAEFK 0181 G]
(Appellant)

-vs-

ITO, Ward-31(1), Kolkata
(Respondent)

For the Appellant : Shri S. M . Surana, Advocate

For the Respondent : Shri Sandeep Lakra, Addl. CIT Sr. DR

Date of Hearing : 25.09.2018

Date of Pronouncement : 05.10.2018

ORDER

Per M.Balaganesh, AM

1. This appeal by the Assessee arises out of the order of the Learned Commissioner of Income Tax(Appeals)-9, Kolkata [in short the Id CIT(A)] in Appeal No. 27/ CIT(A)-9, Wd-31(1)/2016-17/Kol dated 11.08.2016 against the order passed by the ITO, Ward-31(1), Kolkata [in short the Id AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 29.03.2016 for the Assessment Year 2013-14.

2. The first issue to be decided in this appeal is as to whether the Id CITA was justified in upholding the addition made towards liabilities standing in the name of M.Tewari, S.Tewari, Md. Islam and inspection charges treating the liabilities as bogus , in the facts and circumstances of the case.

2.1. The brief facts of this issue are that the assessee is a partnership firm engaged in the business of customs clearing and forwarding agency. The return of income for the Asst Year 2013-14 was filed electronically by the assessee firm on 15.3.2014 declaring total income of Rs 7,84,972/-. The Gross billing done by the assessee was Rs 9,68,76,354/- which includes bill generated to parties for job expenses of Rs 9,49,61,231/- and service charges without service tax of Rs 17,04,860/- and service tax reimbursement of Rs 2,10,263/- . The assessee has shown Rs 17,04,860/- (9,68,76,354 – 9,49,61,231 – 2,10,263) in its profit and loss account as net income . The assessee in this regard explained that the total bill raised by the assessee predominantly includes a portion towards reimbursement of expenses like customs duty, charges to shipping companies, transportation charges etc and that only the service charges component included in the total bill would be its income. In the Balance sheet, the assessee had shown liability for expenses of Rs 4,16,53,151/- for which details were sought by the Id AO. The Id AO observed that the assessee submitted evidence of outstanding balance of Rs 2,90,445/- only which was payable to HDF against car loan. Apart from this, it submitted details of job expenses payable for the period 2012-13 amounting to Rs 46,06,609/- and job charges payable for the period 2011-12 amounting to Rs 45,79,443/-. He observed that no details were provided for the remaining outstanding liability of Rs 3,21,76,654/- shown under the head 'liability for expenses'.

2.2. The Id AO observed that the details of liability towards job expenses as on 31.3.2013 shown by the assessee is as under:-

Opening Balance as on 1.4.2012	- Rs 3,70,46,541.58
Add: Payable for the year	- Rs 46,06,609.62
Closing Balance as on 31.3.2013	- Rs 4,16,53,151.20

The break up of job charges payable for the year were furnished by the assessee as under:-

a) Transportation charges including detention charges - Pasupati Roadways Corporation	14,20,200/-
b) Manoj Tiwari (Container Survey & Repairing charges)	2,96,800/-
c) Saroj Tiwari (Cartoons Plastics, Tape, etc)	3,21,610/-
d) Md. Israil (Labour Charges)	4,10,800/-
e) Md. Islam (Crane Charges)	4,05,000/-
f) Md. Ismail (Container destuffing / stuffing charges)	5,94,000/-
g) Md. Ismail (Coopering & Ceiling charges)	2,93,700/-
h) Md. Israil (Overtime charges for labour)	1,62,000/-
i) Custom/ goods inspection charges	7,02,500/-
Total	46,06,610/-

2.3. The Id AO sought to verify the genuineness of the aforesaid claims of creditors for expenses for which notices u/s 133(6) of the Act were issued to all the aforesaid parties calling for certain particulars. Out of the above, the notice sent to Pasupati Roadways Corporation returned unserved. The Id AO observed that despite non-service of notice on Pasupati Roadways Corporation, a reply was filed by them directly to the office of the Id AO. The Id AO also observed that replies from other sundry creditors except Md. Ismail was received by him in response to notice u/s 133(6) of the Act. The replies given by those parties were summarized by the Id AO in the following table :-

Sl. No.	Name of the Party	Natur of Services Rendered	Opening Balance as on 01.04.2012	Work done during F.Y. - 2012-13	Payment received for the year	Closing Balance as on 31.03.2013	
1	Pasupati Roadways Corporation	Transportation and Detention Charges	10197140	4915103	3494903	11617340	
2	Saroj Kumar Tiwary	Packing Materials and Packing Charges with accessories and Labor	5568601	582409	260800	5890211	
3	Manoj Tiwari	Container Repairing Charges	5408000	431320	1345520	5704800	
4	Md. Islam	Crane Hire Charges	4498900	1879765	1474765	4903900	
5	Md. Israil	Supply of Labor & Labor Charges	5468100	3447190	2874390	6040900	
6	Md. Ismile	No Reply received from him					

2.4. The Id AO sought to further verify the aforesaid details by issuing summons u/s 131 of the Act to all the parties seeking their personal appearance together with the requisite details that were called for. In response to summons u/s 131 of the Act, Sri Manoj Tiwari and Saroj Tiwari appeared on 22.2.2016. The Id AO observed that they could not produce the books of accounts and documentary evidences. A statement was recorded from them on oath wherein they deposed that they are engaged in the work related to transportation of containerized goods from Kolkata port to various parts of Kolkata and neighbouring states ; that they do not have any truck or lorry of their own ; that they manage work from hiring trucks and lorry from the local truck owners and pay them the rent ; that they earn mainly from the commission received from the transportation of containerized goods from Kolkata port ; that their annual income was about Rs 2 lakhs ; that they do not maintain any books of accounts ; that the assessee (i.e. M/s Kunal Exim) would approach them for trucks as per their requirement which would be arranged by them for the assessee ; that they take the money from the assessee as and when they get the order for trucks ; that the same money is advanced to the truck owners ; that they don't remember exactly what was the outstanding amount lying with them as on 31.3.2013 ; that they could not produce any evidence of any outstanding amount lying with the assessee ; that they were working jointly under the name of Pasupati Roadways Corporation which had transactions with the assessee and that they do not have any outstanding balance in their individual capacity with the assessee as on 31.3.2013 . Having said this, they further deposed that they might have some small amount outstanding due from the assessee which they don't remember and they don't have any proof for it. They further deposed before the Id AO regarding the reply sent by Pasupati Roadways Corporation directly that they don't have any idea about income tax and hence on receipt of the said notice , they had given it to Tushar Pandit, the partner of M/s Kunal Exim (i.e the assessee herein) who in turn handed over to his advocate for preparation of the reply and that they had signed on the dotted lines in good faith.

2.5. In response to the summons u/s 131 of the Act, Md. Ismail and Md. Israil appeared on 3.3.2016 before the Id AO , but Md. Islam did not appear. They were asked to appear with supporting documents and books of accounts which were not produced except their identity proof and daily dock permit. Their statement was recorded on oath by the Id AO. The contents of their statement as stated in the order of Id AO are as under:-

(a) Md. Israil himself work as a labour and sometimes arrange labour for the assessee and Md. Ismail do work of Loading and unloading from container by crains mainly at dockyard at Kolkata.

(b) Their daily income is Rs.500/- and Annual income is about Rs.1,80,000/- only.

(c) They do not maintain any books of accounts.

(d) M/s. Kunal Exim approach them for labours and for loading & unloading works as per their requirement. They arrange labours and cranes for them and make advance payment of about 80%, remaining payment is made few days after completion of the work.

(e) None of them remember exactly what was the outstanding amount lying with them as on 31.03.2013. They could not produce any evidence of any outstanding amount lying with the assessee.

(f) Both of them reiterated, "We work on a very small scale as a labour. We might had some small amount outstanding with M/s. Kunal Exim. But / don't remember exactly and / don't have any proof of it. But the amount as mentioned by you was never outstanding and we are a very small person, we somehow manage our lively hood."

(g) When asked about the reply sent in response to notice u/s. 133(6) to them, Both stated, "I did not reply the said letter. Since, / do not have the idea about income tax. So on receipt of the said notice issued to me, / given it to Tushar Pandit, the Partner of M/s. Kunal Exim. He handed over the same to his Advocate and he has prepared the same and told me to put my signature on it and on good faith / signed the documents."

2.6. The Id AO treated the net transactions during the year in respect of aforesaid creditors amounting to Rs 46,06,610/- as bogus liabilities and added the same to the total income of the assessee.

2.7. The Id CITA observed that Sri Manoj Tiwari (Rs 2,96,800/-) ; Sri Saroj Tiwari (Rs 3,21,610/-) did not confirm having transactions in their individual capacity with the

assessee in their statement on oath. Md. Islam (Rs 4,05,000/-) did not appear before the Id AO in response to summons u/s 131 of the Act. Accordingly, he confirmed the addition made towards liabilities standing in the names of these parties. Other than these parties, all other creditors appeared and confirmed the transactions and accordingly the balances shown in their names are to be accepted as genuine. No details were submitted in respect of inspection charges of Rs 7,02,500/- and hence he upheld the addition made thereon. Aggrieved, the assessee is in appeal before us.

2.8. We have heard the rival submissions. At the outset, we find that the expense creditors did not deny having transactions with the assessee. It is not in dispute that those creditors were not having any idea of income tax and accordingly had handed over the 133(6) notice to assessee's partner and had signed on the replies given by the advocate of the assessee. The entire transactions have been confirmed by them before the Id AO by way of deposition in statement on oath. We find that the creditors had only stated before the Id AO that they are all small time labourers and workers and do not have that much income left with them. We find that they had deposed correctly that in as much as their income component in the entire services rendered to the assessee would be miniscule but the total transactions carried out through them for and on behalf of the assessee would be more. The assessee had engaged them for rendering of specific services . The assessee cannot be expected to know how those parties render the services i.e either on their own or through outsourced agencies. For the services rendered by those creditors, the assessee would make total payments to them. Those parties in turn would pay the respective dues to the outsourced agencies such as truck owners and lorry drivers. By this process, the amounts that would be left with those creditors would only be commission income which would be miniscule. The entire modus operandi of these transactions were explained by those parties in the statement given on oath before the Id AO. The fact of these creditors rendering services to the assessee is not denied or disputed by those parties or by the revenue. All these parties

except one party had appeared before the Id AO with their respective identity proofs and statement recorded on oath from them. Hence they cannot be treated as bogus creditors or bogus liabilities. Even for the party who had not appeared before the Id AO in response to summons, reply u/s 133(6) of the Act was given by him directly before the Id AO. No infirmity has been found in the said reply by the Id AO. Infact no infirmity has been found in the factual details submitted by the creditors in the reply filed in response to notice u/s 133(6) of the Act by the Id AO except drawing suspicion without any basis. We find lot of force in the argument of the Id AR that these creditors had not deposed anything against the assessee and hence the assessee chose not to give its counter or seek for cross examination before the Id AO. We find that all those creditors had also deposed that they had not maintained books of accounts and hence they could not confirm the balance outstanding as on 31.3.2013. In these circumstances, there is nothing wrong in they being dependent on the assessee for the facts and figures which were duly confirmed by them in writing by signing the reply letter to notice u/s 133(6) of the Act. We also find that the fact of reimbursement of expenses made by the assessee is not disputed by the revenue before us and hence the corresponding liability thereon cannot be disputed. None of those creditors had denied having rendered services to the assessee. In view of the aforesaid observations in the facts and circumstances of the case, we hold that the Id CITA erred in confirming the addition made towards these liabilities in the sums of Rs 2,96,800/- (Manoj Tiwari) ; Rs 3,21,610/- (Saroj Tiwari) and Rs 4,05,000/- (Md. Islam) treating them as bogus liabilities.

2.9. The Id AR at the time of hearing stated that the addition made towards inspection charges of Rs 7,02,500/- was not pressed by him. The same is reckoned as a statement from the Bar and accordingly the same is treated as dismissed as not pressed.

2.10. Accordingly, the Ground No.2 raised by the assessee is partly allowed.

3. The next issue to be decided in this appeal is as to whether the Id CITA was justified in confirming the action of the Id AO in treating the interest income on fixed deposits as income from other sources in the facts and circumstances of the case.

3.1. The brief facts of this issue are that the assessee derived interest income as under :-

Interest from HDFC Realty Fund	- Rs 2,59,071/-
Interest on FD	- Rs 7,71,238/-
Interest on Loan	- Rs 2,53,018/-
	----- Rs 12,83,327/-

This interest income of Rs 12,83,327/- was offered by the assessee as business income , which was sought to be shifted to be offered under the head 'income from other sources' by the Id AO. Pursuant to this shift, the assessee did not have positive business income . Accordingly, the Id AO sought to disallow the remuneration paid to partners in the sum of Rs 4,00,000/- u/s 40(b) of the Act in the absence of positive business income. The Id CITA observed that the assessee was not able to prove any business connection with regard to the aforesaid interest income and accordingly confirmed the action of the Id AO. Aggrieved, the assessee is in appeal before us.

3.2. We have heard the rival submissions. The Id AR argued that this interest income has been derived by the assessee firm for the past several years and has been accepted as business income by the revenue, although the assessments were framed only u/s 143(1) of the Act upto Asst Year 2012-13. He argued that for the Asst Year 2014-15, the assessment was framed u/s 143(3) of the Act dated 15.6.2016 wherein the interest income was accepted as business income. We have gone through the assessment order for the Asst Year 2014-15 placed on record by the Id AR. We find that there is no discussion in the assessment order regarding the taxability of interest income or even the existence of interest income , if any, in the said assessment year as the computation

of income was not placed on record before us for the Asst Year 2014-15. In this regard, we find that at the outset, there is no finding in the assessment order or in the Id CITA's order regarding the purpose of making investment in deposits and mutual fund vis-a-vis the business connection thereon. This finding is crucial to determine whether the interest income is to be taxed as business income or other sources. Hence in the interest of justice and fair play, we deem it fit and appropriate, to remand this issue to the file of the Id AO , for de novo adjudication of this issue in accordance with law. The issue of allowability of remuneration to partner u/s 40(b) of the Act is consequential in nature as it would depend on the ground to be decided in respect of interest income of Rs 12,83,727/-. Accordingly, the Grounds 3 & 4 raised by the assessee are allowed for statistical purposes.

4. The Ground No. 1, 5 & 6 raised by the assessee are general in nature and does not require any specific adjudication.

5. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the Court on 05.10.2018

Sd/-

[A.T. Varkey]
Judicial Member

Sd/-

[M.Balaganesh]
Accountant Member

Dated : 05.10.2018

SB, Sr. PS

Copy of the order forwarded to:

1. M/s Kunal Exim, 17, Ganesh Chandra Avenue, 1st Floor, Kolkata-700013.
2. ITO, Ward-31(1), Kolkata, 10B, Middleton Row, 4th Floor, Kolkata
- 3..C.I.T(A).- 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches