

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ 'बी' मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

श्री जी. एस. पन्नू, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के
समक्ष

BEFORE SHRI G.S.PANNU, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A.No.2635/M/2014

(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s. Business Combine Ltd. 78-B, Dr. Annie Besant Road, Worli, Mumbai - 400018	बनाम/ Vs.	Asstt. Commissioner of Income Tax 6(1) Room No.506, Ayakar Bhavan, M.K.Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACB1636L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Ms. Aarti Vissanji
Department by:	Shri Bhawar Singh Ratnoo

सुनवाई की तारीख / Date of Hearing: 10.03.2016

घोषणा की तारीख /Date of Pronouncement: 25.01.2017

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 20.09.2013 passed by the Commissioner of Income Tax (Appeals)-14, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the assessment year 2009-10.

2. The assessee has moved an application for the condonation of delay for the period of 149 days. The application is accompanied by the affidavit wherein in one of the director of the company Mrs. Arati Saran has affirmed that the order of learned CIT(A) was received by M/s. M.A.Parikh & Co., Chartered Accountants, Mumbai on 28th October, 2013. and was sent to Nashik but the Nashik factory was closed therefore the matter was not taken up therefore she discussed the matter with M/s. M.A.Parikh & Co. but till then the matter with M/s. M.A.Parikh & Co. became delayed for the period of 149 days. Therefore, in the said circumstances the delay is liable to be condoned. In view of the application as well as affidavit filed by the one of the director Mrs. Arati Saran it came into the notice that she explained the reason for delay that the matter was not attended by Nashik Office being the factory premises was closed. Moreover, the delay is 149 days which is not so long. We are of the view that the matter is required to be considered on merit in the interest of justice, therefore, we condoned the delay and allowed the application.

3. The assessee has raised the following grounds:-

“1. In the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in-

1.1 holding that Rs.12 lakhs paid by the appellant to BCL Forgings Ltd., as reimbursement towards the cost of employees and other general administrative costs in relation thereto was not allowable as expenditure as no tax was deducted under Section 40(a)(ia) of the Act, being reimbursement of employees and other related costs

incurred by the said BCL Forgings Ltd., and they had deducted tax under section 192 of the Act, as applicable from the payments made by them to the employees;

1.2 Applying provisions of Section 40(a)(ia) in respect of payments made towards salaries from which tax is deductible u/s.192 of the Act;

1.3 Disallowing Rs.3,15,205/- being 10@ of workmen and staff welfare expenses on an “ad hoc basis” on the ground that said expenditure could not be verified due to non-furnishing of details and non-establishment of complete genuineness.

2. It is humbly prayed that the reliefs as prayed for here-in above and / or such other reliefs as may be justified by the facts and circumstances of the case and as may meet the ends of justice should be granted.

ISSUE NO.1:-

4. Under this issue the assessee has challenged the confirmation on account of Rs.12 lakhs paid by the appellant to BCL Forgings Ltd., which was not allowed as expenditure being no tax was invoked u/s.40(a)(ia) of the Income Tax Act, 1961(in short “the Act”). The contention of the assessee is that the assessee was hiring the employees from BCL Forgings Ltd. and paid the salary and other benefit to them and the BCL Forgings Ltd. had already deducted the tax u/s.192 of the Act. On appraisal of the order passed by the learned CIT(A) it came into the notice that the CIT(A) has passed the order basically upon the interpretation of clause 3.1 to 3.2 of the agreement executed between the assessee and BCL Forgings Ltd. The clause 3.1

and 3.2 of the agreement dated 01.04.2005 is hereby reproduced as under for ready reference:-

- 3.1 BCL shall bear cost of water and electricity as well as other costs such as salaries and wages of its employees, rate, rent and taxes, insurance charges, legal and professional fees and telephone / tax charges incurred in the said factory during the term of this agreement.
- 3.2 BCL has employed at the said Factory the required manpower comprising skilled and unskilled employees. It is clearly understood that no relationship of employer and employee or principal and agent shall be deemed to be created between the said employees and BCL Forgings

The contention of the Assessing Officer as well as learned CIT(A) is that the appellant has employed its own persons to run the general administrative and other related cost. Therefore, the amount of Rs.12,00,000/- paid to BCL Forgings has been disallowed and added to the income of the assessee. The statement showing the details of salary and wages expenses for the year ended 31.03.2009 has been filed at pages 5 to 13 of the paper book. Statement showing grouping of salary, wages and bonus for the year ended 31.03.2009 at page 14 of the paper book. Copy of the audited financial statements for the

year ended 31.03.2009 has been produced which lies at pages 15 to 36 of the paper book. It is not in dispute that the assessee company paid an amount of Rs.12,00,000/- to the BCL Forgings and the BCL Forgings had deducted the tax in view of the provision u/s.192 of the Act. The provision of section 40(a)(ia) of the Act is applicable where no tax has been deducted and paid whereas in the present case BCL Forgings has deducted the tax u/s.192 of the Act. Therefore, we are of the view that the learned CIT(A) is wrong in confirming the addition of Rs.12,00,000/- paid by the appellant to the BCL Forgings in view of the provision u/s.40(a)(ia) of the Act as the case of the assessee falls u/s.192 of the Act. Accordingly, we direct the Assessing Officer to allow the expenditure to the tune of Rs.12,00,000/- upon which the tax has already been deducted u/s.194 of the Act. This issue has been decided accordingly in favour of assessee against revenue.

ISSUE NO.2:-

5. The issue no.2 is in connection with the disallowance of Rs.3,12,205/- being 10% of workmen and staff welfare expenses on an adhoc basis. The assessee has claimed the expenditure incurred upon workmen and staff welfare expenses but failed to produce the evidence in support of his claim. The assessee produced before us the statement showing year wise parties details of workmen at pages 37 of the paper book which speaks that in the relevant assessment year the workmen and staff welfare expenses is less in comparison to the

earlier year. In the A.Y.2008-09 the expenses for the welfare of workmen and staff was to the tune of Rs.39,48,758/- whereas the in the relevant A.Y.2009-10 the expenses for the welfare of workmen and staff was to the tune of Rs.31,22,047/-. The assessee produced the voucher in support of the claim and there are some also cash expenditure. No reasons have been given to discredit the claim of the assessee. The only reason which has been given is that the claim of the assessee is not fully verifiable. Actually the claim of the assessee was not verified. Claim of the assessee is not liable to be declined on the basis of assumption and presumption. The addition restricted to 10% is wrong however the claim of the assessee is fully allowable. Therefore in view of the said circumstances we set aside the finding of the CIT(A) on this issue and allowed the claim of the assessee. Accordingly, this issue is decided in favour of the assessee and against the revenue.

6. In result, appeal of the assessee is hereby Allowed.

Order pronounced in the open court on 25th January,
2017

Sd/-

Sd/-

(G.S.PANNU)

(AMARJIT SINGH)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 25th January, 2017

MP

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai