

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "E" BENCH, MUMBAI

BEFORE SHRI SHAILENDRA KUMAR YADAV,
JUDICIAL MEMBER,
AND SHRI RAJESH KUMAR, ACCOUNTANT MEMBER.

ITA. Nos. 512 & 365/Mum/2016
(Assessment Year: 2011-12)

M/s. Shroff Textiles Ltd.,
303, B Wing, Kotia Nirman,
New Link Road, Andheri (W),
Mumbai 400 053

Appellant

Vs.

DCIT – 8(3),
Mumbai

Respondent

&

The Dy. Commissioner of
Income Tax - 11(2)(1),
Mumbai 400 020

Appellant

Vs.

M/s. Shroff Textiles Ltd.,
303, B Wing, Kotia Nirman,
Near Fun Republic Cinema,
New Link Road, Andheri (W),
Mumbai 400 053

Respondent

PAN: AAACS6476K

आवेदक की ओर से / By Assessee : Shri Rajiv Khandelwal &
Shri Neelkanth
Khandelwal, A.R.
राजस्व की ओर से/By Revenue : Shri Manjunath Swamy
& Shri Love Kumar,
D.R.
सुनवाई की तारीख/Date of Hearing : 20.06.2016
घोषणा की तारीख/Date of
Pronouncement : 28.06.2016

ORDER

PER SHAILENDRA KUMAR YADAV, J.M:

These cross appeals by assessee and Revenue arising out of Commissioner of Income-Tax (Appeals)-18, Mumbai, dated 09.11.2015 for A.Y. 2011-12.

2. In ITA No.512/Mum/2016, assessee has filed the appeal on the following grounds:

- “1. That the Ld. Commissioner of Income Tax (Appeal) erred in affirming the decision of Ld. AO for disallowing commission payment of Rs. 1,41,21,044/- to M/s Delite International without appreciating the fact that expenditure was incurred wholly and exclusively for the purpose of business.
2. That the Ld. Commissioner of Income Tax (Appeal) erred in affirming the decision of Ld. AO for disallowing transportation charges of Rs. 74,13,811/- in arbitrary manner and without any finding on the reasonableness as required under section 40A(2) (b) of the Income Tax Act, 1961.

3. That the Ld. Commissioner of Income Tax (Appeal) erred in affirming the decision of Ld. AO for disallowing foreign tour expenses of Rs. 14,83,542/- without appreciating the fact that expenditure was incurred wholly and exclusively for the purpose of business.
4. That the Ld. Commissioner of Income Tax (Appeals) erred in not adjudicating the following three \ grounds raised before him on the basis that such grounds were not pressed before him, despite of the fact that these grounds were discussed in detail during appellate proceedings:
 - i. Disallowance of depreciation of Rs. 27,45,524/- claimed on addition to fixed assets merely on the basis of baseless allegations that they are not put to use.
 - ii. Disallowance of commission of Rs. 9,00,000/- paid to employee Mrs. Vijaya Bharadwaj merely because no tax at source was deducted.
 - iii. Disallowance of Rs. 1,00,000/- paid to M/s Amby Valley Ltd. for booking accommodation without appreciating the fact that such expenditure was incurred for the purpose of sales promotion.”

3. In ITA No.365/Mum/2016, Revenue has filed the appeal on the following grounds:

- “1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of interest paid to M/s Delite International and M/s Technical Works Industries Link Ltd without appreciating the fact that the assessee failed to prove the genuineness of the alleged payment both during the assessment proceedings and remand proceedings.?”
2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of interest free advances given by the company to company's staff since as per the

provisions of section 36(1)(iii) of the IT Act, any amount of interest paid in respect of capital borrowed for the purpose of business or profession is allowed as a deduction only if the borrowed funds are utilized for the purpose of business and continues as such.?

3. Whether on the facts and in circumstances of the case and in law, the Ld.CIT(A) erred in not following the ratio laid down by the Hon'ble Madras High Court in the case of K. Somasundaram and Bros. vs. CIT(1999) 238 ITR 939. ?"

ITA No.512/Mum/2016 (Assessee's appeal)

4. Assessee is a Limited Company engaged in the business of manufacturing of expanded Poly. Foam, Assy Floor Mats and Articles of Plastic. First issue in this appeal is with regards to disallowance of commission payment of Rs. 1,41,21,044/- paid by assessee to M/s Delite International. M/s. Delite International is a proprietary concern of Mr. Ashok Pandey, and he was also a Director in M/s. Shroff Textiles Ltd., assessee company. Thus, Mr. Ashok Pandey, proprietor of M/s. Delite International, is a person specified u/s. 40A(2)(b) of the Act. As far as payment of commission amounting to Rs.1,41,21,044/- is concerned, Assessing Officer asked the assessee company to explain the basis for making such commission payment, alongwith evidences regarding nature of services rendered, copies of invoices etc. According to Assessing Officer, assessee failed to provide justification/basis for making the impugned payment and supporting evidences during assessment proceedings. So,

same was disallowed and added to the total income of assessee.

4.1 Matter was carried before the First Appellate Authority, wherein assessee submitted a copy of Commission Agreement with M/s. Delite International inter alia assessee agreed to pay commission @ 5.25% on net sales turnover to M/s. Delite International on monthly basis at actual monthly billing of the assessee. The Commission Agreement specifies that the commission agent is to perform following jobs;

1. Product Awareness to the consumer,
2. Creating consumers Interest in a Product,
3. Providing information relating to product,
4. Liaisoning with O/E and Government Undertakings,
5. Sales Backup at the shop floor / plant level and
6. collection of payments & Sales Tax concessional forms.

According to CIT(A), assessee could not substantiate the claim with evidences to justify the payment to M/s. Delite International in respect of the entire sales effected by the assessee for which commission was paid. In absence of any proof, the entire sales of assessee were the result of efforts of M/s. Delite International and considering that all sales/marketing expenses were to be borne by assessee company and not by M/s. Delite International. CIT(A) held that disallowance of commission payment amounting to rs.1,41,21,044/- made by assessee company to M/s. Delite International deserves to be sustained and accordingly appeal of assessee was dismissed.

4.2 Before us, Id. Authorized Representative drew our attention to various clauses of agreement i.e. page nos. 16, 17 18 & 19 of paper book. According to which, as per clause 2(a) of the said agreement, compensation has been dealt inter alia commission was decided to be paid @ 5.25% on net sales turnover before sales tax plus service tax on monthly basis at actual monthly billing. Above said commission agent agreed as per clause (b), to execute/fulfill and discharge jobs agreed upon by him efficiently and to the full satisfaction of assessee company. Agreement also enumerates the rights and obligations of commission agent as well as rights and obligations of assessee company. Id. Authorized Representative drew our attention to page no.35 of the paper book inter alia details of commission paid to M/s. Delite International has been mentioned month wise details. Similarly attention was drawn to page no.36 of the paper book inter alia sales statement for accounting period of 01.04.2010 to 31.03.2011 has been detail having gross amount, net Vat etc. Id. Authorized Representative also brought to our knowledge the details of TDS on payment made to said M/s. Delite International to establish the fact that factual work has been done and same has been accounted for. Furthermore, Id. Authorized Representative drew our attention to the return of income as well as to substantiate the payment of the amount in question its accounting for purpose of income tax provision. The stand of assessee has been that the fact is that both assessee and M/s. Delite International are paying tax on higher side rate,

so this is a tax neutrality as laid down in the case of CIT vs. Indo Saudi Services (Travel) P.Ltd. (2009) 310 ITR 306 (Bom). In view of above, it was submitted that there is no colourable device in making such payments. According to ld. Authorized Representative, the provisions of Section 40A(2)(b) of the Act has been tried to invoke to disallow the amount in question but no comparable case has been tried to be quoted and ultimately, whole amount is disallowed, which is not in the true spirit of the provisions of Section 40A(2)(b) of the Act. On the other hand, ld. Departmental Representative relied on the order of authorities below and submitted that assessee was not able to substantiate its claim before the authorities below with regard to payment in question. For the same, assessee cannot be allowed such big deduction in absence of substantiating evidence. Ld. Departmental Representative also drew our attention to page no.57 of the paper book inter alia details of the invoices have not been given and submitted that all the payments were bogus. So, same has rightly been disallowed by authorities below. Accordingly, strongly requested order of CIT(A) be upheld on this point.

4.3 After going through rival submissions and material on record, we find that assessee has paid commission in question to M/s. Delite International wherein Ashok Pandey was a key person and he is also a Director in assessee's company. The professional competency of Ashok Pandey has not been disputed as he has been rendering services to

assessee since long. Assessee was having supplies to various companies and commission for the same has been paid earlier years as well. On the analysis of different clauses of agreement, we find that said M/s. Delite International has to render services of product awareness to the consumer, creating consumers interest in a product, providing information relating to product, liasioning with O/E and Government undertakings, sales backup at the shop floor/plant level and collection of payments and sales tax concessional forms. He has to perform the said job as per assignment. The said M/s. Delite International has selected the number of staffs required for completion of job. Commission Agent was supposed to decide the mode and manner of the work to be done by staffs. In case assessee company suffers any damage or loss or harm due to any acts of commission agent or omission of misrepresentation by the Commission Agent, it was bound to indemnify the same. The Commission Agent agreeing to rights and obligations of commission agent, he was responsible for loss to assessee company caused due to negligence/act of the staffs employed by him and shall compensate or reimburse the company adequately for such loss which shall be assessed and determined by the assessee company. The said Commission Agent were supposed to submit bills to the company on monthly basis. The Commission Agent shall not disclose to any one regarding the information, formulae of company adversely affecting the interest of the company. It is not in dispute that similar payment has been made in earlier year

as well. Assessee was also deducting TDS on the payment made to M/s. Delite International. Thus, M/s. Delite International was giving not only services of Commission Agent but composite services to the assessee. Revenue Officers had tried to invoke the provisions of Section 40A(2)(b) of the Act. Comparative cases have to be brought on record to justify the disallowance in question, but in this case, having discussed the provisions of Section 40A(2)(b) of the Act, full amount has been disallowed. Hon'ble Bombay High Court in case of CIT vs. Indo Saudi Services (Travel) P. Ltd. (supra) had held that in case of tax neutrality, disallowance in question are not justified because both payee and recipient are paying tax on highest slab. Assessing Officer has not brought on record to establish colourable device in such payment. There is nothing on record that payment is against public policy. There is also nothing on record that such payment have routed back to assessee in any manner. Lastly, assessee has paid the amount in question after deducting TDS and recipient has paid taxes on same. Taking all facts and circumstances of the case into consideration, we are of the view that payment in question @5.25% looking to the services rendered by said party is justified and same is allowed.

5. Next issue is with regard to payment of transport charges made by assessee company to M/s. Delite International. Assessing Officer asked the assessee company to furnish the details. According to Assessing Officer,

assessee did not discharge the onus to substantiate the claim with supporting evidences. So, it was disallowed.

5.1 In appeal, assessee has filed copies of bills of M/s. Delite International. There are a total of 12 bills, one for each month of F.Y. 2010-11. CIT(A) did not believe the same because they were of similar nature. According to Revenue authorities, many details like challan No., quantity, rate etc. were not filled up. Further, the number of trips between place of origin and destination was not stated. Moreover, details of octroi, toll tax etc. were not stated. In absence of relevant details, according to CIT(A), assessee failed to establish that trips for which transportation charges had been claimed. According to CIT(A), assessee could not establish that amounts were actually made and that these trips were wholly and exclusively for the business of assessee company. After taking support of provisions of Section 40A(2)(b) of the Act, Revenue authorities ultimately disallowed the expenses in question.

5.2 Before us, the stand of assessee has been that similar expenses were claimed in earlier year, no disallowance was made. Payments were made after deduction of TDS. Both payee and recipient are responsible for paying tax on higher slab. So, it is tax neutrality as laid down in case of CIT vs. Indo Saudi Services (Travel) P.Ltd. (supra). Assessee has deducted TDS and taken consequential steps in this regard. Assessee drew our attention to the agreement placed on page nos. 53 to 56 of paper book. According to which, payee was

having sufficient number of transport vehicle and it has actually transported the goods manufactured by assessee to different destinations, so amount in question were requested to be allowed. On other hand, ld. Departmental Representative strongly supported the order of CIT(A) and submitted that concept of tax neutrality would not help assessee nor TDS will help to substantiate the nature of service provided by recipient transport charges from assessee's office will not help the agreement. Assessee has not substantiated its claim with regard to the payment in question. So, Revenue authorities were justified in disallowing the claim of assessee.

5.3 After going through rival submissions and material on record, we find that similar service has been rendered by M/s. Delite International in earlier years and no adverse view has been taken in this regard. The TDS had been deducted on the amount paid by assessee to the recipient. The payment has been made to M/s. Delite International as per agreement dated 02.02.2009 between assessee and M/s. Delite International. According to said agreement, M/s. Delite International was engaged as transport contractor for a period of 2 years for delivering the products manufactured by assessee from its factory situated at Plot No.J-78, MIDC Industrial Area, Boisar, Disstt. Thane to its vendors/godowns. Transporter was supposed to supply vehicle to assessee company on regular basis. The transporter was supposed to provide registered commercial vehicles of

various sizes ranging small size to big size. In the event of non availability of its own vehicle for any mechanical failure/breakdown of vehicle the transporter was supposed to arrange another alternative vehicle at its own cost and risk. Non compliance may attract penalty of Rs.1,500/- per instance. According to agreement, transporter supposed to assign the job of driving of vehicles only to experienced licensed drivers etc. It was also expressed understanding between parties that the party of second part will be solely responsible for the cost of fuels, lubricants, repairs, maintenance, RTO taxes, other Government taxes and insurance, payments of wages to Drivers & Cleaners etc. Payments were to be made on the basis of usage and final bill as submitted by transporter. It is not in disputed that assessee was manufacturing goods and same were transported to various places, for them transports were necessary. So, assessee has preferred to transport their goods to different destinations through M/s. Delite International. Revenue authorities had tried to invoke the provisions of Section 40A(2)(b) of the Act. They have not brought on record any comparative instances to negate the assessee's claim of assessee and ultimately disallowed the whole expenses, which is not true spirit of the Section 40A(2)(b) of the Act. Revenue authorities have not disputed the fact that possession of transport vehicles was M/s. Delite International and transportation by assessee. They have not brought anything on record that goods have been transported by other than vehicles of the M/s. Delite

International. It is a tax neutrality as held by Hon'ble Bombay High Court in case of CIT vs. Indo Saudi Services (Travel) P. Ltd. (supra) as both the parties are paying tax on highest rate. No colourable device has been suggested by Assessing Officer with regards to these transports' payments. similar type payments have been made in assessment order for earlier year has not been disturbed in any manner. We are of the view that assessee is supposed to maintain its affair in its own way and Revenue authorities had brought nothing on record to suggest that such payments were not for business purpose. So, taking all facts and circumstances of the case into consideration, Assessing Officer is directed to allow these expenses in question.

6. Next issue is with regards to disallowance of Rs.14,83,542/- paid for foreign tour. Assessing Officer has discussed this addition in para 7 of the assessment order inter alia observed that this expenditure was in addition to a separate of Rs.13,14,169/- under the head "traveling expenses". Assessing Officer observed that sales and purchases of assessee were with parties located in India. Further, assessee did not furnish any details regarding the purpose of foreign travel and evidences to prove that expenditure has been incurred for the purpose of business. So, same was disallowed by Assessing Officer and confirmed by CIT(A).

6.1 In this regard, stand of assessee has been that assessee has incurred expenses as mentioned on foreign travel wholly

for the business purposes only. The details of the said expenses have been submitted during course of assessment proceedings. Foreign travel carried out with respect to business development along with research gauging the foreign market with respect to newly developed methodology and technical novice for the manufacturing of the products which are produced by assessee. Thus, expenses incurred for foreign travel could not be marked against the sales and purchases as suggested by CIT(A), but foreign travel expenses relate also to the technical study along with market development study for future prospects which would be highlighted subsequently on development and further study on the same. Therefore, assessee requested to allow the same. On the other hand, Id. Departmental Representative supported the orders of authorities below on the issue and submitted that purchases were made on domestic market, there was no purpose for visiting the abroad for the same.

6.2 After going through rival submissions and material on record, we find that assessee is engaged in the business of manufacturing of expanded Poly. Foam, Assy Floor Mats and Articles of Plastic. Ld. Authorized Representative submitted before us that they wanted to purchase certain machinery from abroad but after visiting above places, assessee management finally decided to purchase the same from domestic market. The management skills and latest technical knowhow acquired by assessee by incurring expenses for foreign travel and benefitted assessee in

running its business. Assessee might have reached to its business decision after making detail survey of product and technique. Even if after above foreign travel decision is taken for making purchase from domestic market it cannot be said that foreign travel was not for assessee's business. It is business decision of assessee which should not be disturbed by Revenue authorities without bringing out anything otherwise on the record. Revenue authorities failed to bring any material on record to establish that it was a pleasure trip as same were undertaken by the said persons individually. Assessee is not supposed to disclose all strategic decision to the Revenue authorities including final conclusion of purchasing certain machinery and running the business in more efficient technical and administrative manner. As stated above, Revenue authorities have not brought anything on record to suggest that it is a devise to avoid the tax. Taking all facts and circumstances of the case in to consideration, Assessing Officer is directed to allow the travel expenses in question.

7. Next issue is with regard to different expenses as detailed in ground no.4:

- i. Disallowance of depreciation of Rs. 27,45,524/- claimed on addition to fixed assets,
- ii. Disallowance of commission of Rs. 9,00,000/- paid to employee Mrs. Vijaya Bharadwaj,
- iii. Disallowance of Rs. 1,00,000/- paid to M/s Amby Valley Ltd. for booking accommodation.

CIT(A) dismissed these issues by observing that same were not pressed.

7.1 Ld. Authorized Representative before us submitted in affidavit inter alia deposed that CIT(A) erred in not adjudicating the aforesaid ground. According to affidavit deposed by Ashok Pandey, assessee has never authorized any person to not press the legal and factual grounds in question. These are legal claims which can be demonstrated by assessee on merit. Assessee has deposed the fact that assessee has not authorizes one for not pressing these grounds and was never done on behalf of them. Same should be decided on merit. In the interest of justice and in view of deposition by deponent, we restore this issue to Assessing Officer with direction to decide the same as per fact and law after providing due opportunity of hearing to the assessee. As a result, these issues are allowed for statistical purposes. Since we are restoring the issue on preliminary ground, so we are refraining to comment on merit of issue at hand.

ITA No.365/Mum/2016 (Revenue's appeal)

8. Assessing Officer has disallowed the interest expenses of Rs.68,09,927/- (Rs.46,07,791/- paid to M/s. Delite International + Rs.22,02,136/- paid to Technical Works Industrial Link Ltd.). Assessing Officer stated that there were no loan outstanding in respect of these parties and further that the assessee has not furnished any supporting

evidences regarding the interest credited to these two parties, so same was disallowed.

8.1 Matter was carried before the First Appellate Authority, wherein various contentions were raised on behalf assessee and having considered the same, CIT(A) has allowed the claim of assessee by observing that interest paid to M/s. Delite International was towards bill discounting facility from M/s. Delite International. He further observed that there was nothing on record to suggest that this interest payment was partly and wholly for purposes other than the business of assessee. Further, interest paid to M/s. Technical Works Industrial Link Ltd. was a reimbursement the interest incurred by M/s. Technical Works Industrial Link Ltd. on overdraft facility in bank, which was availed against fixed deposits of M/s. Technical Works Industrial Link Ltd. for the purposes of business of assessee. As stated above, CIT(A) found nothing on record to show that this payment was partly or wholly for purposes other than the business purpose. The submissions of assessee were sent to Assessing Officer. However, Assessing Officer has not brought any fact to the knowledge of CIT(A) to suggest that interest payment made to M/s. Delite International of Rs.46,07,791/- or to M/s. Technical Works Industrial Link Ltd. of Rs.21,04,071/- was partly or wholly attributable to purposes other than business of assessee. In these facts and circumstances, CIT(A) was justified to held that these expenses have been incurred for business purposes of

assessee and this reasoned finding of CIT(A) needs not interference from our side. We uphold the same.

9. As a result, appeal filed by assessee is partly allowed and the appeal filed by Revenue is dismissed.

Pronounced in the open Court on this the 28th day of June, 2016.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SHAILENDRA KUMAR YADAV)
JUDICIAL MEMBER

Mumbai: Dated 28/06/2016

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार,
आयकर अपीलीय अधिकरण, मुंबई ।