

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'C', BANGALORE

BEFORE SHRI. N. V. VASUDEVAN, JUDICIAL MEMBER

AND

SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

I.T.A No.434/Bang/2012
(Assessment Year : 2007-08)

M/s. Buhler (India) P. Ltd,
No.13D, KIADB Industrial Area,
Attibele, Bangalore 560 107
PAN : AAACB5987A

..Appellant

v.

Deputy Commissioner of Income-tax,
Circle -11(2), Bangalore

..Respondent

Assessee by : Shri. Chavali Narayan, CA
Revenue by : Shri. Sunil Kumar Agarwala, JCIT

Heard on : 19.08.2015
Pronounced on : 26.08.2015

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

In this appeal filed by assessee it assails disallowance of commission expenditure of Rs.1,14,30,754/- made by the AO which was confirmed by the CIT (A).

02. Facts apropos are that assessee engaged in manufacture and distribution of food processing machines had filed its return of income declaring income of Rs.15,31,55,764/-. During the course of assessment proceedings it was noted by

the AO that assessee had done a provisioning for commission of Rs.1,25,46,819/- payable to agents for procuring business. As per the AO assessee had actually incurred Rs.9,64,631/- only during the year. AO was of the opinion that assessee was unable to substantiate the claim of provision. After adjustment of the earlier year provision the effective claim was Rs.1,14,30,754/-. This was disallowed.

03. On appeal CIT (A) confirmed the disallowance for a reason that there was no scientific study done by the assessee for justifying the provisioning.

04. Aggrieved assessee moved in appeal before this Tribunal. This Tribunal held that the bulk of the provisioning related to one party, namely, M/s. Patinum Corporation. As per this Tribunal, the invoices raised pertained to a subsequent assessment year. Tribunal confirmed the order of CIT (A). Assessee thereafter filed a miscellaneous petition stating that it had produced the invoice from M/s. Platinum Corporation in support of the provisioning done. However the Tribunal dismissed the MP.

05. Aggrieved assessee moved in further appeal before the Hon'ble jurisdictional High Court. Hon'ble Jurisdictional High Court in its judgment dt.19.08.2014 held as under at para 2 :

2. The assessee is a Company engaged in the manufacture, trading, servicing and maintenance of food processing machines. They have filed the returns declaring the income of ₹15,31,55,764/-. The returns was

processed under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act', for short). Later, it was taken up for scrutiny. An order came to be passed under Section 143(3) of the Act determining the income of the assessee at ₹17,24,34,920/- making certain additions. Aggrieved by the said order, the assessee preferred an appeal. The Appellate Authority passed an order on 30.12.2011 partly allowing the appeal and dismissing on certain other aspects. Against the said order, the assessee preferred an appeal to the Tribunal. The Tribunal dismissed the appeal by its order dated 22.2.2013 confirming the order passed by the Appellate Authority and confirming the additions made by the Assessing Authority. The reason given was that the commission expenditure was not an ascertained liability and no evidence has been brought on record for disallowance. Therefore, the assessee filed a miscellaneous application enclosing the copy of the invoice raised to the extent of ₹1,14,00,000/- showing the commission for the assessment year 2008-09 and they also produced documents. Without looking into the said documents, the

miscellaneous petition also came to be dismissed. That is how, the assessee is before this Court challenging both the orders. Along with the appeal memos, they have produced invoice and other documents. The said documents are not looked into by the Tribunal. They are the documents which are produced by the assessee before the Appellate Commissioner. The said documents were part of the record. Therefore, the findings recorded by the Tribunal that the assessee has not produced any evidence to substantiate his claim, is ex facie illegal. Therefore, the order cannot be sustained. It is appropriate to remand the matters back to the Tribunal to enable them to hear the appeals afresh in the light of the documents which are available on record and which will be pointed out by the appellant in the course of arguments. They also shall take into account the judgments to be relied on by both the parties and then pass appropriate orders. Hence, we pass the following:

ORDER

Both the appeals are allowed. Impugned orders are set aside. The entire matter is remitted back to the Tribunal for fresh consideration and in accordance with law, without in any way being influenced by any of the observations made by this Court in this order.

06. Now before us Ld. AR submitted that provisioning for commission done by the assessee was based on an invoice raised by M/s. Platinum Corporation dt.12.06.2006 placed at paper book page.95. As per the Ld. AR assessee had filed details of the provision created including the provision of Rs.1,14,00,000/- raised by M/s. Platinum Corporation for the sales effected through them. Ld. AR submitted that total provisioning for the year came to Rs.1,25,46,890/-. Against the invoice raised by M/s. Platinum Corporation assessee had paid Rs.98,67,500/- in the very next year. As per learned AR despite all these details placed, provision was disallowed as unascertained. Further according to him a sum of Rs.6,58,734/- included in the total amount of Rs.1,14,30,754/- disallowed by the AO, was already included in prior period expenditure which was again the subject of a disallowance. Therefore according to him, there was a double disallowance of such amount.

07. Per contra, Ld. DR submitted that the bill placed by the assessee at paper book page 70 dt.12.12.2006 mentioned the commission as USD 2,50,000/-. As per the Ld. DR once the invoice was raised by M/s. Platinum Corporation assessee should have accounted it as commission expenditure and credited the said party's account. Instead of this assessee had shown it as provision. This required verification. As per the Ld. DR similarly the sum of Rs.6,60,734/- stated as already disallowed under prior period expenditure also required verification by the AO.

08. We have perused the materials on record and heard the rival submissions. Details of the provision created by the assessee for commission dues has been placed at paper book page 10. We find that the bulk of the amount of provisioning related to M/s. Platinum Corporation and this came to Rs.1,14,00,000/-. In support assessee has placed an invoice dt.12.12.2006 raised by M/s. Platinum Corporation for US \$ 2,50,000/-. As stated by the Ld. DR since assessee was following mercantile system of accounting it should have debited the commission amount on receipt of the invoice and credited M/s. Platinum Corporation as the creditor for the said amount. As against this, assessee had created a provision of Rs.1,14,00,000/-. In our opinion two aspects require verification. One is whether the provision of Rs.1,14,00,000/- made by the assessee is based on the invoice dt.12.12.2006 of M/s. Platinum Corporation. This is for the reason that invoice is for US\$ 2,50,000/- whereas the provision created is for INR 1,14,00,000/-. Further it is also required to verify whether on receipt of invoice from M/s. Platinum Corporation , which was raised during the currency of the relevant previous year, assessee had debited the commission account and shown M/s. Platinum Corporation as a creditor. In other words whether there is duplication of claim also needs to be verified. We also find that AO had disallowed a sum of Rs.6,54,734/- as prior period expenditure treating it as commission expenses and not relating to the impugned assessment year. As per the assessee this was also included in the sum of Rs.1,14,30,754/- disallowed. This aspect also requires verification. We are therefore of the opinion that the claim of provision of Rs.1,14,00,000/- against bill raised by

M/s. Platinum Corporation as well as the question of duplication of disallowance of commission expenditure to extent of Rs.6,54,734/- requires fresh verification by the AO. However we make it clear that if assessee is able to show that the invoice raised by M/s. Platinum Corporation is the basis for provisioning of Rs.1,14,00,000/-, it has to be considered as an ascertained liability and allowed, provided it is not already claimed as commission expenditure. We, therefore set aside the orders of the authorities below and remit this issue back to the file of AO for verification afresh.

09. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 26th day of August, 2015.

Sd/-

(N. V. VASUDEVAN)
JUDICIAL MEMBER

MCN

Sd/-

(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order
Assistant Registrar