

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री रमित कोचर, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri Ramit Kochar, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A. No. 926/Chny/2019
निर्धारण वर्ष/Assessment Year: 2014-15

M/s. Narbod Constructions Pvt. Ltd.,
No. 9, Tharapore Avenue, Harrington
Road, Chetpet, Chennai 600 031.
[PAN:AAACN1133C]

The Deputy Commissioner of
Income Tax, Corporate Circle 4(2),
Nungambakkam High Road,
Chennai 34.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri Saroj Kumar Parida, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, JCIT
सुनवाई की तारीख/ Date of hearing : 20.07.2020
घोषणा की तारीख /Date of Pronouncement : 01.09.2020

आदेश / O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 8, Chennai dated 13.12.2018 relevant to the assessment year 2014-15. The effective grounds raised in the appeal of the assessee relate (i) confirmation of disallowance of personal expenses, (ii) confirmation of disallowance of road repairs and maintenance and (iii) confirmation of disallowance of professional fee besides challenging levy of interest under section 234 of the Income Tax Act, 1961 ["Act" in short].

2. Brief facts of the case are that the assessee filed is return of income for the assessment year 2014-15 on 30.09.2014 admitting a total income of

₹.17,04,82,610/-. The return of income filed by the assessee was selected for scrutiny and notice under section 143(2) of the Act was issued. Subsequently, notice under section 142(1) of the Act was also issued against which the assessee filed the details. After perusal of the details filed by the assessee and considering the submissions on various issues, the assessment under section 143(3) of the Act was completed by assessing total income of the assessee at ₹.17,53,76,319/- after making various additions/disallowances. On appeal, the Id. CIT(A) partly allowed the appeal filed by the assessee against which, the assessee preferred further appeal before the Tribunal.

2.1 With regard to the disallowance of personal expenses, on verification of the Form 3CD under column No. 21a, the Assessing Officer noted that the assessee company has incurred club expenses to the extent of ₹.48,125/-. Since the above expenditure is personal in nature, the Assessing Officer asked the AR of the assessee to explain as to why the expenses should not be disallowed as the same is not added back in the statement of income. However, since the AR of the assessee could not explain, the Assessing Officer disallowed the sum of ₹.48,125/- and added back to the total income of the assessee. Since the assessee failed to offer any proper explanation before the Id. CIT(A), the Id. CIT(A) confirmed the above disallowance.

2.2 We have heard both the sides through video conferencing, perused the materials available on record and gone through the orders of authorities below

as well as written submissions e-mailed by the assessee. With regard to the personal expenses claimed by the assessee, we find that when the assessee was asked to explain as to why these expenses should not be disallowed as the same is not added back in the statement of income, the assessee could not furnish any explanation before the assessing authority or before the Id. CIT(A) or even before the Tribunal. Under these facts and circumstances, the disallowance of personal expenses made by the Assessing Officer and confirmed by the Id. CIT(A) stands sustained. Thus, the ground raised by the assessee is dismissed.

3. With regard to the disallowance of road repairs and maintenance, on perusal of the details, the Assessing Officer noticed that an amount of ₹.39,44,710/- was shown as road repairs and maintenance. When the assessee was asked to explain as to how the repairs and maintenance of road had any connection with the business, it was the submission of the assessee that the road is a public property, neither belongs to the assessee nor the contractor. It was further submission that the road was laid in order to facilitate the smooth running of vehicles used by the assessee, repairs were also made to the public road by the assessee itself. After considering the submissions, the Assessing Officer observed that since the road is used by all general public and the same are maintained by the Government or local bodies, the expenditure on the same is not directly related to the assessee's business, the Assessing

Officer disallowed the above claim of expenses of ₹.39,44,710/- and added back to the total income of the assessee.

3.1 On appeal, after considering the submissions of the assessee, the Id. CIT(A) has observed that the veracity of the said expenditure cannot be verified as genuinely incurred and verifiable business expenditure. It was further observed that if this were to be allowed, any assessee can claim any expenditure as incurred towards repairing and maintaining public properties. Thus, the expenditure can only be held as unverifiable expenditure towards corporate social responsibility and therefore, the Id. CIT(A) has held that such expenditure cannot be allowed under section 37(1) of the Act and dismissed the ground raised by the assessee.

3.2 Aggrieved, the assessee is in appeal before the Tribunal. By relying on the written submissions of the assessee, the Id. Counsel for the assessee has submitted that the assessee's business relates to transportation of Hot Iron Slags (waste generated from the manufacture of iron and steel by TATA STEEL) carrying the same in vehicles from the factory belonging to TATA STEEL and dumping them at low lying areas (unpaved lands) specified by and belong to Tata Steel. It was further submitted that the lands where the dumping is carried out do not have pucca roads and are mostly not paved and difficult for vehicle to ply. It was further submission that the assessee uses heavy vehicles such as dumpers, dozers and tippers, etc. for the said purposes. The lands on

which slag-filling is done do not belong to the assessee. The lands in Jamshedpur have been taken on 25 years lease by the Tata Steel from the Jharkand Government. It was further submission that the above expenses claimed to have incurred towards land filling have been classified as road repairs and maintenance. The assessee does not laid roads but only slag-filling was done, which does not bring into existence any tangible fixture or asset. It was further submission that there was no enduring benefit derived by the assessee as the lands do not belong to the company and whose business involves transportation of hot iron slags generated in the manufacture by Tata Steel for the purpose of dumping. It was submission that the slag filling are regular and recurring in nature and represent "current repairs" only. On the other hand, the Id. DR has submitted that the assessee has carried out repairs to the "public road" and is used by all general public and the same are maintained by the Government or local bodies and therefore, the expenditure claimed by the assessee is not directly related to the assessee's business. It was further submission that the assessing authority has rightly disallowed the claim of expenditure, which was confirmed by the Id. CIT(A) and pleaded for sustaining the same.

3.3 We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including written submissions of the assessee as well as case law. On perusal of the orders of authorities below, we find that the road on which the repair works carried out by the

assessee do not belong to the assessee company, but the assessee carried out only repairing work through slag-filling for limited purpose. It is an undisputed fact that the road is a public property, neither belongs to the assessee nor the contractor. Since the roads are being used by all general public and the same are generally maintained by the Government or local bodies, it is not clear as to whether the assessee has been permitted to carry out any repair work of the public road or not. In case, the local bodies/government claimed similar expenditures, then such expenditure would not be allowed to the assessee and thus, NOC from the local bodies is required for consideration. Moreover, it is required to be verified any similar expenditure incurred by the assessee in earlier year, and if so, whether it has been allowed or not. Further, the case law filed by the assessee shall not come to his rescue since the assessee has not produced any agreement with the local bodies/Government for undertaking repair and maintenance work of public roads. However, as discussed above, we set aside the issue to the file of the Assessing Officer for verification and to examine the above said aspects and decide the issue afresh in accordance with law by affording adequate opportunity of being heard to the assessee.

4. The next ground raised in the grounds of appeal relates to confirmation of disallowance of professional fee. On perusal of the details, the Assessing officer noted that ₹.5,61,800/- was paid to "Singhi Advisors Pvt. Ltd., Consultant". Since the nature of service rendered by the consultant was purely personal and the AR of the assessee has submitted before the authorities

below that the above amount was paid for taking advice for investments made, and not related to the business activity of the assessee, the Assessing Officer disallowed the above expenditure and brought to tax. On appeal, the Id. CIT(A) confirmed the disallowance. Before us, the Id. Counsel for the assessee could not explain anything and filed any written submission for incurring the above expenditure towards business activities of the assessee. Accordingly, the disallowance confirmed by the Id. CIT(A) stands sustained.

5. So far as levy of interest under section 234B and section 234C of the Act are concerned, the same are consequential and mandatory to the assessed income of the assessee. Since we have remitted the issue of quantum addition to decide afresh, it requires no adjudication by us.

6. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on 1st September, 2020 at Chennai.

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, 01.09.2020

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.