

**IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH
MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.3496/Mum/2017
(Assessment Year :2009-10)**

M/s. Liebherr India Private Limited 25 th & 26 th Floor, Kesar Solitaire Plot No.5, Sector-19 Sanpada, Navi Mumbai – 400 705	Vs.	Additional Commissioner of Income Tax – 10(3) Aayakar Bhavan New Marine Lines Mumbai – 400 020
PAN/GIR No. AABCL2049J		
(Appellant)	..	(Respondent)

Assessee by	Shri K.K.Ved
Revenue by	Ms. Samatha Mullahudi
Date of Hearing	26/09/2019
Date of Pronouncement	24/12/2019

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.3496/Mum/2017 for A.Y.2009-10 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-24, Mumbai in appeal No.CIT(A)-22/Addl. CIT-10(3)/IT-266/2012-13 dated 27/02/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 13/12/2012 by the Id. Addl. Commissioner of Income Tax – 10(3), Mumbai (hereinafter referred to as Id. AO).

2. The first issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in upholding the disallowance of IFRS audit fees of Rs.3,17,300/- on the ground it pertains to the period prior to the year under consideration.

2.1. We have heard rival submissions and perused the materials available on record. It is not in dispute that the fee of Rs.3,17,300/- was paid by the assessee in respect of IFRS audit completed for the year ended 31/12/2007. We find that the same has been disallowed by the lower authorities on the ground that it is prior period expenses and since, the assessee was following mercantile system of accounting, the same cannot be allowed as deduction for the year under consideration. We find that the genuineness of the incurrence of this expenditure and its business purpose is not doubted by the revenue. We find that though the audit pertains for the year ended 31/12/2007, the invoice was raised by the concerned Auditor only on 28/11/2008 as the service was rendered thereon during the year under consideration. We find that the services have been crystallised during the year under consideration and accordingly become an expenditure allowable as deduction for the year under consideration. It is not the case of the revenue that assessee had indeed claimed deduction for the very same sum in the earlier year on mercantile basis. In view of the aforesaid observations, we hold that the assessee is indeed entitled for deduction of Rs.3,17,300/- towards IFRS audit fees. The Id. AO is directed accordingly to grant deduction for the same. The ground No.1 raised by the assessee is allowed.

3. The next ground to be decided in this appeal is as to whether the Id. CIT(A) was justified in not allowing deduction of Rs.5,23,277/- towards service tax credit written off on the basis that it pertains to earlier period.

3.1. We have heard rival submissions and perused the materials available on record. We find that there is no dispute with regard to the basic fact that this sum of Rs.5,23,277/- was appearing as service tax receivable in the opening balance in the books of accounts of the assessee. It is not in dispute that service tax receivable is reflected under the head 'current assets loans and advances' in the balance sheet of the assessee company. It is not in dispute that this service tax receivable emanates out of the input services used for the purpose of business of the assessee. Once, the service tax input credit is not eligible to be utilised against the output tax, the same requires to be written off as business expenditure, which is what is done by the assessee in the instant case. There is no dispute that the service tax input credit of Rs.5,23,277 was not eligible to be utilised towards output service tax by the assessee. In these circumstances, the action of the assessee in writing off the input service tax credit lying in current assets loans and advances as on 01/04/2009 and consequentially claiming the same as deduction, is in accordance with law. We direct the Id. AO accordingly. The ground No.2 raised by the assessee is allowed.

4. The last issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in upholding the adhoc disallowance of 30% of total travelling and conveyance expenses in the facts and circumstances of the case.

4.1. We have heard rival submissions and perused the materials available on record. We find that the assessee had incurred total travelling and conveyance expenses of Rs.1,80,49,723/- during the year under consideration. The assessee was asked by the Id. AO to produce supporting evidences in respect of travelling and conveyance expenses above Rs.1,00,000/-. The Id. AO observed that despite several

opportunities provided to the assessee, the assessee failed to produce supporting evidences and accordingly proceeded to disallow 40% of the total travelling and conveyance expenditure on an adhoc basis amounting to Rs.72,19,889/- in the assessment. We find that the Id. CIT(A) had observed that assessee had submitted the copies of vouchers and invoices of travelling and conveyance expenses before him and the same were duly subjected to remand proceedings and duly verified by the Id. AO. Before the Id. AO also, further details were submitted by the assessee. These facts are recorded by the Id. CIT(A) in page 18 para 2.4.15 of his order. We find that assessee had incurred these travelling and conveyance expenses in respect of site visits of its personnel, trainings, meetings and other official visits for which detailed break-up were filed alongwith written submissions. We find that the Id. AO in the remand report had observed that certain details furnished by the assessee contain the provision for expenses which are contingent in nature and hence, not allowable as deduction; certain expenses are reflected as receivable and later transferred to expenses by the assessee by way of journal entry in the books of accounts. In the opinion of the Id. AO, these expenses are not fully verifiable and assessee could not substantiate the veracity of the same. Accordingly, the Id. CIT(A) observed that the entire travelling and conveyance expenses could not be fully verifiable at the end of the Id. AO and restricted the disallowance to 30% of total travelling and conveyance expenses and reduced the disallowance to Rs.54,14,917/- as against Rs.72,19,889/- made by the Id. AO. We find that the assessee had filed detailed bills and vouchers in the form of additional evidences before the Id. CIT(A) comprising of pages 3-739 of the paper book which were also filed before us. These details were subject to verification by the Id. AO in the remand proceedings and in the remand report, the Id. AO had held that some of the expenses are not fully verifiable. We find in these circumstances, some adhoc disallowance

of expenses need to be made. However, the disallowance @30% would be on the higher side given the status of the company and the behaviour of the assessee. Hence, we hold that disallowance on an adhoc basis at 10% of total travelling and conveyance expenses would meet the ends of justice in the peculiar facts and circumstances of the instant case. Accordingly, the ground No.3 raised by the assessee is partly allowed.

5. Ground No.4 raised by the revenue is general in nature and does not require any specific adjudication.

6. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on this 24/12/2019

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 24/12/2019
KARUNA, *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.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai