

IN THE INCOME TAX APPELLATE TRIBUNAL "C(SMC)"
BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rajesh Kumar, Accountant Member

I.T.A. No.225/Kol/2022
Assessment Year: 2014-15

Paavan Commercial Pvt. Ltd.....Appellant
22, Armenian Street,
Burra Bazar, WB-700001.
[PAN:AADCP0987B]

vs.

ITO, Ward-5(2), Kolkata.....Respondent

Appearances by:

Shri Anil Kochar, AR, appeared on behalf of the appellant.
None appeared on behalf of the Respondent.

Date of concluding the hearing : June 13, 2022
Date of pronouncing the order : June 28, 2022

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 25.03.2022 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee in this appeal has taken the following grounds of appeal:

"1. For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant.

2. For that the Ld. CIT(A) erred in rejecting the claim of the appellant for deduction of Rs.5,00,000/- paid to the West Bengal Fire Service Deptt. ought to have been allowed by the A.O as it related to the business activities of the appellant and being revenue expenditure its disallowance by the A.O without properly appreciating the factual aspect of the matter was entirely uncalled for.

3. For that the Ld. CIT(A) erred in holding that the payment of Rs.5,00,000/- towards Fire Extinguishing Expenses is an offence not allowable as per the provisions of Explanation -1 to Sec. 37 of the Act.

4. For that the Ld. CIT(A) ought to have appreciated the fact that payment of Rs.5,00,000/- was made to avoid litigation only.

5. For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds."

2. The sole issue involved in this appeal is that the amount of Rs.5,00,000/- paid by the assessee to West Bengal Fire Service Department is allowable as an expenditure u/s 37 of the Act. The assessee has claimed before the lower authorities that the aforesaid amount was paid to West Bengal Fire Service Department for providing manpower and put in service ten (10) number jets for extinguishing the fire. However, the lower authorities have disallowed the claim of the assessee observing that the aforesaid payment of Rs.5,00,000/- was penal in nature being compounding fees for violation of section 11C and 12 of West Bengal Fire Service Act, 1950 which is punishable u/s 11C and u/s 26 of the said Act. The Id. CIT(A) in the impugned order has referred to the order dated 26.04.2013 of the DG, WB Fire and Emergency Services, in this respect, the relevant part of the order of the CIT(A) is reproduced as under:

“5.1 Although the assessee has stated that the expenditure of Rs.5,00,000/- is on account of "Fire Extinguishing Expenses", this statement is contrary to the documentary evidence furnished by the assessee. The assessee has submitted that the Director General, West Bengal Fire and Emergency Services directed the appellant to deposit a sum of Rs.5,00,000/- as fees under the West Bengal Fire Services Act vide order dated 26.04.2013. A perusal of the order dt. 26.04.2013 however clearly shows that the payment of Rs.5,00,000/- is penal in nature, being compounding fees for violation of section 11C and 12 of West Bengal Fire Service Act, 1950 which is punishable under section 11C and under section 26 of the said Act respectively. The relevant Paras of the order dt. 26.04.2013 of the DG, WB Fire and Emergency Services are reproduced below-

"Consequent upon devastating fire on 03.01.2013 at about 08.25 a.m. and detection of non provision of Fire Safety Measures in accordance With the West Bengal Fire Services Act, 1950 for the safety of life and properties at 11, Strand Bank Road, Jagannath Ghat, Shed-A, Ground Floor, occupied by M/s Paavan Commercial Pvt. Ltd. through way of license for a period of 11 months bearing No. Lnd. 5468/12/1395 dated 20.04.2012 of Kolkata Port Trust, under the jurisdiction of Central Avenue Fire Station, "B" Division, West Bengal Fire & Emergency Services an F.I.R was lodged by Sri Ashim Sarkar, Station Officer of Central Avenue Fire Station under "B" Division vide police case No. 03 dated 04.01.2013 of North Port Police Station in violation of section 11C and 12 of West Bengal Fire Service Act, 1950 which is punishable under section 11C and under section 26 of the said Act respectively.

.....
Perused the relevant documents including F.I.R. inspection report, receipt of payment against fire tender and application for compounding of offence (s) submitted by Sushil Kumar Jain, Chandrakant Jain and Rahul Jain, all are residing at 159, Rabindra Sarani Kolkata-700007, proprietor of M/s Paavan Commercial Pvt. Ltd., being the persons Suspected to have committed offence(s), pleading guilty application and considering such application for "compounding

being only once as recommended / certified by the concerned Divisional Officer, West Bengal Fire & Emergency Services, the commission of offence(s) punishable under this Act is hereby compounded by the undersigned, being the Director General, West Bengal & Emergency Services duly empowered by the West Bengal Fire Services Act, 1950 u/s 38B, Shri Sushil Kumar Jain, Chandrakant Jain and Rahul Jain are hereby directed to deposit a sum of Rs.5,00,000/- (Rupees Five Lakh) only in T.R. Form No. 7 in any Government Treasury / Revenue Bank of India, Kolkata or schedule Bank under the head of account 0070-60-109 Fire protection and control 001 Fees under the West Bengal Fire Services Act 14 Services Fees". Only after production of receipt of making such payment to the Government to the Government exchequer, offence(s) will be treated to have been compounded and no further proceeding shall continue against them as per West Bengal Fire Service Act, 1950 as referred under North Port Police Station case No. 03 dated 04.01.2013."

5.2 The payment of Rs.5,00,000/- being penal in nature is not allowable in view of the provisions of Explanation 1. To Section 37, which reads as under-

"For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure."

5.3 In view of the facts of the case and the position of law as discussed in the preceding sub paras, the disallowance of Rs.5,00,000/- is hereby upheld."

3. A specific query was put by us to the ld. counsel for the assessee as to on what account the aforesaid expenditure was incurred. The ld. counsel has stated that the West Bengal Fire Service has charged the aforesaid amount from the assessee without any reason. He has further submitted that the assessee wants to place on the file a paperbook to prove the nature of the expenditure.

4. However, we note that it is clearly mentioned in the impugned order of the CIT(A) that the aforesaid payment was made by the assessee by pleading guilty to the charges levelled vide police case no.03 dated 04.01.2013 on account of detection of non-provision of the Fire Safety Measures in accordance with the West Bengal fire Services Act, 1950 in violation of section 11C and 12 of the West Bengal Fire Service Act, 1950 which is punishable u/s 11C and u/s 26 of the said Act respectively. Even the order dated 26.04.2013 of the DG, West Bengal Fire and Emergency Services has been reproduced.

5. The ld. counsel has placed on file the challan for depositing of money wherein it has been specifically mentioned that the aforesaid payment is for compounding u/s 38B

of West Bengal Fire Services Act, 1950. The facts are apparent that the aforesaid payment was made by the assessee as compounding fees by pleading guilty before the competent authority of commission of offences under the West Bengal Fire Services Act 1950.

6. We deem it pertinent to mention here that the offence for non-compliance of fire safety provisions is heinous which may result into breakage of fire putting risk to life and limb of residents as well as other public at large. Any payment made by the assessee as compounding fees for such an offence has rightly been disallowed by the lower authorities. The assessee in this case right from the Assessing Officer to the level of the Tribunal has tried to misguide authorities about the nature of payment which act of the assessee is highly deprecable.

7. In the result, the appeal of the assessee is hereby dismissed.

Kolkata, the 28th June, 2022.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated:28.06.2022.

RS

Copy of the order forwarded to:

1. Paavan Commercial Pvt. Ltd
2. ITO, Ward-5(2), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches