

आयकर अपीलीय अधिकरण नागपुर न्यायपीठ, नागपुर में ।
IN THE INCOME TAX APPELLATE TRIBUNAL NAGPUR BENCH, NAGPUR

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.392/NAG/2017

निर्धारण वर्ष / Assessment Year : 2011-12

DCIT, Central Circle-2(1),
Nagpur.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Gupta International Industries Ltd.,
Gupta Bhavan, Temple Bazar Road,
Civil Lines, Nagpur-440001.

PAN : AAACG6362Q

.....प्रत्यर्थी / Respondent

Revenue by : Shri U. U. Kasar, Jt. CIT
Assessee by : Shri Rajesh Loya, Adv.

सुनवाई की तारीख / Date of Hearing : 28.03.2019

घोषणा की तारीख / Date of Pronouncement : 24.04.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal is filed by the Revenue against the order of CIT(A)-
III, Nagpur dated 26.09.2017 for the Assessment Year 2011-12.

2. The grounds raised by the Revenue are as under :-

“i) On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the disallowances of conveyances and

vehicle maintenance of Rs.19,800/-, consulting charges of Rs.24,803/-, travelling expenses (Director) of Rs.1,56,771/-, Professional fee of Rs.13,309/-. Selling expenses of Rs.73,132/-, interest on cash credit of Rs.57,43,576/-, interest paid to others of Rs.10,16,121/- & interest on HDFC lap of Rs.33,35,867/- and bank commission and charges of Rs.2,91,757/- without appreciating the fact that the assessee was not engaged in any business activity and the transactions were only accommodations entries and paper transactions which had been carried out for the purpose of raising funds from the Bank.

ii) *Any other ground that may be urged at the time of hearing.”*

3. Briefly stated the relevant facts include that the assessee is a company and is engaged in the business of trading of coal and steel etc. The assessee filed the return of income declaring net loss of Rs.6,50,202/-. At the end of the assessment, the Assessing Officer, after verifying the books of accounts, related documents and material available on record, computed the total income of the assessee at Rs.1,00,24,934/- after making certain additions of Rs.1,06,75,136/- u/s 143(3) of the Act. The addition of Rs.1,06,75,136/- constitutes various disallowances under various heads of expenditure narrated in the table given in para 4 of the assessment order. The assessee carried the matter before the CIT(A). The CIT(A) granted relief to the assessee and directed the Assessing Officer to delete disallowance of Rs.1,06,75,136/-.

4. Aggrieved with the said decision of the CIT(A), the Revenue is in appeal before the Tribunal with the above extracted grounds.

5. Before us, at the outset, ld. Counsel for the assessee brought our attention to the grounds raised by the Revenue and submitted that the similar issue was raised before the Tribunal in assessee's own case for the earlier assessment year 2008-09 vide ITA No.223/Nag/2013, order dated 22.05.2015, wherein the Tribunal confirmed the order of the CIT(A) and dismissed the appeal of the Revenue.

6. On examining the facts as well as the issue raised before us, we find the similar issue was examined by the Tribunal and the same was allowed on similar facts in favour of the assessee. The contents of para 5 of the order of the Tribunal (supra) are relevant in this regard and the same are extracted hereunder :-

"Therefore, under the totality of the facts and circumstances of the case, we find no reason on the part of the A.O. to disallow the expenditure, that too on proportionate basis. We, therefore, endorse the view taken by the learned CIT(Appeals). Ground dismissed."

7. We also perused the order of the CIT(A) and reasoning given by him while giving the relief to the assessee. For the sake of completeness, the relevant paragraphs are extracted hereunder :-

"5.8 In my considered view, there is no evidence brought on record to hold that the expenditures incurred and claimed by the assessee are bogus. The A.O. at Page 3 of the Assessment Order agreed that the expenses claimed had to be restricted to only those expenses which

were related to non-delivery transaction or paper transactions and further held that it is reasonable to allow only those expenses which are genuinely incurred to carry out such paper transactions. Thus the A.O. agrees that the expenses are allowable. However, he failed to bring on record any infirmity in the individual head of expenditure which had been considered for disallowance. I find that the assessee has paid interest to banks on the LC transactions and finance facility. Similarly, the bank charges and commission have been paid for LC discounting. The interest paid to others is also for securing funds for the purpose of business. It is nowhere established by the A.O. that the funds have been utilised for personal purposes or non business activity. The genuineness of the expenditure cannot be doubted as the payment is made to bank and other parties. No defect has been pointed out in any of such expenditure. Since it is held that the assessee had carried out the regular business activity on which profit is earned and also considered for the purposes of assessment, the expenditure incurred for such transaction or for facilitating the business has to be allowed. The A.O. has disallowed professional and legal charges, travelling expenses of Directors, 2/3rd part of conveyance and vehicle expenses, consultancy charges and selling and distribution expenses only on the basis that such expenses are not required without going into the details of such expenditure, and whether they have been actually incurred or not. The expenditure has been disallowed by the A.O. summarily without proper verification. I find that the other expenses in the Profit and Loss Account which are also of similar nature have been allowed as deduction. I find that the assessee has incurred expenditure and no defect /infirmity has been pointed out in such expenditure. Here it is to be further noted that no evidence was found during search on the basis of which A.O. could have disallowed the expenditure. In fact, there is no such finding at all.

.....

5.10 Considering the aforesaid facts, I hold that the expenditure claimed by the assessee are incurred as well as directly relatable for the purpose of earning profit on the activities carried out by the assessee and therefore the disallowance of Rs.1,06,75,136/- made by the A.O. is unjustified and therefore directed to be deleted. The ground of appeal is allowed.”

8. From the above, it is evident that, in the present case, the disallowance made by the Assessing Officer on ad-hoc basis or on the basis of suspicious & surmises is not sustainable. No case is made

out to substantiate the disallowance made by the Assessing Officer. No evidence gathered against the assessee. Following the parity of reasoning, we do not find any infirmity in the order of the CIT(A). Thus, the grounds raised by the Revenue are dismissed.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced on 24th day of April, 2019.

Sd/-

(विकास अवस्थी / VIKAS AWASTHY)
न्यायिक सदस्य / JUDICIAL MEMBER

नागपुर / Nagpur; दिनांक / Dated : 24th April, 2019.

Sujeet

Sd/-

(डी. करुणाकरा राव / D. KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)
4. The CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर बेंच, नागपुर / DR, ITAT, Nagpur Bench, Nagpur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, नागपुर / ITAT, Nagpur.