

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No.3328/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2014-15)

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| M/s. C.P. Aquaculture (India) Pvt. Ltd. No.40, 1 st Floor, F-1, 2 nd Street, Sparton Nagar, Mugappair East, Chennai - 600 037. | बनाम/ Vs. | ACIT Corporate Circle-1(2), Chennai. |
| स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAACC-1316-Q | | |
| (पीलार्थी/ Appellant) | : | (प्रत्यर्थी / Respondent) |

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| अपीलार्थी की ओर से/ Appellant by | : | Shri T. Banusekar(CA) – Ld. AR |
| प्रत्यर्थी की ओर से/ Respondent by | : | Shri ARV Sreenivasan (Addl. CIT) – Ld. Sr. DR |

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| सुनवाई की तारीख/ Date of Hearing | : | 11-04-2022 |
| घोषणा की तारीख / Date of Pronouncement | : | 08-06-2022 |

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2014-15 arises out of the order of learned Commissioner of Income Tax (Appeals)-4, Chennai [CIT(A)] dated 09.10.2019 in the matter of assessment framed by the Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 30.12.2016. The grounds raised by the assessee read as under:

1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interest of the assessee and at any rate is opposed to the principles of equity, natural justice and fair play.
2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.
3. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of assessment is bad in law.
4. For that the Commissioner of Income Tax (Appeals) erred in upholding the disallowance to the extent of Rs.24,12,82,364/-.
5. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the technical and management fee paid to CPF (India) Pvt Ltd was a bonafide payment made wholly and exclusively for the purpose of business.
6. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the technical and management fee paid to CPF (India) Pvt Ltd was towards services availed in connection with infrastructure and human resource management, technical support and business development.
7. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the said technical and management fee paid to M/s CPF (India) Pvt Ltd cannot be questioned on the basis of commercial expediency.
8. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer erred in putting himself in the shoes of the businessman and questioning the rationale for incurring such expenditure.
9. For that the Commissioner of Income Tax (Appeals) based on surmise and conjectures erred in concluding that the said technical and management fee was paid to CPF (India) Pvt Ltd was not genuine expenditure.
10. For that the Commissioner of Income Tax (Appeals) erred in not considering the explanations and submissions provided by the appellant.
11. For that the appellant objects to the levy of interest u/s.234B and 234C.

PRAYER

For these grounds and such other grounds that may be urged before or during the hearing of the appeal it is most humbly prayed that the Hon'ble Tribunal may be pleased to

- a. Delete the disallowance of Rs.24,12,82,364/- and / or
- b. Pass such other orders as the Hon'ble Tribunal may deem fit.

As evident, the sole grievance of the assessee is confirmation of disallowance of Rs.2412.82 Lacs. The same is in the nature of technical and management fees paid by the assessee to its related entity namely M/s Charoen Pokphand (India) Pvt. Ltd. (in short 'CIPL'). M/s CIPL is stated to be leading manufacturer of Poultry and aqua feed and also breeder & Hatcheries and Broiler Integration Activities in India. The assessee is stated to be engaged as leading manufacturer of Aqua feed having breeder & Prawn hatcheries.

2. The Ld. AR advanced argument assailing the impugned additions and placed reliance on various judicial decisions. The Ld. AR drew attention to the terms of the agreement to submit that fees were to be paid as per specified % based in increase in Gross Profit. The Ld. AR submitted that there was substantial increase in sales and gross profits during the year which was a result of services rendered by the payee. The Ld. AR also submitted that due Tax has been deducted at source on the aforesaid payment and revenue could not sit on the armchair of the business so as to question the rationale for incurring such expenditure. It was also submitted that the payments were through banking channels. The Ld. AR also filed note on field activities undertaken by the payee on behalf of the assessee. The Ld. Sr. DR, on the other hand, submitted that the assessee could not prove that the factum of rendering of services and therefore, the disallowance was justified. For the same, Ld. Sr. DR took us through the findings of lower authorities in their respective orders. Having heard rival submissions and after going through relevant material on record, our adjudication would be as given in succeeding paragraphs.

Assessment Proceedings

3.1 The assessee being resident corporate entity is stated to be engaged in manufacturing and supply of aquaculture products, prawn feed and prawn seeds. It was assessed for the year under consideration u/s 143(3) on 30.12.2016 wherein it was saddled with additions of Rs.2473.35 Lacs which include management and technical fees of Rs.2412.82 Lacs paid to another entity i.e., M/s CIPL whereas the balance sum of Rs.60.43 Lacs paid to various other parties. The

payment made to other parties is not the subject matter of appeal before us.

3.2 During the course of assessment proceedings, it transpired that CIPL being a sister concern of the assessee was engaged in the field of hatching of broilers and manufacturing of broiler feeds. The assessee paid impugned sum for the first time during this year. The same was pursuant to Memorandum of Understanding dated 01.04.2013 between the assessee and CIPL, a copy of which is on record. As per the terms of the agreement, CIPL was required to provide services of infrastructure management, management consultancy to augment human resources, technical support services, undertake surveys and various other support services. Accordingly, the assessee was required by Ld. AO to explain as to why such services were needed and what was the nature of services rendered.

3.3 The assessee submitted that it had presence only in Tamil Nadu and Andhra Pradesh and assessee had planned to expand to other states also. Further prawn feed and prawns seed were in similar line of business and CIPL being front runner in prawn feed with their wide presence and marketing team, was marketing assessee's prawn seeds along with its own product 'prawn feed'.

3.4 The Ld. AO noted that the assessee was exclusive manufacturer of prawn feed as well as prawn seed, and hence, there was no necessity to get managerial and technical services from CIPL which had 60% of its business in poultry and no technical knowledge of prawn seed. With regards to prawn feed, both entities had similar turnover and similar presence in the states which was tabulated in the assessment order in para-3. After considering assessee's reply, Ld. AO noted that the only

proof of service that the assessee could produce is the fact the assessee achieved sale of prawn seed for Rs.145.95 Crores in this year as against sale of Rs.61.34 Crores in preceding year. However, that would not automatically mean that the services are received by the assessee. No evidences could be furnished to establish the factum of rendering of services. The assessee enumerated the range of services received by it and tabulated the state-wise growth in turnover from AYs 2010-11 to 2014-15.

3.5 However, rejecting the same, Ld. AO held that the assessee as well as CIPL paid royalty to parent CP group of Thailand and therefore, there was no necessity for the assessee to received such services from CIPL. The Ld. AO also alleged that there was no basis for determining the fees. No such fees were paid in earlier years. The transactions would also to be treated as sham transaction since in AY 2014-15, CIPL incurred heavy losses. Since it was sister concern of the assessee, the management had decided to arrange such a transaction and the profits have deliberately been shifted to a loss-making entity. Accordingly, the amount of Rs.2473.25 Lacs was disallowed and added back to the income of the assessee on the ground that the expenditure was not incurred wholly and exclusively for the purpose of business.

Appellate Proceedings

4.1 The assessee, in statement of facts, submitted that the business of the assessee includes growing of seeds to be given to the farmers. The plant of the assessee is situated in Chennai and its product is consumed by the customers who are prawn cultivators spread over coastal India. Due to marketing and operation difficulties, the assessee was unable to expand marketing base and accordingly, to fill the marketing gap and to

provide technical information to customers, the assessee appointed CIPL, an entity who was stated to be in the same line of business having extensive network all over India. CIPL is stated to be a subsidiary of renowned CP Group of Thailand having expertise in production and marketing of Agro and Aquatic feed, Prawn Feed etc. CIPL is stated to be having more than 2000 employees on its payroll and it achieved a turnover of 1093 crores in aquatic products and 1479 Crores in poultry products. It had already established prawn feed activities having connectivity in various states of India and having marketing offices at various locations. Considering all these facts, the assessee availed management and technical services from CIPL. The service includes infrastructure management including Seed Counting Machines, Auto Feeder Technology, Closed System of Water Management etc. with the objective of enhancing growth rate in production, productivity, profitability and turnover and to expand market share. The assessee also stated to have procured management consultancy to augment the human resource to optimize the production and review the man-machine ratio to achieve high level of output and also to advice for recruitment of the right candidate having expertise in marine technology. The assessee is also stated to be have received technical support for improving day to day activities efficiently at farm and hatchery. The assessee is stated to have received various other similar nature of services from CIPL.

4.2 The assessee also drew attention to the fact that the actual amount paid to CIPL was Rs.2412.82 Lacs whereas the remaining amount of Rs.60.43 Lacs was paid towards professional fees, audit fees etc. to other professional. It was also submitted that Ld. AO erroneously concluded that CIPL transacts only for 'Prawn Feed' and not 'Prawn

seed'. The fact that CIPL deals only with 'Prawn feed' but the same cannot be sustained in the market without promoting the Prawn seed to the Prawn Seed Owners, who are the backbone of the said industry as the said PrawnFeed is produced for the Prawn Seeds only. For this purpose, CIPL had engaged various experts, quality assurance personnel, marketing executives / staff etc. who have consistent and continuous contacts with such Prawn Seed Farmers and also conduct periodical as well frequent visits/meetings to explain and to educate the Prawn Seed Farmers about the latest technology in the Prawn Seed Farming, Prawn Diseases, providing proper feed to the prawns based on age, effective controls over cost administration, effective Manpower handling, all cost effective methodologies including Machines, indigenous developments, exclusive modification over the same on case to case basis as required based on regional, seasonal and economic factors. Based on the above access, interaction and connectivity with the farmers, CIPL has come forward to provide such technical service and the assessee decided to utilize the same to develop the Seed Farming for mutual benefits. Hence, Prawn Seed Farming is the basis for the Prawn Feed Manufacturing and Ld. AO erred in concluding that CIPL did not have access to Prawn seed and the entire fees is paid towards the services of educating by creating awareness about Prawn seed farming which requires continuous support for better quality performance. It was also submitted that the substantial increment in sale of 'Prawn seeds' during the year had been achieved on account of enhanced and additional support and services of CIPL. The fees have been paid through banking channel after complying with TDS provisions. In the above background, the assessee assailed the impugned additions.

4.3 Concurring with the plea that the correct amount paid to CIPL was Rs.2412.82 Lacs, Ld. AO was directed to delete the remaining disallowance of Rs.60.43 Lacs.

4.4 Regarding payment made to CIPL, the Ld. CIT(A) noted the various observations of Ld. AO leading to the disallowance. The submission of the assessee in support of claim was captured as under: -

- a) The appellant decided to utilize the management and technical support services from CPF since it is into the similar line of business and with adequate management and technical expertise and
- b) Services were availed by the appellant with the aim to strengthen the activities of prawn farming and prawn hatcheries vis-a-vis its competitors and also to make strong marketing base at the other parts of India in farming activities.
- c) The AO was not justified in invoking the provisions of Sec. 40A(2)(b) for making the disallowance.
- d) The AO was not right in treating the transaction as sham.
- e) Details of computation of management fees provided which was 15% of GP on the eligible sales of Rs.1,43,16,02,967/-.
- f) Though there was no such payment in the earlier years, the appellant had decided to explore the option to increase the revenue from the prawn seed segment which was a business decision and the disallowance on this ground is not a valid one.
- g) The expenditure was incurred wholly and exclusively for the purpose of business.
- h) The management fee paid by the appellant would not be covered by section 92BA and therefore the question of furnishing industry comparable does not arise.

4.5 However, Ld. CIT(A) observed that the assessee was not able to produce any documentary evidence to establish that the CIPL had really rendered services to the appellant company. Though much was written in the MOU about the services to be rendered, it is not established that the CIPL had really rendered such services whereas the appellant had admitted the fact that M/s. CIPL had not even recruited any new workforce to help and assist the appellant for the services agreed to be rendered for the first time to the appellant. Simply because the payments were made by cheque and TDS was made on the same, the said expenditure cannot be treated as a genuine payment. Further the AO had not at all made the disallowance by invoking the provisions of

Sec.40A(2) but on the contrary Ld. AO had held that the expenditure was not incurred wholly and exclusively for the purpose of business which is required u/s 37 to allow expenditure wholly related to business. No such reference was made by Ld. AO to Sec.40A(2) in the assessment order anywhere. No material was brought on record by the assessee to show that the increase in the turnover was due to the efforts made by CIPL. The assessee did not furnish the basis of computation of management fee. The management fees paid by the assessee had no rationale behind it. The fee was paid for the first time to CIPL and by paying huge sum to CIPL, the assessee could reduce its profit for tax whereas CIPL would not have to pay any tax on the said receipt as it had huge losses during the year. Considering the above fact, the reasonable inference would be that the expenditure was not claimed under proper perspective and it was not genuine. Finally, the disallowance was upheld against which the assessee is in further appeal before us.

Our findings and Adjudication

5. We find that the basic facts are not under dispute. Upon careful consideration of factual matrix, we find that though the fees have been paid by the assessee to CIPL under a MOU, however, the assessee has not furnished sufficient evidences to prove that it actually availed varies services from CIPL. After going through the orders of lower authorities, we find that this onus of establishing the fact of rendering of services could not be established conclusively. The only evidence that could be furnished by the assessee was signing of MOU and increase in turnover during the year. However, the fact the increase in turnover was due to the efforts of CIPL could not be proved. As rightly held by Ld. CIT(A), mere payment through banking channels and TDS compliance was not

sufficient to establish the genuineness of the transactions. This would be more vital considering the pertinent fact that the assessee as well as CIPL belongs to same group and CIPL has suffered losses during the year which cast doubt on the genuineness of such payments. No such payments have been made by the assessee in earlier years. The assessee could not prove that CIPL had recruited any new workforce or already had such workforce to help and assist the assessee to render such services.

6. Considering the entirety of facts and circumstances, we deem it fit to provide another opportunity to the assessee to establish the factum of rendering of services with cogent evidences in terms of Sec.37(1). For the same, we restore the matter back to the file of Ld. CIT(A) for fresh adjudication with a direction to the assessee to substantiate the genuineness of the payment. Needless to add that adequate opportunity of hearing shall be granted to the assessee.

7. The appeal stand allowed for statistical purposes.

Order pronounced on 08th June, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 08-06-2022

EDN

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1.अपीलार्थी/Appellant 2.प्रत्यर्थी/Respondent 3.आयकरआयुक्त (अपील)/CIT(A) 4.आयकरआयुक्त/CIT
5.विभागीयप्रतिनिधि/DR 6. गार्डफाईल/GF