

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.1913/Bang/2016

Assessment year : 2010-11

M/s VRL Logistics Ltd., 351/1, 16 KM, Bengaluru Road, Varur, Hubblli. PAN – AABCV 3609 C	Vs.	The Dy. Commissioner of Income-tax, Circle-1(1), Hubblli.
APPELLANT		RESPONDENT

ITA No.2066/Bang/2016

Assessment year : 2010-11

The Asst. Commissioner of Income-tax, Circle-3(1), Hubblli.	Vs.	M/s VRL Logistics Ltd., 351/1, 16 KM, Bengaluru Road, Varur, Hubblli. PAN – AABCV 3609 C
APPELLANT		RESPONDENT

Assessee by	:	Shri V.K Gurnathan, Advocate
Revenue by	:	Dr. P.V Pradeep Kumar, Addl. CIT (DR)

Date of hearing	:	06.08.2019
Date of Pronouncement	:	08.08.2019

ORDER

Per B.R Baskaran, Accountant Member

These cross appeals are directed against the order dated 16-06-2016 passed by Ld CIT(A), Hubli and it relates to the

assessment year 2009-10.

2. The assessee is in appeal in respect of following issues:-
 - (a) Disallowance made u/s 40(a)(ia)
 - (b) Disallowance towards personal usage of Aircraft.

3. The Revenue is in appeal on the following issues:-
 - (a) Disallowance of interest relating to work in progress
 - (b) Disallowance towards personal usage of Aircraft.
 - (c) Disallowance of prior period expenses.

4. The assessee is engaged in the business of transportation of goods, courier service, passenger travels and wind power generation of electricity. The assessment in the hands of the assessee for the year under consideration was completed by the AO u/s 143(3) of the Act determining the total income at Nil and computing book profit at Rs.45.31 crores. Not satisfied with the assessment order, the assessee preferred appeal before the 1d CIT(A), which was allowed in part.

5. Aggrieved by the order so passed by 1d CIT(A), both the parties are in appeal before us on the above said issues.

6. We shall first take up the appeal filed by the assessee. The first issue relates to disallowance made u/s 40(a)(ia) of the Act.

7. The ld counsel for the assessee submitted that the assessee had paid a lump sum lease amount in the earlier year for taking a property on lease on 20 years lease. The amount so paid was amortised over the period of lease and accordingly, the assessee claimed a sum of Rs.23.75 lakhs as deduction in the profit and loss account. Since the assessee did not deduct tax at source from the above said amount the AO disallowed the same u/s 40(a)(ia) of the Act and same was also confirmed by ld CIT(A).

8. The ld AR submitted that the recipient has already declared this amount as its income and further the assessee has not been deemed to be an 'assessee in default' u/s 201(1) of the Act. Accordingly he submitted that the second proviso of sec. 40(a)(ia) which was inserted by the Finance Act 2012 w.e.f 1/4/2013 should be applied to this year and disallowance should be deleted.

9. We heard the ld DR and perused the record. Having regard to the fact that the assessee is seeking application of second proviso to sec. 40(a)(ia) to be present issue and further since this claim has not been examined by the AO, we set aside the order passed by ld CIT(A) on this issue and restore the same to the AO for examining the claim of the assessee. Accordingly this issue is restored to the file of the AO.

10. The next issue contested by the assessee relates to disallowance made out of aircraft expenses towards personal use.

11. The ld AR submitted that the AO disallowed Rs.94.80 lakhs out of aircraft expenses & depreciation towards the personal use of aircraft. However, the AO has not given any break up thereof. The ld CIT(A) granted relief to the extent of 50% of the disallowance and confirmed the balance amount of disallowance.

12. The ld AR submitted that the assessee is in appeal challenging the disallowance confirmed by the ld CIT(A) and the Revenue is in appeal challenging the relief granted by him.

13. The ld AR submitted that the assessee has maintained log book for usage of the aircraft, wherein use of aircraft for personal purposes is also recorded. He submitted that the AO and CIT(A) has made disallowance on some basis, without considering the log book. He submitted that the assessee is agreeable for disallowance, but it should be restricted to actual usage for personal purposes of the Directors.

14. We heard the ld DR and perused the record. Since the assessee is claiming to be maintaining log book, there is merit in the contentions of the assessee. When the log books is available it should be possible to segregate the use of aircraft for business purposes and personal purposes. In that case, the disallowance should be restricted to proportionate amount attributable to personal use of aircraft. Since this fact require the verification, we set aside the order passed by ld CIT(A) on this issue and restore the same to the file of the AO with the direction to restrict the

disallowance to the personal usage of aircraft as per log book records.

15. We shall now take up the appeal filed by the Revenue. The first issue relates to disallowance of interest expenditure by capitalizing it towards work in progress. The AO noticed that the assessee has paid interest on borrowed funds. He also noticed that the assessee is having capital work in progress. The AO noticed that the assessee has claimed entire interest expenses as deduction. He took the view that a portion of interest expenditure should be allocated to capital work in progress. Before the AO, the assessee contended that the capital work in progress was funded out of internal resources. However, the assessee furnished a working, wherein the interest attributable to work in progress was shown at Rs.9.97 lakhs. Hence the AO disallowed Rs.9.97 lakhs out of interest expenditure.

16. The Id CIT(A) took the view that the assessee has used the borrowed funds for other purposes and the AO has not examined the nexus between the borrowed funds and work in progress. Accordingly he took the view that the disallowance is not called for and accordingly deleted the same.

17. The AO had also added the above said disallowance to the Net Profit, while working out book profit u/s 115JB of the Act. The Id CIT(A) took support of the decision rendered by Hon'ble Supreme Court in the case of Apollo Tyres Ltd (255 ITR 273) and held that

the above said addition is not warranted. Accordingly he deleted the addition made u/s 115JB of the Act also.

18. We heard the parties and perused the record. At the time of hearing, the ld AR produced a copy of Balance sheet before us in order to show that the own funds available with the assessee is more than the amount of Capital work in progress. We notice from the Balance Sheet that the own funds available with the assessee as on 31.3.2010 were around 108 crores, while the amount shown towards capital work in progress was only 12.92 crores. He further submitted that the term loans and working capital loans availed by the assessee have been used for specific purposes and they have not been diverted towards capital work in progress.

19. The ld DR on the contrary supported the order passed by the AO.

20. We heard the parties on this issue and perused the record. We noticed that the own funds available with the assessee is more than the amount of Capital work in progress as on 31/3/2010. It is also the contention of the assessee that the term loans and working capital loans have been used for specific purposes. Be that as it may, if the own funds available with the assessee is in excess of amount of capital work in progress, the presumption that could be drawn is that the assessee has used its own funds for funding the capital work in progress, in which case disallowance of interest is not called for. We derive support for this proposition from the decision rendered by Hon'ble Bombay High Court in the case of

Reliance Utilities & Power Ltd (313 ITR 340). However, we notice that these factual aspects have not been examined by the AO. Hence, for the limited purpose of examining the factual aspects, we restore this issue to the file of the AO and direct him to delete the addition on being satisfied that the own funds available with the assessee is in excess of amount of capital work in progress.

21. With regard to the addition made by the AO while computing book profit u/s 115JB of the Act, we noticed that the Id CIT(A) has taken support of the decision rendered by Hon'ble Supreme Court in the case of Apollo Tyres Ltd (Supra), wherein it has been held that the AO is not entitled to make adjustment to the net profit disclosed in the profit and loss account which has been adopted in the annual general meeting of the company. Secondly the impugned interest disallowance is not an item of addition listed in Explanation 1 to sec. 115JB of the Act as an item of addition. Hence, we agree with the view taken by the Id CIT(A) that the disallowance of interest expenditure, if any, made while computing total income under normal provisions of the Act cannot be added to the book profit computed u/s 115JB of the Act.

22. The next issue contested by the Revenue relates to relief granted in respect of disallowance of aircraft expenses. While considering the appeal of the assessee, we have already restored this issue to file of the AO.

23. The next issue contested by the Revenue relates to addition of prior period expenditure of Rs.12.67 lakhs made by the AO while computing book profit u/s 115JB of the Act. The AO noticed that the assessee has debited profit and loss account with prior period expenses of Rs.12,67,726/-. He noticed that the assessee, while computing book profit u/s 115JB of the Act has reduced the same from the net profit. Since the prior period expenditure cannot be allowed as deduction while computing book profit u/s 115JB of the Act, the AO disallowed the said claim. The Id CIT(A), however, allowed the same by placing reliance on the decision rendered by Hon'ble Supreme Court in the case of Apollo Tyres Ltd. (Supra).

24. We heard the parties on this issue and perused the record. We have also perused the profit and loss account of the assessee and noticed that the assessee has shown the prior period expenditure of Rs.12.67 lakhs as an item "below the line". We also noticed that the assessee has not claimed the above said amount as deduction while computing total income under normal provisions of the Act. It is also an undisputed fact that the prior period expenses is not an item of deduction listed in Explanation 1 of sec. 115JB in the list of deductions to be made from net profit. In this view of the matter we are of the view that the assessee is not entitled to deduct prior period expenditure of Rs.12.67 lakhs from the net profit while computing book profit u/s 115JB of the Act. In this view of the matter, we are of the view that the Ld CIT(A) has misdirected himself while placing reliance on the decision of Hon'ble Supreme Court rendered in the case of Apollo Tyres Ltd. Accordingly we set

aside the order passed by Id CIT(A) on this issue and confirm the disallowance made by the AO.

25. In the result, both the appeals are treated as partly allowed for statistical purposes.

Order pronounced in the Open Court on **8th August, 2019.**

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(B.R Baskaran)
Accountant Member

Bangalore,
Dated, 8th August, 2019.

/ vms /

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.