

5. *Whereas the ld.CIT(A) erred in allowing entertainment expenses whereas assessee has failed to establish commercial expediency for the expenditure.*

3. The brief facts of the case is that the assessee is a partnership firm and is wholesaler of IMFL products and beers. The Learned AO found that a sum of Rs. 7,20,000/- was received as advance from customers by the assessee (Ground No. 1 of the revenue) on various dates. The Learned AO felt that the genuineness, creditworthiness and identity of the parties were not proved by the assessee and accordingly sought to bring the advances received to tax u/s 68 of the Act. On first appeal, the Learned CITA felt that all the details were filed by the assessee and all these advances were subsequently converted into sales. Accordingly the Learned CITA deleted the addition. Aggrieved, the revenue is in appeal before us.

3.1. Similarly, with regard to the trade advances given by the assessee to various parties which are duly reflected in the books of accounts of the assessee to the tune of Rs. 7,2,0000/- (Ground No. 2 of the revenue), the assessee could not produce any details before the Learned AO during the assessment proceedings. On first appeal, the Learned CITA merely granted relief to the assessee on the ground that all the advances given by the assessee have been duly accounted in the books of the assessee and hence no addition needs to be made by the Learned AO. Aggrieved, the revenue is in appeal before us.

3.2. With regard to the loans received by the assessee to the tune of Rs. 2,45,000/- from D.L.Saha & N.L.Saha & Ors (Ground No. 3 of the revenue), the Learned AO found that the said transaction is not reflected in the balance sheet of D.L.Saha and accordingly sought to bring the said receipt of Rs. 2,45,000/- to tax as unexplained cash credit u/s 68 of the Act. On first appeal, the Learned CITA merely accepted the version of the assessee without giving any finding in this regard. Aggrieved, the revenue is in appeal before us.

4. We have heard the Learned DR. We find that the Learned CIT(A) was convinced with the evidences that were submitted before him by the assessee which were admittedly

not before the Learned AO. To meet the ends of justice, we find in the facts and circumstances, to set aside this issue to the file of the Learned AO to decide this issue afresh. The assessee is given liberty to file complete details and fresh evidences, if any, in support of his contentions. Needless to mention that the assessee be given a reasonable opportunity of being heard. Accordingly, the ground nos.1, 2 & 3 raised by the revenue are allowed for statistical purposes.

5. The next issue to be decided in this appeal is as to whether disallowance u/s 40A(3) of the Act could be made in the sum of Rs. 1,30,634/- being 20% of Rs. 6,53,174/- incurred towards loading and unloading charges in the facts and circumstances of the case.

5.1. The brief facts of this issue is that the assessee had debited a sum of Rs. 6,53,174/- towards loading and unloading charges in his return but could not produce the bills / vouchers for the same before the Learned AO. The assessee merely stated before the Learned AO that expenses were incurred towards payments to local labourers for loading and unloading of goods and properly vouched and stated that no single payment exceeding Rs. 20,000/- was made to any party in a single day and no party has been paid beyond Rs. 50,000/- during the financial year so as to come under the ambit of TDS provisions thereon. The Learned AO not satisfied with this reply sought to disallow a sum of Rs. 1,30,634/- being 20% of Rs. 6,53,174/- u/s 40A(3) of the Act. On first appeal, the Learned CIT(A) held that the incurrence of this expenditure is inevitable in the line of business carried on by the assessee and accordingly granted relief to the assessee. Aggrieved, the revenue is in appeal before us.

5.2. We have heard the Learned DR. We find that no details were either submitted before the Learned AO or before the Learned CIT(A). We find that the Learned CIT(A) had merely granted relief by looking from the propriety angle of the expenditure. Even before Learned CIT(A), no evidences at least in the form of self made vouchers which are duly acknowledged by the payees were filed. We hold that assessee be given one last opportunity and hence we find in the facts and circumstances, to set aside this issue to the file of the Learned AO in the interest of justice

and fair play, to decide this issue afresh. The assessee is given liberty to file complete details and fresh evidences, if any, in support of his contentions. Needless to mention that the assessee be given a reasonable opportunity of being heard. Accordingly, the ground no. 4 raised by the revenue is allowed for statistical purposes.

6. The last issue to be decided in this appeal is as to whether disallowance of Entertainment expenses in the sum of Rs. 1,17,920/- could be made in the facts and circumstances of the case.

6.1. The brief facts of this issue is that the assessee had debited a sum of Rs. 1,17,920/- towards Entertainment expenses in his return. The assessee submitted the supporting documents and also explained the necessity of incurring such expenses in order to maintain cordial relation for running the business smoothly. The Learned AO sought to disallow the same on the ground that Fringe Benefit Tax was not suffered on the same. On first appeal, the Learned CITA held that the said expenditure is incurred on the ground of commercial expediency more so for the line of activity in which the assessee is engaged and accordingly granted relief to the assessee. Aggrieved, the revenue is in appeal before us.

6.2. We have heard the Learned DR. We find from the orders of the lower authorities that this expenditure has to be necessarily incurred by the assessee in order to have smooth conduct of his business and commercial expediency thereon is also proved. Hence we do not find any infirmity in the order of the Learned CIT(A) in this regard. Accordingly, the ground no. 5 raised by the revenue is dismissed.

7. In the result, the appeal of the revenue is partly allowed.

THIS ORDER IS PRONOUNCED IN OPEN COURT ON 24 /11/2015

Sd/-
(Mahavir Singh, Judicial Member)
Dated 24 /11/2015

Sd/-
(M. Balaganesh, Accountant Member)

Copy of the order forwarded to:

- 1.. The Appellant :Shri Nayan Jyoti Nath, ACIT, Cir-39, 8th Fl, Poddar Court, 18 Rabindra Sarani, Kol-1.
- 2 The Respondent- M/s. FRISCO STORES 235/2 B.B Ganguly St, Kol-12
- 3 The CIT,

The CIT(A)
- 4..
5. DR, Kolkata Bench
6. Guard file.

True Copy,
** PRADIP SPS

By order,

Asstt Registrar