

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

**Shri Manish Borad, Accountant Member
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No.885/Kol/2024
Assessment Year: 2012-13**

Mak Logistics Private Limited,

99, Gati Coast to coast, Haddo PO

Delanipur, Port Blair - 744102

[PAN: AAECM2139H]

.....**Appellant**

vs.

DCIT, Circle 3(2), Port Blair,

Aayakar Bhawan, MB-210,

Shadipur, Port Blair - 744102

..... **Respondent**

Appearances by:

Assessee represented by : Akkal Dudhewala, AR

Department represented by : Subhendu Datta, CIT-DR

Date of concluding the hearing : August 28, 2024

Date of pronouncing the order : September 26, 2024

ORDER

Per Sonjoy Sarma, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2012-13 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 21.12.2022 arising out of Assessment Order dated 26.03.2015, passed under Section 143(3) of the Act.

2. The Assessee has raised the following grounds of appeal:

"1. For that on the facts and in the circumstances of the case, the lower authorities erred in adding the proportionate income of Rs.1,30,86,046/- corresponding to the TDS credit of Rs.3,04,926/- allegedly claimed by the appellant in excess of the total credit reflected in Form 26AS without appreciating that the same would tantamount to addition of the same sum twice and in that view of the matter, the addition being illegal and unsustainable deserves to be deleted.

2. For that on the facts and in the circumstances of the case, the lower authorities erred in disallowing the current year unabsorbed depreciation of Rs. 1,98,673/- on account of delayed filing of return of income without correctly appreciating the provisions of section 80 of the Act, in terms of which, filing of return of income within the due date was not necessary to carry forward and set off the unabsorbed depreciation.

3. For that on the facts and in the circumstances of the case, the disallowance of business expenses of Rs.33,85,214/- made by the AO on estimated basis is arbitrary & untenable and thus deserves to be deleted.

4. For that the appellant craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before."

3. At the time of hearing, the Ld. AR highlighted that there was a delay of 429 days in filing the appeal by the assessee. The Ld. AR submitted an affidavit explaining the reasons for the such delay. The contention of the assessee is that the Ld. AO as in the case of the assessee is situated at Port Blair and the impugned order dated 21.12.2022 passed u/s 250 of the Act was not served to the assessee and even in the registered e-mail ID on the IT portal. Additionally, the order was not delivered to the assessee's office by registered post also. The assessee became aware of the impugned order only on 21.12.2022 when assessee visited the office of the Income Tax Department at Port Blair. Upon learning this, the assessee promptly obtained a copy of the order and filing the present appeal before this Tribunal. The Ld. AR explained that the delay in filing the appeal was due to non-service of the impugned order via both registered post and e-mail ID provided by the assessee. As a result, the assessee was unaware

of the disposal of appeal by the Ld. CIT(A) leading to the delay in filing the instant appeal before the Tribunal. The Ld. AR requested that delay may be condoned by considering given genuine reasons as submitted by the assessee.

4. We after reviewing the submissions and material on record to find that the assessee had not received the impugned order either through e-mail or by the registered post. Consequently, the assessee was unaware of the appeal disposal which lead to 429 days delay in filing the appeal. In the light of these facts, we find that the delay to be genuine and excusable. Accordingly, we condoned the delay of 429 days and decide to proceed with the appeal on merits of the case.

5. Brief facts of the case are that the assessee filed its return of income for the AY 2012-13 by declaring loss of Rs. 2,27,33,096/- which was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny under CASS followed by notices issued u/s 143(1) and 142(1) of the Act. In compliance to the notices, the assessee appeared before the Ld. AO and provided the necessary documents and explanation as per requisition. During the course of assessment proceedings, it was observed that the assessee is mainly engaged in the business of shipping and contract logistics. The Ld. AO upon examine the details he noted that the discrepancies in assessee's claim for TDS. The assessee had claimed TDS of Rs. 11,24,243.41/-. However, as per Form 26AS only Rs. 8,19,31,141/- was reflected. As a result, the AO disallowed the TDS claim for excess amount of Rs. 3,04,926/-. Additionally, corresponding income of Rs. 1,30,86,446/- was added back to the assessee's income. The Ld. AO further disallowed the assessee's claim of carried forward loss of Rs. 1,98,673/- for AY 2012-13 which was filed belatedly on 07.06.2017 and added back 10%

of business expenses i.e. Rs. 3,38,521.41/- amounting to Rs. 33,85,214/- as assessee had failed to provide sufficient evidence.

6. Aggrieved by the order of the Ld. AO, assessee filed appeal before the Ld. CIT(A) which were dismissed.

7. Dissatisfied with the above order, the assessee is in appeal before this Tribunal. At the outset, the Ld. AR stated that Ground No. 2 of the appeal was not being pressed, and hence, it does not require adjudication. On Ground No. 1, the AR argued that the addition of Rs. 1,30,86,464/- made by the Ld. AO was incorrect by alleging corresponding to the excess TDS claimed of Rs. 3,04,926/-. The Ld. AR submitted that the TDS claim as per the assessee's return of income was fully justified and that the AO misinterpreted the data in Form 26AS. He placed on record, the TDS reconciliation statement (at page no. 9 of the paper book), which clearly showed that the TDS claimed by the assessee in the return of income was Rs. 11,24,167/- while TDS reflected in Form No. 26AS mentioning to Rs. 10,97,528/-. The Ld. AR further submitted that minor difference of Rs. 26,639/- that the TDS claim and TDS return in Form No. 26AS was due to certain delays in the deductor record. He argued that this minor discrepancy could not justified the substantial addition made by the AO. The Ld. AR in order to substantiate his claim, he submitted that Form No. 26AS data as per the statement dated 26.07.2024 placed at page 10 to 20 of the paper book. The data clearly reflects that the total TDS amount of RS. 11,24,167/- was correctly claimed by the assessee. Therefore, the AR contended that the addition made by the AO was incorrect and deleted.

8. On the other hand, the Ld. DR supported the order passed by the AO and the Ld. CIT(A) stating the discrepancy in TDS claims warranted the

addition. The Ld. DR stated that the AO's addition was passed on difference in TDS as reflected in Form 26AS and that the assessee failed to provide adequate justification for the same at the time of framing of assessment order.

9. We have heard the rival submission of the parties and carefully considered the arguments advanced by the parties and have examined the material available on record. We find that the issue before us is whether the AO was justified in making the addition of Rs. 1,30,86,464/- based on alleged discrepancies in TDS claim. We after reviewing the TDS reconciliation statement submitted by the assessee and details in Form No. 26AS (placed at page 10 to 20 of the paper book), we find that the TDS claim of Rs. 11,24,167/- made by the assessee is adequately supported by records. The difference between the TDS claim and TDS reflected in Form No. 26AS is minor sum of Rs. 26,639/- which in our view is not significant enough to justify such addition to be total income. Furthermore, the assessee has provided sufficient evidence to demonstrate that the discrepancy in the TDS amount was due to delay in deductors submission of data. The assessee total receipts as show in the audited financial statements, fully accounted in the income corresponding to the TDS claim as per 26AS statement dated 26.07.2024 filed before the Bench. In view of the above, we find that the addition of Rs. 1,30,86,464/- made by the AO is unsustainable. The AO's action in making the addition were result in double taxation which is impermissible under the law. Accordingly, we delete the addition. In the light of the facts and evidence, we find that the addition of Rs. 1,30,86,464/- made by the AO is not justified and is hereby deleted.

10. Ground No.3 raised by the assessee is regarding the disallowance of expenses to the extent of 10% amounting to Rs. 33,85,214/- which has been contested by the assessee as being arbitrary and excessive. At the time of hearing, the Ld. AR submitted that disallowance of 10% expenses amounting to Rs. 33,85,214/- made by the AO was without any proper basis or justification and was therefore, excessive. The Ld. AR argued that the expenses claimed by the assessee were genuine and incurred during the regular course of business. The AR further submitted that even if some disallowance is warranted, disallowance rate of 10% is arbitrary and on higher side. He contended that the disallowance should be restricted to 5% amounting to Rs. 16,92,607/- which would be more than reasonable and in the light of the facts of the case. The AR urged the Bench to restrict the disallowance to the extent of Rs. 16,92,607/- and thereby provide relief to the assessee by reducing the excessive disallowance made by the AO.

11. On the other hand, the Ld. DR supported the findings of the AO and argued that the disallowance was made after considering the insufficient supporting evidence provided by the assessee. The Ld. DR further contended that the disallowance of 10% was reasonable given the lack of complete verification of the expenses and therefore, the action of the Ld. AO should be upheld.

12. We have heard the rival submission of both the parties and carefully considered the material on record. The issue before us is appropriateness of 10% disallowance made by the AO on the total expenses claimed by the assessee amounting to Rs.33,85,214/-. It is noted that the AO had made disallowance due to inadequate supporting documents provided by the assessee for certain expenses. However, upon the reviewing the facts and circumstances, we agree with the AR that disallowance of 10% is on higher

side does not appear to be based on any concrete evidence indicating that such high percentage of expenses were not genuine or not incurred for business purpose, in the interest of justice and considering the overall facts, we find that appropriate to reduce the disallowance to the extent of 5% of the total expenses claimed which amounts to Rs. 16,92,607/-. In our view, we adequately address any concerned regarding lack of documentation while ensuring that assessee is not unduly penalised. In the light of the above, we hereby direct the disallowance of Rs. 33,85,214/- to be restricted to Rs. 16,92,607/-. The appeal of the assessee on this ground is partly allowed. The reduce disallowance of 5% of the expenses is hereby confirmed and the AO is directed to modify the assessment order accordingly.

13. Ground No. 4 is general in nature, therefore, need not require to be adjudicated. In terms of the above, appeal of the assessee is partly allowed.

14. In the result, appeal of the assessee is partly allowed.

Kolkata, the 26th September, 2024.

Sd/-
[Manish Borad]
Accountant Member

Sd/-
[Sonjoy Sarma]
Judicial Member

Dated:26.09.2024.

AK, PS

Copy of the order forwarded to:

- 1.Mak Logistics Private Limited
- 2.DCIT, Circle 3(2), Port Blair
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches