

IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 4321/Mum/2019
(A.Y: 2012-13)

M/s. Emem Freight Forwarders 8 th Floor, Business Park, ACC Cement Road, City of Joy Mulund (W), Mumbai – 400080	Vs.	CIT(A)-40 Earnest House, Nariman Point, Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABFE0221G		
Appellant	..	Respondent

Appellant by :	Mr.Nishit Gandhi. AR
Respondent by :	Mr.Jasbir Chouhan.DR

Date of Hearing	05.01.2022
Date of Pronouncement	13.01.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed an appeal against the order of the CIT(A)-40, Mumbai passed u/s 143(3) r.w.s 250 of the Act. The assessee has raised the following revised grounds of appeal:

1.1 In the facts and circumstances of the case and in law, the Learned CIT(A) erred in confirming the action of the Ld. AO by sustaining the ad-hoc disallowance of expenses made by

the Ld. AO in respect of the following expenses:

- i. Rs.7,92,423/- being 5% of freight forwarding, agency, handling and transportation CFS of Rs. 1,58,48,456/-;
- ii. **Rs. 12,251/-** being 20% of Business Promotion Expenses of Rs.61,253/-;
- iii. Rs.15,474/- being 30% of Conveyance Expenses of Rs. 51,581/-;
- iv. **Rs. 10,000/-** in respect of Donation u/s 80G;
- v. Rs.6,080/- being 30% of mobile charges of Rs.20,268/-;
- vi. Rs.3,914/- being 20% of office expenses of Rs. 19,750/-
- vii. **Rs.5,718/-** being 20% of staff welfare expenses of Rs.28,590/-
- viii. Rs.9,851/- being 30% of travelling expenses of Rs. 32,836/-

1.2 In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in:

- (i) Confirming the additions made by the Ld. AO without appreciating that no show cause notice was ever issued by the Ld. AO before making the impugned disallowances;
- (ii) Not considering the the facts, materials and evidences on record and eventhe remand report of the Ld. AO in this regard; and;
- (iii) Remanding the issue in respect of disallowance of freight and related expenses amounting to Rs.2,51,617/- to the file of the AO despite acknowledging that the same is covered by the decision of the Ld. CIT(A) in the earlier year i.e. AY 2010-11

1.3 In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not allowing the ground pertaining to set-off of brought forward losses of Rs.,98,926/- and simply directing the Assessee to file a rectification application despite the fact that the said claim of loss is as per the order the Assessing Officer in the earlier years.

2. *The appellant craves leave to add, amend, alter, modify or delete.*

2. The Brief facts of the case are that, the assessee is engaged in the business of clearing and forwarding services. The books of accounts were audited u/s 44AB of the Act. The assessee has filed the return of income for the A.Y 2012-13 on 27.09.2012 with a total income of Rs Nil and the return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny and notice u/s 143(2) & u/sec 142(1) of the Act are issued. In compliance, the Ld.AR of the assessee appeared from time to time and submitted the details and the case was discussed. The A.O on perusal of the information filed found that the assessee has debited indirect expenses to profit and loss account, therefore the A.O has issued the notice u/s 133(6) of the Act on the freight & forwarders charges and agencies, handing and transportations and CFS parties. Whereas the A.O. has not received reply from Oriental Overseas Container Ltd to whom the assessee has paid Rs. 2,51,617/- during the year. The assessee has debited the freight and forwarders charges and agency, handling and transportation &

CFS of Rs. 1,58,48,456/- and due to non availability of the supporting evidences the A.O has made the adhoc disallowance @5% and which works out to Rs. 7,92,423/-.

3. Similarly the A.O has made disallowance of expenses on adhoc basis as no proper evidences were available with the assessee (i) Business and promotion expenses @ 20% adhoc addition Of Rs. 12,251/-(ii) commission and brokerage expenses of Rs. 37,868/- towards 20% not supported with the evidence (iii) conveyance charges of Rs. 15,474/- being 30% of the total conveyance charges not supported with the proper evidences (iv) donation of Rs. 10,000/-no supporting receipts (v) disallowance on account of mobile charges Rs. 6,080/- being 30% are not supported by evidences (vi)office expenses of Rs.3,914/-and professional fee of Rs. 11,000/- being 20% of expenses not supported with vouchers and disallowed (via) Salary and wages of Rs. 71,775/- being 10% of total claim (vii) disallowance of Rs. 5,718 on account of staff welfare expenses being 20% of expenses (viii) adhoc disallowance of Rs. 16,765/-

on account of telephone expenses being 30% of total expenses and (ix) travelling charges of Rs. 9,851/- being 30% of expenses of claim not supported with the evidence and not verifiable. Finally the A.O has assessed the total income of Rs.9,98,210/- and passed the order u/s 143(3) of the Act dated 28.01.2015.

4. Aggrieved by the order, the assessee has filed an appeal with the CIT(A). Whereas, the CIT(A) on adhoc disallowance on account of freight & forwarding charges has granted the relief to the extent of Rs. 2,51,617/- and the balance of disallowance is sustained. In respect of professional fee, wages & salaries and telephone expenses the CIT(A) has granted relief and confirmed the other additions and partly allowed the assessee appeal. Aggrieved by the CIT(A)order, the assessee has filed an appeal before the Honble Tribunal.

5. At the time of hearing, the Ld. AR of the assessee submitted on the first disputed issue of part disallowance sustained towards freight & forwarders

charges. The expenses are supported with Audited books of accounts and Tax Audit Report U/sec44AB of the Act , invoices and TDS details. In respect of other expenses disallowance as per the A.O. order, Most of the expenses are supported with the proofs and genuinity of claim cannot be doubted. The Ld. AR supported the submissions with the voluminous paper book with the evidences in respect of expenses and the remand report and prayed for allowing the appeal. Contra, the Ld. DR supported the order of the CIT(A).

6. We heard the rival contentions and perused the material available on record. Prima-facie on the first disputed issue with respect to disallowance made @ 5% on the freight and forwarders charges and agency and handling and transportation, we find that on considering the turnover, there cannot be any question of ambiguity with respect to payments made to agencies though the A.O has made 5% adhoc addition but the CIT(A) has granted the partial relief. We find the A.O without identifying the particular item or claim has made adhoc addition applying the

random percentage which cannot be accepted and further the A.O. has not pointed out any particular defect in freight and forwarding charges. We considering the nature of business operations and the turnover direct the A.O to delete the disallowance sustained by the CIT(A) on this disputed issue .

7. Whereas in respect of the adhoc addition on percentage basis of the Business promotion expenses, conveyance expenses, mobile charges, office expenses, staff expenses and travel expense is slightly on the higher side. We considering the facts, submissions and the documentary evidences submitted are of the opinion that such adhoc addition cannot be fully sustained. The fact remains that the assessee should take extra care in maintaining complete vouchers and bills at least in future years. Accordingly we direct the A.O to restrict the disallowance @ 5% instead of differential percentage applied for expenses. We make it clear that the relief @ 5% is applicable only to this assessment year. Further we direct the assessing officer to grant setoff of brought forward of losses of earlier years on

verification of the facts and as per the provisions of law. And We partly allow the grounds of appeal of the assessee.

8. In the result, the assessee appeal is partly allowed.

Order pronounced in the open court on 13.01.2022.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 13.01.2022

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//

1.

(Asst. Registrar)
ITAT, Mumbai