



IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.3201/Mum./2019
(Assessment Year : 2015-16)

BNX Logistics Pvt. Ltd.
Room no.1002-1003, 10th Floor
Meridian Business Centre, Plot no.27
Sector-30, Vashi Sanpada
Navi Mumbai 400 705
PAN – AAECB5445P

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-15(1)(2), Mumbai

..... Respondent

Assessee by : None
Revenue by : Shri Oommen Tharian

Date of Hearing – 10.11.2020

Date of Order – 24.11.2020

ORDER

Captioned appeal has been filed by the assessee challenging the order dated 1st March 2019, passed by the learned Commissioner of Income Tax (Appeals)-24, Mumbai, pertaining to the assessment year 2015-16.

2. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case. There is no application seeking adjournment either. Considering the nature of dispute, we

proceed to dispose off the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

3. Brief facts are, the assessee, a resident company, is stated to be engaged in the business of logistic services. For the assessment year under dispute, the assessee filed its return of income on 29th September 2015, declaring loss of ₹ 95,77,042. In the course of assessment proceedings, the Assessing Officer noticed that the assessee has debited an amount of ₹ 3,67,62,310, towards direct expenses. After calling for the details relating to direct expenditure and examining them, the Assessing Officer found that an amount of ₹ 3,31,67,335, was on account of trailer expenses paid to four parties as noted below:–

<i>i)</i>	<i>Bafna Motors (Mumbai) Pvt. Ltd.</i>	<i>₹ 17,30,515</i>
<i>ii)</i>	<i>Ceat Ltd.</i>	<i>₹ 26,02,396</i>
<i>iii)</i>	<i>Shree Automobile</i>	<i>₹ 2,51,68,228</i>
<i>iv)</i>	<i>Tyre Grip Pvt. Ltd.</i>	<i>₹ 7,09,987</i>

4. To independently verify the genuineness of such expenditure, the Assessing Officer issued notices under section 133(6) of the Act to the above mentioned parties. As observed by the Assessing Officer, though, initially no response was received from Bafna Motors

(Mumbai) Pvt. Ltd., Ceat Ltd. and Shree Automobile, however, subsequently, the Assessing Officer received information from the Bafna Motors (Mumbai) Pvt. Ltd. Insofar as Shree Automobile is concerned, though, the Assessing Officer subsequently received a reply in response to the notice issued under section 133(6) of the Act, however, he found that the said reply was posted from a different place and not from the said party's postal address. No reply was received from Ceat Ltd. Further, vide letter dated 8th December 2017, the assessee clarified that actually amount of ₹ 1,56,76,258, was paid to Shree Automobile which was inadvertently mentioned as ₹ 2,51,68,228. It was submitted, the balance out of the amount of ₹ 2,51,68,228 was actually paid to Indian Oil Corp. for diesel. The Assessing Officer, however, did not find the explanation of the assessee as regards the trailer expenditure paid to Shree Automobile and Ceat Ltd. acceptable and added back an amount of ₹ 1,82,78,654. Though, the assessee challenged the aforesaid addition before the first appellate authority, however, it was unsuccessful.

5. In ground no.1, the assessee has raised the issue of non-admission of additional evidence produced before the first appellate authority. Whereas, in ground no.2, the assessee has raised the issue of violation of rules of natural justice.

6. Heard the learned Departmental Representative and perused the material on record. As could be seen from the facts on record, genuineness of trailer expenditure paid to Shree Automobile and Ceat Ltd., were doubted by the Assessing Officer. The reason for entertaining such doubt was due to the fact that the notice issued under section 133(6) of the Act to Ceat Ltd. was not responded, whereas, the notice issued under section 133(6) of the Act to Shree Automobile though was responded to, however, the reply to the said notice was posted from a place which is different from the postal address and the area of the assessee. Of-course, the Assessing Officer has also observed that though summons under section 131 of the Act was issued to Shree Automobiles, however, there was no response to the said summons.

7. The aforesaid facts clearly reveal the existence of the concerned party in the given address. Non response to the summons can be for various reasons. However, the Assessing Officer has enough power to enforce attendance of the concerned parties if they do not appear in response to summons issued under section 131 of the Act. The difference in postal address, though, may raise some amount of suspicion, however, it is not enough to disallow the payment made by the assessee. Before disallowing the expenditure, the Assessing Officer should have made further enquiry. It is evident, before the first

appellate authority, the assessee had furnished certain additional evidences in support of the payment made, however, the learned Commissioner (Appeals) has declined to consider them. In our considered opinion, if the assessee is able to prove the payment made through proper evidence, the assessee should be provided a fair opportunity to furnish such evidence. The evidences produced by the assessee certainly cannot be accepted on the face of it but have to be examined. But the assessee should not be debarred from submitting any evidence to support its case if through such evidence the assessee can prove the genuineness of the expenditure. In view of the aforesaid, we set aside the impugned order of learned Commissioner (Appeals) and restore the issue to him for fresh adjudication after considering the additional evidences filed or to be filed by the assessee. We make it clear, the disallowance made by the Assessing Officer has to be considered on its own merits in the light of the evidences furnished and we have expressed no opinion on the merits of the issue. Needless to mention, learned Commissioner (Appeals) should provide reasonable opportunity of hearing to the assessee before deciding the issue. Since we are restoring the issue to the learned Commissioner (Appeals) on the ground of non-consideration of additional evidences as raised in ground no.1, the merits of the

issue as raised in ground no.3, is also restored back to him for fresh adjudication.

8. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open court on

MANOJ KUMAR AGGARWAL
ACCOUNTNAT MEMBER

SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED:

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

By Order

Assistant Registrar
ITAT, Mumbai