

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD

BEFORE SHRI PRAMOD M JAGTAP, VICE PRESIDENT
& MS. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील(एसएस)सं./I.T.A. Nos.458 & 459/Ahd/2018

(निर्धारण वर्ष / Assessment Years: 2010-11 & 2011-12)

Vardhman Shipping Pvt. Ltd., R.V. Shah Bunglow, Opp. Camp Station, Mill Compound, Surendranagar-363001	बनाम/ Vs.	ACIT Surendranagar Circle, Surendranagar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.: AABCV6763F		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

आयकर अपील(एसएस)सं./I.T.A. No.508/Ahd/2018

(निर्धारण वर्ष / Assessment Year: 2012-13)

Vardhman Shipping Pvt. Ltd., R.V. Shah Bunglow, Opp. Camp Station, Mill Compound, Surendranagar-363001	बनाम/ Vs.	ACIT Surendranagar Circle, Surendranagar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.: AABCV6763F		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

आयकर अपील(एसएस)सं./I.T.A. No.460/Ahd/2018

(निर्धारण वर्ष / Assessment Year: 2013-14)

Vardhman Shipping Pvt. Ltd., R.V. Shah Bunglow, Opp. Camp Station, Mill Compound, Surendranagar- 363001	बनाम/ Vs.	ACIT Surendranagar Circle, Surendranagar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.: AABCV6763F		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri S. N. Divatia, A.R.
प्रत्यर्थी की ओर से/Respondent by:	Shri Mukehs Thakwani, Sr. DR

सुनवाई की तारीख/Date of Hearing:	22.07.2022
घोषणा की तारीख /Date of Pronouncement:	29.07.2022

आदेश/ORDER

PER MS. MADHUMITA ROY, JUDICIAL MEMBER:-

The bunch of appeals filed by the assessee are directed against the orders passed by the Ld. CIT(A)-7, Ahmedabad all dated 25.10.2017 arising out of the assessment orders passed by the ACIT, Surendranagar Circle, Surendranagar dated 28.12.2016 & 30.12.2016 passed under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for A.Y. 2010-11 to 2013-14.

ITA Nos. 458 to 460/Ahd/2018(A.Y. 2010-11, 2011-12 & 2013-14):-

2. There is 64 days delay in filing the instant appeal before us. The assessee has filed an affidavit explaining the said delay wherefrom it appears that the Director of the assessee company had shifted to Mumbai and rarely comes to his native village at Surendranagar. The notice sent to the address available with the Department, therefore, could not be complied with in due time and hence there is some delay in preferring the appeal before us. There is no deliberate intention to delay in preferring such appeal by the assessee and unless the delay is condoned, the assessee would suffer irreparable loss and injury as also stated and submitted by the assessee in the said affidavit filed before us.

At the time of hearing of the matter the Ld. Counsel appearing for the assessee reiterated the above facts before us and prayed for condonation of delay which has not been objected by the Ld. DR with all his fairness.

Having regard to the facts and circumstances of the case as narrated by the assessee which seems to be genuine, we condone the delay in preferring the appeal before us.

ITA No. 508/Ahd/2018(A.Y. 2012-13):-

3. There is a delay of 72 days in filing the instant appeal before us. The assessee has filed an affidavit explaining the said delay on the same plea as made in ITA No. 458/Ahd/2018. Considering the facts and circumstances of the case as narrated by the assessee which seems to be genuine, we condone the delay in preferring the appeal before us.

4. A perusal of the grounds of appeals would indicate that there are certain common grounds in the assessee's appeals which are as follows—

1. Addition on account of cash deposits in the bank made by the assessee.

2. Addition for non-deduction of tax in respect of payment made to legal consultant in U.K.

3. Addition on account of non-deduction of tax on rent paid

4. Addition in respect of disallowance of 1/5th of the ticketing and travelling expenses.

5. Confirming the order of assessing officer in making a disallowance of miscellaneous expenses.

5. Since all the appeals relating to the assessment of the same assessee, these are heard analogously and are being disposed of by a common order for the sake of convenience.

6. We shall take up the Revenue's appeal in ITA No. 458/Ahd/2018 concerning AY 2010-11 as a lead case for adjudication.

7. The addition of Rs. 11,02,000/- on account of cash deposited in the bank is the issue before us.

8. The assessee is doing business of carryout cargo clearing and forwarding activity and event management activity filed its return of income for 2010-11 on 20.12.2016 declaring total income at NIL. Subsequently, the case was reopened and notice under Section 148 recording reasons was issued on 19.11.2015. Thereafter, the assessee filed returned showing loss of Rs. 1,38,319/-.

9. The assessee during the assessment proceeding was called for to explain the source of cash deposit of Rs. 11,02,000/- in his bank account. However, the assessee could not submit evidence in support of such cash deposit and addition was, therefore, any made by the Ld. AO to the tune of Rs. 11,02,000/-. The said addition was further been confirmed by the First Appellate Authority on the count that the assessee failed to explain the nature of source of deposit of the impugned amount in his bank account. The assessee, since has not discharged his onus of providing the identity of the deposits or the genuineness and creditworthiness of the depositors, the First Appellate Authority confirmed the appeal made by the Ld. AO. Hence, the instant appeal before us.

10. We have heard the rival submissions made by the respective parties, and we have also perused the relevant materials available on record.

11. It is a fact that since the assessee has not been able to produce any such evidence to justify the genuineness of the deposit made to the bank account before the authorities below. But the Ld. Counsel appearing for the assessee before us prayed for another opportunity to be given to the assessee to substantiate the genuineness of source of cash deposit in the bank and thus the issue may be remanded to the file of the Ld. AO for deciding the same afresh as contended by him.

12. The Ld. DR relied upon the order passed by the authorities below.

13. Having heard the Ld. Counsel appearing for the parties and having regard to the facts and circumstances of the case we find it fit and proper to give a further opportunity to the assessee to submit the source of cash deposit by supporting the evidence for proper adjudication of the matter. We, therefore, dispose of this issue by remitting the same to the file of the Ld. AO to decide the same afresh by passing a reasoned order upon giving an opportunity of being heard to the assessee and upon considering the evidence which the assessee may choose to file at the time of hearing of the matter. This ground of appeal is preferred by the assessee is allowed for statistical purpose.

14. **Ground No.2:-** The department has got the information that the assessee has reached international business and obtained several services for which payments were also made in foreign currency but without deducting TDS on such payments. During the re-assessment proceeding the assessee was asked to provide such details of payments and directed to explain as to why TDS should not be deducted on the same. However, the assessee failed to answer the same by providing details or explaining the reason for non-deduction of TDS of such payment and thus addition of Rs. 95,05,505/- under Section 40(a)(ia) of the Act was made by the Ld. AO which was, in turn, confirmed by the First Appellate Authority. Hence, the instant appeal before us.

15. We have heard the rival submissions made by the respective parties, and we have also perused the relevant materials available on record.

16. It is evident from the order passed by the Ld. CIT(A) that the payment made by the assessee is in the nature of fees for professional services (legal services) and thus, the same was covered by Article 15 of the said Double Taxation Avoidance Agreement (DTAA) between India and U.K. It was further submitted that such payments were made to U.K. after following the proper procedure laid down by the RBI. However, no explanation with regard to the nature of services for which payment has been made has been properly explained by the assessee as of the view of the Ld. CIT(A). Further that, though Form No.

15CA filed by the appellant states such remittance has been made towards security undertaking neither the copy of any agreement with the parties to whom payments were made nor so that the nature of payment could be determined and the services offered could not verified by the Revenue and thus, the addition made by the Ld. AO has been confirmed by the First Appellate Authority. Before us the Ld. Counsel appearing for the assessee drawn our attention to Page 45 and 46 of the Paper Book filed before us whereof Column 14 of Form No. 15CB declaring remittance has been made towards legal consultancy and not involving any technical services is evident and hence the claim of the assessee that the payment is covered under Article 7 of Business Profits of the DTAA between India and U.K. seems to be acceptable. The same has not been considered in its proper perspective by the Revenue as it is evident from the order impugned.

17. Having heard the Ld. Counsel appearing for the parties and having regard to the facts and circumstances of the case and particular documents relied upon by the assessee's counsel as aforesaid we find that for the ends of justice the assessee be given a further opportunity of being heard in order to substantiate the claim for non-deduction of TDS. Hence, we dispose of this ground of appeal by remitting the same to the file of the AO to consider the issue afresh and to pass a reasoned order upon giving an opportunity of being heard to the assessee and upon considering the evidences in respect of the claim made by the assessee in regard to the remittances which the assessee may choose to file at the time of hearing of the matter. This ground of appeal is, thus, disposed of for statistical purposes.

18. **Ground No.3:-** The third ground of appeal has been raised in ITA No. 459/Ahd/2018 for A.Y. 2011-12 in regard to the addition of on account of non-deduction of tax on the Rent.

19. We have heard the rival submissions made by the respective parties, and we have also perused the relevant materials available on record.

20. Upon verification of the books of accounts it was found that the assessee has not deducted TDS for the payment of rent to various parties. The assessee since failed to give any proper explanation to the Ld. AO the total rent paid to the tune of Rs. 8,29,000/- was added to the total income of the assessee. Since no documentary evidences in support of the claim neither any bill or vouchers or any confirmation of documentation in respect of the rent payment has been furnished before the First Appellate Authority the said addition stood confirmed.

21. It is the case of the assessee that all the payments were made below the amount of Rs. 1,20,000/- and therefore, tax was not deducted. Another opportunity of being heard has been requested to be given to the assessee by the Ld. A.R. before us in order to substantiate the claim of the assessee before the authorities below which has not been controverted by the Ld. D.R. Keeping in view the submissions made by the parties for the ends of justice we are disposing of this ground by remitting the issue to the file of the Ld. AO to consider the same afresh upon giving an opportunity of being heard to the assessee and upon considering the evidences which the assessee may choose to file at the time of hearing of the matter. This ground of appeal preferred by the assessee is allowed for statistical purposes.

22. **Ground No.4:-** The fourth ground of appeal has been raised in ITA No. 459/Ahd/2018 for A.Y. 2011-12 in regard to disallowance of 1/5th of the ticketing and travelling expenses.

23. During the course of assessment proceeding it was found that the assessee has debited or travel ticket expenses of Rs. 8,78,800/- and travelling expense 2,27,670/-. In the absence of any supporting document being bills/evidence of purpose of journey, 1/5th of the said expenses was disallowed. The said addition of Rs. 2,23,294/- was further confirmed by the First Appellate Authority.

24. We have heard the rival submissions made by the respective parties, and we have also perused the relevant materials available on record.

25. It appears that before the Ld. AO, nothing has been submitted by the assessee in support of his claim. Before the First Appellate Authority the bank statement substantiating the payment has only been made by the assessee. However, as to how the expenditure is being made as business purpose that has not been clarified before the First Appellate Authority which according to us seems to be justified and hence upheld. This ground of appeal preferred by the assessee thus fails and dismissed.

26. **Ground No.5:-** The fifth ground of appeal has been raised in ITA No. 508/Ahd/2018 for A.Y. 2012-13in regard to the disallowance of miscellaneous expenses to the tune of Rs. 7,57,925/-.

27. It appears that in the absence of relevant bills/evidences in support this claim made by the assessee the addition was made by the authorities below. However, for the ends of justice we are remitting the issue to the file of the Ld. AO to consider it afresh and to pass a reasoned order upon giving an opportunity of being heard to the assessee and upon considering the evidence which the assessee may choose to file at the time of hearing of the matter. This ground of appeal preferred by the assessee is allowed for statistical purpose.

28. In the combined result, the appeals preferred by the assessee are partly allowed.

This Order pronounced in Open Court on

29/07/2022

Sd/-

PRAMOD M JAGTAP
(VICE PRESIDENT)

TANMAY

Ahmedabad: Dated 29/07/2022

Sd/-

MADHUMITA ROY
(JUDICIAL MEMBER)

TRUE COPY

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार आयकर अपीलीय
अधिकरण, अहमदाबाद ।