

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, BENGALURU**

**BEFORE SHRI A.K.GARODIA, ACCOUNTANT MEMBER
and
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA Nos.90 to 92/Bang/2011
(Assessment years: 2004-05 to 2006-07)

M/s.Worldwide Shipping Inc.
No.202, Veekay towers,
Kulur Bangra Road, Kulur,
Mangalore. ... Appellant
PAN:AAAFW3568 K

Vs.

Deputy Commissioner of Income-tax,
Central Circle,
Mangalore. ... Respondent

Appellant by : Shri V.Srinivasan, Advocate.
Respondent by : Shri K.V.Aravind, Standing counsel

Date of hearing: 20/12/2018
Date of pronouncement: 31/12/2018

O R D E R

Per PAVAN KUMAR GADALE, JM :

These are the appeals filed by the assessee against the orders of the Commissioner of Income-tax(Appeals)-VI, Bengaluru, for the assessment years 2004-05, 2005-06 and 2006-07 passed u/s 153A r.w.s. 143(3) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short]. Since the issues involved in these appeals are common, these are clubbed together and heard and disposed by this common order for the sake of convenience.

2. Before we proceed, the learned AR of the assessee has not pressed the grounds No.2 to 8 in the assessment year 2004-05 (ITA No.90/Bang/2011) and accordingly made endorsement in the grounds of appeal. Therefore, the effective grounds are grounds No.1 and 9 to 12 which read as under:

1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

9. Without prejudice to the above, the learned CIT[A] is not justified in sustaining a sum of Rs.10,293/- from out of the addition made by the learned A.O. of Rs. 51,465/- under explanation to section 37[1] in respect of tipper mamools as these expenses are not in the nature of bribes and are in the nature of customary mamools payable to the crew of the trucks, who bring cargo for loading or unloading from the ships in the port yard. The disallowance is on erroneous appreciation of facts and by considering 3 statements in the case of M/s.HML Agencies Pvt. Ltd.,, which perhaps created a doubt that they were in the nature of entertainment and further they relate to altogether different assessment year and further it related to the case of M/s.HML Agencies Pvt. Ltd., and not that of the appellant and such vouchers perhaps creating such doubt are not in existence for the year under appeal and therefore, the disallowance made requires to be deleted.

10. The authorities below ought to have telescoped each one of the additions/disallowances made in the assessment with the other additions/disallowances for not only of the year under appeal but also of such additions made in earlier years and confined himself to assess only the incremental peak of such additions for the year under appeal.

11. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s.234A, 234B and 234D of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

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7. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs as the learned CIT[A] despite citing the binding decision of the Hon'ble Karnataka High Court, Circuit Bench, Gulbarga in ITA Nos.6005 & 6006/2010 has not cancelled the assessment faithfully following the binding decision.

3. For the assessment year 2005-06 (ITA No.91/Bang/2011) the learned AR has not pressed the grounds No.2 to 8 and accordingly made endorsement in the grounds of appeal. Therefore, the effective grounds are grounds No.1 and 9 to 13 which read as under:

1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

9. Without prejudice to the above, the learned CIT[A] is not justified in sustaining a sum of Rs.7,181/- from out of the addition made by the learned A.O. of Rs. 16,705/- under explanation to section 37[1] in respect of tipper mamools as these expenses are not in the nature of bribes and are in the nature of customary mamools payable to the crew of the trucks, who bring cargo for loading or unloading from the ships in the port yard. The disallowance is on erroneous appreciation of facts and by considering 3 statements in the case of M/s.HML Agencies Pvt. Ltd.,, which perhaps created a doubt that they were in the nature of entertainment and further they relate to altogether different assessment year and further it related to the case of M/s.HML Agencies Pvt. Ltd., and not that of the appellant and such vouchers perhaps creating such doubt are not in existence for the year under appeal and therefore, the disallowance made requires to be deleted.

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10.1 The learned CIT[A] is not justified in sustaining a sum of Rs.51,084/- out of the addition made by A.O. of Rs. 74,29,518/- as bogus sundry creditors under the facts and in the circumstances of the appellant's case.

10.2 They failed to appreciate that these are trade creditors and the appellant has not been informed that the A.O. has not received directly confirmation letters from the parties for the appellant to procure such confirmation and file the same with the A.O.

10.3 The addition is purely on suspicion and surmise, assumptions and presumptions and in the absence any shred of evidence that the liability ceased to exist and the A.O. has not discharged the burden of proving the cessation of liability or to disprove the existence of the liability to make the addition of the trading liability.

11. The authorities below ought to have telescoped each one of the additions/disallowances made in the assessment with the other additions/disallowances for not only of the year under appeal but also of such additions made in earlier years and confined himself to assess only the incremental peak of such additions for the year under appeal.

12. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s.234A, 234B, 234C and 234D of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

13. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs as the learned CIT[A] despite citing the binding decision of the Hon'ble Karnataka High Court, Circuit Bench, Gulbarga in ITA Nos.6005 & 6006/2010 has not cancelled the assessment faithfully following the binding decision.

4. For the assessment year 2006-07 (ITA No.92/Bang/2011) also, learned AR has not pressed the grounds No.2 to 7 and accordingly made endorsement in the

grounds of appeal. Therefore, the effective grounds are No.1 and 8 to 10 which read as under:

1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The authorities below ought to have telescoped each one of the additions/disallowances made in the assessment with the other additions/disallowances for not only of the year under appeal but also of such additions made in earlier years and confined himself to assess only the incremental peak of such additions for the year under appeal.

3. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s.234A, 234B and 234D of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

4. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs as the learned CIT[A] despite citing the binding decision of the Hon'ble Karnataka High Court, Circuit Bench, Gulbarga in ITA Nos.6005 & 6006/2010 has not cancelled the assessment faithfully following the binding decision.

5. For the sake of convenience, we take up appeal No.ITA 90/Bang/2011 for assessment year 2004-05 and the facts narrated therein as under:

The assessee is engaged in the business of clearing and forwarding agent and filed the Return of income on 22/10/2004 declaring total income of Rs.16,13,616/-. The Return of income was processed u/s 143(1) of the Act. Subsequently, search u/s 132 of the Act was conducted on the

premises of assessee and notice u/s 153A of the Act was issued. In compliance, the assessee filed letter to treat the Return of income filed earlier as in response to notice u/s 153A of the Act. Further, the assessing authority has issued notice u/s 143(2) and 142(1) of the Act along with questionnaire and calling for various details. The assessing authority found that the assessee has not submitted the information for various reasons and finally, the assessee was represented by its learned AR and the case was discussed. The assessing authority dealt on the nature of business activities and nature of income whereas the assessee has challenged the validity of search u/s 132 of the Act and claim of expenditure. The assessing authority, after considering the submissions of the assessee and material filed and information obtained on verification relied on documents. Further due to non-availability of confirmation of creditors and evidence of claim of expenditure has made an addition of expenses of Rs.51,465/- to the Returned income u/s 37(1) of the Act and Balance of sundry creditors to the extent of non-availability of confirmation of Rs.38,97,404/- and finally Assessed the total income of Rs.55,62,490/- u/s 153A r.w.s. 143(3) by order dated 04/12/2009.

6. Aggrieved by the assessment order, the assessee has filed an appeal before the CIT(A). The CIT(A), in the appellate

proceedings, having considered the grounds of appeal and the submissions and details filed in the course of appellate proceedings in respect of sundry creditors has granted relief in respect of the addition of sundry creditors and restricting the addition of tipper expenses by estimating at 20% worked out to Rs.10,293/- and partly allowed the appeal.

7. Before us, the Id.AR has made endorsement for not pressing grounds No.2 to 8 and has argued only one effective ground No.9 in respect of Restricting disallowance of Rs.10,293/-, the Id. DR supported the order of the CIT(A). Hence, we adjudicate only effective ground argued by the Id. AR.

8. We heard the Rival submissions and perused the material on record. The Id. AR submitted that the assessee has claimed expenditure u/s 37(1) of the Act which is in the nature of tipper expenses and such expenses are customarily incurred in the normal course for effective working of the assessee's business activities. We found that the CIT(A), having considered these facts has restricted the addition to Rs.10,293/-. We also observed that the CIT(A) considered the submissions of the assessee vis-à-vis explanations, took a decision of Restricting the estimation of expenditure. Even before us, the Id. AR could not bring any evidence or

controvert the finding of the CIT(A). Therefore, we, considering the apparent facts and the circumstances of the assessee's case and business activities find the CIT(A) dealt on the disputed issue and Restricted the addition. Accordingly, we are not inclined to interfere with the finding of the CIT(A) on this ground. Accordingly, we uphold the action of the CIT(A) and dismiss the effective ground of appeal of the assessee for the assessment year 2004-05.

9. In the result, the assessee's appeal for assessment year 2004-05 is dismissed.

10. Similarly, for the assessment year 2005-06 in ITA No.91/Bang/2011, the facts are similar and the assessee has raised effective grounds No.1 and 9 to 13. But whereas at the time of Hearing, the Id. AR has argued only effective grounds No.9 and 10. Whereas the ground No.9 is the addition of Tipper expenses Restricted by the CIT(A). We have dealt on this issue in the assessee's own case in ITA No.90/Bang/2011 for the assessment year 2004-05 and confirmed the order of the CIT(A) on this ground. Accordingly, we follow the decision taken by us for the earlier assessment year 2004-05 and dismiss this ground of appeal for the assessment year 2005-06.

11. In respect of ground No.10, we found the AO has made addition of Rs.74,29,518/- as no confirmations were provided in respect of balance of sundry creditors by the assessee and the appellate authority considered the facts and the submissions with evidence and restricted the addition to an extent of Rs.51,084/-. Whereas the contention of the Id. AR that the assessee could not substantiate with any evidence of confirmation to the extent of Rs.51,084/- as they were not received by the assessee and the CIT(A) has granted partial relief. We found the assessee could not submit any evidence and confirmation even before us to substantiate balance of sundry creditors. Therefore, we are of the considered opinion that the CIT(A) has granted opportunity to the assessee for submitting the confirmations. But assessee could not submit to the extent and the CIT(A) has observed that the assessee has failed to explain the credit in the appellate proceedings. We found, in spite of providing opportunities to substantiate, the assessee could not substantiate with evidence before the lower authorities and also Id. AR could not controvert the finding of CIT(A). Accordingly we are not inclined to interfere with the order of CIT(A) and uphold the same. Accordingly, the ground of appeal of the assessee is dismissed.

12. In the result, the assessee's appeal for assessment year 2005-06 is dismissed.

13. We found for assessment year 2006-07 in ITA No.92/Bang/2011 the assessee has argued only the sole effective ground No.7.1 in respect of balance of sundry creditors. Whereas the CIT(A) in appellate proceedings after calling for information and confirmation has restricted the addition to the extent of Rs.6,034/-. We have decided this issue in assessee's own case for assessment year 2005-06 in ITA No.91/Bang/2011 in para.11 above and uphold the order of the CIT(A) on this ground. Therefore, the observations made in ITA No.91/Bang/2011 shall also apply to the said assessment year under consideration. Accordingly, we uphold the action of the CIT(A) in restricting the addition to Rs.6,034/- and the grounds of appeal of the assessee are dismissed. In the result, the assessee's appeal for assessment year 2006-07 is dismissed.

14. In the result, the assessee's appeals for the assessment years 2004-05, 2005-06 and 2006-07 are dismissed.

Order pronounced in the open court on 31st December, 2018.

sd/-

(A.K.GARODIA)
ACCOUNTANT MEMBER

Place : Bengaluru
Date : 31/12/2018
srinivasulu, sps

sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Copy to :

- 2 Respondent
- 3 CIT(A)-
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore