

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

Before Shri Manjunatha G., Accountant Member
and
Shri K. Narasimha Chary, Judicial Member

आ.अपी.सं / **ITA No.928/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2018-19)

Citrus Alpha Marine LLP Nellore [PAN : AANFC0150C]	Vs.	Income Tax Officer Ward-1 Nellore
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri S.K.Tulsiyan, AR	
राजस्व द्वारा / Revenue by::	Shri R.Kumaran, DR	
सुनवाई की तारीख / Date of hearing:	19 / 12 / 2024	
घोषणा की तारीख / Date of Pronouncement:	30 / 12 / 2024	

आदेश / ORDER

PER. MANJUNATHA G., A.M:

This appeal filed by the assessee is directed against the order dated 26.07.2024 of the learned Commissioner of Income Tax (Appeals) [Ld.CIT(A)], National Faceless Appeal Centre (NFAC), Delhi pertaining to A.Y.2018-19 on the following grounds :

1. That on the facts and in the circumstances of the case, the learned CIT(A) erred in sustaining the addition made by the learned Assessing Officer in treating the opening balance of capital introduced of Rs.16,38,389/- by the partner of the assessee LLP, Shri Ansuman Chand as unexplained cash credit u/s 68 of the Act when it was duly explained that no fresh sum of money from Shri Ansuman Chand was received / credited in the

books post incorporation of the assessee LLP on 31.08.2017, thus there cannot be any addition u/s 68 of the Act in the current year.

2. That on the facts and in the circumstance of the case, the learned CIT(A) erred in sustaining the addition made by the learned Assessing Officer in treating the opening balance of capital introduced of Rs.31,60,948/- by the partner of the assessee LLP, Smt.Dudala Mahavi as unexplained cash credit u/s 68 of the Act, when it was duly explained that no fresh sum of money from Smt.Dudala Madhavi was received / credited in the books post incorporation of the assessee LLP on 31.08.2017, thus there cannot be any addition u/s 68 of the Act in the current year, moreso when the learned Assessing Officer in his remand report dated 15.01.2024 has duly confirmed the fact that the said sum of Rs.31,60,948/- was transferred to the assessee LLP from M/s Alpha Marine by way of a book entry on 31.08.2017.

3. That on the facts and in the circumstances of the case, the learned CIT(A) erred in sustaining the adhoc disallowance of Rs.19,58,709/-, being 5% of the total administrative and repairs and maintenance expenses inspite of the fact that proper bills and vouchers were filed by the assessee during appellant proceedings.

4. 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 brief facts of the case are that the assessee LLP is into business of producing, processing and preservation of fish and fish products. The assessee LLP was formed on 31.08.2017 by conversion of an existing partnership firm into Alpha Marine LLP, which was engaged in the business of export of marine products like shrimp and fish. The assessee has filed its return of income for the A.Y.2018-19 on 10.09.2018, declaring total income of Rs.4,19,700/-. The case was selected for scrutiny and the assessment has been completed u/s 143(3) on 15.03.2021 and determined total income at Rs.24,45,90,823/-, by making additions towards unsecured loan and unexplained capital

account of partners u/s 68 of the Income tax Act, 1961 (“the Act”), addition towards adhoc disallowance of various expenditure and disallowance of deduction claimed u/s 80-IB of the Act.

3. The assessee carried the matter in appeal before the first appellate authority and the Ld.CIT(A) for the reasons stated in their appellate order dated 26.07.2024, partly allowed the appeal filed by the assessee, where, the Ld.CIT(A) confirmed the unexplained partners capital account to the tune of Rs.47,99,337/- and scaled down adhoc disallowance of various expenditure from 25% to 5%.

4. Aggrieved by the Ld.CIT(A) order, the assessee is now in appeal before the Tribunal.

5. The learned Counsel for the assessee Shri S.K.Tulsiyan, Advocate, submitted that the Ld.CIT(A) erred in sustaining the addition on partners capital account, even though the assessee has explained with relevant evidences that the entire partners capital of erstwhile firm Alpha Marine has been transferred to the books of accounts of the assessee upon conversion into LLP on 31.08.2017. The learned counsel for the assessee took us to balance sheet of erstwhile firm as on 31.03.2018 and the balance sheet of the assessee firm for the year ending 31.03.2018 and submitted that there is no change in the partners capital account from both the balance sheet and from the above, it is clear that the assessee has transferred capital account of partners to the books of accounts of the assessee firm by journal entries. Although, the facts have been explained to the Ld.CIT(A), the Ld.CIT(A) confirmed the amount of partners capital account,

being fresh capital introduced for the F.Y.2017-18 in the erstwhile partnership firm in the hands of the assessee. Therefore, he submitted that the additions made by the Assessing Officer and sustained by the Ld.CIT(A) should be deleted.

6. The learned DR, Shri R.Kumaran, on the other hand, referring to Ld.CIT(A) order, more particularly para 6.5, submitted that the Ld.CIT(A) has recorded a categorical finding in light of capital account and return of income filed by Shri Anshuman Chand and observed that fresh capital of Rs.16,38,389/- was added during the year, on account of journal entry in the name of Farmer Ansuman Chand and no details filed to explain the capital introduced in the firm. Similarly, the firm has introduced capital in the name of D.Madhavi for Rs.31,60,948/-, whereas, as per the income tax return filed for the assessment year, she was not carrying any business in her individual capacity. The Ld.CIT(A), after considering the facts has rightly sustained the capital account of partners to the extent of Rs.47,99,385/- and the order of the Ld.CIT(A) should be upheld.

7. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the assessee Limited Liability Partnership (LLP) firm came into existence on 38.01.2017, by conversion of existing partnership firm in the name of M/s Alpha Marine and this fact has been confirmed by the Ld.CIT(A), upon verification of certificate of incorporation issued by the Registrar, Ministry of Corporate Affairs. It is also an admitted fact from the remand report submitted by the Assessing Officer during the appellate proceedings that the assessee firm

came into existence upon conversion into LLP and the entire assets and liabilities of erstwhile partnership firm, M/s Alpha Marine has been taken over by the assessee firm and necessary journal entries have been passed in the books of accounts of both the firms to give effect to the conversion. As on the date of conversion on 31.08.2017, capital account of partners in the erstwhile partnership firm, M/s Alpha Marine was at Rs.9,91,12,554/- and the same has been transferred to the assessee firm upon conversion into LLP and the capital account of the firm stood at Rs.9,91,12,554/- without any changes. Although there are additions in two partners capital account, i.e. Shri Anshuman Chand for Rs.16,38,389/- and in the capital account of Smt.Madhavi for Rs.31,61,948/-, but the said addition to capital account was made before the assessee LLP came into existence. In other words, the addition to capital account in two partners capital accounts was in the books of accounts of the erstwhile partnership firm, M/s Alpha Marine, therefore, even if the assessee has not been able to explain the credits, the same cannot be treated as unexplained credit in the hands of the assessee firm. Further, the assessee firm has filed relevant evidences including ledger account of partners capital account and proved that the said credit is on account of purchasing, which has been accounted in the books of accounts of M/s Alpha Marine. Therefore, we are of the considered view that the Ld.CIT(A) is erred in sustaining the additions to the extent of Rs. 16,38,384/- in the name of Shri Anshuman Chand and Rs.31,60,048/- in the name of Smt.Madhavi, partners capital account. Thus, we direct the Assessing Officer to delete

the addition sustained by the Ld.CIT(A) to the extent of Rs. 47,99,385/- , towards capital account of partners.

8. The next issue that came up for consideration is addition towards adhoc disallowance of various expenses. The learned Assessing Officer has made 25% adhoc disallowance of administrative expenses on the ground that the assessee could not file supporting evidences. The learned CIT(A) by considering the remand report of the Assessing Officer has scaled down the adhoc disallowance to 5% of administrative expenses and repairs and maintenance which works out to Rs.19,56,709/-.

9. The learned Counsel for the assessee submitted that although the assessee has filed bills and vouchers in support of various expenses, but the learned Assessing Officer vide 3.4 of his remand report observed that there are certain discrepancies like missing of signature of receiver of payment and address of the receiver is not proper etc. Therefore 5% of the said expenditure needs to be disallowed. But the fact remains that the assessee is partnership firm and its books of accounts are audited by the accountant. The Assessing Officer neither rejected the books of accounts nor noted any discrepancy in the books of accounts. Therefore, without any observation with regard to correctness of books of accounts, adhoc disallowance cannot be made towards expenditure. Therefore, he submitted that the addition sustained by the Ld.CIT(A) should be deleted. In this regard, he relied upon the decision of ITAT Hyderabad benches in the case of Ram Gopal Varma Penumatsa vs. ITO in ITA No.1097/Hyd/2024 dated 04.12.2024.

10. The Ld.DR on the other hand, supporting the order of the Ld.CIT(A) submitted that there is no dispute with regard to the fact that there are certain discrepancies in the bills and vouchers submitted and the assessee could not explain the discrepancies. Therefore, the Ld.CIT(A) has rightly scaled down the adhoc disallowance to 5% of administrative expenses and repair and maintenance and therefore, the order of the Ld.CIT(A) should be sustained.

11. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. As per the provisions of section 145 of the Act, unless the books of accounts are rejected with reasons, book results declared in the financial statements are supported by necessary audit report from accountant cannot be disregarded. In the present case, the assessee's books of accounts have been audited by accountant and the Assessing Officer neither pointed out any discrepancy in the books nor rejected the books of accounts with valid reasons. Further, even going by the observation of the Assessing Officer and remand report in para 3.3 and 3.4, there is no credible observations with regard to bills and vouchers submitted by the assessee, except signature of the assessee is missing and address of the receiver is not known which is not sufficient in our considered view to make adhoc disallowance of expenses. Therefore, we are of the considered view that the Ld.CIT(A) erred in sustaining 5% adhoc disallowance of administrative expenses and repairs and maintenance and this principle is supported by the decision of ITAT Hyderabad benches in the case of Ram Gopal Varma Penumatsa vs. ITO (supra). We, therefore, direct the

Assessing Officer to delete 5% of adhoc disallowance of administrative expenses and repairs and maintenance sustained by the Ld.CIT(A).

12. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 30th December, 2024.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (MANJUNATHA G.) ACCOUNTANT MEMBER
---	--

Hyderabad,
Dated 30th December, 2024
L.Rama, SPS

Copy to:

S.No	Addresses
1	M/s Citrus Alpha Marine LLP, 27-4-319, 8 th Cross Road Ramji Nagar, Nellore
2	The Income Tax Officer, Ward No.1, Nellore
3	The Pr.CIT, Tirupati
4	The DR, ITAT Hyderabad Benches
5	Guard File

By Order