

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'C' BENCH, KOLKATA**

Shri Rajpal Yadav, Vice-President (KZ)

&

Shri Manish Borad, Accountant Member

**I.T.A. No. 2166/KOL/2018
Assessment Year: 2012-2013**

***Income Tax Officer,.....Appellant
Ward-27(2), Haldia,
Aayakar Bhawan, Basudevpur,
Khanjanachak, Haldia,
Purba Medinipur-721602***

-Vs.-

***Shri Kamal Nayak,.....Respondent
Khadal, Gobra, Old Digha,
P.O. Contai, Purba Medinipur-721424
[PAN:ABHPN1317K]***

Appearances by:

*Shri Amitabha Sen, Addl. CIT, appeared on behalf of the Revenue
None, appeared on behalf of the assessee*

Date of concluding the hearing : April 05, 2022

Date of pronouncing the order : May 9th, 2022

O R D E R

Per Manish Borad, Accountant Member:-

This appeal preferred by the Revenue is directed against the order of ld. Commissioner of Income Tax (Appeals)-7, Kolkata dated 13.07.2018 for the assessment year 2012-13.

2. The Revenue has raised the following grounds of appeal:

(1) That on the facts and in the circumstances of the case, the Ld.CIT(A)erred in accepting the assessee's argument regarding transactions of Rs.61,67,793/- not being routed through the regular books of account for it was in the nature of reimbursement of expenses with no impact on the profits for the year, even when the assessee had failed to produce any documentary evidence in support of his claim during assessment proceedings and also during the remand stage.

(2) That on the facts and in the circumstances of the case, the Ld.CIT(A)erred in accepting the assessee's argument regarding the nature of transactions relating to M/s. S. A. Exports and M/s. IFB Agro Industries Ltd. of Rs.77,54,900/- and Rs.20,35,788/- respectively, even when the assessee failed to produce any documentary evidence in support of his claim during assessment proceedings and even later during the remand stage.

(3) That on the facts and in the circumstances of the case, the Ld.CIT(A)erred in ignoring the Remand Report of the A.O. and by accepting fresh evidence in violation of Rule 46A of the I.T. Rules, 1962.

3. Brief facts of the case are that the assessee is a Researcher and specialised in aquatic culture. The assessee filed return of income on 04.08.2012 declaring total income of Rs.8,79,130/-. The case was selected for scrutiny through CASS for the reason of "low net profit or loss shown from large gross receipt". Accordingly notices under section 143(2) of the Act dated 12.08.2013 and under section 142(1) dated 21.08.2014 were served upon the assessee. During the year of scrutiny, the assessee carried on the business of wholesale trading of Prawn and sale of Fish-feed in the name and style of M/s. Harbola Sea Food. Ld. Assessing Officer examined the records including the purchases and sales made by the assessee. Reconciliation was sought for the receipts from M/s. IFB Agro Industries Limited, S.A. Exports. Due to lack of necessary submission, certain additions were made and income assessed at Rs.1,72,72,940/-. Aggrieved, the assessee preferred appeal before the ld. CIT(Appeals) and succeeded. Now the Revenue is in appeal before the Tribunal.

4. Apropos to Ground No. 3, Ld. D.R. failed to prove that the ld. CIT(Appeals) ignored the remand report. Further the ld. D.R. also failed to place on record the details of evidence accepted by the ld. CIT(Appeals) in violation of Rule 46A of the Income Tax Rules, 1962. We also notice that the remand proceedings were duly carried out by the ld. Assessing Officer, Ward-27(2), Haldia of the Act. Vide letter dated 19.01.2017, the assessee was asked to furnish the copies of supported bills and vouchers and other documents necessary for remand

proceedings to be carried out on 31.01.2017. Necessary documents were duly filed before the Assessing Officer in the remand proceedings and this fact remains undisputed at the end of the Id. D.R. Thus we find no merit in the ground no. 3 of Revenue and the same is dismissed.

5. As far as the remaining grounds no. 1 & 2 are concerned, Id. D.R. supported the findings of the Id. Assessing Officer. Per contra, Id. Counsel for the assessee apart from the finding of the Id. CIT(Appeals) also referred to the relevant page 5 of the paper book.

6. We have heard the arguments of both the parties and also perused the relevant material available on record. Apropos to Ground No. 1, the Revenue's contention is that the Id. CIT(Appeals) erred in accepting the assessee's argument regarding transaction of Rs.61,67,793/- not being routed through the regular books of account as it was in the nature of reimbursement of expenses. We notice that the Id. CIT(Appeals) has adjudicated this issue by examining the facts of the case observing as follows:-

Ground No. 1:-

Before this ground of appeal is adjudicated, a basic understanding of the business of cultivation of prawn (Vennamei variety) is required. The vennamei variety of prawn which is mostly exported to countries like Japan, South Korea, Vietnam and China and partly to the middle East countries are all cultivated by small and marginal prawn cultivators mainly in the district of 24 Parganas (South) and East Midnapur, West Bengal, where due to the proximity to the sea, availability of brackish water is not a problem. The brackish water, which is mainly estuarine water, is found where fresh river water mixes with sea water. The brackish water of particular degree of salinity is ideal for cultivation of the vennamei variety of prawn. Such water is usually brought in the inland pond and small reservoirs through channel from the sea. This water once stored in the pond is then further purified for cultivation by mixing with certain specific medicine and as per the parameters mainly set by the major exporter of the prawn namely M/s IFB Agro Industries Ltd. and S.A Exports, Aquatic Marine Export Co. etc.

As has already been discussed that this vennamei variety of prawn is cultivated by innumerable number of small part-time prawn cultivators, who either own small pond or reservoirs or took them on short time lease from other parties. These uneducated people do not have any direct access to the final prawn export companies but they have their own agents, who are

otherwise head cultivator themselves, who act as the main liaison between these uneducated cultivators and the final prawn exporting companies. In this present case, the assessee himself, is such an individual, who himself is otherwise a prawn cultivator of national repute, and who because of his leadership managerial and organizational skills is also acting as the main liaison between as many as 147 cultivators, who are personally known to him on one hand and on the other he has direct link with the prawn export companies like IFB Agro Industries Ltd. and S.A Exports. These companies provide medicines and especial prawn feed to the assessee, Mr. Kamal Nayak, who in turn distributes amongst 14/ prawn cultivators under his leadership and also acts as a one point contact man between these prawn cultivators and the export companies. The assessee is a presidential awardee researcher and specializes in aquatic culture, who supervises the best practice of methods in this line of cultivation. The numerous small prawn cultivators under his supervision (namely about 147 cultivators during the period) bring their produce to M/s IFB Agro Industries Ltd. for sale have to naturally incur certain expenses on freight & transport. Prawn being a aquatic produce has very low shelf-life and therefore, special attention and care is needed for its proper harvesting and preservation during its transport from one point to the other. The produce is to be carried in proper refrigerated and fumigated vans. The expenses incurred on such freight & transportation is finally reimbursed by the Companies while they purchase the produce from cultivators otherwise such an activity will become economically unviable for them.

The company M/s IFB Agro Industries Ltd. while reimbursing these expenses to all the small 147 prawn cultivators, actually uses the services of the assessee and reimburses the expenses mainly to him and who in turn further reimburses the actual cost incurred on transportation to these final 147 cultivators who are in the assessee's team. Since this reimbursement is neither the assessee's income nor his expenditure, they were not routed through the normal books of accounts of the assessee and they were not shown by the assessee before the Ld. A.O. Therefore, the total handling charges of Rs.61,67,973/- is actually the reimbursement. In view of the above, the addition made by the A.O is now deleted and the appeal of assessee on this ground is treated as allowed".

7. On perusal of the above finding of the Id. CIT(Appeals) and also going through the certificate issued by IFB Agro Industries Limited placed at page no. 23 of the paper book, we find that the alleged amount was paid by the Company to the assessee for meeting the handling charges for the purpose of maintaining liaison between the Company and its 147 cultivators. We are satisfied with the finding of the Id. CIT(Appeals) that M/s. IFB Agro Industries Limited used the honorary services of the assessee and reimbursed the expenses incurred on

transportation and other handling charges incurred for its 147 cultivators. Since the alleged amount is neither the assessee's income nor expenditure, they were not forming part of the regular books of account and thus no addition was called for the same amount. Thus no interference is called for in the finding of the Id. CIT(Appeals) deleting the addition of Rs.61,67,793/-.

8. As regards the Grounds No. 2 & 3 are concerned, relating to the transaction of Rs.77,54,900/- with M/s S.A. Exports and Rs.20,35,788/- with M/s. IFB Agro Industries Limited, Id. Assessing Officer made the addition since the assessee failed to produce any documentary evidence in support of his claim. However, when the matter travelled to Id. CIT(Appeals), he deleted the alleged addition observing as follows:-

"Ground No.2:

As has been discussed in the Ground No.1 that Mr. Kamal Nayak, the assessee, is a Presidential awardee specializing on aquatic culture. He not only has specific knowledge of prawn cultivation, he is a technically trained man who supervises the entire prawn cultivation processing, virtually acting as an agent of the final prawn buying companies. Since, the vennamei variety prawn is actually a highly perishable produce to increase its normal shelf-life, the uneducated cultivators use a particular drug called 'ethotoxin' which are mixed with brackish water to increase the normal shelf-life of prawns. This particular drug is highly toxic for human consumption, .therefore, as per international standards of prawn cultivation, this drug has been totally banned by, the major prawn importing countries like Japan and South Korea. Instead of using 'ethotoxin' drug, there are other drugs available in the market, which can be used to increase the shelf-life of prawn. The prawn exporting companies like M/s IFB Industries Ltd., S.A Export etc provide this drug to the prawn cultivators. Here too the assessee, Mr. Kamal Nayak, acts as an agent on behalf of these companies. Such companies provide the specific drugs to Mr. Kamal Nayak, the assessee, who in turn after testing the brackish water available with each of these cultivators decides on the exact proportion of the use of such drug and he distributes them accordingly and also educates these cultivators on the exact parameter set by the prawn importing countries. The payment, which has been received from M/s S.A Export by Mr. Nayak is again one such example of reimbursement of expenses on such specific drug actually incurred by the cultivators. To put it in another way, the cultivators have to purchase this drug which comes as 'kits' from M/s S.A Export, and whatever expenses are incurred by all the 147 cultivators has to be again reimbursed by the same company i.e. M/s S.A Export. Since such reimbursement again is neither the assessee's income nor it is his expenses, these payments were not routed through the books of accounts of the assessee. In view of the above, the A.O's observation is found not to be

correct and the amount of Rs. 77,54,900/-, which was disallowed by him is now deleted and the appeal of the assessee on this ground is treated as allowed.

Ground No.3:

As can be seen from the details submitted before me that there are certain cultivators who in order to cultivate the prawn had directly brought prawn seed and their specific feed from M/s IFB Agro Industries Ltd and have paid to the company through cheque. The company, due to a mistake on their part, had wrongly credited the payment it had received from these parties to Mr. Kamal Nayak. As can be clearly seen from the ledger copies provided by M/s IFB Agro Industries Ltd., the company has accepted the said mistake later. It can be verified from the list of payments received by M/s IFB Agro Industries Ltd. wherein the names of these cultivators, who did not operate under the leadership of Mr. Kamal Nayak, the assessee, have been clearly mentioned. In view of the same, the addition made by the A.O amounting to Rs.20,35,788/- is hereby deleted and the appeal of the assessee on this ground is treated as allowed".

9. On going through the finding of the Id. CIT(Appeals) and the relevant documents placed on the paper book, we find that Rs.77,54,900/- was neither income nor expenditure of the assessee but it is a reimbursement of the amount received from M/s. S.A. Export for and on behalf of the cultivators. Similarly the alleged amount of Rs.20,35,788/-, the same has been clarified by M/s. IFB Agro Industries Limited that it has wrongly credited the amount in the account of Kamal Nayak, but the same was meant for the cultivators who cultivate Prawns on behalf of M/s. IFB Agro Industries Limited for the business of wholesale trading of Prawn and the sale of specific fish-feed received from IFB Agro Industries Limited. Mr. Kamal Nayak, who knows these cultivators and served as the communicator between the Company and these cultivators provided these services for the social caused. No such addition was called for by the Assessing Officer. Thus the Id. CIT(Appeals) has rightly appreciated the facts and deleted the addition. Thus we find no infirmity in the order of the Id. CIT(Appeals). These grounds are dismissed.

10. Ground No. 4 is consequential in nature and therefore, needs no adjudication.

11. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on May 9th, 2022.

**Sd/-
(Rajpal Yadav)
Vice-President (KZ)**

**Sd/-
(Manish Borad)
Accountant Member**

Kolkata, the 9th day of May, 2022

- Copies to :*
- (1) ***Income Tax Officer,
Ward-27(2), Haldia,
Aayakar Bhawan, Basudevpur,
Khanjanchak, Haldia, Purba Medinipur-721602***
 - (2) ***Shri Kamal Nayak,
Khadal, Gobra, Old Digha,
P.O. Contai, Purba Medinipur-721424***
 - (3) ***Commissioner of Income Tax (Appeals)-7, Kolkata***
 - (4) ***Commissioner of Income Tax,***
 - (5) ***The Departmental Representative***
 - (6) ***Guard File***
- TRUE COPY***

By order

***Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata***

Laha/Sr. P.S.