`IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, VP AND SHRI N.K. BILLAIYA, AM

ITA No.2265/Mum/2023
(Assessment Year: 2012-13,)

Underwater Services Company Ltd., 23/24, MBPT Building, Malet Bunder Road, Mazgaon, Mumbai- 400009	Vs.	Dy. Commissioner of Income Tax, Central Circle 5(3), Room No. 1906, 19th Floor, Air India Building, Nariman Point, Mumbai- 400021
(**Appellant**)	:	(**Respondent**)
PAN NO. AABCU 0302K		

ITA No.2264/Mum/2023
(Assessment Year: 2017-18,)

Underwater Services Company Ltd., 23/24, MBPT Building, Malet Bunder Road, Mazgaon, Mumbai- 400009	Vs.	Dy. Commissioner of Income Tax, Central Circle 5(3), Room No. 1906, 19th Floor, Air India Building, Nariman Point, Mumbai- 400021
(**Appellant**)	:	(**Respondent**)
PAN NO. AABCU 0302K		

ITA No. 2340, 2341 & 2342/Mum/2023
(Assessment Year: 2012-13, 2017-18 & 2018-19)

Dy. Commissioner of Income Tax, Central Circle 5(3), Mumbai- 400021 Room No. 1928, 19th Floor, Air India Building, Nariman Point, Mumbai- 400021	Vs.	Underwater Services Company Ltd., 23/24, MBPT Building, Malet Bunder Road, Mazgaon, Mumbai- 400009
(**Appellant**)	:	(**Respondent**)
PAN NO. AABCU 0302K		

Appellant by	:	Shri Ajay R Singh/Akshy Pawar
Respondent by	:	Shri Arun Kanti Datta, (CIT-DR)
(Appellant)		**(Respondent)**

Date of Hearing	:	19.06.2025
Date of Pronouncement	:	30.06.2025

O R D E R

Per Saktijit Dey, VP:

Captioned Appeals relate to the same assessee and arise out of three separate orders of learned Commissioner of Income Tax (Appeal) [in short the 'CIT(A)], Mumbai. There are two sets of cross appeals for Assessment Years (AYs) 2012-13 and 2017-18, whereas, appeal for A.Y. 2018-19 is by the Revenue.

ITA No. 2265/Mum/2023 (A.Y. 2012-13) Assessee's Appeal

2. We propose to deal with this appeal at the outset, as in Ground No.1, the assessee has challenged the validity of the assessment order passed under Section (u/s.) 153A r.w.s. 143(3) of the Income Tax Act, 1961 (in short the 'Act').

3. Briefly stated, assessee is a resident corporate entity and is a subsidiary of Samson Maritime Ltd. (in short 'SML') another Indian Company. As stated, the assessee is involved in the business of providing diving services for marine offshore activities etc. and such services are generally provided to oil companies. Though, the assessee has employed experienced and qualified diving team & Tanker Seamen, however, it does not have sea going vessels hence takes them on charter hire basis from its holding company SML. For the assessment year under dispute, assessee filed its return of income on 28.09.2012, declaring income of Rs.3,69,93,535/-. Assessment in case of the assessee was completed u/s. 143(3) of the Act vide order dated 13.03.2015. Subsequently, a search and seizure operation u/s. 132 of the Act was carried out on the assessee on 23.11.2017. Consequent upon search action, proceedings u/s. 153A of the Act were initiated for preceding assessment years including the impugned assessment years. The initial notice issued u/s. 153A of the Act was set aside by the Hon'ble Jurisdictional High Court. Subsequently, the

Assessing Officer (AO) issued a fresh notice u/s. 153A of the Act on 18.11.2021. In course of assessment proceedings, the AO noticed that the charter hire charges paid by the assessee to SML, a related party, is excessive as compared to the fair market value of similar charter hire charges. Accordingly, he issued a show cause notice to the assessee to explain why the excess payment made to the related party should not be disallowed in terms of with Section 40A(2)(b) of the Act. In reply, though, the assessee filed a detailed submission objecting to the proposed disallowance, however, the AO was not convinced. He observed that charter hire charges paid by the assessee to SML. is much more than charter hire charges paid by unrelated parties to SML. Thus, he was of the view that the payment made by the assessee to its related party does not represent the fair market value. Accordingly, he held that the excess payment made has to be disallowed u/s. 40A(2)(b) of the Act. Having held so, he disallowed 25% of the aggregate charter hire charges paid by the assessee to SML. In nutshell, he disallowed an amount of Rs.4,08,80,266/-. Proceeding further, he disallowed couple of other expenses, being victualling expenses and sales promotion expenses. Accordingly, he completed the assessment.

4. Against the assessment order so passed, assessee preferred an appeal before learned First Appellate Authority, *Inter-alia* challenging the validity of the additions made in absence of any incriminating material found as a result of search and seizure operation. However, learned First Appellate Authority did not entertain assessee's ground on the legal issue. However, he granted partial relief on merits.

5. Before us, learned counsel appearing for the assessee submitted that the additions disallowances made by the AO are not based on any incriminating material found as a result of search. He submitted, very same issues were examined by the AO while completing the assessment u/s. 143(3) of the Act. Thus, he submitted, the

additions/disallowances made are unsustainable. In support, he relied upon the following decisions:

i. PCIT vs. Abhisar Buildwell (P.) Ltd. [2023] 454 ITR 212 (SC).

ii. PCIT vs. Jay Ace Technologies Ltd. [2023] 154 taxmann.com 45 (SC) dated 28.07.2023.

iii. PCIT vs. Kind Buildcon (P) Ltd. [2023] 456 ITR 770 (SC) dated 10.07.2023.

iv. CIT vs. Sinhgad Technical Education Society [2017] 397 ITR 344 (SC).

6. Strongly relying upon the observations of the AO and learned First Appellate Authority, learned Departmental Authority (DR) submitted, jurisdiction u/s. 153A of the Act was validly exercised as incriminating materials were found during the search and seizure operation.

7. We have considered rival submissions and perused the materials on record. We have also applied our mind to judicial precedents cited before us. Undisputedly, in so far as assessment year under dispute is concerned, the assessee was subjected to assessment u/s. 143(3) of the Act much prior to date of search and seizure operation. Thus, on the date of search and seizure operation, there was no assessment proceeding pending for the impugned assessment year. That being the case, in a proceeding initiated u/s. 153A of the Act, the AO could have considered issues for addition which are based on incriminating materials found as a result of search and seizure operation. Whereas, while completing the assessment u/s. 153A r.w.s. 143 of the Act, the AO has made certain statutory disallowances u/s. 40A(2)(b) and 37(1) of the Act**.** The information relating to aforesaid expenses claimed as deduction has already been furnished by the assessee and were part of the original assessment proceeding. In the assessment proceeding undertaken u/s. 153A of the Act, the AO has merely revisited the material already available on record and concluded

that certain expenses are not allowable to the assessee in terms with certain provisions of the Act. There is nothing either in the assessment order or any other material placed on record by the Department to suggest that the fact of payment of charter hire charges and couple of other deductions claimed by the assessee were unearthed only because of search and seizure operation. Therefore, in our view, the additions/disallowances made by the AO are unsustainable as they are not based on any incriminating material, which is an essential ingredient for making addition in a proceeding u/s. 153A of the Act in respect of unabated assessment. While coming to the aforesaid conclusion, we have respectfully followed the ratio laid down in the judicial precedents cited before us. Thus, we have no hesitation in deleting the additions made by the AO. This ground is allowed. In view of our decision, above grounds, raised on merits both in assessee's appeal as well as in appeal of the Revenue have become infructuous.

8. In the result, assessee's appeal is allowed as indicated above.

ITA No. 2340/Mum/ 2023 (Revenue's Appeal)

9. In view of our decision in assessee's appeal, being ITA No.2265/Mum/2023 (Supra), Revenue's appeal, having become infructuous, is dismissed.

ITA No. 2264/Mum/2023 A.Y.2017-18 (Assessee's Appeal)

10. The only issue in this appeal relates to disallowance of sales promotion expenses of Rs.7,53,248/-.

11. Briefly the facts are, in course of assessment proceeding, the Assessing Officer noticed that the assessee has incurred certain expenses viz sundry expenses sales promotion expenses and expenses for gift, out of which, *suo-motu* assessee has disallowed 50% and claimed 50% of the expenditure as deduction. Stating that the assessee could not establish that the expenses were incurred for the purpose of business, the AO disallowed the balance

amount of expenditure aggregating to Rs.7,53,248/-. The disallowance so made was also confirmed by learned First Appellate Authority.

12. Having considered rival submissions, we find that the assessee has disallowed 50% of the total expenses, since, they were incurred in cash and were not fully supported by vouchers. Since, the assessee itself has disallowed 50% of the total expenditure incurred and claimed deduction balance 50%, in our view, it is reasonable, hence, does not require further disallowance. Accordingly, we direct the AO to delete the disallowance. This ground is allowed.

ITA No. 2341/Mum/ 2023 A.Y. 2017-18 (Revenue's Appeal)

12. In Ground No.1, the Department has challenged deletion of addition made of Rs.22,77,81,080/- u/s. 40A(2)(b) of the Act.

13. Briefly the facts are, in course of assessment proceedings, the AO noticed that in the year under consideration, the assessee had taken on charter hire basis ships/vessels from its holding company SML and paid hire charges of Rs.98,18,15,000/-. Whereas, other unrelated entities had also taken ships/vessels from SML on charter hire basis and paid hire charges of Rs.89,94,15,943/-. He further found that while the holding company has given on hire 8 vessels to the assessee, it has given on hire 23 vessels to other unrelated entities. On aggregating per day rate of hire charges on tonnage basis, the AO worked out the average hire charges per day per ton of the vessels given on hire at Rs.984/- so far as the transaction between SML and the assessee is concerned. Whereas adopting similar method he worked out average hire charges in respect of transaction between SML and unrelated entities at Rs.756/- per day per ton. Since as per the said working the hire charges paid by the assessee to SML was more than the hire charges paid by unrelated entities to SML, the AO issued show cause notice requiring the assessee to explain why the amount paid in

excess of the market value determined by way of the transaction between SML and the unrelated parties amounting of Rs.22,77,81,080/- should not be disallowed u/s. 40A(2)(b) of the Act. Though, the assessee seriously objected to the proposed disallowance, however, the AO proceeded to reject the objection of the assessee and disallowed the amount of Rs.22,77,81,080/- u/s.40A(2)(b) of the Act. The assessee contested the aforesaid disallowance before learned First Appellate Authority.

14. After considering the submissions of the assessee in the context of facts and materials on record, learned First Appellate Authority observed that AO has made a fundamental mistake by determining the market value of the hire charges based on the total tonnage of the ships/vessels given on hire to the assessee as well as unrelated parties. He observed, charter hire charges of ships/vessels differ based on the capacity of the vessels and their tonnage. Unless vessels are common in nature and if the tonnage vary widely, they cannot be treated as comparable transaction. In this context, he referred to the provision contained u/s. 115VG of the Act, wherein, varying rates are prescribed from Rs.29 per 100 tonne to Rs.70 per 100 tones depending on the capacity of the vessel. Having held so, he observed that as per the data available on record, only two ships/vessels given on hire both to assessee and unrelated parties by SML are common. He further found, in respect of vessel 'Ocean Tanzanite' SML had charged at Rs.839.7 per day from the assessee, whereas, it has charged Rs.1183.21 to 1383.12 per day to unrelated entity. Similarly in case of vessel 'Garnet' SML had charged at Rs. 932.2 per day from assessee, whereas, it has charged Rs.2,000/- per day to other entities. Since, assessee had paid lesser hire charges to its holding company compared to hire charges paid by unrelated parties, learend First Appellate Authority held that the hire charges paid by the assessee to SML is not excessive compared to market value. Accordingly, he deleted the disallowance.

15. Before us, learned Departmental Representative (DR) strenuously argued that the tonnage of certain vessels given on hire by SML is either identical to or near to the tonnage of ships/vessels given on hire to unrelated parties. He submitted, hire charges of those ships/vessels can be taken as comparable to determine the market value. He submitted, in case such a comparison is made it can be seen that the hire charges received from assessee is more than the hire charges received from unrelated parties. Thus, he submitted, disallowance made by the AO is justified. However, he fairly submitted that the AO has not adopted such approach while determining the market value of the hire charges.

16. The learned counsel appearing for the assessee strongly supported the decision of learned First Appellate Authority.

17. We have considered rival submissions and perused the material on record. On a careful reading of the impugned assessment order we have found that the AO has not made an apple to apple or orange to orange comparison between the ships/vessels given on hire by SML to assessee and unrelated parties. AO has worked out average of hire charges paid by aggregating the entire tonnage of all the vessels both in case of the assessee and unrelated party. This, in our view, is totally unscientific and cannot represent the market value of hire charges of vessels. As rightly observed by learned First Appellate Authority, the hire charges of vessels widely vary depending their tonnage. Therefore, the hire charges cannot be determined by aggregating the tonnage of all the vessels given on hire. Pertinently, on analyzing the data available on record, learned First Appellate Authority has found that two vessels given on hire are common both in case of transaction between SML and the assessee as well as SML and unrelated parties. Therefore, he has made a fair comparison between such vessels and found that the hire charges received by SML from assessee is much lesser than the hire charges received from unrelated parties. That being

the factual position emerging on record, we do not find any justifiable reason for invoking the provision of Section 40A(2)(b) of the Act which postulates that in case assessee incurs any expenditure by way of payment made to any related party, which is excessive or unreasonable having regard to the fair market value of the goods/services, such excess payment can be disallowed. In the facts of the present case, admittedly on a fair comparison it is found that hire charges paid by the assessee to SML for same vessels is much lesser than the hire charges paid by the unrelated parties to SML.

18. Though learned Departmental Representative made an attempt to deviate from the methodology adopted by the AO in determining the fair market value of the hire charges to impress upon us that the hire charges paid by the assessee is more than the hire charges paid by unrelated parties, however we are unable to accept such contention of learned Departmental Representative as such methodology now adopted by learned DR is neither the case of the AO nor learned First Appellate Authority. In view of the aforesaid, there being no infirmity in the decision of learned First Appellate Authority, which is scientific and reasonable, we uphold the deletion of disallowance made by the AO. This ground is dismissed.

19. In Ground No.2, Revenue has challenged deletion of disallowance of victualling expenses of Rs.32,94,375/-.

20. Briefly the facts are, in course of assessment proceeding, the AO noticed that the assessee has claimed deduction of an amount of Rs.1,31,77,499/- towards victualling expenses. Seeking details of such expenses, the AO ultimately concluded that the assessee failed to establish that the entire expenditure was incurred for the purpose of business. Thus, on adhoc basis he disallowed 25% amounting to Rs.32,99,375/- out of the total expenses claimed. Assessee contested the aforesaid disallowance before learned First

Appellate Authority. After considering the submissions of the assessee in the context of the facts and material on record, learned First Appellate Authority observed that in course of assessment proceeding the assessee had furnished the necessary details with supporting evidences. He further observed that similar disallowance made by the AO in assessee's case in A.Y. 2012-13 was deleted by learned First Appellate Authority. Accordingly, he proceeded to delete the disallowance made by the AO.

21. We have considered rival submissions and perused the material on record. Victualling expense was incurred by the assessee towards fooding and boarding of crew and other members on board the vessels at high sea. The assessee had incurred such expenses towards the personnel on board by making provision of supply of food material. From the material on record, it is further noticed that in support of the claim the assessee had not only furnished the details of personnel on board but had also furnished the chart of food served to the crew/personnel on board. Even, other supporting evidences were also furnished before the AO. Without pointing out any specific defect/deficiencies in the claim of the assessee, the AO has disallowed 25% of the expenditure claimed on purely ad-hoc basis without any cogent reasoning. In these circumstances, we do not find any infirmity in the decision of learned First Appellate Authority in deleting the disallowance. This ground is dismissed.

22. In the result, appeal is dismissed.

ITA No. 2342/Mum/ 2023 A.Y. 2018-19 (Revenue's Appeal)

23. In Ground No.1, Revenue has challenged the deletion of disallowance of Rs.33,83,67,486/- made u/s. 40A(2)(b) of the Act.

24. This issue raised in this ground is identical to issue raised in Ground No.1 of ITA No. 2341/Mum/2023 decided by us in earlier part of this order. Following our detailed

reasoning therein, we uphold the decision of learned First Appellate Authority by dismissing the ground raised by the Revenue.

25. In Ground No.2, the Department has contested the disallowance of victualling expense of Rs.31,84,862/-. The issue raised in this ground is identical to issue raised in Ground No.2 of ITA No.2341/Mum/2023 decided by us in the earlier part of this order. Following our detailed reasoning therein, we uphold the decision of learned First Appellate Authority by dismissing the ground raised.

26. In the result, appeal is dismissed.

27. To sum up, ITA Nos. 2265/Mum/2023 and 2264/Mum/2023 are allowed and ITA Nos.2340 to 2342/Mum/2023 are dismissed.

Order pronounced in the open court on 30 /06/2025..

Sd/-	Sd/-
(N.K. Billaiya)	(Saktijit Dey)
Accountant Member	Vice President

Mumbai; Dated : 30/06/2025
Aks/-

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai