

आयकर अपीलतीय अधिकरण, मुंबई न्यायपीठ 'A', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI

Before Shri Mahavir Singh, JM and Shri Ramit Kochar, AM

ITA No.5231/Mum/2014 : Asst.Year 2008-2009

M/s.Loha Ispaat Limited 9 th Floor, Naman Centre C-31, Bandra Kurla Complex Bandra (West), Mumbai – 400 051. PAN : AAACL1583C.	बनाम/ Vs.	The Addl.Commissioner of Income-tax Range 6(3) Mumbai.
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से /Appellant by : **Shri Anant N.Pai**

प्रत्यर्थी की ओर से /Respondent by : **Shri Vikash Kumar Agarwal**

सुनवाई की तारीख / Date of Hearing : 05.10.2016	घोषणा की तारीख / Date of Pronouncement : 05.10.2016
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आदेश / O R D E R

Per Mahavir Singh, JM :

This appeal by the assessee arising out of order of Commissioner of Income-tax (Appeals)-38, Mumbai in appeal No.CIT(A)-38/IT-160/2012-13 dated 11.04.2014. The assessment was framed by Addl.CIT, Range 6(3), Mumbai for the assessment year 2008-2009 vide his order dated 29.12.2010 u/s 143(3) of the Income-tax Act, 1961 (hereinafter "the Act").

2. The first issue in this appeal of assessee is against the order of the CIT(A) confirming partly the addition made by the A.O. by disallowing adhoc expenses.

3. We have heard rival contentions and gone through the facts and circumstances of the case. Brief facts are that the assessee is engaged in

the business of processing hot rolled coils / plates, cold roll coils etc. The assessee claimed expenses on account of carriage inwards, carriage outwards, octroi, staff welfare, conveyance and travelling expenses, printing and stationary, miscellaneous expenses etc. amounting to Rs.2,57,35,636.

The details are as under:-

(i)	Carriage Inwards	Rs. 92,76,954
(ii)	Staff Welfare Expenses	Rs. 4,66,248
(iii)	Conveyance and Travelling Expenses	Rs. 15,72,022
(iv)	Printing and stationary	Rs. 4,62,214
(v)	Miscellaneous expenses	Rs. 3,55,394
(vi)	Carriage outwards, Octroi etc.	Rs.1,36,02,804

	Total	Rs.2,57,35,636
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4. The Assessing Officer noted that the assessee could not produce proper vouchers and produced self-made vouchers qua these expenses. The A.O., in the absence of proper evidences, estimated the disallowance at Rs.7,00,000 on adhoc basis. Aggrieved, the assessee preferred appeal before CIT(A), who restricted the disallowance at Rs.4,00,000 by observing that the A.O. in the assessment order could not bring out clearly to what extent the vouchers are self-made and which item is disallowable. According to CIT(A), the assessee has also paid fringe benefit tax on some of the expenses. Considering over all facts, the CIT(A) deleted the addition of Rs. 3 lakh and restricted the addition of Rs.4 lakh. Aggrieved now, assessee is in second appeal before the Tribunal.

5. We have gone through the facts and noticed that the Assessing Officer has made disallowances of expenses on estimated basis, i.e., purely on

adhoc. The Assessing Officer could not point out what are the defects in the expenses or the expenses are excessive. Before us, the assessee specifically pointed out that the authorities below could not point out any specific defect in the expenses claimed so as to main adhoc disallowances. The learned Counsel for the assessee relied on the decision of the Hon'ble Supreme Court in the case of *Dhakeshwari Cotton Mills Ltd. v. CIT [(1954) 26 ITR 775 (SC)]*. The learned Counsel for the assessee stated that the disallowance is excessive and it can be reduced to Rs.2 lakh. In view of the above concession given by the learned Counsel, we are of the view that a reasonable disallowance of Rs.2 lakh will meet the ends of justice and hence we delete the balance Rs.2 lakh. This ground is partly allowed.

6. The next issue in this appeal of assessee is against the order of the CIT(A) confirming disallowance of Provident Fund payment of Rs.82,554 being belated payment but actually these were paid before the due date of filing of return of income u/s 139(1) of the Act.

7. After hearing both the sides, we find that the Assessing Officer has recorded the factum of date of payment of employees' contribution, which read as under:-

Due date of payment	Employees' Contribution (Rs.)	Date of payment
15.09.2007	4,745 + 637	08.20.2007
15.10.2007	8,904 + 1,083	03.11.2007
15.11.2007	15,603 + 2,093	26.11.2007
15.12.2007	8,708 + 1,057	30.01.2008
15.01.2008	8,982 + 1,094	30.01.2008
15.02.2008	9,006 + 1,743	23.02.2008
15.03.2008	8,455 + 1,134	05.04.2008
15.04.2008	8,288 + 1,002	21.04.2008
Total	82,554	

7.1 From the above chart, it is clear that the payments made by the assessee are made within the due date of filing of return of income u/s 139(1) of the Act. Once employees' contribution to PF noted above not paid before statutory date as prescribed under the respective Acts, but paid before the due date of filing of return of income u/s 139(1) of the Act, the same is allowable. This view of ours is supported by the decision of the Hon'ble Bombay High Court in the case of *CIT v. Ghatge Patil Transports Ltd. [(2014) 368 ITR 749 (Bom.)]*.

7.2 Respectfully following the decision of the Hon'ble Bombay High Court, we direct the A.O. to delete the disallowance and this issue of the assessee's appeal is allowed.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced on this 05th day of October, 2016.

आदेश की घोषणा दिनांक: को की गई ।

Sd/-
(Ramit Kochar)
ACCOUNTANT MEMBER

Sd/-
(Mahavir Singh)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 05th October, 2016.
Devdas*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A) - 38, Mumbai
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