

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND SHRI SANJAY GARG, JUDICIAL MEMBER

ITA No. 4440/MUM/2010
(Assessment Year : 2006-07)
ITA No. 4426/MUM/2010
(Assessment Year : 2007-08)

Asstt. Commissioner of Income Tax-8(1),
Room No.260A, 2nd Floor,
Aaykar Bhavan, MK Road,
Mumbai 400 020

... Appellant

Vs.

M/s. Affable Fisheries Pvt. Ltd.,
Cosmos Building, Khira Nagar,
Santacruz(West),
Mumbai 400 020
PAN:AAACA 9733H

.... Respondent

Appellant by : Shri Rajneesh K. Arvind
Respondent by : Shri M.Subramanian

Date of hearing : 03/08/2015
Date of pronouncement : 30/11/2015

ORDER

PER G.S. PANNU,AM:

Both the captioned appeals are filed by the Revenue, which are directed against a common order passed by the CIT(A) -16, Mumbai dated 24/03/2010 pertaining to the assessment years 2006-07 & 2007-08, which in turn have arisen from an orders passed by the Assessing

Officer dated 23/12/2008 & 20/11/2009 respectively under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. In both the appeals, the issues raised are common, therefore, the two appeals have been clubbed and heard together and a consolidated order is passed for the sake of convenience and brevity.

3. First we shall take up the appeal relating to the Assessment Year 2006-07, wherein Revenue has raised the following three main Grounds of appeal.

Grounds of appeal for Assessment Year 2006-07:-

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance made by the Assessing Officer on account of depreciation of Rs.2,35,13,625/-, without appreciating the facts of the case."

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs.39,67,132/- made by the A.O on account of food and other provisions for crew members without appreciating the fact that the assessee had failed to substantiate its claim with supporting documentary evidence.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs.48,25,082/- made by the Assessing Officer on account of salary paid to crew members without appreciating the fact that the assessee had failed to substantiate its claim with supporting documentary evidence.

4. The appellant prays that the order of the CIT(A) on the above ground to be set aside and that of ITO/ACIT/DCIT be restored."

3. Before we proceed to adjudicate the specific grounds of appeal, brief background is that the respondent assessee is a company incorporated under the provisions of the Companies Act, 1961 and is,

inter-alia, engaged in the business of operating deep sea fishing vessels in Indian as well as international waters. For the Assessment Year under consideration, assessee-company filed return of income declaring a loss of Rs.1,27,61,271/-, which was subject to a scrutiny. In the assessment, the total income as been assessed at Rs.4,64,72,570/- as against the loss declared in the return of income. The difference between the returned and the assessed income is primarily on account of disallowance of depreciation and expenses on fuel, salary to crew members, etc. The entire discussion in the assessment order reveals that the genesis of the disallowances was the failure on the part of the assessee to furnish certain information called for by the Assessing Officer, which was claimed not to be readily available with the assessee as the same was in the custody of the Department of Revenue Intelligence(DRI). Since the Assessing Officer could not carry out appropriate verification, he made disallowances out of the claim of depreciation, salary for vessel crew, provision for crew and fuel expenses. Before CIT(A), assessee pointed out that the DRI had conducted the search on the assessee on 27/07/2006 and certain documents were seized by the Officers of the DRI and, therefore, the required documents could not be produced before the Assessing Officer in the course of the assessment. Before the CIT(A) assessee also submitted an affidavit alongwith the copy of 'Panchnama' prepared by the DRI officials at the time of search and enclosed a communication from the DRI demonstrating that a search had taken place in the premises of the assessee on 27/7/2006 and documents were seized by the officials of the DRI. The assessee also moved an application under Rule 46A of the Income Tax Rules, 1962, before the CIT(A) pleading for

admission of additional evidence as such documents could not be produced before the Assessing Officer, since they were seized during the search carried out by the DRI officials. The CIT(A) considered the circumstances in which such evidences could not be produced before the Assessing Officer and he deemed it fit to admit the same. The CIT(A) sent back the additional evidence to the Assessing Officer with directions to verify the same and submit a remand report. On each of the disallowances in question, the Assessing Officer submitted a remand report, which has been taken into consideration by the CIT(A). On the basis of the material on record as well as the remand report furnished by the Assessing Officer, the CIT(A) found it fit to delete all the additions/disallowances made by the Assessing Officer out of the claim of depreciation, fuel expenses and salary paid to crew and provisions. Against such action of the CIT(A), the Revenue is in appeal before us.

4. At the time of hearing, the Ld. Departmental Representative appearing for the Revenue has primarily canvassed an omnibus argument to support the case of the Revenue, which is to the effect that the assessee had failed to substantiate the claim on account of depreciation, fuel expenses and salary to crew members and other provisions on the basis of appropriate documentary evidence.

5. On the other hand, assertions of the Ld. Representative for the assessee were that the CIT(A) made no mistake in deleting the disallowances/additions made by the Assessing Officer since the relevant material was brought on record in the appellate proceeding and even in the remand proceedings the Assessing Officer did not find

anything objectionable in such material. Before us, the Ld. Representative for the assessee has also furnished a Paper Book which, inter-alia, contains the material which was available before the CIT(A) and which has been relied upon to delete the impugned addition/disallowances. The Ld. Representative for the assessee also pointed out that in scrutiny assessment made for the subsequent assessment year of 2008-09, no such disallowances have been made and the income computed for such assessment year has been accepted as such except variation in the brought forward losses of assessment years 2006-07 and 2007-08. In this manner, it is sought to be contended that the impugned additions/disallowances made in the assessment by the Assessing Officer were unjustified.

6. We have carefully considered the rival submissions. At the outset, we may say that the CIT(A) has based his decision to delete the additions/disallowances made by the Assessing Officer on the material available before him, which was also a subject matter of verification by the Assessing Officer in the remand proceedings. The CIT(A), in our view, is quite justified in admitting fresh evidence produced by the assessee, which was hitherto not available in the course of assessment proceedings before the Assessing Officer. The reasons advanced by the CIT(A) for admitting such additional evidence, in our view, does not merit any interference in as much as the inability to produce requisite material was on account of seizure of documents by the DRI in the course of search on 27/7/2006. Be that as it may, we hereinafter discuss the specific grounds of appeal raised by the Revenue.

7. In the first ground, the dispute relates to denial of assessee's claim for depreciation of Rs.2,35,13,625/- on the vessels owned by the assessee-company. On this aspect, it is noticeable that relevant documents were furnished by the assessee during the course of assessment proceedings but the assessee could not produce copies of the import invoice and the evidence of payment of custom duty and also could not produce the original copies of certain documents. For the said reasons, the Assessing Officer disallowed the claim of depreciation. The CIT(A) has appreciated the position and noticed that the original documents were seized and lying in the custody of DRI and, therefore, the reliance by the assessee on photocopies of such documents was quite in order. In fact, the CIT(A) also records a finding that the photocopy of the documents were subject to verification by the Assessing Officer during the remand proceedings and nothing objectionable has been found. With regard to the other objection CIT(A) noticed that the assessee has produced the evidence of sale purchase of the vessels, clearance from the Registrar Fishing Boat, Bombay, permission from Ministry of Agriculture, etc. for each of the individual vessels. This material has formed the basis for CIT(A) to allow the claim of the assessee for depreciation. Before us, there is no material lead by the Revenue, which would negate the authenticity and bonafide of the material relied upon by the CIT(A) to allow the claim of the assessee. As a consequence, we hereby affirm the order of Ld. CIT(A) on this aspect and as a result, Revenue fails in Ground of appeal No.1.

8. The next grievance of the Revenue is with regard to the action of CIT(A) in deleting the disallowance of Rs.39,67,132/- made by the

Assessing Officer on account of food and other provisions for crew members.

8.1 In this context, the brief facts are that the Assessing Officer disallowed 50% of the total expenses for the food and other provisions for the crew members. The Assessing Officer noticed that assessee had claimed salary payment to 196 crew members and since complete details were not made available, he disallowed 50% of the salary paid. Similarly, provision for food and other expenses of the crew members were also subject to disallowance to the extent of 50% of the total expenses. The Assessing Officer noticed that the number of crew employed by the assessee was only 52, while the provisions were made for 196 members.

8.2 The claim of the assessee was that the entire provision for food, etc. and salaries was based on invoices raised by M/s.Great Wall International Development Company Ltd., Taiwan and there was no justification for making any adhoc disallowance. In the course of appellate proceedings before the CIT(A), assessee submitted complete details of the crew members numbering 196, which included 52 Indian crew members and the balance foreign members. The CIT(A) considered the details furnished by the assessee as also the confirmation of M/s.Great Wall International Development Company Ltd., to whom the payments had been reimbursed by the assessee company. According to CIT(A), the Assessing Officer erred in inferring that the assessee company was employing only 52 crew members, whereas the actual number was 196. The CIT(A) also referred to the third party evidence in the shape of an approval from the Ministries of

Government of India, which established the actual number of crew members at 196.

8.3 In the above background, we have carefully considered the discussion in the assessment order as also the stand of the Assessing Officer during the remand proceedings and findings of the CIT(A). In our considered opinion, the CIT(A) is quite justified in concluding in para 5.5 of his order that there was no evidence with the Assessing Officer which would demolish the plea that assessee had employed 196 crew members and the total provision of Rs.79,46,264/- made for food and other provisions for the crew members was duly confirmed by the third party i.e. M/s.Great Wall International Development Company Ltd., to whom such payments had been reimbursed. The aforesaid factual findings of the CIT(A) have not been negated by the Revenue on the basis of any credible material. Therefore, the same are hereby affirmed. As a consequence, in so far as the Ground of appeal No.2 is concerned, the same is hereby dismissed.

9. The last Ground is with respect to the action of the CIT(A) in deleting the disallowance of Rs.48,25,082/- made by the Assessing Officer on account of salaries paid to crew members. The aforesaid issue is subsumed in the disallowance made by the Assessing Officer of Rs.39,67,132/- on account of food and other provisions for crew members, which has been dealt with by us in the earlier stated Ground of appeal No.2. In fact, the disallowance out of salaries was also made to the extent of 50% of the total salaries claimed that was based on the payments made to M/s. Great Wall International Development Company Ltd., Taiwan. Based on our discussion in the earlier paras

relating to the Ground of appeal No.2, on this aspect also, we find no error on the part of CIT(A) in deleting the addition, which we hereby affirm.

10. In the result, the appeal of the Revenue for Assessment Year 2006-07 is dismissed.

11. It was a common point between the parties that the facts and circumstances of the dispute in Assessment Year 2007-08 is parimateria to that of Assessment Year 2006-07, which we have dealt with in the earlier paras. Our decision in the appeal of the Revenue for Assessment Year 2006-07 shall apply mutatis-mutandis in the appeal for Assessment Year 2007-08 also.

12. Resultantly, the captioned appeals of the Revenue are dismissed.

Order pronounced in the open court on 30/11/2015.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER
Mumbai, Dated 30/11/2015

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

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

//True Copy//

Vm, Sr. PS

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai