

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No.5585/M/2014
Assessment Year: 2011-12**

| | | |
|---|-----|--|
| M/s. Haji Ebrahim Hussain & Sons, 109/B/110, 1 st Floor, Parvati Indl. Estate, New Sun Mill Compound, Lower Parel (W), Mumbai – 400 013 PAN: AACFH 1520N | Vs. | Dy. Com. Of Income Tax 13(1), Aayakar Bhavan, Churchgate, Mumbai - 400020 |
| (Appellant) | | (Respondent) |

**ITA No.5669/M/2014
Assessment Year: 2011-12**

| | | |
|---|-----|---|
| Dy. Com. Of Income Tax 13(1), R. No.418, 4 th Floor, Aayakar Bhavan, M.K. Road, New Marine Lines, Mumbai - 400020 | Vs. | M/s. Haji Ebrahim Hussain & Sons, 109-B/110, 1 st Floor, Parvati Industrial Premises, New Sun Mill Compound, Lower Parel (West), Mumbai – 400 003 PAN: AACFH 1520N |
| (Appellant) | | (Respondent) |

Present for:

Assessee by : Shri M. Subramanian, A.R.
Revenue by : Shri Amit Kumar Singh, D.R.

Date of Hearing : 31.03.2016
Date of Pronouncement : 31.03.2016

ORDER

Per Sanjay Garg, Judicial Member:

The above tilted cross appeals one by the Revenue and the other by the assessee have been preferred against the order dated 30.06.2014 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12. Both the appeals were heard together and

are being disposed of by this common order. First we take up the appeal of the Revenue bearing ITA No.5669/M/2014.

ITA No.5669/M/2014 (Revenue's Appeal)

2. The Revenue has taken the following grounds of appeal:
 - "1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the disallowance to 50% of Rs.63,25,781/- i.e. Rs.31,62,891/-.
 2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing relief of Rs.9,99,79,167/- which had been disallowed u/s. 40(a)(ia) of the Act.
 3. The appellant prays that the order of CIT(A) on the above ground(s) be set aside and that of the Assessing Officer be restored.
 4. The appellant craves leave to amend or alter any ground or add any new ground, if necessary."

Ground No.1

3. The Revenue, vide ground No.1, has agitated the action of the Ld. CIT(A) in restricting the disallowance of 10% of the various expenses as against disallowance of 20% made by the Assessing Officer (hereinafter referred to as the AO). The AO during the assessment proceedings noted that the assessee had debited various expenses. He, further, noted that the said expenses were mainly in cash and supported by cash vouchers. He observed that the genuineness & business expediency of the said expenses were not capable of being verified. He therefore made an adhoc disallowance of 20% of the said expenditure.

4. In appeal, the assessee demonstrated before the Ld. CIT(A) that in the business of the assessee he has to incur certain expenditure for paying to the labourers in the docks in cash for loading and unloading of cargo and that the expenditure was incurred wholly and exclusively for business purposes. The Ld. CIT(A), taking into consideration the overall facts and circumstances of the case, and observing that since the expenditure was made in cash, hence the

cash vouchers of the assessee cannot be said to be conclusive evidence of genuineness and cannot be fully verified, restricted the disallowance to the extent of 10% of the same as against made by the AO at the rate of 20%.

5. Now the Revenue has come in appeal agitating the relief given by the Ld. CIT(A) to the assessee and on the other hand the assessee in his appeal has contended that the entire claim of expenditure is required to be allowed.

6. After considering the rival submissions of the Ld. Representatives of the parties and going through the record, we find that the Ld. CIT(A) has taken a very holistic view that though in the business of the assessee certain expenditure is required to be incurred in cash, however, at the same time the genuineness of the cash payments could not be verified, thus the Ld. CIT(A) has restricted the disallowance to 10%. In the circumstances of the case, we do not find any infirmity in the order of the Ld. CIT(A) in this respect.

7. The second issue taken by the Revenue is in relation to the deduction of tax at source from payment made to foreign shipping companies. The Ld. CIT(A) while relying upon the CBDT circular No.723 dated 19.09.1995 observed that the assessee was not duty bound to deduct tax on the payments made to Indian agents of foreign shipping companies. He, however, directed the AO to verify all the relevant details such as entries in the ledger, payments made to Indian agents of foreign shipping lines' agents in India, amount paid by agent to foreign shipping companies and allow the claim accordingly.

8. The Ld. A.R. of the assessee has produced on the file an order of the AO dated 03.03.16 which is an order giving effect to the Ld. CIT(A)'s order. In the said order, the AO has recorded that on verification he has found that the assessee's firm's claim that tax was not required to be deducted was correct and was properly supported by various evidences. He accordingly allowed the said claim.

9. In view of the above circumstances, the claim of the assessee has been properly verified by the AO and he has found the same to be correct, thus under the circumstances, there is no infirmity in the order of the Ld. CIT(A) on this issue also and the same is accordingly upheld.

ITA No.5585/M/2014 (Assessee's Appeal)

10. So far as the appeal of the assessee is concerned, as observed above, the assessee has agitated the sustaining of the remaining disallowance at the rate of 10% of the various expenditures claimed. As discussed above, we have already upheld the action of the action of the Ld. CIT(A) in restricting the disallowance to the extent of 10% as against 20% made by the AO. Hence, we do not find any merit in the appeal of the assessee in this respect.

11. In the result, both the appeals i.e. one by the Revenue and the other by the assessee are hereby dismissed.

Order pronounced in the open court on 31.03.2016.

**Sd/-
(Ramit Kochar)
ACCOUNTANT MEMBER**

**Sd/-
(Sanjay Garg)
JUDICIAL MEMBER**

Mumbai, Dated: 31.03.2016.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.