

आयकर अपीलिय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member

AND

Shri Laliet Kumar, Judicial Member

ITA Nos.1971 & 1719/Hyd/2018		
Assessment Years: 2012-13 & 2013-14		
Dy. C.I.T Circle 17(1) Hyderabad.	Vs.	DRS Logistics (P) Ltd, Secunderabad. PAN:AAACD7182R
(Appellant)		(Respondent)
Revenue by:	Shri Jeeval Lal Lavidiya, DR	
Assessee by:	Shri K.C.Devdas, CA & Shri M.V. Anil Kumar	
Date of hearing:	31/10/2022	
Date of pronouncement:	18/11/2022	

ORDER

Per Laliet Kumar, J.M

These two appeals filed by the Revenue are directed against the separate orders dated 05.07.2018 & 13.06.2018 of the learned CIT (A)-5, Hyderabad relating to A.Ys. 2012-13 & 2013-14, respectively. Since the Revenue has raised identical issues in both the appeals, they were heard together and are being disposed of by this common order.

2. Firstly, we are taking ITA 1971/Hyd/2018 for A.Y. 2012-13. The grounds raised by the Revenue in this Appeal read as under:

“1 The learned CIT(A) has erred both in law and on facts of the case.

2 The learned CIT(A) erred in deleting the disallowance of salary expenditure of Rs. 2,26,38,128/- made by the Assessing Officer without appreciating the fact that the assessee's claim of salary expenditure which is 9.67% of its turnover is huge when compared with its sister concerns which are in the same line of business, even though the vehicles are operated through another Company Agarwal Packers & Movers Pvt Ltd.

3. The learned CIT(A) erred in deleting the disallowance of salary expenditure of Rs. 2,26,38,128/- made by the Assessing Officer without appreciating the fact that the assessee failed to substantiate its claims with proper supporting evidence other than TDS return and statement showing month wise expenditure incurred.

4. The learned CIT(A) erred in deleting the disallowance of Branch Expenses of Rs. 1,09,87,840/-, Major portion of the business was operating through the sister Concern of the assessee company, M/s Agarwal Packer & Movers Pvt. Ltd. The branches of the assessee-company were not operated. When there are no operations at the branch level, the requirement of expenditure does not arise.

5. The learned CIT(A) erred in deleting the disallowance of loss on sale of by the Assessing Officer without 5 debtors of Rs. 51,56,416/- made appreciating the fact that the assessee failed to prove the genuineness of the sale of debtors. Except the names of the parties to whom debtors were sold no other details like agreement copies in connection of sale of debtors, assessment accounts, statements, address, Confirmation from parties, particulars etc were submitted.

6. The learned CIT(A) erred in deleting the disallowance of loss on sale of Rs. 51,56,416/- made by the Assessing Officer without debtors appreciating the fact that the assessee has not written off the same in its books of accounts.

7. The learned CIT(A) erred in partly allowing the appeal of the assessee without calling for evidences to substantiate its claims and without calling for a remand report from the Assessing Officer.

8. Any other ground(s) that may be urged at the time of hearing.”

3. With regard to the first issue of disallowance of salary expenditure to the extent of Rs.2,26,38,128/-, the Id.DR for the revenue had submitted that the disallowance of salary expenditure of Rs.2,26,38,128/- was made by the Assessing Officer after noticing that the assessee's claim of salary expenditure which is 9.67% of its turnover, which is huge when compared with its sister concerns. The Assessing Officer had also mentioned that vehicles were operated through another Company i.e., Agarwal Packers & Movers Pvt Ltd. The learned DR drew the attention of the Bench to the order passed by the Assessing Officer, which reads as under:

“(xvi) Salaries and benefits of NTW Division:

As per the audit report submitted by the special auditor the NTW division has debited an amount of Rs.4,99,42,443/- towards Salaries and other staff related expenses. The explanation was called for incurring such a huge expenditure when the major portion of the business was operated through another company i.e. M/s Agrawal Packers & Movers Pvt. Ltd.. The AR of the NTW division vide their reply dated 26.07.2017 submitted as under:

“Please find attached the salaries paid to employee's month wise along with self-copy of TDS return tiled as annexure -10 Proof of payment of Salary and other has been provided and also would like to apprise you that payment made to each employee by cheque only for all 12 months of the year. TDS return also being provided here with. Month-wise summary is attached too showing separately the person and directors whose TDS is deducted”.

The reply given by the assessee is general in nature as the assessee has only provided copy of TDS return filed and statement showing month-wise expenditure incurred without proper supporting evidence. As the assessee has failed to

explain the reasons for incurring such huge expenditure on account of salary, when the assessee company is operated through its sister concern i.e. M/s AGARWAL PACKERS & MOVERS PVT.LTD. Further, when compared to the previous year Salaries, the assessee in NTW division earned the income to the tune of Rs. 200.43 Crores for which it claimed the salaries of Rs. 13.80 Crores. However, during the year under consideration, the Company in NIW division is claiming an amount of Rs. 5.01 Crores towards salaries and benefits against the income of Rs. 51.82 Crores which is definitely on higher side. Also, it is pertinent to mention here that M/s Agrawal Movers & Packers through which the assessee has operated its major operations during the financial year under consideration, has debited an amount of Rs. 14.14 Crores (Salary Rs. 8.45 Cr & Driver wages Rs. 5.69 Cr) on account of salaries and drivers wages against revenue of Rs. 247.41 crore. Further the chart given below would clearly establish that the salaries debited under head payment to and provisions for employees by the assessee company is on high side when compared with its sister concerns which are in same line of business. The comparative chart is as under:

S.No	Name of the company	F.Y	Turn over	Salaries	
1	DRS Logistics NTW Div.	2011-12	51.82	5.01	9.67%
2	DRS Dilipord Lines (P) Ltd	2011-12	117.63	5.77	4.90%
3	AGARWAL PACKER & MOVERS (P) LTD	2011-12	247.14	14.14	5.71%

Thus, I am constrained not to accept the argument put forth by the assessee company and under the given circumstance I am of the opinion that it is appropriate to allow average percentage i.e. 5.30% $(4.90 + 5.71 = 10.61 / 2 = 5.30)$ of expenditure claimed by its sister concerns as discussed above. Hence, Rs.2,74,65,316/- (Rs.51,82,13,506@5.30%) is allowed as salary expenditure and balance Rs.2,26,38,128/- (Rs.50103444-Rs.2,74,65,316) is disallowed and added to the income”.

4. The learned DR submitted that the learned CIT(A) deleted the said addition made by the Assessing Officer stating as under:

"6.12 The ground no. 16 pertains to the disallowance of salary and benefits of NTW Division of Rs. 2,26,38,128/-. The AO noted that a sizable amount of salary has been debited to the tune of Rs. 4,99,42,443/- by the appellant.

The AO asked for the explanation of the appellant, to which the appellant replied with the details of salary month wise along with the copy of the TDS return and also claimed the fact that all of them were paid through cheque.

The AO did not doubt the above facts of the existence of the employees and the payment thereof and the necessary TDS being deducted. The AO however

noted that the expenditure was huge as the turnover of the appellant had grossly fallen down for the year under consideration and the turnover had actually gone from 200.43 crores to 51.82 crores, whereas the salaries had gone from 13.8 to 5.01 crores only. The AO made comparison to the other concerns and came up with the concept of a disallowance on the basis of 5.3% of the turnover of the appellant.

The AO seems to be of the opinion that the salary and the turnover are as per a prescribed formula in a service industry just like there is a chemical composition of a particular substance. This analogy and empirical imports are non justifiable and unreasonable to be invoked in this manner. The appellant had sizable business and the turnover started falling because of disputes and other issues, the AO simultaneously wants the persons drawing salary either should be fired or their salary should be reduced. These kind of expectation and to get into the diktat of the payment of the salary is not within the jurisdiction of the AO. On the identical issue in the A.Y. 2013-14, the following was adjudicated.

"The ground no. 6 pertains to disallowance of salary of Rs. 1,17,75,392/-, the AO has noted that the expenditure is high, as the vehicles are operated through other company. The appellant gave the details of the employee month wise along with the TDS details of the same. The AO wanted the reasons for the incurring of such expenditure. It is not the jurisdiction of the AO to decide as to how many employees should be kept by the appellant or how profitably the business should be run by the appellant. In the instant case, the appellant was doing excellent business till F. Y. 2007-08 and after that due to internal disputes, the business went bad and the operations went into a mess. There is no basis for the salary to be disallowed and allowed on a percentage basis. There is no other reason given by the AO such as doubting the payment or a payment to bogus persons. The AO has no basis

to dictate the quantum of salary paid to the employees vis-à-vis the business of the sister concern. The AO has just made an observation that the employees should not be paid salary as the vehicles are operated by the sister concern, in an employer and employee relationship, it is not the duty of the employee to seek work but the employer to provide work and if the employer has not terminated the services and continues to pay, in the hope of revival of business, the same cannot be disallowed u/s. 37(1).

In view of the details submitted by the appellant before the A.O and the fact that there are large number of employees with the appellant and these employees have been continuing for past quite few years, there is no basis to disallow the salary expenses only on this pretext. Therefore, the addition of Rs. 1,17,75,392/- is hereby deleted and the relief is granted on ground no. 6 accordingly."

Considering the above, the addition of Rs. 2,26,38,128/- is hereby deleted and the appellant is granted relief on ground no. 16 accordingly."

4.1. The learned DR further submitted that the deletion made by the Assessing Officer was based on the comparative analysis of the salary paid by the assessee and its sister concerns. It was also submitted that the salary bills paid by the assessee were inflated and exorbitant one, and therefore, the Assessing Officer was correct in disallowing the salary bills claimed by the assessee to the extent of Rs.2,26,38,128/-.

5. Per contra, the learned AR submitted that the assessee had submitted the details of the name of the employees, salary paid to them and the TDS deducted on salary to the Assessing Officer. It was also submitted that salaries for the whole year were paid through Banking channel and the Assessing Officer has neither doubted the genuineness nor the identity of the employees.

6. We have heard the rival arguments made by both sides and perused the records. In the present case, as admitted by the Assessing Officer in his assessment order that all the salary bills were paid by the assessee to its employees through banking channels which were duly vouchered and also supported by the other evidences. In our view, the Assessing Officer has not doubted either the identity of the employees or the salary paid to them. Further, the Assessing Officer, in the present case, has not brought on record any evidence to show that the employees are not in existence, more particularly when the Special Audit has been carried out by the Revenue to find out the true nature of the financial transactions of the assessee and its accounts. The Special Auditor of the Department has not doubted the veracity of the books of account of the assessee, the existence of the employees etc. In view of the above, the deletion of the disallowances done by the Id.CIT(A) was in accordance with the law and the same was on the basis of the settled proposition of the accounting standard and policy. The expediency, legitimacy and the business needs will have to be examined from the assessee's point of view and not from the department's view, as held by Hon'ble Gujarat High Court in the case of Voltamp Transformers Pvt. Ltd. vs. CIT 129 ITR 105 (Guj). We further find that Hon'ble Rajasthan High Court in the case of CIT vs. Consulting Engineering Group Ltd. reported in 223 Taxman 440 has held that it is for the assessee as a business concern to conclude as to what remuneration of the salary has to be paid to the employees and the reasonableness of the expenses is to be judged from an angle of a business concern rather than from angle of an Assessing Officer. In view of the above, we do not find any substance in the ground raised by the Revenue and accordingly, the ground is dismissed.

7. With regard to the next effective ground raised by the Revenue pertaining to the disallowance of branch expenses, the Id.DR had stated that the Assessing Officer had made the disallowance of branch expenses as the assessee was operating its business through its sister concern i.e., M/s Agarwal Packer & Movers Pvt. Ltd. The branches of the assessee-company were not operated. In this regard, our attention was drawn to the order passed by the Assessing Officer, which is to the following effect:

“(xiv) Branch Expenses:

As per the audit report submitted by the Special Auditor, the NTW division has 61 branches and incurred certain expenditure under the head Part Lorry expenses, Balance lorry expenses etc. This expenditure amounting to Rs. 1,09,87,840/- includes the en-route expenditure such as diesel, freight charges etc.. The response of the company was called for in this regard. The AR of NTW division vide reply dated 26.07.2017 submitted as under:

“We're enclosing copy of ledger account along with supporting Vouchers against major part of the expenditure Rs. 95,18,71 0/- which represents 8/% of the above amount. In view of this the expenditure claimed may kindly be allowed. We request your good self to allow expenditure for those expenses also for which vouchers are in search in our warehouse as annexure attached here with.

In view of the above, kindly be allowed the total expenses. However, to buy peace with department we're offering 5% of total unvouchered amount i.e. Rs 14,69, 130. It works out Rs.73,456/- as disallowable. ”

The contention of the assessee cannot be allowed because the assessee itself submitted that major portion of the business was operated through its sister concern of the company M/s Agrawal Packer & Movers Pvt. Ltd.. The branches of the company were not operated. When there are no operations at the branch level, the requirement of expenditure could not arise. Accordingly, the entire expenditure of Rs. 1,09,87,840/- is disallowed and added back to the income of the assessee”.

8. The learned Id.CIT(A) had granted relief by observing as under:

“6.11 The ground no. 14 and 15 pertains to expenses of NTW Division being disallowed to the extent of Rs. 1,09,87,840/-, which were relating to 61 branches of the appellant and were part of the head Part Lorry Expense and Balance Lorry Expenses, which were in relation to enroute expenses such as diesel freight charges. The appellant stated that it produced the ledger with supporting vouchers of Rs. 95,18,710/- out of the above quantum so claimed before the AO and requested that to the extent of balance not produced, an equivalent sum of 5% of the balance may be disallowed.

The AO stated that as there was no operation by these branches, then there is no need for the expenditure to be incurred and therefore disallowed the same. It is important to note that in NTW division, the turnover is Rs: 51,82,13,506/- and therefore to say that there is no operation in the NTW division is prima facie wrong observation and the branches obviously handle, the enroute cargo and trucks booked by the appellant, therefore, to say that there was no business operation and the expense has to be disallowed is an invalid reason to do the same.

The addition made by the AO is by a general remark without getting into the bonafides of the expenditure and in spite of the fact that the vouchers to the extent of Rs. 95,18,710/- were produced by the appellant and no doubt regarding the bonafides of the expenditure has been highlighted by the AO and nor there is any basis given but the AO has just mentioned a general remark that the expenditures were not needed as the sister concern was operating for the majority of business.

As can be seen from the nomenclature of the expense, these are operational expenses pertaining to freight forwarding and not general but specific to the transportation activity conducted by the appellant. There is not a single doubt regarding the veracity of the expenses have been made by the AO but the same has been disallowed through a general remark.

There is no basis apparent for the addition made by the AO to the extent of Rs. 95,18,710/-, as for the same the appellant has produced necessary vouchers and documentation before the AO and the same has been recorded in the assessment order, without any dispute. Therefore, there is no case to make an addition to the extent of Rs. 95,18,710/-.

However, as the appellant. has failed to produce vouchers to the extent of Rs. 14,69,130/- nor the same have been produced before the undersigned. Therefore, the expenses to the tune of Rs. 14,69,130/- is disallowed accordingly. In view of the above the ground no. 14 is partly allowed and the ground no. 15 is dismissed accordingly."

9. The ld.DR for the Revenue had submitted that the ld.CIT(A) has wrongly deleted the disallowance.

10. On the other hand, the ld.AR for the assessee has submitted that the expenditure of the assessee is duly vouchered and supported by documentary evidence to the Assessing Officer. Even the Assessing Officer had mentioned the above said fact in the impugned order.

11. We have heard the rival arguments made by both sides, and perused the records. We find that the assessee has provided details in the form of vouchers/bills etc., for the expenses incurred by the Branches. Those vouchers/bills have not been disputed by the Assessing Officer in the assessment record. However, the assessee on its own has restricted the disallowance to a certain amount i.e., Rs.14,69,130/- which is clear from the assessment order. We may adhere that the Assessing Officer had taken into account the income earned by the assessee from its various branches, however, he had disallowed the expenditure, which cannot be permitted. In our view, the order passed by ld.CIT(A) was in accordance with the law whereby he had allowed the expenditure towards the various branches of the assessee to the extent of Rs.95,18,710/-. In view of the above, we do not find any infirmity in the order of the learned CIT (A) and accordingly, this ground raised by the Revenue is also dismissed.

12. The third effective ground is with respect to the deletion of disallowance of loss on sale of Rs.51,56,416/- by the Id.CIT(A). In this regard, the Id.DR for the Revenue had submitted that the assessee had provided the details of the persons to whom the assessee sold the debtors. In this regard, the Id.DR had drawn our attention to the order passed by the Assessing Officer to the following effect :

“(xvii) Loss on Sale of Debtors:

The Special Auditors has pointed out that the NTW division has debited an amount of Rs. 51,56,416/- towards Loss on Sale of Debtors. The AR of the NTW division were asked to explain the reasons for loss. The AR of the NTW division vide reply dated 26.07.2017 submitted that

"During the year company has decided to sell the debtors and realise the money, Since, the debtors were getting old, it was decided to find such parties who takeover at discount and recover at their end. Therefore it was after negotiations with different parties, with great difficulty, were able to sell debtors in the range of 15-20% discount. Loss on sale of debtors is revenue expenses and same is to be allowed as

expenses since it is a recovery process expense. We have already provided all supporting to auditors and same is attached in his report i.e. Terms and conditions, list of debtors etc..

We give here under the PAN no of the parties to whom debtors were sold as under:

Freesia Construction Private Ltd. PAN AAGCS9291Q

Opal Build Well Pvt. Ltd. PAN AABCN9757H

Assurance Build Tech Pvt Ltd. PAN AABCS5866L"

The submissions made by the assessee are carefully examined. In its submissions the assessee company has given details such as name and PAN of the parties to whom debtors were sold. Except these details no other details like agreement copies in connection of sale of debtors, confirmation from parties, accounts statements, etc. were not submitted. Further, the assessee has not substantiated the claim of loss on account of sale of debtors. As loss on sale of debtors is not incurred for carrying out the business of the company the loss incurred will not qualify for allowing as expense. Furthermore, the loss on account of sale of debtors would not come u/s 36(i)(vii) as it is not written off in

the books of accounts of the company. In view of the above, the loss of Rs.51,56,416/- on account of sale of debtors is disallowed and added to the income of the assessee."

13. However, it was the contention of the Id.DR that the Id.CIT(A) had wrongly allowed the ground of the assessee by observing as under :

"6.13 The ground no. 17 pertains to the addition on account of loss on sale of debtors of Rs. 51,56,416/-. The appellant stated that certain debtors were old and to recover money from these parties was a difficult task, they sold the debtors at 15 to 20% discount and realized the money from these parties. The appellant gave the details of these parties. On an identical issue, in the A.Y. 2013-14, the following was adjudicated as under:

"The ground no. 7 pertains to the disallowance of loss on sale of debtors of Rs. 55,51,264/-. The appellant had booked the loss by discounting the debtors which were old and therefore, it assigned these debtors to various parties at a discount and realized the sums from the assignees. The discount taken on these debtors was between 15 to 20%. The appellant gave the details of parties to which the debtors were sold.

The AO has not disputed the receipts of funds from these parties from whom the discounted funds were received. The same were also submitted to the special auditor. The appellant has discounted debt of almost more than 150 parties, wherein the quantum of debt was from Rs. 40,000/- to 2,80,000/- and mostly in the range of around 50,000/- odd, with "these three parties viz:", Shoverline Infra Con. Ltd. Monika Global Pvt. Ltd. and OEC Diascans Pvt. Ltd.

The appellant was anyway going through in house disputes and funds were the key and therefore it got its debtors discounted through independent parties. The amounts received from these three parties of a quantum of Rs. 2,70,00,000/- has not been considered as unexplained by the AO and the AO has accepted these amounts to have been received in the ordinary course of business. Therefore, the AO has as such not doubted the transaction and thereof the loss on assignment of debt cannot be disallowed. Thus, over all there is no reason to disallow the loss on sale of debtors and this measure is part of financial expediency and a legitimate transaction therefore the appellant is granted relief on ground no. 7 accordingly."

In the present case, there is a similar circumstances, in which such outstanding debts have been sold to the three parties who were ready to takeover these debts due to the appellant at a discount. The appellant has stated that the agreements were produced before the AO and also the same finds discussion in detail in the Special Audit report regarding the party details which were

discounted, as they form part of annexures of the report, with the respective three parties in question.

Therefore the observation made of non production of evidence is prima facie incorrect. The above ground is thus allowed accordingly, in view of the observations made above and as adjudicated in the appellant's case in A.Y. 2013-14. Therefore, the ground no. 17 is allowed accordingly."

14. The Id.DR had submitted that the order of the Id.CIT(A) is bad in law. It was submitted that the assessee has not provided the details like creditworthiness, genuineness and identity of the purchasers of the debtors. Hence, the order of Id.CIT(A) is required to be reversed.

15. Per contra, the Id.AR for the assessee had submitted that the assessee had provided all the details including the name, PAN Card etc. to the Assessing Officer which is duly mentioned by him in his order.

16 We have heard the rival arguments made by both sides and perused the records. In the present case, the assessee had provided the details of the purchaser of the debtors to whom the debtors have been sold for a considerable amount. The assessee, after receiving the amount from the purchaser, had declared the said amount as its income. In our view, in the case of unpaid debtors, the assessee has primarily two choices, including either to recover the amount with his own resources or to sell the debtors at a discounted price to some outside agency or to write off the said unpaid debtors as bad debts. In the present case, the assessee had exercised his right under the second option, namely, to sell off the unpaid debtors at a discounted price to various purchasers. The Assessing Officer in the order (supra) had mentioned the details like name, PAN number etc of the purchasers. Thus, the assessee has

provided the details of the purchaser. Therefore, in our view, the contention of the Id.DR that the details have not been provided by the assessee was without any basis. Hence, we do not find any illegality in the above said transaction of the assessee as the same has been done by the assessee acting as a prudent business concern. In light of the above, we do not find any error in the order passed by the learned CIT(A) and thus, the ground raised by the revenue is dismissed.

17. In the result, the appeal filed by the Revenue in ITA No.1971/Hyd/2018 for A.Y. 2012-13 is dismissed.

18. As far as the other appeal i.e. ITA No.1719/Hyd/2018 of Revenue is concerned, in view of the submissions of both the parties that the issues raised in both the appeals are identical to each other, we, for the reasons stated hereinabove while deciding the appeal in ITA 1971/Hyd/2018 and for similar reasons, dismiss the other appeal also. Accordingly, the appeal of Revenue in ITA 1971/Hyd/2018 for A.Y. 2013-14 is dismissed.

19. In the result, the appeal filed by the Revenue in ITA No.1719/Hyd/2018 is dismissed.

20. To sum up, both the appeals filed by the Revenue are dismissed. A copy of the same may be placed in respective case files.

Order pronounced in the Open Court on 18th November, 2022.

Sd/- (R.K. PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 18th November, 2022.

Vinodan/sps

Copy to:

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4	Pr. CIT-5, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order