

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ C ” BENCH: BANGALORE
BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.2731/Bang/2017
(Assessment Year: 2012-13)

M/s. Yuken India Limited,
P.B. No.5, Koppathimmanahalli,
Vill. H. Hoskote Gram Panchayat,
Kakkur Hobli, Malur Taluk, Kolar Dist.

....Appellant

Vs.

Deputy Commissioner of Income Tax,
LTU, Circle 1, Bangalore.

.....Respondent.

Assessee By:	Shri K.R. Vasudevan, Advocate.
Revenue By:	Smt. R. Premi, JCIT (D.R)

Date of Hearing :	06.02.2020.
Date of Pronouncement :	26.02.2020.

ORDER

PER SHRI PAVAN KUMAR GADALE, JM :

The assessee has filed an appeal against the order of Commissioner of Income Tax (Appeals)-14, Bangalore passed under Section 143(3) r.w.s. 92CA and 250 of the Income Tax Act, 1961 ('the Act').

2. The assessee has raised the following grounds of appeal :

1 Disallowance of additional depreciation- Rs. 21,40,137

- a) The learned Commissioner of Income-tax (Appeals) ['CIT(A)'] erred in upholding the restriction for allowance of additional depreciation of Rs.21,40,137.
- b) The learned CIT(A) erred in fact in not appreciating that a new asset had come into existence by expending substantial refurbishing cost on an used asset imported from outside India.
- c) The learned CIT(A) failed to identify that a new asset had come to existence pursuant to the refurbishing which has a different identity from the used asset imported in India and accordingly, the refurbishment cost incurred to bring the new asset ought to be eligible for additional depreciation as per the provisions of section 32(1)(iia) of the Act.
- d) The learned CIT(A) erred in not considering various rulings, wherein it was observed that the cost incurred to refurbish the machinery was entitled for additional depreciation.

2 Disallowance of commission payment- Rs.25,28,973:

- a) The learned CIT(A) has erred in upholding the disallowance of entire commission expenses of Rs. 25,28,973 on the ground that the same was not legal expenditure and ought to be disallowed under section 37 of the Act.
- b) The learned CIT(A) has failed to consider the fact, that the payments under consideration was subject to withholding of taxes and accordingly offered to income by the recipient.
- c) The learned CIT(A) also erred in law by not considering the fact that the expenditures were pursuant to agreements placed on record and hence cannot be deemed to be as illegal payments without examining the nature and purpose of the payment.

3 Disallowance of Provision-Rs.11,97,199:

- a) The learned CIT(A) erred in upholding the disallowance made by the learned AO amounting to Rs. 11,97,199 on the ground that the same is excess in comparison to actual expense without giving adequate reasons for such disallowance.

- b) The learned CIT(A) ought to have appreciated the fact that the Appellant was required to account for yearend provision for expenses as per the Accounting Standard and generally accepted accounting principles.
- c) The learned CIT(A) failed to consider the fact that a year-end provision are accounted based on the best estimates of the expenditures and an accurate quantification may not have been possible.
- d) The learned CIT(A) ought to have appreciated that various judicial precedents have held that if the liability is being estimated with reasonable certainty even though actual quantification may not be possible, such liability is not a contingent one and is an allowable expenditure under section 37(1) of the Act.

4 Interest under section 234B of the Act- Rs. 38,91,936

- a) The learned CIT(A) erred in upholding the levy of interest by the learned assessing officer under section 234B of the Act, which is consequential in nature.

3. The Brief facts of the case are that the assessee is in the business of manufacture of Hydraulic Equipment and filed the Return of Income for the Assessment Year 2012-13 on 27.08.2012 declaring total income of Rs.2,03,504 and filed the revised return of Income admitting income of Rs.11,89,45,510. Subsequently, the case was selected for scrutiny and Notice under Section 143(2) and 142(1) of the Act were issued. In compliance, the learned Authorized Representative appeared from time to time and furnished the details. Since the assessee has international transactions, it was referred to TPO for determination of ALP, and the TPO has passed the order on 20.01.2016 with no adjustments in respect of determining the Arm's Length Price (ALP), and the draft assessment

order was passed. The Assessing Officer observed that the assessee has claimed additional depreciation on used assets, and no additional depreciation is allowed under Section 32(i)(iia) of the Act in respect of used assets and made addition of Rs.1,64,72,846/- by disallowing the additional depreciation. Similarly AO disallowed commission payments of Rs25,28,973/- on the reasoning that same was incurred to take care of interest of officials, which is contrary to proviso to u/sec 37(1)of the Act. Further the AO compared the provision for expenses provided as on 31.03.2012 with actual utilization made in the succeeding year and noticed that provision is in excess by Rs11,97,199, accordingly disallowed the same and assessed the total income of Rs.13,93,76,940/-. Aggrieved by the order, the assessee has filed an appeal with the CIT(Appeals). Whereas the CIT(Appeals) considered the grounds of appeal, findings of the Assessing Officer and submissions of the assessee and dealt on the disputed issue of claim of additional depreciation, by holding that additional depreciation is not allowed on used assets. Accordingly, the learned CIT (Appeals) allowed additional depreciation on new assets, but confirmed disallowance of additional depreciation on refurbishment expenses. The Ld. AR raised contentions in respect of refurbishment of used machinery. But the CIT(Appeals) has granted partial relief on additional depreciation and confirmed disallowance of Rs.21,40,137/- and in respect of other disputed issues of commission payments and excess provision for expenses, the

appellate authority concurred with the Assessing Officer's action and partly allowed the appeal. Aggrieved by the CIT(Appeals) order, the assessee has filed an appeal with the Tribunal.

4. At the time of hearing, the learned Authorized Representative referred to the observations of the Assessing Officer and CIT(Appeals) in respect of additional depreciation and emphasized that the assessee has not claimed depreciation on used machinery and referred to the paper book on submissions made before the lower authorities. In respect of disputed issue of disallowance commission payments, the Ld. AR submitted that the claim has to be allowed under Section 37(1) of the Act and referred to the Agreement entered for liaison works of business operations. The third disputed issue being addition of excess provision of expenses. The Assessee has made provision as per Accounting Principles on the year end date, as it is not possible to quantify the expenditure, and such expenditure has been incurred wholly and exclusively for the purpose of business and prayed for allowing the appeal. Contra, the learned Departmental Representative relied on the orders of the lower authorities.

5. We heard the rival contentions and perused the material on record. On the first disputed issue contested by the learned Authorized Representative in respect of claim of additional depreciation, we found that the CIT(Appeals) has dealt on the issue and observed that the assessee has not claimed depreciation on the used

assets and restricted the disallowance to the extent of Rs.21,41,137/-.The additional depreciation claim pertains to refurbishing costs of used assets. On perusal of the assessment order, we find that, there are no findings or observations of the Assessing Officer on the refurbishing cost incurred by the assessee. Therefore, we are of the opinion, that refurbishing cost has to be examined by the Assessing Officer. Accordingly, we restore this disputed issue for limited purpose to the file of Assessing Officer for verification and examination as per law.

6. On the second disputed issue of commission payments made to Enterprise, was disallowed under Section 37 of the Act. The Assessing Officer observes that such payments are not allowed under Section 37 of the Act. The LdAR demonstrated copy of lease agreement at page 121 of paper book, and emphasized that the company has entered into Agreement of liaison work with M/S NewApexEnterprises on terms and scope of work/responsibilities. Whereas the AO out of 10 areas of scope of work, was satisfied with 9 areas of work and in respect of one area, being taking care of interest of officials to ensure orders and payments, has wrongly presumed that it is not allowable u/sec37(1) of the Act and disallowed entire commission payments. The liaison works has helped the assessee company to get more business. The commission is paid on sales for liaisoning work, for under taking various roles and responsibilities, and one of the area being taking care of interest of officials in assisting and procuring orders and

payments. The learned Authorized Representative contended that similar claim was made in the earlier assessment years and was accepted by the revenue. Further the claim is genuine and incurred wholly and exclusively for promoting the business of the assessee. We found strength in the submissions of learned Authorized Representative that the liaison work Agreement is entered with coverage areas, being incidental for the achievement of Business targets. Accordingly, we set aside the order of the CIT(Appeals) on this ground of appeal and direct the Assessing Officer to delete the addition and allow the ground of appeal of the assessee.

7. The last disputed issue in respect to the yearend provision disallowed by the Assessing Officer, we find that the assessee has furnished the details as on 31.3.2012 on actual utilization. The Assessing Officer has made disallowance as the assessee has made excess provision of expenses and accordingly disallowed under Section 37 of the Act. The LdAR submitted that, the provision made as on 31.3.2012 was reversed and incorporated in the Books of Accounts. The fact remains that neither the assessee nor the revenue could brought on record that the excess provision has been offered in subsequent assessment year with any material evidence and was subject to taxation and further there are no findings of assessing officer.. Accordingly, we direct the Assessing Officer to verify whether provision as on 31.3.2012 is reversed in the subsequent assessment year and offered to tax

and if so, no addition can be sustained, since provision is generally made on estimated basis and there is bound to be difference between estimate and actual expenses. Accordingly, we restore this disputed issue for limited purpose to the file of Assessing Officer and allow the ground of appeal for statistical purposes.

8. In the result, the assessee's appeal is partly allowed for statistical purposes.
Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER
Dated: 26.02.2020.

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore