

IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI

BEFORE S/SHRI SANJAY ARORA, ACCOUNTANT MEMBER

AND AMARJIT SINGH, JUDICIAL MEMBER

आयकर अपील सं/ I.T.A. No.3241&3242/Mum/2014

(निर्धारण वर्ष / Assessment Year: 2008-09 & 2009-10)

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| Hindustan Export and Import Corporation (P) Ltd. Anand Bhavan, 348, Dr. D. Naoroji Road, Mumbai - 400001 | बनाम/ Vs. | Additional Commissioner of Income Tax 1(1) Aayakar Bhavan Maharshi Karve Marg Mumbai - 400020 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACH1112M | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |

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|----------------|-------------------------------------|
| Assessee by: | Shri S.R.Kiron & Raghavendra Rao |
| Department by: | Shri M. Rajan |

सुनवाई की तारीख / Date of Hearing: 08.06.2016

घोषणा की तारीख /Date of Pronouncement: 05.10.2016

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed both the appeals against the order dated 11.02.2014 passed by the Commissioner of Income Tax (Appeals)-1, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2008-09 and 2009-10.

ITA NO.3241/M/2014(A.Y.2008-09):-

2. The appellant has raised the following grounds:-

- “1. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) (CIT(A) has erred in confirming the disallowance of Commission of Rs.5,00,915/-. He ought not to have done so.*
- 2. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in confirming the disallowance of Rs.12,63,254/- u/s. 14A read with Rule 8D. He ought not to have done so.*
- 2.1 Without prejudice to ground of appeal (2) above and on the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in not re-determining the amount disallowable under Rule 8D of the Income Tax Rules, 1962. He ought not to have done so.*
- 3. On the facts and in the circumstances of the case and in law the learned CIT(A) has erred in confirming the disallowance of advances written off being Bad Debts of Rs.2,22,786/-. He ought not to have done so.*

3. The brief facts of the case are that the assessee filed its return of income on 22.10.2009 declaring total income to the tune of Rs.11,66,56,050/- and book profit of Rs.3,14,09,856/- u/s.115JB of the Income Tax Act, 1961(in short “the Act”). The return was processed u/s.143(1) of the Act on 09.02.2010. The notice u/s.143(2) was also issued on 13.05.2010 which was served upon the assessee on 15.05.2010. The CIT, vide order dated 22nd June, 2010 authorised the Additional Commissioner of Income Tax-1, Mumbai, to exercise all powers and discharge all functions of the Assessing Officer for A.Y.2008-09 in respect of assessee company’s case. In consequence, a fresh opportunity of being heard was granted to assessee by the Assessing Officer in respect of scrutiny assessment proceedings and notices u/s.143(2) and 142(1) of the Act along with questionnaire were issued on 25.08.2010 and served upon the assessee on 27.08.2010. The

assessee company is engaged in the business of dealing in machine tools and equipments and process know-how for defence production. The Assessing Officer disallowed the commission to the tune of Rs.5,00,915/- and the expenditure incurred to earn the exempt income to the tune of Rs.12,63,254/- u/s.14A read with Rule 8D of the Act and bad debts to the tune of Rs.2,22,786/-, therefore the assessee filed the appeal before the CIT(A) who confirmed the order of the Assessing Officer, therefore the assessee has filed the present appeal before us.

ISSUE NO.1:-

4. Under this issue the assessee has raised the question of disallowance of commission to the tune of Rs.5,00,915/-. The assessee has admitted this fact that he failed to produced the confirmation of commission by the parties because at that time he was not having sufficient evidences with him and failed to produced the same before the Assessing Officer as well as the CIT(A), therefore, he should be allowed to adduce the additional evidence in the interest of justice. The assessee wanted to adduce the confirmation issued by the M/s. Techno Link Corporation and M/s. A.B.Services Pvt. Ltd. lies at page 108 to 128 and 129 to 134 of the paper book. This piece of evidence seems justifiable to decide the matter of controversy and in the interest of justice. Therefore, in the said circumstances we set aside the finding of the CIT(A) on this issue and allow the assessee to adduce the additional evidence and remand this issue to the file of Assessing Officer to decide the matter afresh after giving an opportunity of being heard to the assessee in accordance with law in view of the evidence adduced by the

assessee. Accordingly, this issue is decided in favour of the assessee against the revenue.

ISSUE NO.2:-

5. Under this issue the assessee has challenged the disallowance of Rs.12,63,254/- u/s.14A read with Rule 8D of the Act. The contention of the assessee is that the Assessing Officer included the investment which has been made by the assessee after the sale of old shares. The assessee has also shown the figure at pages 155 to 156 of the paper book. The detailed note on investment has also been given which lies at page 157 to 158 of the paper book. However, in this regard no evidence was adduced before the Assessing Officer, therefore the assessee wanted to adduce the additional evidence in this regard. No doubt this piece of evidence was not produced before the Assessing Officer at the time of the finalising the assessment. The assessee has earned tax free Long Term Capital Gain to the tune of Rs.92,419/- and dividend income to the tune of Rs.7,47,733/-. The assessee has been suo moto disallowed an amount of Rs.4,49,541/-. However, considering the fact that the Assessing Officer has disallowed the expenditure to the tune of Rs.20,91,062/- and this calculation was based upon the investment of the assessee which is pertaining to the sale of old shares and purchase of new shares. In this regard the assessee wanted to adduce the fresh evidence which has not been adduced earlier. In this regard, we may add that where the new shares are, as contended, purchased by sale of old shares (at a profit) the new shares, to the extent of the said profit, can only be considered as financed by the assessee's own capital.

Therefore, in the said circumstances and in the interest of justice we are of the view that the contention of the assessee is liable to be allowed. Therefore, in the said circumstances we set aside the finding of the CIT(A) and allowed the assessee to adduce the additional evidence and remand this issue to the file of Assessing Officer to decide the matter afresh after giving an opportunity of being heard to the assessee in accordance with law. Therefore, this issue is decided in favour of the assessee against the revenue.

ISSUE NO.2.1:-

6. This issue is in connection with the disallowance of the bad debts to the tune of Rs.2,22,786/-. In this regard the assessee also wanted to adduce the additional evidence and in this regard the figure of the bad debts has been shown at page 159 of the paper book. Since this piece of evidence was not adduced before the CIT(A) as well as Assessing Officer but it is relevant to decide the matter of controversy and in the interest of natural justice. Therefore, in the said circumstances we set aside the finding of the CIT(A) on this issue and allowed the assessee to adduce the additional evidence before the Assessing Officer and remand this issue to the file of Assessing Officer to decide the matter afresh after giving an opportunity of being heard to the assessee in accordance with law. Accordingly, this issue is decided in favour of the assessee against the revenue.

7. It is observed that in all the above said issues the assessee wanted to adduce the additional evidence which he has not produced before the Assessing Officer as well as CIT(A). Therefore, in the interest of justice

we are of the view that the assessee was at fault for not producing the evidence well in time, therefore we impose the cost to the tune of Rs.25,000/- payable in the Prime Minister Relief Fund. Fine paid. The assessee has also filed the receipt in connection with the payment to the tune of Rs.25,000/- with the Prime Minister Relief Fund.

ITA NO.3242/MUM/14 (A.Y.2009-10):-

8. The appellant has raised the following grounds:-

- “1. *On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) (CIT(A) has erred in confirming the disallowance of Commission of Rs.50,74,979/-. He ought not to have done so.*
2. *On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in confirming the disallowance u/s. 14A of Rs.16,41,521/-. He ought not to have done so.*
- 2.1 *Without prejudice to ground of appeal (2) above and on the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in not re-determining the amount disallowable under Rule 8D of the Income Tax Rules, 1962. He ought not to have done so.*

9. The facts of the present case are quite similar to the above said ITA No.3241/Mum/2014 however the figures are different. The matter of controversy is also involved as the same which has been involved in the above mentioned appeal. The issue no.1, 2 and 2.1 which has been raised in above mentioned ITA No. 3241/Mum/1014 has also been raised in this appeal and the assessee has raised the similar point which has been mentioned above. Therefore, we set aside the finding of the CIT(A) on in the issue no.1, 2 and 2.1 in this appeal also and allow the assessee to adduce the additional evidence before the Assessing Officer

which is necessary to adjudicate the matter of controversy and in the interest of justice. Accordingly, these issues are decided in favour of the assessee against the revenue.

10. It is observed that in all the above said issues the assessee wanted to adduce the additional evidence which he has not produced before the Assessing Officer as well as CIT(A). Therefore, in the interest of justice we are of the view that the assessee was at fault for not producing the evidence well in time, therefore we impose the cost to the tune of Rs.25,000/- payable in the Prime Minister Relief Fund. Fine paid. The assessee has also filed the receipt in connection with the payment to the tune of Rs.25,000/- with the Prime Minister Relief Fund.

11. In the result, both the appeals of the Assessee are hereby allowed for statistical purpose.

Order pronounced in the open court on 5th October, 2016

Sd/-

Sd/-

(SANJAY ARORA)

(AMARJIT SINGH)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 5th October, 2016

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