

IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, MUMBAI  
BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 696/Mum/2019  
(A.Y: 2015-16)

Ornate Multi Modal Carriers Pvt Ltd, 4 <sup>th</sup> floor, Orient House, Adi Marzban Path, Bellard Estate, Mumbai – 400 038.	Vs.	DCIT – 2(2)(2), 5 <sup>th</sup> Floor, Aayakar Bhavan, Mumbai – 400 020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACO0797R		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Mr. R.A. Dhyani. Sr. DR

Date of Hearing	24.02.2022
Date of Pronouncement	25.02.2022

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed an appeal against the order of the CIT(A)-5, Mumbai passed u/s 143(3) and 250 of the Act. The assessee has raised the following grounds of appeal as under;

i. The learned CIT(A) has grossly erred in confirming the addition of Rs.1,79,70,364/- made by the Assessing Officer DY CIT2(2)(2).

ii. The learned CIT(A) has further erred in not considering the fact that certain payments so made to employees referred to in appellant letter dt 27.11.2017 amounting to Rs.11622008/- should be allowed as normal contractual payments.

iii. The learned CIT(A) has grossly erred in passing his order without considering all the facts and details submitted to him.

iv. The appellant reserves the right to add, amend, alter or delete all or any of the above grounds of appeal on or before hearing of the appeal.

2. At the time of hearing, none appeared on behalf of the assessee nor application for adjournment was filed. On perusal of the order sheet, we find the appeal was filed on 07.02.2019 and the case was posted for hearing on 09.11.2020, 16.02.2021, 07.04.2021, 07.06.2021, 04.08.2021, 15.09.2021, 16.11.2021, 05.01.2022 and finally the case is posted for hearing today i.e on 24.02.2022, and even today none appeared on behalf of the assessee. On perusal of the facts and the inaction of the assessee, we find that the assessee is not interested in prosecuting the appeal, hence we considering the material available

on record heard the submissions of the Ld.DR. heard the appeal.

3. The brief facts of the case that the assessee company is engaged in the business of transportation and related services. The assessee has filed the return of income for the A.Y 2015-16 on 31.10.2015 disclosing the total income of Rs. Nil, the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny under the CASS and notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued. In response the Ld. AR of the assessee appeared for time to time and submitted the details. The A.O. on perusal of the profit and loss account find that the assessee has claimed employee benefit expenses of Rs. 3,35,62,994/-which include Rs. 2,24,62,955/- claimed under the heading workers retrenchment compensation and the details were submitted on 06.10.2017 explaining the claim and supported by the agreement.

4. The A.O found that an amount of Rs. 2,24,62,955/- is debited to the profit and loss account against

workers retrenchment compensation on account of voluntarily retirement (VRS) of 119 employees. The assessee was required to support with material information and clarifications to justify the claim. Whereas, the assessee has filed the letters dated 16.11.2017 & 27.11.2017 referred at Para 4.2 of the AO order. Finally the A.O. found that the assessee has made payments as per the list in the agreement of voluntary retirement scheme (VRS) and claimed the entire expenditure. Whereas, the A.O. find that as per the provisions of Sec.35DDA of the Act, only 1/5 of the VRS expenditure shall be allowed as deduction from profits and gains of the business or profession. Hence only 1/5 of total claim is allowable as deduction and balance 4/5 is carried forwarded to next year and disallowed Rs.1,79,70,364/-and assessed the total loss of Rs.1,50,44,670/-and passed the order u/s 143(3) of the Act on 11.12.2014.

5. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the A.O. The assessee has

filed the submissions referred at Para 6.3 & 6.4.3 and the CIT(A) was not satisfied with the explanations and has confirmed the action of the Assessing Officer and dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal with the Honble Tribunal.

6. At the time of hearing none appeared on behalf of the assessee as discussed in the above paragraph. We considered the submissions of the Ld. DR and the perused the material on record. We find as per the observations of the CIT(A), the assessee has to follow the provisions of Sec.35DDA of the Act by claiming the proportionate deduction in respect of workers retrenchment compensation and the remaining 4/5 has to carry forward to subsequent years and has to be claimed in immediately 4 succeeding previous years and the CIT(A) has confirmed the disallowance by the A.O. At this juncture, we consider it appropriate to refer to the observations of the CIT(A) at page 5 Para 6.4.3 read as under:

*6.4.3 It is an admitted fact that during the year the appellant has claimed deduction of Rs. 3,35,62,997/- under head employees benefit expense and the same*

*included a sum of RS. 2,24,62,955/- paid on account of workers retrenchment compensation which had arisen on account of voluntary retirement of of employees. In view unambiguous language of Sec. 35DDA of the Act, I am of the considered opinion that the Ld. AO was justified in holding that the said payment of Rs. 2,24,62,955/- would fall u/s 35DDA of the Act and hence has rightly allowed 1/5 of same under the present assessment year and allowed the balance 4/5<sup>th</sup> to be carried forward to be allowed in equal installments in four immediately succeeding previous years. Hence, the disallowance made by the Ld. AO at Rs. 1,79,70,364/- in confirmed. Accordingly, the Ground Nos. 1 to 3 raised in appeal are dismissed.*

7. We find the provisions u/s 35DDA of the Act are clear on amortization of claim, which is read as under:

***Amortisation of expenditure incurred under voluntary retirement scheme.***

***35DDA.*** (1) *Where an assessee incurs any expenditure in any previous year by way of payment of any sum to an employee in connection with his voluntary retirement, in accordance with any scheme or schemes of voluntary retirement, one-fifth of the amount so paid shall be deducted in computing the profits and gains of the business for that previous year, and the balance shall be deducted in equal instalments for each of the four immediately succeeding previous years.*

(2) *Where the assessee, being an Indian company, is entitled to the deduction under sub-section (1) and the undertaking of such Indian company entitled to the deduction under sub-section (1) is transferred, before the expiry of the period specified in that sub-section, to another Indian company in a scheme of amalgamation, the provisions of this section shall, as far as may be, apply to the amalgamated company as they would have applied to the amalgamating company if the amalgamation had not taken place.*

(3) Where the undertaking of an Indian company entitled to the deduction under sub-section (1) is transferred, before the expiry of the period specified in that sub-section, to another company in a scheme of demerger, the provisions of this section shall, as far as may be, apply to the resulting company, as they would have applied to the demerged company, if the demerger had not taken place.

(4) Where there has been reorganisation of business, whereby a firm is succeeded by a company fulfilling the conditions laid down in clause (xiii) of section 47 or a proprietary concern is succeeded by a company fulfilling the conditions laid down in clause (xiv) of section 47, the provisions of this section shall, as far as may be, apply to the successor company, as they would have applied to the firm or the proprietary concern, if reorganisation of business had not taken place.

(4A) Where there has been reorganisation of business, whereby a private company or unlisted public company is succeeded by a limited liability partnership fulfilling the conditions laid down in the proviso to clause (xiiib) of section 47, the provisions of this section shall, as far as may be, apply to the successor limited liability partnership, as they would have applied to the said company, if reorganisation of business had not taken place.

(5) No deduction shall be allowed in respect of the expenditure mentioned in sub-section (1) in the case of the amalgamating company referred to in sub-section (2), in the case of demerged company referred to in sub-section (3), in the case of a firm or proprietary concern referred to in sub-section (4) and in the case of a company referred to in sub-section (4A) of this section, for the previous year in which amalgamation, demerger or succession, as the case may be, takes place.

(6) No deduction shall be allowed in respect of the expenditure mentioned in sub-section (1) under any other provision of this Act.

8. We find that the provisions of Sec.35DDA of the Act are applicable to the assessee and is eligible for 1/5

of claim/ deduction of VRS expenditure in the present assessee year. The CIT(A) considered the submissions and the provisions of the Act and passed a reasoned order. Accordingly, we uphold the order of the CIT(A) and dismiss the grounds of appeal of the assessee.

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 25.02.2022.

Sd/-

(S RIFAUR RAHMAN)  
**ACCOUNTANT MEMBER**

Sd/-

(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 25.02.2022

KRK, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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