

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.5584/MUM/2011

निर्धारण वर्ष / Assessment Year : 2007-08

Eagle Home Appliances P. Ltd.,  
Parmar House, Wanawadi,  
Pune - 411040

PAN : AAAC3316M

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward - 7(3)(2), Mumbai

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.5636/MUM/2011

निर्धारण वर्ष / Assessment Year : 2007-08

The Income Tax Officer,  
Ward - 7(3)(2), Mumbai

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. Eagle Home Appliances Pvt. Ltd.,  
12, New India Industrial Estate,  
Mahakali Caves Road, Andheri (E),  
Mumbai - 400093

PAN : AAAC3316M

.....प्रत्यर्थी / Respondent

**प्रत्याक्षेप सं. / CO No.118/MUM/2012**  
**निर्धारण वर्ष / Assessment Year : 2007-08**

Eagle Home Appliances P. Ltd.,  
Parmar House, Wanawadi,  
Pune – 411040

PAN : AAAC3316M

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward – 7(3)(2), Mumbai

.....प्रत्यर्थी / Respondent

Assessee by : Shri M.K. Kulkarni  
Revenue by : Shri N. Ashok Babu

सुनवाई की तारीख / Date of Hearing : 29-07-2019  
घोषणा की तारीख / Date of Pronouncement : 21-08-2019

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

These cross appeals by the assessee and the Revenue are directed against the order of Commissioner of Income Tax (Appeals)-13, Mumbai dated 26-04-2011 for the assessment year 2007-08. The assessee has also filed Cross Objections in the appeal filed by the Revenue supporting the findings of Commissioner of Income Tax (Appeals) on the issue of alleged violation of Rule 46A of the Income Tax Rules, 1962.

**ITA No. 5584/MUM/2011 (Assessee's Appeal)**

2. The assessee in appeal has raised as many as 17 grounds. Shri M.K. Kulkarni appearing on behalf of the assessee submitted at the outset that the ground Nos. 1, 2, 5 to 9 and 12 to 14 of the appeal are not pressed. Thus, the only grounds left for adjudication before the Tribunal are ground Nos. 3, 4, 10, 11, 15 and 16. The same are reproduced here-in-below :

*“3. On the facts and circumstances of the case and in law the Ld. C.I.T.(A) erred in confirming the addition of Rs.6,17,152/- made by A.O. being Employer's Contribution to Provident Fund. The disallowance is not contrary to law in view of Hon'ble Supreme Court judgment in the reported case as (2009) 319 ITR 306 (SC). The disallowance be deleted.*

*4. On the facts and circumstances of the case and in law the Ld. C.I.T.(A) erred in confirming the addition made by A.O. of Rs.4,76,670/- incurred towards legal and professional fees. The disallowance has been confirmed without assigning any cogent reasons and by not passing a 'speaking order'. The disallowance be quashed.*

*10. On the facts and circumstances of the case and in law the Ld. C.I.T.(A), Mumbai erred in confirming the disallowance made by the A.O. of Rs.7,55,350/- u/s. 40-A(3) of the Act. The disallowance has been confirmed without assigning any cogent reasons and sans 'speaking order'. The disallowance be quashed.*

*11. On the facts and circumstances of the case and in law the Ld. C.I.T.(A) was not justified in restricting the disallowance out of Travelling expenses to Rs.3,49,469/-. The entire claim of Rs.59,21,115/- be allowed in full.*

*15. On the facts and circumstances of the case and in law the Ld. C.I.T.(A), Mumbai erred in confirming the disallowance of Rs.35,33,080/- made by A.O. which was claimed as deduction on account of Sales promotion expenses. The disallowance has been confirmed without any cogent reasons sans any 'Speaking order'. The disallowance be deleted.*

*16. On the facts and circumstances of the case and in law the assessee denies its liability to pay interest u/s. 234-B of the Act and the same be deleted.”*

3. In respect of ground No. 3 of the appeal, the ld. Counsel submitted that the authorities below have erred in making addition of Rs.6,17,152/- in respect of Employer's Contribution to Provident Fund. Admittedly, there

was delay in depositing the aforesaid statutory amount. However, the aforesaid amount was paid by the assessee before due date of filing return of income. The ld. Counsel referred to chart at page 10 of the paper book giving details of amount paid, due date and date on which the liability was discharged. The ld. Counsel submitted that in the light of decision of Hon'ble Supreme Court of India in the case of Commissioner of Income Tax Vs. Alom Extrusions Ltd. reported as 319 ITR 306, the disallowance made by the authorities below is unjustified.

3.1 In respect of ground No. 4 of the appeal, the ld. Counsel submitted that the Commissioner of Income Tax (Appeals) has erred in confirming addition of Rs.4,76,670/- on account of legal and professional fees. The Commissioner of Income Tax (Appeals) has confirmed the addition in summary manner, without passing a speaking order.

3.2 In respect of ground No. 10 of the appeal, the ld. Counsel submitted that addition has been confirmed by the Commissioner of Income Tax (Appeals) in respect of disallowance of Rs.7,55,350/- made u/s. 40A(3) of the Act. The Commissioner of Income Tax (Appeals) without considering the material available on record has confirmed the addition in a summary manner.

3.3 In respect of ground No. 11 of the appeal, the ld. Counsel submitted that the assessee had claimed travel expenditure to the tune of Rs.59,21,115/-. The assessee had furnished details of expenditure. However, the Assessing Officer disallowed the entire expenditure. The Commissioner of Income Tax (Appeals) after considering the remand report restricted the disallowance to Rs.3,49,469/-. The Commissioner of Income

Tax (Appeals) has failed to acknowledge the fact that the assessee is a company, its account are subject to audit, the disallowance cannot be made unless the books of account are rejected u/s. 145(3) of the Act.

3.4 In respect of ground No. 15 relating to disallowance of Rs.35,33,080/- the ld. Counsel submitted that the expenditure was incurred towards sales promotion. The expenditure has been disallowed by the Commissioner of Income Tax (Appeals) without assigning any cogent reasons.

4. On the other hand Shri N. Ashok Babu representing the Department vehemently defended the order of Commissioner of Income Tax (Appeals) in upholding the additions. The ld. DR submitted that the assessee has failed to furnish evidence regarding deduction of tax at source in respect of payment of professional fees. Hence, the payment of legal charges were disallowed u/s. 40(a)(ia) of the Act. Similarly, in respect of disallowance u/s. 40A(3) of the Act, the assessee failed to offer any explanation for cash payments. Further, the assessee did not furnish the details of expenditure in respect of sales promotion and advertisement. Therefore, the same were disallowed by the Assessing Officer as well as the Commissioner of Income Tax (Appeals).

5. Both sides heard. Orders of the authorities below perused. The ld. Counsel for the assessee has sated at the Bar that he is not pressing ground Nos. 1, 2, 5 to 9 and 12 to 14 of the appeal. Thus, in view of the statement made, the aforesaid grounds are dismissed as not pressed.

6. In ground No. 3 of the appeal, the assessee has assailed disallowance of Rs.6,17,152/- in respect of Employer's Contribution towards Provident Fund. The Hon'ble Supreme Court of India in the case of Commissioner of Income Tax Vs. Alom Extrusions Ltd. (supra) and the Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Ghatge Patil Transports Ltd. reported as 368 ITR 749 have held that the payments on account of Provident Fund made before due date of filing return of income are to be allowed as deduction. A perusal of assessment order reveals that the assessee has filed return of income for the impugned assessment year on 29-10-2007. The ld. Counsel for the assessee has furnished details of Provident Fund contributions at page 10 of the paper book. A perusal of the same reveals that except contribution for the month of March, 2007 which was due on 15-04-2007 and the same was paid on 26-08-2008, all contributions starting from April, 2006 to February, 2007 were made up to 15-05-2007 i.e. well before the date of filing return of income. The Provident Fund contribution for the month of March, 2007 only was made after filing return of income for the impugned assessment year. Hence, the contributions made by the assessee before due date of filing return of income deserves to be allowed as deduction. We hold and direct accordingly. **Consequently, ground No. 3 of the appeal by the assessee is partly allowed.**

7. In ground No. 4, the assessee has assailed the addition of Rs.4,76,670/- towards legal and professional fees. The Assessing Officer has disallowed the aforesaid amount u/s. 40(a)(ia) of the Act as the assessee has failed to furnish the details of TDS deducted in respect of aforesaid payments. The Commissioner of Income Tax (Appeals) in one line observation as upheld the disallowance made by the Assessing Officer u/s.

40(a)(ia) of the Act. It is not emanating from records whether the assessee was declared as assessee in default within the meaning of section 201 of the Act. The provisions of section 40(a)(ia) of the Act have been amended by the Finance Act, 2012 w.e.f. 01-04-2013 with the insertion of second proviso to the section. The same is reproduced here-in-below :

*“Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso.”*

The Tribunal in the case of Rajeev Kumar Agarwal Vs. Additional Commissioner of Income Tax reported as 149 ITD 363 (Agra-Trib.) has held that the aforesaid proviso is declaratory and curative and has retrospective effect from 01-04-2005. The aforesaid view of the Tribunal has been upheld by the Hon'ble Delhi High Court in the case of Commissioner of Income Tax Vs. Ansal Land Mark Township reported as 371 ITR 635. Thus, in view of the amended provisions, we deem it appropriate to restore this issue back to the file of Commissioner of Income Tax (Appeals) for de-novo adjudication. **Accordingly, ground No. 4 of the appeal by the assessee is allowed for statistical purpose.**

8. In ground No. 10 of the appeal, the assessee has assailed disallowance of Rs.7,55,350/- u/s. 40A(3) of the Act. The assessee has allegedly made cash payments. Neither any explanation has been furnished by the assessee before the authorities below for making such cash payments nor any effort is made by assessee to substantiate that the aforesaid cash payments fall within the exceptions provided under Rule 6DD of the Income Tax Rules. No material has been furnished by the assessee before the Tribunal to dispel the findings of authorities below. In

the absence of any cogent material, we see no reason to interfere with the findings of Commissioner of Income Tax (Appeals) on this issue.

**Accordingly, ground No. 10 of the appeal by the assessee is dismissed.**

9. The ground No. 11 of the appeal by assessee is against disallowance of travelling expenses amounting to Rs.3,49,469/-. The Assessing Officer had disallowed entire expenditure towards travelling expenses claimed by the assessee i.e. Rs.59,21,115/-. The assessee furnished documentary evidence to substantiate its claim before the First Appellate Authority. The Commissioner of Income Tax (Appeals) sought remand report. The assessee furnished documentary evidence to substantiate the expenditure claimed under the head travelling expenses. The Commissioner of Income Tax (Appeals) accordingly, allowed the expenditure to the extent the assessee furnished supporting documents. The assessee could not prove expenditure to the extent of Rs.3,49,469/-, thus, the same was disallowed by Commissioner of Income Tax (Appeals). Even before the Tribunal, the assessee has not furnished any documentary evidence to substantiate the claim disallowed by First Appellate Authority. In the absence of any documentary evidence, we find no reason to interfere with the findings of Commissioner of Income Tax (Appeals) in restricting the disallowance to Rs.3,49,469/-. **Accordingly, ground No. 11 of the appeal by the assessee is dismissed.**

10. The ground No. 15 of the appeal is against disallowance of sales promotion expenses Rs.35,33,080/-. A perusal of impugned order shows that the Commissioner of Income Tax (Appeals) had sought remand report on the documents furnished by the assessee in support of sales promotion expenditure. The Commissioner of Income Tax (Appeals) has merely

extracted the observations of Assessing Officer in remand report and has rejected this ground of appeal without passing a speaking order and without commenting on the contentions of the assessee. It is a well settled law that the Commissioner of Income Tax (Appeals) has to pass a speaking order on the grounds raised by the assessee. Therefore, we deem it appropriate to restore this issue back to the file of Commissioner of Income Tax (Appeals) for de-novo consideration. **Accordingly, ground No. 15 of the appeal by the assessee is allowed for statistical purpose.**

11. In ground No. 16 of the appeal, the assessee has assailed charging of interest u/s. 234B of the Act. Charging of interest u/s. 234B is consequential and mandatory, **hence, ground No. 16 raised in appeal by the assessee is dismissed being devoid of any merit.**

12. The ground No. 17 is general in nature, hence, requires no adjudication.

**13. In the result, appeal of the assessee is partly allowed in the terms aforesaid.**

**ITA No. 5636/MUM/2011, (Revenue's Appeal)**

14. The Revenue in its appeal has raised solitary issue of violation of provisions of Rule 46A of the Income Tax Rules, 1962. The ld. DR submitted that the assessee filed some additional documents before the First Appellate Authority. Proper opportunity was not afforded to the Assessing Officer to examine the said documents. Thus, there was contravention of Rule 46A by the Commissioner of Income Tax (Appeals).

15. On the other hand the ld. Counsel for the assessee submitted that the documentary evidences filed before the Commissioner of Income Tax (Appeals) were referred to Assessing Officer by the Commissioner of Income Tax (Appeals) for his comments and report. The Assessing Officer furnished his report on 28-07-2010. On the basis of said report the Commissioner of Income Tax (Appeals) granted partial relief on some of the issues and upheld the findings of Assessing Officer on some issues. Thus, there is no violation of Rule 46A as alleged by the Department.

15.1 The ld. Counsel for the assessee further submitted that the assessee has filed Cross Objections supporting the order of Commissioner of Income Tax (Appeals) in granting relief to the assessee after duly complying with the provisions of Rule 46A.

16. Both sides heard. The Revenue in appeal has impugned the order of Commissioner of Income Tax (Appeals) on the solitary issue of violation of Rule 46A. A perusal of impugned order reveals that the Commissioner of Income Tax (Appeals) had sought remand report on the new evidences filed by the assessee during First Appellate proceedings. The Assessing Officer furnished remand report on the 28-07-2010. Thus, we are of considered view that fair opportunity was given to the Assessing Officer by the Commissioner of Income Tax (Appeals) to rebut the additional evidences filed by the assessee during First Appellate stage. The ld. DR has not pin pointed the additional evidences filed by assessee before First Appellate Authority that were considered to grant relief without referring to Assessing Officer. In our considered view there seems to be no violation of Rule 46A as alleged by the Department. We do not find any merit in the grounds raised by the Revenue, **accordingly, the appeal of Revenue is dismissed.**

17. The assessee has filed Cross Objections in support of order of Commissioner of Income Tax (Appeals) in admitting additional evidences. Since, we have dismissed the appeal of Revenue, **the Cross Objections of the assessee has become infructuous and the same are dismissed as such.**

18. **To sum up, the appeal of assessee is partly allowed and the appeal by the Revenue, as well as, Cross Objections of the assessee are dismissed.**

Order pronounced on Wednesday, the 21<sup>st</sup> day of August, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 21<sup>st</sup> August, 2019

RK

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-13, Mumbai
4. आयकर आयुक्त / The CIT-7, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune