

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'C(SMC)' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No. 1620/KOL/ 2016
Assessment Year: 2007-2008**

Deputy Commissioner of Income Tax,.....Appellant
Circle-3(1), Kolkata,
P-7, Chowringhee Square,
Aayakar Bhawan, 4th Floor, Room No. 19,
Kolkata-700 069

-Vs.-

M/s. Shiv Shakti Sponge Iron Limited,.....Respondent
P-48, Strand Bank Road, 3rd Floor,
Kolkata-700 007
[PAN: AAFCS 3682 JJ]

Appearances by:

Shri Rajat Kumar Kureel, JCIT, D.R., for the Department
Shri V.N. Purohit, FCA, for the assessee

Date of concluding the hearing : February 27, 2017
Date of pronouncing the order : March 24, 2017

O R D E R

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-1, Kolkata dated 10.05.2016 and in the solitary ground raised therein, the Revenue has challenged the action of the Id. CIT(Appeals) in deleting the addition of Rs.48,32,116/- made by the Assessing Officer on account of disallowance of expenses claimed by the assessee under the head "salary, wages and allowances".

2. The assessee in the present case is a Company, which is engaged in the business of manufacturing of sponge iron. The return of income for the year under consideration was filed by it on 31.10.2007 declaring a loss of Rs.45,08,193/-. The said return filed by the assessee was selected for scrutiny by the Assessing Officer and a notice under section 132 was issued by him to the assessee. There was, however, no compliance on the

part of the assessee to the said notice as well as to the subsequent notices issued by the Assessing Officer under section 142(1) from time to time. The assessee also could not furnish the details and documents required by the Assessing Officer such as the list of employees with their names, addresses and assessment jurisdiction, Permanent Account Number and the amount of salary and wages received by them, their P.F. Account Nos., ESI A/c. Nos. and Gratuity A/c. Nos., etc. in order to enable him to verify the expenses of Rs.48,32,116/- claimed under the head "salary, wages and allowances". The Assessing Officer, therefore, was left no option but to complete the assessment of the assessee to best of his judgment under section 144 and in the assessment so completed vide an order dated 31.12.2009, he disallowed the entire expenses of Rs.48,32,116/- claimed by the assessee under the head "salary, wages and allowances" by treating the same as unverifiable.

3. Against the order passed by the Assessing Officer under section 144, an appeal was preferred by the assessee before the Id. CIT(Appeals). During the course of appellate proceedings, the Id. CIT(Appeals) remanded the matter to the Assessing Officer with a direction to verify the expenses claimed by the assessee under the head "salary, wages and allowances" and after considering the remand reports submitted by the Assessing officer, rejoinders filed by the assessee in response thereto as well as the other material available on record, the Id. CIT(Appeals) deleted the addition of Rs.48,32,116/- made by the Assessing Officer on account of disallowance of expenses claimed by the assessee under the head "salary, wages and allowances" for the following reasons given in his impugned order:-

"I have carefully considered the AO's finding, written submissions, remand report and rejoinder, and material on record. It is observed that the AO had disallowed the entire expenditure claimed by the assessee amounting to Rs.48,32,116/- under the head Salary, wages & allowances by holding that the genuineness of the claim of expenses cannot be verified in view of non-compliance by the assessee to produce details in respect of expenses i.e. Salary, wages with the list of the employees with their name, address with

assessment jurisdiction, PAN and amount of salary/wages received by them. The appellant's A.R has contended through the written submission that from schedule 18 of the profit and loss account, the amount of Rs. 48,32,116/- was claimed as salary, wages and allowances which was disallowed by the AO in totality. It was further argued that it was not possible for the assessee to produce 15,875 M. Tons of Sponge iron without payment of salary and wages and that the AO could have made estimation of profit based on material available on record like audited accounts and capital TAR or past assessment records. During the course of appellate proceedings, the A.O was asked to verify the appellant's claim of salary, wages and allowances as per profit and loss account after examination of books of accounts of the appellant. The A.O has submitted the remand report dated 15.10.2015 as under:

"2. Mr. V.N. Purohit, A. R., appeared and he was asked to submit the salary wages ledger copy, copy of the Bank Statement, copy of PF, ESI payment.

3. The assessee submitted the ledger copy of the salary and wages and PF. The assessee explained that the factory was closed for three years and for that reason PF challan or bank statement could not be produced.

4. Under these circumstances, the payment of salary and wages could not be verified properly because assessee was unable to produce name and address of the employee/labour. The third party verification like PF payment/ESI payment could not be done due to lack of evidence, this is your kind information at your end.

The appellant's A. R has through his: rejoinder/comments on the remand report vide letter dated 27.04.2016 has stated that "copies of ledger account of salary, wages and PF filed on record. This apart original salary, wages sheets were also produced." In support thereof, the appellant's A. R Sri V.N. Purohit has submitted a sworn affidavit dated 23.05.2016, wherein he has affirmed to have produced before the DCIT the following details/records:

"(i) Ledger copies of salary & wages and P.F. accounts as appearing in the books of accounts of assessee Company.

(ii) Two files of payment vouchers for three months-April, May & June, 2006.

(iii) Staff salary sheet for 2006-07.

(iv) Labour wages sheet from April-2006 to October-2006.

In view of the above discussion and appraisal of documents on record, it is observed that there is sufficient force in the submissions of the appellant's A.R. It is found that the appellant company was engaged in the manufacturing of sponge iron and disclosed net loss of Rs.12,699,379/- from gross sales amounting to Rs.125,600,946/- during the financial year 2006-07 relevant to the AY 2007-08 under consideration. From perusal of the P & L accounts for the year ended 31.03.2007 annexed with the audited accounts. It is found that the gross sales during the relevant A.Y had declined as compared to sales of Rs.1,35,047,164/- in the preceding AY 2006-07. Further, there was a decline in cost of material from Rs.1,13,637,819/- in FY 2005-06 to Rs.102,870,482/- in the FY 2006-07. In respect of expenditure under the head "Expenses on employees" vide schedule 18 to the audited accounts, expenditure on "Salary, wages and allowances" were shown at Rs.48,32,116/- for FY. 2006-07 as compared to Rs.46,97,441/- in the preceding FY 2005-06 showing a marginal increase under this head.

From perusal of the assessment order u/s.144 of the Act, it is found that although the assessment was made on the basis of "best judgement", however, the AO had proceeded to disallow and add back the entire expenses of Rs.48,32,116/- under the head 'Salary, wages and allowances'. In the instant case, the only dispute pertains to the disallowance made by the AO of the entire expenses under the head "Salary, wages and allowances". From perusal of the remand report of the AO, it is found that although the AO has admitted that the assessee submitted the ledger copy of salary, wages and PF, however, the conclusion drawn by the AO that the payment of salary and wages could not be verified because assessee was unable to produce name and address of the employee/labour is found to be contradictory. In this regard, the appellant's AR has categorically stated in the sworn Affidavit dated 23.02.2016 filed with the rejoinder to the A.O's remand report that:

"(i) Two files of payment vouchers for three months-April, May & June, 2006.

(iii) Staff salary sheet for 2006-07.

(iv) Labour wages sheet from April-2006 to October-2006."

On the issue of evidentiary value of averments of a deponent through an affidavit, it is well settled that the statements are to be considered as correct in the absence of any contrary evidence on record. Considering the fact that the appellant's A.R had produced relevant supporting vouchers, salary/wages sheets for the period April, May, June and April to October respectively, it is inferred that sufficient material was produced to substantiate the genuineness of claim for having incurring expenditure of Salary, wages and allowances. Hence, in the absence of any discrepancy having being found or confronted by the A.O, the claim of expenditure of Salary/Wages is considered to be substantiated, in view of the fact that the books of accounts and book results were audited and the impugned expenditure was found to be duly vouched. Considering the totality of the facts of the case, it is held that the disallowance of entire expenditure under the head salary, wages and allowances amounting to Rs.48,32,116/- is found to be not justified and the AO is directed to delete the said disallowance. This ground is allowed”.

Aggrieved by the order of the Id. CIT(Appeals), the Revenue has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. Although the Id. D.R. has contended that there was a failure on the part of the assessee to support and substantiate the expenses claimed under the head “salary, wages and allowances” by producing the relevant documentary evidence called for by the Assessing Officer either during the course of assessment proceedings or even during the course of remand proceedings, it is observed that some of the relevant documentary evidence in the form of ledger account copies of salary and wages accounts and Provident Fund account were produced by the assessee before the Assessing Officer along with two files of payment vouchers for atleast three months and staff salary sheet and labour wages sheet for the year under consideration. In my opinion, the said documentary evidence produced by the assessee was sufficient for the Assessing Officer to verify the expenses claimed by the assessee under the head “salary, wages and allowances”, but instead of doing the same, he insisted for other records, such as copies of P.F.

challans, Bank statement, etc. which the assessee could not produce for the reason that its factory had already been closed for three years. In any case, the Assessing Officer, in my opinion, adopted a very arbitrary and unreasonable approach while disallowing the entire expenses claimed by the assessee under the head "salary, wages and allowances" ignoring completely the fact that sponge iron of 15,875 Metric Ton was produced by the assessee-company in its factory during the year under consideration, which was not possible without the payment of salary and wages. The Id. CIT(Appeals), on the other hand, appreciated this relevant factual position in the right perspective and deleted the disallowance made by the Assessing Officer on account of salary, wages and allowances after taking note of the fact that there was only a marginal income in the said expenses claimed by the assessee for the year under consideration as compared to the immediately preceding year, wherein the expenses on account of salary, wages and allowances to the extent of Rs.46,97,441/- were claimed by the assessee. As such, keeping in view all the facts and circumstances of the case, I am of the view that the disallowance made by the Assessing Officer of the entire expenses claimed by the assessee under the head "salary, wages and allowances" was not sustainable and the Id. CIT(Appeals) is fully justified in deleting the same. In that view of the matter, I uphold the impugned order of the Id. CIT(Appeals) on this issue and dismiss this appeal filed by the Revenue.

5. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on March 24, 2017.

**Sd/-
(P.M. Jagtap)
Accountant Member**

Kolkata, the 24th day of March, 2017

**Copies to : (1) Deputy Commissioner of Income Tax,
Circle-3(1), Kolkata,
P-7, Chowringhee Square,
Aayakar Bhawan, 4th Floor, Room No. 19,
Kolkata-700 069**

- (2) **M/s. Shiv Shakti Sponge Iron Limited,
P-48, Strand Bank Road, 3rd Floor,
Kolkata-700 007**
- (3) *Commissioner of Income Tax(Appeals)-1, Kolkata*
(4) *Commissioner of Income Tax- ,*
(5) *The Departmental Representative*
(6) *Guard File*

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By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.