

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH MUMBAI

BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

&

SHRI RAM LAL NEGI, JUDICIAL MEMBER

ITA No.6661/Mum/2017

(Assessment Year :2012-13)

M/s. Oil Field Instrumentation (India) Pvt.Ltd. 3 rd Floor, Liberty Building Sir Vithaldas Thackersey Marg New Marine Lines Mumbai-400 020	Vs.	Add.CIT Rg.1(2) & CIT(OSD) 5 th Floor, Aaykar Bhawan M.K.Road Mumbai-400 020
PAN/GIR No.AAACO4870H		
Appellant)	..	Respondent)

Assessee by	Dr. K.Shivram & Rahul K.Hakani
Revenue by	Abi Rama Kartikeyan
Date of Hearing	24/07/2019
Date of Pronouncement	31/07/2019

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax Appeals-6, Mumbai dated 27/09/2017 and it pertains to the Assessment Year 2012-13. The assessee has raised the following grounds of appeal:-

Ground No.1

Disallowance of additional depreciation-Rs. 12,01,165/-

1. *On the facts and circumstances of the case and in law the Learned erred in confirming that the Appellant was not engaged in the business of manufacture or production of articles or things, thereby confirming disallowance of additional depreciation claimed U/s. 32(1)(iia) of Rs. 12,01, 165/-, without appreciating the fact that the Appellant is a manufacturer engaged in the business of manufacturing mud-logging*

units which was a tangible article/ thing, and hence, is entitled to claim additional depreciation U/s. 32(1)(ia) of the Act.

2. Without prejudice to the above, the Learned CIT(A) failed to appreciate that the activity of data processing through the use of computers also amounts to 'manufacture', and hence, the Appellant is a manufacturer entitled to additional depreciation.

Ground No. 2 :

Disallowance of out of Legal and Professional Fees-RS.34,27,976/-

On the facts and circumstances of the case and in law the Learned CIT(A) erred in confirming the disallowance of Rs. 34,27,976/- out of Legal and professional fees incurred on the ground that, there was no business expediency in incurring the said expenses and the same were not for the purposes of the Appellant Company, but relating to the joint ventures, subsidiary company and step down subsidiary, without appreciating the fact that these expenses were necessary and incurred in the ordinary course of business and for the purpose of business of the Appellant

2. The brief facts of the case are that the assessee company is engaged in the business of manufacture of Mud-Logging Units (MLU's), Data Acquisition Systems, supply of equipment and rendering services, mainly for geological operations for Oil, Gas and mineral explorations, filed its return of income for AY 2012-13, declaring total income of Rs. 26,51,75,374/-. The case was selected for scrutiny and the assessment was completed u/s 143(3) of the I.T.Act, 1961, on 04/03/2015 determining the total income at Rs. 27,14,42,710/-, by making various additions including disallowances of additional depreciation claimed on plant and machinery purchased during the year u/s 32(1)(ia) of the I.T.Act, 1961, and disallowance of legal and professional charges. The assessee carried the matter

in appeal before the Id.CIT(A), but could not succeed. The Ld.CIT(A) for detailed reasons recorded in his appellate order, dated 27/09/2017 confirmed additions made by the AO towards disallowance of additional depreciation claimed on plant and machinery, on the ground that the assessee was not engaged in any manufacturing or production of article or things and so called product manufactured by the assessee i.e MLU is nothing but a data, which cannot be considered as production of articles or things to claim depreciation. Similarly, the Ld.CIT(A) has confirmed additions made by the AO towards disallowance of legal and professional charges, on the ground that on perusal of details filed by the assessee, it is clearly evident that professional charges incurred are for either the subsidiary company or a step down subsidiary and hence, the same cannot be allowed as deduction as business expenses of the assessee. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

3. The first issue that came up for our consideration from ground No.1 of the assessee appeal is disallowance of additional depreciation claim on plant and machinery. The Ld.AO disallowed additional depreciation on plant and machinery, on the ground that the claim of assessee is that it is a manufacture of MLU's and

equipments and software related to the business of Mud-logging services is factually incorrect. The Ld.AO further, observed that on perusal of website of the assessee, it is noticed that predominantly, the assessee is in the business of providing services to Oil and Gas exploration industries in the nature of mud-logging,-- instrumentation and other services and it has not manufactured any product for the year under consideration.

4. The Ld.AR for the assessee, at the time of hearing, submitted that this issue is squarely covered in favour of the assessee by the decision of ITAT in assessee's own case for AY 2011-12 in ITA No. 2233/Mum/2016, where under identical set of facts allowed depreciation claimed on plant and machinery. The Ld. AR, further submitted that it is not a case of the AO that the assessee is not manufacturing any goods, it is evident from the fact that the AO has allowed normal deprecation on plan and machinery, but disputed additional depreciation for reasons best known to him. Once, it has been accepted that assessee is into the manufacturing activity, then question of disallowance of additional depreciation does not arise

5. The Ld. DR, on the other hand, strongly supporting order of the AO, as well as Ld.CIT(A) submitted that the activity undertaken

by the assessee is at best could be treated as service provider to Oil, Gas and mineral exploration industry, because mud-logging service cannot be considered as a product for the purpose of claiming depreciation. The Ld.CIT(A) has rightly appraised facts to confirm the additions made towards disallowance of depreciation and his order should be upheld.

6. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find that an identical issue has been considered by the Co-ordinate Bench, in assessee's own case for AY 2011-12 in ITA.No. 2233/Mum/2016, where it has recorded categorical findings, in light of various judicial precedents that the assessee is involved in the activity of manufacturing MLU's and for this purpose, it has set up a manufacturing facilities, therefore depreciation has been rightly claimed on plant and machinery. The relevant findings of the Tribunal are as under:

8. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the AO has disallowed the claim of additional depreciation on the ground that assessee is not a manufacturer or production of any article or thing and the Mud Logging Units manufactured by the assessee are for captive use and not for sale in the open market.

We have also gone through the legal proposition in the case of CIT Vrs. HLS India Ltd. (2011) 335 ITR 292 (Delhi) wherein on identical facts, it was held that the production of mud logging reports and analysis given

the process involved tantamount to 'Manufacture or production of article or thing' as held by the High Court of Delhi observed as under:-

Having analyzed the submissions of/learned counsel of both the parties and the material available for our perusal and the cited case law, we find force in the submissions of Mr. Vohra, learned counsel for the assessee. No doubt, the raw material i.e., the primary input in the impugned activity is the 'information' but can we equate this 'information' with something which is being copied from there in tow. Whether the characteristics regarding which the information is being sent back to computers on surface from logging tools working inside the down hole can be compared to a characteristic which is available and readable without conducting highly technical scientific tests and calculations down inside the borehole. Even after the geophysical and petro-chemical properties of the rocks have been measured, further scientific processing is required to be done by dedicated software on the computers. It is only after the above said process, the readable and usable data in the form of logs is provided to technical experts to determine the potentiality and other technical and commercial characteristics of the oil well in we say. when latent physical property of the rocks, which was otherwise unreadable and thus unusable, has been changed by way of sophisticated scientific tests and calculations into scientific data which subsequently has been further changed into logs printed on the papers or recorded on the magnetic tapes, that the character and identity of end product and final product is not distinct. We are unable to uphold such a proposition. It is a clear case where the legal proposition that "If an operation/process renders a commodity or article fit for use for which it is otherwise not fit, the operation/process falls within the meaning of the word "manufacture" applies." "Even from another perspective, which forms the second limb of the assessee's argument, the case tilts in the favour of assessee. Mr. Vohra has tried to draw an analogy between the production of logs by using wireline logging equipments on the one hand and the production of X-Ray and ultrasound report sheets using X-Ray and Ultrasound machines on the other hand which have been held to be eligible for investment allowance under section 32A in various judicial pronouncements. Various High Courts of India have held that X-Ray machine is qualified for investment allowance under section The Hon'ble Delhi High Court relied upon the case of CIT v. Dr. S. Surender Reddy [2000] 243 ITR 110 (AP)(HC), Gauhati High Court in UT v. Down Town Hospital (P.) Ltd. [2004] 267 ITR 439 and Kerala High Court in CIT v. Upasana Hospital [1997] 225 ITR 845. Considering these Judgements, the Hon'ble Court held that 'The issue, which we are concerned with, is a fiscal issue which is concerned with a central statute. It is desirable that in such a matter there should be uniformity of the judicial opinion. Even on merits, the analogy has some substance. We, therefore, in the light of aforesaid, decide this issue in the favour of the assessee and against the revenue."

9. On the above proposition, we have also considered the orders passed by the Coordinate Delhi Bench of Hon'ble ITAT in the case of Triveni Sperry Sun Ltd. Vrs. ACIT wherein it has been held that the activity of the assessee namely, production of the mud- logging reports, after

processing of the data collected by the Mud Logging Units, constituted article or thing as per the statutory requirement for grant of deduction u/s 80-I.

10. We have also considered the judgment cited by Ld. DR in the case of Shiva Cargo Movers Ltd. Vrs. DCIT (2012) 82 DTR 246 (Chennai Trib) and Clover Developers Pvt. Ltd. Vrs. ACIT (ITA No. 6422/Mum/2011) (ITAT Mumbai). However, the facts contained in both the judgments are different from the facts contained in the present case. In the case of Shiva Cargo Movers Ltd, wherein the assessee was engaged in the business of transport of spirit and molasses and it acquired a new windmill in the year and had claimed additional depreciation.

So far as the case Clover Developers Pvt. Ltd is concerned, wherein, the assessee was engaged in the business of construction. Hence, in both case, assessee was not engaged in the business of manufacture or production and had set a new lines of manufacturing /production. However, in the present case, assessee was already in the line of producing mud logging for the purpose of oil exploration.

Considering the facts and circumstances of the present case, discussions as well as judgments cited above, we hold that the activities of the assessee is mainly production of mud logging reports after processing of the data collected by the mud logging units and thus constitutes an 'article or thing' as per the statutory requirement for grant of deduction u/s 80-I of the I.T. Act.

As per the facts of the present case, the assessee has processed the data collected and the report prepared by the technical personnel amounts to production of an article or thing. We fortify our conclusion on the basis of decision rendered by the Coordinate Delhi Bench of Hon'ble Tribunal in the case of CIT Vrs. HLS India Ltd. (2011) 335 ITR 292 (Delhi), wherein on identical facts, the similar findings have been recorded by the Tribunal. Hence we direct the AO to allow additional depreciation to the assessee. Resultantly, these ground raised by the assessee stands allowed.

7. In this view of the matter and consistent with view taken by the Co-ordinate Bench, we direct the AO to allow additional deprecation on plant and machinery as claimed by the assessee.

8. The next issue that came up for our consideration from ground No.2 of assessee appeal is disallowance of legal and professional charges. The AO disallowed legal and professional charges, in respect of fees paid to Lynch, Chappel and Alsup in matter of

Sheredian B.V, a subsidiary company of the assessee and also legal fees paid to P. Naidu Advocates & Solicitors, Singapore for joint venture and shareholders agreement for McPhar international services Pvt.Ltd., Singapore and also consultation charges paid to Bharuch & partners on legal matter regarding Black Viper (Step down subsidiary), on the ground that the services rendered by professionals are in connection with subsidiary company and step down subsidiary company and therefore, the same cannot be considered as expenditure, incurred wholly and exclusively for the purpose of business of the assessee.

9. The Ld. AR for the assessee, submitted that the assessee has incurred legal and professional charges in connection with drafting shareholders agreements and other related matter in connection with restructuring of the business of its subsidiary because, it has direct relationship with subsidiary and step down subsidiary companies. Therefore, professional charges paid for professionals for such services is incurred wholly and exclusively for the purpose of business of the assessee. The Ld. AR, further, submitted that it has appointed Lynch, Chappel and Alsup to advise on restructuring business by purchasing further units or to sell the investments. Although, the transactions has not been materialized, but fact remains that to protect interest of its investments it has taken

professional services from various parties. Therefore, the same is rightly claimed as business expenditure wholly and exclusively incurred for the purpose of business of the assessee. In this regard, he relied upon the decision of ITAT, Mumbai in the case of Aker Power Gas Pvt.Ltd. ACIT [2016, 70 taxmann.com 11 (Bom.Trib.)]. The assessee has also relied upon the decision of Hon'ble Madras High Court in the case of CIT vs Bush Boake Allen (India Ltd.) [1982 135 ITR 306].

10. The Ld. DR, on the other hand, referring to paper book filed by the assessee submitted that although, the professional have raised bill in the name of the assessee for various professional services, but on perusal of description of services rendered by the professionals, it is very much clear that predominantly, the services are rendered to subsidiary company and step down subsidiary company, which is evident from the fact that most of the time has been used for drafting agreements between the subsidiary company and third parties. The Ld. DR, further submitted that the AO never disputed the fact that, the assessee has invested in subsidiary and step down subsidiary. But, the AO has questioned relevance of professional charges incurred in connection with transactions between subsidiary and third parties. Therefore, the AO was right in disallowances of expenditure incurred towards legal and professional charges and

accordingly, his order should be upheld. However, in order to verify, the claim of the assessee that services has been rendered to the assessee, the matter may be set aside to the file of the AO to verify the claim with reference to bills submitted by the professionals.

11. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the assessee has paid professional charges to Lynch, Chappel and Alsup a professional corporation and also legal fees to P. Naidu Advocates & Solicitors, Singapore and Baruch & partners. It is also not in dispute that said legal fees has been paid in connection with joint venture agreements with subsidiary and step down subsidiary. The only dispute is with regard to services rendered by professionals to the assessee. Although, the assessee claims to have availed services of three professionals disputed by the AO, but on perusal of bill submitted by the professionals, it is noticed that predominantly payment has been made in connection with professional services rendered to Sheredian B.V, a subsidiary of assessee company with third parties, in connection with drafting and other services. No doubt, the professionals have rendered some services to the assessee, which is clear from description of services attached with bills submitted by the professional. But, facts are not clear, whether professional

services rendered by three professional is entirely for the assessee or any part of services is related to subsidiary and step down subsidiary. Therefore, we are of the considered view that the issue needs to be re-examined by the AO in light of claim of the assessee that it has availed services of professional to protect investments and interest of the company and also as a commercial expediency with reference to bills submitted by Lynch, Chappel and Alsup and also P. Naidu Advocates & Solicitors, Singapore and Bharuch and partners. Hence, we set aside the issue to the file of AO and direct him to cause necessary enquires in light of evidence of the filed by the assessee, including bills submitted by the professions.

12. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 31/07/2019

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 31/07/2019
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT

5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai