

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Sanjay Awasthi, Accountant Member

I.T.A. Nos.414 to 419/Kol/2024
(Assessment Years: 2006-07 to 2011-12)

Fab Leathers Limited.....Appellant
P 42/1 Hide Road,
Extn Ballygunge,
Kolkata – 700088.
[PAN: AAACF3790K]

vs.

ACIT, Central Circle-3(3), Kolkata..... Respondent

I.T.A. No.490/Kol/2024
(Assessment Year: 2012-13)

Fab Leathers Limited.....Appellant
P 42/1 Hide Road,
Extn Ballygunge,
Kolkata – 700088.
[PAN: AAACF3790K]

vs.

ACIT, Central Circle-3(3), Kolkata..... Respondent

Appearances by:

Shri Ananda Muskara, AR, on behalf of the appellant.

Shri Prabhakar Prakash Ranjan, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : May 20, 2024

Date of pronouncing the order : May 30, 2024

आदेश / ORDER

PER BENCH:

The captioned appeals have been preferred by the assessee against the separate orders all dated 19.12.2023 of the Commissioner of Income Tax (Appeals)-21, Kolkata for different assessment years. The assessee in all these appeals has agitated against the levy of penalty u/s 271(1)(c) of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee's appeal in ITA No.414/Kol/2024 for assessment year 2006-07 is taken as the lead case for narration of facts.

2. During the assessment proceedings carried out u/s 263/143(3)/153C of the Act, the Assessing Officer noted that the assessee company has claimed to have paid Rs.8,69,484/- as rent to the Kolkata Port Trust, however, no TDS was deducted u/s 194I of the Act. The assessee explained that in fact, the rent was not paid as court case was going on between the assessee company and Kolkata Port Trust. The Assessing Officer noticed that though the rent was not paid but the deduction has been claimed by the assessee on the rental amount from assessment year 2006-07 to 2012-13. Even no TDS was deducted on the said amount u/s 194I of the Act. Therefore, the Assessing Officer disallowed the said rental expenses and made the addition of Rs.8,69,484/- in the assessment proceedings carried out for assessment year 2006-07. Similar additions were made by the Assessing Officer for different assessment years, the details of which are as under:

AY 2006-07: Rs 8,69,484/-
AY 2007-08:Rs 9,28,428/-
AY 2008-09: Rs 10,46,952/-
AY 2009-10: Rs 10,97,508/-
A Y 2010-11: Rs 12,10,044/-
AY 2011-12: Rs 19,13,022/-
AY 2012-13:Rs 53,61,823/-

2.1 The Assessing Officer also initiated penalty proceedings u/s 271(1)(c) of the Act and levied the penalty of Rs.2,92,670/- for the year under consideration i.e. A.Y. 2006-07. Similar penalties have been made for different assessment years, the details of which are as under:

AY 2007-08:Rs 3,12,508/-
AY 2008-09: Rs 3,23,508/-
AY 2009-10: Rs 3,39,130/-
A Y 2010-11: Rs 3,73,904/-
AY 2011-12: Rs 5,91,123/-

AY 2012-13:Rs 16,80,253/-

3. Before the Id. CIT(A), it was explained that in fact the rent was payable to the Kolkata Port Trust, however, there was some dispute going on in Civil court relating to the quantum of the rent payable to the Kolkata Port Trust. That the Kolkata Port Trust suddenly increased the rent, which the assessee disputed. The assessee furnished the relevant documents before the CIT(A), whereupon, a remand report was called upon by the CIT(A) from the Assessing Officer. The Assessing Officer perused the records and found that there was a dispute going on between the assessee and the Kolkata Port Trust regarding the rent payable. The Assessing Officer noted from the record that assessee was mismatch of the expenses claimed by the assessee and the outstanding rent as per Kolkata Port Trust. The year-wise details of discrepancies given in the remand report are as under:

SL. No.	FY	A.Y	Rental expenses claimed by assessee	Outstanding rent as per Kolkata Port Trust	Difference amount
1	2005-06	2006-07	8,69,484/-	6,60,981/-	2,08,503/-
2	2006-07	2007-08	9,28,428/-	6,94,979/-	2,33,449/-
3	2007-08	2008-09	10,46,952/-	7,30,425/-	3,16,527/-
4	2008-09	2009-10	10,97,508/-	7,67,674/-	3,29,834/-
5	2009-10	2010-11	12,10,044/-	8,06,823/-	4,03,221/-
6	2010-11	2011-12	19,13,022/-	8,47,967/-	10,65,055/-
7	2011-12	2012-13	53,61,823/-	10,18,026/-	43,43,797/-
Total			1,24,27,261/-	Rs. 55,26,875/-	Rs. 69,00,386/-

3.1 The Id. CIT(A) considering the aforesaid remand report of the Assessing Officer directed the Assessing Officer to restrict the penalty

u/s 271(1)(c) of the Act in relation to the difference of amount claimed by the assessee in the Profit & Loss A/c and the amount actually payable by the assessee to the Kolkata Port Trust and compute the penalty on the corresponding portion of tax sought to be evaded. For example, in the year under consideration i.e. A.Y 2006-07, the assessee claimed Rs.8,69,484/- as rental expenses, whereas, as per the remand report, the rental expenses payable by the assessee were Rs.6,60,981/- and the income concealed by the assessee amounted to Rs.2,08,503/-, whereupon, the ld. CIT(A) directed the Assessing Officer to compute the penalty.

4. Now, before us, the ld. counsel for the assessee has submitted that in fact the concerned Assessing Officer/CIT(A) have not taken the correct figure of amount payable. That the Assessing Officer only took the rental amount mentioned in the documents relating to the rent payable, whereas, the amount to be taken, was gross amount payable on account of rent, interest etc. He, in this respect, has submitted the following chart as under:

SL. No.	FY	A.Y	Rental expenses claimed by assessee	Outstanding rent as per Kolkata Port Trust	Difference amount	Outstanding Gross payable as per KPT (D)	Difference amount (E=A-D) as per the assessee
1	2005-06	2006-07	8,69,484/-	6,60,981/-	2,08,503/-	8,51,058.00	18,426.00
2	2006-07	2007-08	9,28,428/-	6,94,979/-	2,33,449/-	8,51,615.00	36,813.00
3	2007-08	2008-09	10,46,952/-	7,30,425/-	3,16,527/-	10,09,865.00	37,087.00
4	2008-09	2009-10	10,97,508/-	7,67,674/-	3,29,834/-	10,73,915.00	23,593.00
5	2009-	2010-	12,10,044/-	8,06,823/-	4,03,221/-	11,09,207.00	1,00,837.00

	10	11					
6	2010-11	2011-12	19,13,022/-	8,47,967/-	10,65,055/-	11,80,606.00	7,32,416.00
7	2011-12	2012-13	53,61,823/-	10,18,026/-	43,43,797/-	15,17,993.00	38,43,830.00
Total			1,24,27,261/-	Rs. 55,26,875/-	Rs. 69,00,386/-	76,34,259.00	47,93,002.00

4.1 Since it is a matter of calculation of the amount of tax sought to be evaded by the assessee and the assessee has disputed the figures taken by the Assessing Officer and the CIT(A), therefore, it will be appropriate to remand back the matter to the file of the Assessing Officer with a direction to consider the submissions of the assessee relating to the gross rent payable and the amount claimed by the assessee in the Profit & Loss A/c and thereafter calculate the tax sought to be evaded and impose the penalty u/s 271(1)(c) of the Act accordingly.

5. Since facts and issue involved in all the remaining appeals bearing ITA Nos..415 to 419/Kol/2024 & I.T.A. No.490/Kol/2024 are identical to that have been discussed above in ITA No.414/Kol/2024, except with regard to the disputed figures of amount, therefore, our findings given above will mutatis mutandis apply to remaining all the appeals also.

6. In the result, all the appeals of the assessee are treated as partly allowed for statistical purposes.

Kolkata, the 30th May, 2024.

Sd/-

[Sanjay Awasthi]

लेखा सदस्य/Accountant Member

Dated: 30.05.2024.

Sd/-

[Sanjay Garg]

न्यायिक सदस्य/Judicial Member

RS

Copy of the order forwarded to:

1. Fab Leathers Limited
2. ACIT, Central Circle-3(3), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches