

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 AND
SHRI DUVVURU R.L.REDDY, JUDICIAL MEMBER

ITA No.885/Chny/2019
निर्धारण वर्ष / **Assessment Year: 2014-15**

HEARD THROUGH VIDEO CONFERENCING

M/s. Sun Paper Mill Ltd.,
11/6, Second Street,
Ratnapuri , Koyambedu
Chennai-600 107.

v. The Deputy Commissioner of
Income-tax, Corporate Circle
6(2), Room No. 705
121 Mahatma Gandhi Road,
Nungambakkam, Chennai.

[PAN: AAACS 5044 B]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.Ravindra Nagesh Naik, CA

प्रत्यर्थी की ओर से /Respondent by

: Mr. AR.V.Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing

: 29.09.2020

घोषणा की तारीख /Date of Pronouncement

: 30.09.2020

आदेश / ORDER

PER RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal filed by assessee is directed against appellate Order dated 14.01.2019 passed by learned Commissioner of Income Tax (Appeals)-16, Chennai (hereinafter called "the CIT(A)"), in ITA No.325/CIT(A)-16/2016-17 for assessment Year (ay) 2014-15, the appellate proceedings before learned CIT(A) had arisen from assessment

order dated 26.12.2016 passed by learned Assessing Officer (hereinafter called "the AO") u/s.143(3) of the Income-tax Act, 1961 (hereinafter called "the Act"). This appeal was heard in Open Court held in Virtual Mode through Video Conferencing Mode using Webex platform.

2. The grounds of appeal raised by assessee in memo of appeal filed with the Income-Tax Appellate Tribunal, Chennai (hereinafter called "the Tribunal") read as under:-

"1) Objection against making addition of Rs 2,57,142/-on account on profit on sale of asset:

a) On the facts and in the circumstances of the case, the learned CIT has erred in making an addition of Rs.2,57,142/- on account of Profit on sale of asset.

b) The Appellant respectfully submits that the appellant is in a position to establish the genuineness of the transaction as the whole amount of profit has been shown on the income side of Profit and Loss Account.

2) Objection against making additions of Prior Period Expenses amount to Rs.8,70,532/-

a) the learned CIT has erred in making additions of Prior period expenses of Rs.8,70,532/- even after making submissions of the same to the CIT of the correct effect given in Computation of Income.

3) Objection against making additions of payment made towards earned leaves of the employees amounting to Rs.13,45,194/-.

a) the learned CIT has erred in making additions of payment made towards earned leaves as the appellant has all the details with respect to payment made towards the said expenditure.

4) In view of the above, the appellant prays that

i) the impugned disallowance shall please be deleted.

ii) penalty u/s 271(1)(c) to be waived off.

iii) Relief to be given of loss incurred by the appellant

iv) Any other relief with the permission of the Commissioner.

If the prayer prayed for are not granted irreparable harm and loss would be caused. The balance of convenience entirely lies in the favor of the appellant. Hence if the prayer prayed for is granted no prejudice would be caused to the Income tax department as a whole."

3. The brief facts of the case are that the assessee is engaged in the business of manufacturing of Paper, Power & Energy, Fertilizer, Chemicals

and Paints. The assessee's case was selected by Revenue for framing scrutiny assessment u/s.143(2) r.w.s.143(3) of the 1961 Act. The AO passed an assessment order u/s.143(3) of the 1961 Act, dated 26.12.2016, wherein, three additions were made to the returned income of the assessee, which were later confirmed by the Ld.CIT(A) vide appellate Order dated 14.01.2019 with respect to two additions namely disallowance on profit on sale of assets to the tune of Rs. 2,57,142/- which was stated by Revenue to be deducted in excess by assessee while computing its income chargeable to tax within provisions of the 1961 Act and disallowance on expenditure on account of payment made towards Earned Leave to the tune of Rs. 13,36,142/- on the grounds that the assessee did not file complete details of employees to whom these earned leave were paid nor confirmation was filed , while with respect to the third disallowance of Prior Period Expenses to the tune of Rs. 8,70,532/- claimed by the assessee, the learned CIT(A) was pleased to restore the matter to the file of AO for verifying the claim of the assessee that the assessee has made genuine claim that it disallowed the said expenses suo motu voluntarily in computation of income chargeable to tax while filing its return of income with Revenue. We will take up these three additions one by one as under:

A) Disallowance of profit on sale of assets:

The authorities below observed that the assessee has credited Rs. 13,45,194/- to its Profit & Loss A/c on account of 'Profit on sale of Assets' but while deducting the said amount in computation of its income chargeable to tax filed alongwith return of income filed by assessee with Revenue , the assessee has claimed higher deduction towards 'Profit on sale of Assets' to the tune of Rs. 16,02,336/- and thus, the differential amount to the tune of Rs. 2,57,142/- was brought to tax by the AO, which addition was later confirmed by the Ld.CIT(A) while adjudicating first appeal filed by assessee with learned CIT(A). The assessee being aggrieved has filed second appeal before the Tribunal raising this issue of disallowance of Rs. 2,57,142/- vide ground number 1 raised in memo of appeal filed with tribunal. Our attention was drawn by Ld.Counsel for the assessee that the assessee has credited Rs. 13,45,194/- to its P&L A/c for the year ending 31/03/2014 as 'Profit on sale of assets' under the "Note No. 20 -Other Income" in its audited financial statement for the relevant year under consideration, which is placed in Paper Book-1 at Page No.6. It was explained by Ld.Counsel for the assessee that in the same P&L A/c under the head 'Note No. 20-Other income' , the assessee has reflected as 'Miscellaneous Receipts' to the tune of Rs. 5,26,825/- which included figure of Rs. 2,57,142/- which was towards profits on sale of old vehicle and hence the total amount of Rs. 16,02,336/- was duly credited under the

head 'Note No. 20 other income' in its audited financial statements for the relevant year under consideration , which it was submitted that the same was later claimed as deduction while computing income chargeable to tax in the return of income filed with Revenue. Our attention was drawn to Page Nos.10-13 of the Paper Book-I wherein details of Miscellaneous Receipts of Rs. 5,26,825/- are available , which includes figure of Rs. 2,57,142/- towards 'Sale of old vehicles (Profit)'. The Ld.Counsel for the assessee has also drawn our attention to the sale Invoice No.2110 dated 30.01.2014, which was raised by the assessee in favour of M/s. Elson Tractor Spares(TIN 33905641553) towards sale of old vehicle No. TN-72-D-9399, which is placed in paper book-I at page 9. Thus, it was prayed by learned counsel for the assessee that the assessee has included Rs 16,02,336/- in the P&L A/c and hence the same was deducted while computing income chargeable to tax while filing return of income with Revenue. Our attention was drawn to computation of income, which is placed at Page No.1 of Paper Book-2, wherein, Rs. 16,02,336/- was deducted from the income towards 'Profit on sale of assets' while computing income chargeable to tax. The Ld.DR on the other hand submitted that the matter as now contended by learned counsel for the assessee before tribunal requires verification by the authorities below and the issue can be restored to the file of the AO. After hearing both the parties and perusing the material on record, we are of the view that the

this issue needs to be restored to the file of the AO for verification of the claim of the assessee as made out by the learned counsel for the assessee as detailed above and hence we are inclined to restore this issue back to the file of the AO for verification of the contentions of the assessee on the factual as well legal aspects as to chargeability of the said sum received by assessee within four corners of provisions of the 1961 Act so that no escapement of income chargeable to tax as is mandated under provisions of the 1961 Act takes place . The assessee is directed to produce all the necessary evidences before the AO to substantiate its claim in the denovo determination of this issue by the AO in set aside proceedings. Needless to say that the AO shall give proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law in denovo set aside assessment proceedings. The evidences filed by the assessee shall be admitted by the AO in the interest of justice. The Ground No.1 raised by assessee in memo of appeal filed with the tribunal is allowed for statistical purposes. We order accordingly.

B. Prior Period Expenses to the tune of Rs. 8,70,532/- disallowed

The second ground raised by the assessee in memo of appeal filed with tribunal is regarding disallowance of prior period expenses amounting to Rs. 8,70,532/-. The AO has disallowed the said expenses on the ground that the assessee has not produced any proof to show that these expenditure were crystallized during the year by relying on the decision of

the Hon'ble Madras High Court in the case of Madras Fertilizers Limited v. CIT reported in 209 ITR 174. Before the Ld.CIT(A), it was the contention of the assessee that the assessee has voluntarily suo motu disallowed the said expenses while computing income chargeable to tax and the Ld.CIT(A) was pleased to direct the AO to verify the genuineness of the claim made by the assessee and delete the same while computing the income chargeable to tax in case the assessee has already voluntarily disallowed the said expenses while computing income chargeable to tax. Before us, the Ld.Counsel for the assessee submitted that the assessee has voluntarily disallowed the said Prior Period Expenses to the tune of Rs. 8,70,532/- while computing income chargeable to tax and by this disallowance so made by AO while framing assessment has led to double disallowance of the same expenses, which is not permissible under the provisions of the 1961 Act. He drew our attention to Page No.1 of the Paper Book-2 filed with the tribunal to highlight that these Prior Period Expenses to the tune of Rs. 8,70,532/- were voluntarily disallowed by the assessee. The Ld.DR submitted that the Ld.CIT(A) has already directed the AO to verify the genuineness of the claim of the assessee and delete the disallowance in case the assessee has voluntarily disallowed the said expenses while filing return of income so that there is no double disallowance of the said expenses and hence no prejudice is caused to the assessee. It is also brought to our notice by learned DR that appeal effect is already given by the AO and hence no grievance of the assessee now survives. We have considered rival contentions and perused the material

on record. We have observed that the assessee has claimed prior period expenses to the tune of Rs. 8,70,532/- in its P&L A/c (Note Number 26/page 7 of PB-I), which the assessee has claimed to have voluntarily disallowed the same in computation of income while filing of the return of income with Revenue (Page 1 of PB-II), if that be so, there cannot be double disallowance of the said expenses as the same is not permissible under the provisions of the 1961 Act. The AO is directed to verify the claim of the assessee and grant adequate relief to the assessee, in case, the assessee has suo motu voluntarily disallowed the Prior Period Expenses to the tune of Rs. 8,70,532/- while filing the return of income and action of the AO while framing scrutiny assessment has led to double disallowance of the same expenses. We have also observed that the Ld.CIT(A) has already given direction to the AO to verify the genuineness of the claim of the assessee and give adequate relief by deleting the disallowance, in case, the action of the AO has led to double disallowance of the same expenses. Thus, in case already AO has given appeal effect to learned CIT(A) orders , then nothing survives now to be done by the AO. This aspect also shall be looked into by AO . Needless to say that the AO shall give proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law in denovo determination of this issue as directed by us as above. The evidences filed by the assessee shall be admitted by the AO in the interest

of justice. The Ground No.2 raised by assessee in memo of appeal filed with the tribunal is allowed for statistical purposes. We order accordingly.

C. Earned Leave Payments to the tune of Rs. 13,36,142/- disallowed

The third issue pertains to the disallowance by AO of Earned Leave claim to have been paid by assessee in cash to its workers to the tune of Rs. 13,36,142/- as the assessee did not produced evidences before the AO , but before the Ld.CIT(A) in its appeal, the assessee has claimed to have produced sample list of 10 workers to whom earned leave was paid and the assessee had submitted before learned CIT(A) in its appeal , as under:

"3. Disallowance of payments made towards earned leave Rs. 13,36,142/-

Sir, these payments were made to the works of on company as per their entitlements as per above laws.

Sir, our organisation has kept up to date records in this regard.

Sir, during financial year 2013-14 approximately 130 worker have settled their amounts and registered. The earned leave was only paid to them.

As regards proof of payments. I am enclosing some sample workers for your ready reference:

(i) Shri L. vedanayagam Rs. 4,690.00

(ii) Shri K. Ramaswamy Rs. 11009.00

(iii) Shri K. Mantharaj Rs. 2289.00

:- 10 -:

(iv) Shri P. Chellappa	Rs. 4429.00
(v) Shri P Ravi	Rs. 20000.00
(vi) Shri P. Ravi	Rs. 8013.00
(vii) Shri N. Paul	Rs. 16553.00
(viii) Shri J. S V ganthan	Rs. 9333.00
(ix) Shri R. Murugam	Rs. 7173.00
(x) Shri V. Arumugam	Rs. 2066.00

Sir, I respectfully submit that my client has detailed records to substantiate the payment of Earned Leave of Rs.13,36,142/-.

Sir, I pray that the disallowance of Rs. 13,36,142/- be cancelled.

Hope the above explanation makes the points clear you are requested to do the needful. Any further clarification if needed will be provided."

The above contentions filed by assessee before learned CIT(A) did not found favour with learned CIT(A) who was pleased to uphold aforesaid disallowance of Earn Leave to the tune of Rs. 13,36,142/-, vide appellate order dated 14.01.2019 , by holding as under:

"8. Disallowance of Payment made towards Earned leave:

8.1 Assessing Officer disallowed the claim of the assessee company towards Earned leave wages of Rs.13,36,142/- as the assessee failed to submit any proof in support.

8.2 In the grounds of appeal, the appellant contested - "3) The learned Deputy Commissioner of Income Tax has erred by disallowing Payment made towards Earned leave Rs. 13,36,142/-."

8.3 In the written submission, the A.R stated that the assessee has detailed records to substantiate the payment of Earned Leave of Rs.13,36,142/- and furnished names of 10 employees on sample basis. A.R did not furnish the names of all the employees to whom the payment was made towards Earned leave. A.R did not furnish any confirmation letter with respect to the payment towards Earned leave.

Hence the disallowance of Rs.13,36,142/- towards unsubstantiated payment towards Earned leave is upheld."

Thus, as could be seen from appellate order passed by learned CIT(A), the learned CIT(A) was of the view that complete details of all the employees to whom earned leave of Rs. 13,36,142/- was paid by assessee during the year under consideration was not furnished by assessee nor confirmation letters from these employees were filed by assessee, which led learned CIT(A) to uphold disallowance as were made by the AO. The assessee has now filed an second appeal before tribunal agitating this disallowance of Rs. 13,36,142/- paid towards earned leave to its employees during the year under consideration . The Ld.Counsel for the assessee submitted before us that the assessee has filed an Petition for admission of Additional Evidences supported by an Affidavit of Director in accordance with Rule 29 of the Income-Tax (Appellate Tribunal) Rules, 1963 and prayers were made to admit additional evidences running into 187 pages which comprises of Exhibit 'A' and Exhibit 'B' as detailed hereunder:

"Exhibit 'A':

List of Employees who were paid Earned Leave of Rs. 13,36,142/-. (Page No. 1 to Page No.5)

Exhibit 'B':

Xerox copy of payment vouchers of Earned Leave paid to Workers. (Page No.6 to Page No.187)."

We have observed that vide these additional evidences are now filed before the tribunal for the first time and the assessee has submitted details of 187 employees to whom Earned Leave to the tune of Rs.13,36,142/- was paid, along with payment vouchers for making aforesaid payments during the previous year relevant to the impugned ay. The assessee has claimed in the averments that the assessee's factory is situated at Cheranmahadevi in District Tirunelveli , while the assessee is assessed at Chennai and the assessee could not bring vouchers from the factory during the course of assessment , while before the Ld.CIT(A) sample vouchers were submitted but learned CIT(A) was not satisfied as complete list of employees were not given nor confirmation letters were given. The learned counsel for the assessee submitted that the assessee has submitted an Affidavit dated 21.12.2019 executed by its Director namely Mr. Chandrahas Vittal Moolya, requesting for admission of additional evidences. The Ld.DR objected to the admission of additional evidences and submitted that the assessee has not produced these documents before the authorities below and the assessee should not be allowed to produce these documents now as the relevant ay in this appeal is ay:2014-15 and now more than six years have passed and it is difficult for AO to verify these expenditure. We have considered rival contentions and perused the material on record. We are of the view that these additional evidences go to the root of the matter which are to be admitted in the interest of the justice. We have observed that the assessee did not

filed these details of employees to whom earn leave was paid before the AO but had filed details of 10 employees along with relevant vouchers to whom earn leave was paid before Ld.CIT(A) but its submissions were not accepted by Ld.CIT(A) as complete details were not furnished nor confirmations were filed by the assessee. Now the assessee has come forward and submitted complete details along with vouchers pertaining to 187 employees to whom Earned Leave of Rs. 13,36,142/- was paid during the previous year relevant to impugned ay . However, these vouchers and details are to be verified by the authorities below and in the interest of justice and in fairness to both the rival parties, we are inclined to restore this matter to the file of the AO for de-novo adjudication of this issue. The assessee is directed to appear before the AO and submit all the details for verification by the AO and also any other details as the AO may require to adjudicate this issue in accordance with law. We would also like to clarify that the assessee is claiming deduction towards payments made for earn leave of Rs. 13,36,142/- to its employees/workers while computing income chargeable to tax and thus onus is on the assessee to prove the genuineness of these expenses and satisfy the mandate of the provisions of the 1961 Act. Needless to say that the AO shall give proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law in denovo . The evidences filed by the assessee shall be admitted by the AO in the interest of justice. The Ground No.3 raised by assessee in memo of appeal filed with the tribunal is allowed for statistical purposes We order accordingly.

4. Ground Number 4 is general in nature and also premature and does not requires separate adjudication and hence stands dismissed.

4. In the result, appeal filed by assessee in ITA No.885/Chny/2019 for ay: 2014-15 is allowed for statistical purposes.

Order pronounced on the 30th day of September, 2020 in Chennai.

Sd/-
(धुव्वुरु आर.एल. रेड्डी)
(DUVVURU R.L.REDDY)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-
(श्री रमित कोचर)
(RAMIT KOCHAR)
लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 30 September, 2020.
TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

- | | |
|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 4. आयकर आयुक्त/CIT |
| 2. प्रत्यर्थी/Respondent | 5. विभागीय प्रतिनिधि/DR |
| 3. आयकर आयुक्त (अपील)/CIT(A) | 6. गार्ड फाईल/GF |