

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "A" KOLKATA*

Before **Shri Waseem Ahmed, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.1306/Kol/2013
Assessment Years:2009-10

DCIT, Circle-8, Aayakar Bhawan, 5 th Floor, P-7, Chwringhee square, Kolkata-700 069	बनाम / V/s.	M/s Rawatsons Engineers Pvt. Ltd., 6, L. Road, Belgachi, Howrah-711 108 [PAN No. AABCR 2957 D]
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Pradip Mondal, JCIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Subash Agarwal, Advocate
सुनवाई की तारीख/Date of Hearing	09-08-2016
घोषणा की तारीख/Date of Pronouncement	-09-2016

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals)-VIII, Kolkata dated 22.02.2013. Assessment was framed by JCIT(OSD), Circle-8, Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 10.12.2011 for assessment year 2009-10.

Sole ground raised by the Revenue per its appeal as under:-

"1. That on the facts and circumstances of the case and in aw, the Ld. CIT(A) erred in deleting Assessing Officer's disallowance on account of Sundry balance written off, donation and subscription, liquidated damages and adding interest income, contract receipts totaling to Rs.1,03,47,224/-.

2. That the appellant reserves the right to amend, alter or add to any ground of appeal before or at the time of hearing of the appeal.”

Shri Subash Agarwal, Ld. Authorized Representative appeared on behalf of assessee and Shri Pradip Mondal, Ld. Departmental Representative appeared on behalf of Revenue.

2. First issue raised by the Revenue in Ground No.1 is as regards that Ld. CIT(A) allowed the expenses and deleting the observation of AO on account of sundry balance written off, donation and subscription, liquidated damages and adding interest income, contract receipts.

3. Brief facts of the case are that assessee is a Private Limited Company and engaged in the business of supplying galvanized steel channel with track fittings and steel structural parts to railways as well as also providing the services for erection and fixation of these parts at the sites. The assessee filed its return of income for the assessment year 2009-10 showing a total income of Rs.1,93,55,905/- as on 29.09.2009. However, the return was selected for scrutiny under CASS and notices under section 143(2) r.w.s 142(1) of the Act were complied with. At the outset the AR of the assessee submitted that a fire broke out in the Head Office premises and all the documents were destroyed. Hence the assessee will not be able to produce any documentary evidence.

During the course of assessment proceedings, assessee was asked to provide the details of sundry debtors written off, donation and subscription and liquidated damages but nothing was submitted before AO.

It was observed by the AO that even no records are available due to the fire, then also contractual agreement copies can be easily made available from the other party of the contract. The assessee has not put any effort to make those documents available and not given any details of the party to verify the transactions. So the AO assumed that the claim for damage for liquidated damages amounting to Rs.2,43,054 , Sundry balances written off Rs. 13,612 and donation and subscription Rs. 75,298/- has not been incurred wholly and exclusively for the business and disallowed the same.

Similarly, assessee has shown interest income from bank amounting to Rs.40,63,653/- while the bank has credited interest amounting to Rs.55,10,258/-. The ld. AR submitted that the difference in amount may be due to following a different method by bank and assessee for calculating the interest. Assessee was unable to produce any documentary evidence to substantiate that this income is not pertaining to the AY 2009-10. AO has not accepted the explanation of AR and added back the difference in amount i.e. Rs.14,46,605/- as undisclosed income of the assessee.

During the year under consideration the assessee has received payments from various parties after the deduction of TDS. Assessee is engaged in providing material as well as providing services to the Railways all over the India. However, the Railways Division has deducted the TDS on consolidated bill which includes material as well as labour charges. Assessee has shown the material part under the head sales and labour part under the head contractual receipts in its books of accounts. Because of the above explained presentation of books of accounts the assessee is showing total sales and contractual receipts amounting to Rs. 36.29 crores in its P&L account and Rs. 31.28 crores is reflecting in the ITS statement. The Form 26AS was obtained from the assessee for the verification. It was observed by the AO that there were differences in all the three documents i.e. Form 26AS, ITS Statement and Schedule of TDS. The assessee was unable to provide any document or reconciliation to the AO. Hence the AO has added back the amount of difference emerged out of the comparison of three documents amounting to Rs. 1,03,47,224/- as undisclosed income of the assessee.

4. Aggrieved assessee preferred an appeal before CIT(A) whereas assessee submitted as under :

Disallowance of sundry balance written off:

AR submitted that the total turnover of the assessee for the relevant assessment year is 36.28 crores and total receivables are 4.65 crores. The amount written off i.e. Rs.13612.00 is a very small amount pertaining to the cumulative figures of small balances and which are non recoverable. In the immediately preceding year the assessee has written off debtors amounting to Rs. 65267/- and it is accepted by the AO. The AO should have followed the same on the principle of materiality.

Disallowance of Donation and subscription:

Assessee has paid donation to “Calcutta Mahanagar Trust & Others” amounting to Rs. 31,200.00 but AO has not verified it. Balance amount Rs. 44,098.00 has been paid as subscription for various trade bodies and Business Chambers. In the earlier years also assessee has claimed similar expenses amounting to Rs. 69,643.00 and it was accepted by the AO.

Disallowance of liquidated damages:

The assessee major customer is Railways of India. While making the payment to the contractor the Railways deduct some amount on account of delay in supply, quality, workmanship etc. This deduction is a negligible percentage i.e. 0.7% of the total sale in the ordinary course of business.

Addition of interest income

The AR submitted that calculation of sum credited with the form 26AS cannot be relied as banks usually makes mistake in the amount on which TDS to be deducted. Moreover the Bank does not calculate interest as on 31st March but it is based on the date of compounding of interest. Different FD's have different compounding dates. So the difference in amount is obvious because the assessee follows the mercantile accounting system.

Addition on account of contract receipt

AR submits that the difference in contract receipt is arising due to the filing of incorrect TDS returns by the payee. AO has ignored the return filed by the assessee. To substantiate its claim AR has submitted the copy of TDS certificates which shows the same amount as entered in its books of accounts.

In view of above the Id. CIT(A) has deleted the addition made by the AO for sundry balance written off for Rs. 13612.00/ donation & subscription 75,298.00 and liquidated damages for Rs. 2,43,045.00 by observing as under :

“I have carefully considered the submission put forth on behalf of the appellant with regard to the above items of additions in the back drop of destruction of records in lire which was an unavoidable and unusual circumstance and such facts have also been acknowledged by the AO in his assessment order. The appellant has cited on the issue very land mark judgments or the Honble Delhi High Court in the matter of Addl. Commissioner of Income Tax Vs. Jay Engineering Works Ltd [113 ITR 389] and in the matter of Modi Carpets Ltd Vs. Income Tax Officer I (J 993) 46 TTJ Del 155]. The said

judgments deal with the mode and manner of assessment in case of destruction of records and 'Material evidence' in case of fire.

I find that the Hon'ble High Court in the case of Addl. Commissioner of Income Tax Vs. Jay Engineering Works Ltd has held that - "*whether the reports of the auditors could be said to be "material" on which reliance could be placed by the income-tax authorities. Unlike the proof required of such reports as also of the account books under the Indian Evidence Act. It is quite competent for the income-tax authorities not only to accept the auditors' report, but also to draw the proper Inference from the same, The income-tax authorities could, therefore, come to the conclusion that since the auditors were required by the statute to find out if the deductions claimed by the assessee in their balance-sheets and profit and loss accounts were supported by the relevant entries in their account books, the auditors must have done so and must have found that the account books supported the claims for deductions, when the deductions were disallowed by the Income-tax Officer on the ground that detailed information regarding them was not available, justice was not done to the assessee, It was not possible for the assessee to produce the original account books, which were destroyed in fire. There was, however, other material mainly consisting of the auditors' report from which it could be inferred that the deductions were properly supported by the relevant entries in the account books. In a sense it may be a question of law as to what the meaning of "material" is and whether the auditors' reports were material. But the question of law is well settled and is not capable of being disputed.*"

Similar observation was also made by the Honble court in Modi Carpets Ltd. Vs. . Income Tax Officer where the reliance was also made on the judgment of Addl. Commissioner of Income Tax vs. Jay Engineering Works Ltd (supra).

Considering the submissions of the appellant and the judgments cited above, I find that in case of addition of Rs. 13612/- being the writing off or Sundry balances and debit or Liquidated Damages Rs. 243045/-, the details thereof are definitely not in possession of the appellant and the Assessing Officer ought to have relied on supplementary evidence i.e. Auditors Report and Audited Accounts in this case. Similarly, in case of Donation and Subscription Rs. 75298/-, the amount of Donation Rs.31200/- to "Calcutta Mahanagar Trust & Others", 145, Sarat Bose Road, .Kolkata-700026 having PAN DDDPP6061 P" is clearly stated in the Schedule 80G of Return of Income. As stated in cases above, the detail of balance of amount Rs. 44098/- claimed by the appellant as subscription to various trade chambers and Bodies for augmenting the business of the appellant, is not available the reliance should have been placed on the Audited Accounts and corresponding claims in earlier year. I also fully agree with the argument of the appellant that "Concept of Materiality" should be considered in such cases vis-a-vis volume of business. In view of the same I hereby direct the assessing officer to delete the addition of Rs. 13612/- made on account of Sundry Balance W/off, Rs. 243045/- out of Liquidated Damages and Rs. 44098/- out of total amount of Donation & Subscription and also direct the Assessing Officer to allow deduction on Rs. 31200/- as available u/s 80G of the Act after due verification from the details furnished in the return in respect of the Donee."

Similarly the Id. CIT(A) deleted the addition made by the AO for bank interest income for Rs. 14,46,605.00 and contractual receipt for Rs. 1,03,47,224.00 by observing as under :

“I have carefully considered the observation of Assessing Officer in the Assessment Order and also the submissions of the appellant as well as the material available on record and/or placed with the said submission as Annexures. According to me .the judgment of the Hon'ble Delhi High Court(supra) in the instant case is Very important in this regard. I find that the Assessing Officer wholly and solely placed reliance on the figures available in Form 26AS but the figures reflected in the said Form is not accurate as the instances pointed out on behalf of the appellant as above. I also find that the AO did not tally the sum total of amount received by the appellant as per the said Form 26AS and the amount of income as disclosed in the Audited Profit & Loss Account and had he done so, I am of the view that the cause of additions would not have arisen. Perusal of the documents submitted by the appellant fully supports this view. In respect of addition of Rs.14,46,605/- made by the AO on account of understatement of interest income it is seen from perusal of Annexure “A” furnished by the appellant I find there is possibility which cannot be ruled out that the amounts shown to have been Paid/Credited may include the Principal Amount of FDs and/or part of the said amounts could have been accounted for by the appellant in earlier year according to the mercantile system accounting. It is also noted that as per Form 26AS, the rate of deduction works out to 15.20% (i.e. Rs. 845779 of Rs.555S795) for the whole year which is less than the required rate of .20.60% u/s 1194A. In this circumstances, the addition made by the AO on account of understatement of interest income from bank deposits on the basis of data available from Form n.26AS considered to be unjustified instead the TDS certificates issued by the banks should have been considered. The AO is .therefore , directed to recalculate the interest income earned on fixed deposits considering the TDS certificates issued by the bank and allow delete/modify the addition accordingly under this head.

As regards the addition of Rs. 1,03,47,224/- made under different sub- heads on the basis of data available from Form No 26AS, I am of the opinion that the Assessing officer erred in fact as well as in law by making the said addition of Rs 1,03,47,224/- comprising of various above amounts solely on the basis of the data available in Form No. 26AS which are , often, suffers from imperfection, errors /omissions and matching principle as stated above.

In the light of the above discussion and observation, considering the submission of the appellant and after perusing the entire facts of the case and respectfully following the judgment of the Hon'ble Delhi High Court (supra) relied upon I hereby direct the Assessing Officer to delete the addition of Rs. 1,03,47,224/- made under different subheads as mentioned above. Thus. these grounds of appeal of the appellant are partly allowed.”

5. Aggrieved by the order of the ld. CIT(A), Revenue is in 2nd appeal before us. The ld. DR vehemently supported the order of the AO whereas the ld. AR filed a paper book comprising of pages from 1 to 129 and submitted that the documents were not submitted as a result of fire in the office building of the assessee. In support of his claim the ld. AR drew our attention on pages 81/82 of the paper where the new paper cutting was placed. As such there was no defect in the audited financial statement of the assessee. The amounts written off are of small in value and similar expenses the

assessee has claimed in the earlier years as well and no disallowance was warranted on this account. The Id. AR drew our attention on the pages of 92 to 99 where the detail working of the TDS on the interest income was placed. Similarly the manual TDS certificate from the contractor were placed on pages 99, 105-114, 117-118 and 120-121 of the paper book. The Id. AR relied in the order of the Id. CIT(A).

6. We have heard both the rival parties and perused the material available on record. At the outset we find that the assessee failed to submit the supporting documents for the various balance written off. Accordingly the AO has made the addition. In our considered view the assessee was prevented from the reasonable cause for not submitting the supporting documents. In such circumstances the AO was to cross verify the same from the external sources such as audited accounts which he has failed to do so. In such situation courts has decided the issue in favor of assessee. In this connection we rely in the judgment of Hon'ble Delhi High Court in the case of ACIT Vs. Jay Engineering Works Ltd. 113 ITR 389. The relevant extract is reproduced below.

"In the present case, the relevant books of account in which detailed information as to the expenses which were claimed as deductions for the asst. yrs. 1962-63 and 1963-64 are destroyed by fire in November, 1962. Under the Indian Evidence Act secondary evidence of the contents of these account books would have to be adduced if they were to be used to prove any fact. The external auditors of the assessee-companies had, however, made their annual reports under s. 227(2) of the Companies Act, 1956, to the members of the company on the accounts examined by them and on the balance-sheets and profit and loss accounts for these two years. These reports do not doubt the correctness of the expenses, deductions of which were claimed by the assessees. Under s. 227(3)(b) and (c) the auditor's report had to state whether in their opinion proper books of account as required by law have been kept by the company and whether the company's balance-sheets and profit and loss accounts were in agreement with the books of account and returns. Under s. 209 of the Companies Act, the assessee-company was required to maintain proper books of account with reference to the receipts and expenditure taking place in the business of the assessees. The account books maintained by them must be such as to give a true and fair view of the state of affairs of the companies.

The question arises, therefore, whether the reports of the auditors could be said to be "material" on which reliance could be placed by the IT authorities. Unlike the proof required of such reports as also of the account books under the Indian Evidence Act, it is quite competent for the IT authorities not only to accept the auditors' report, but also to draw the proper inference from the same. The IT authorities could, therefore, come to the conclusion that since the auditors were required by the statute to find out if the deductions claimed by the assessee in

their balance-sheets and profit and loss accounts were supported by the relevant entries in their account books, the auditors must have done so and must have found that the account books supported the claims for deductions, when the deductions were disallowed, by the ITO on the ground that detailed information regarding them was not available, justice was not done to the assessee. It was not possible for the assessee to produce the original account books, which were destroyed in fire. There was, however, other material mainly consisting of the auditors' reports from which it could be inferred that the deductions were properly supported by the relevant entries in the account books. In a sense it may be a question of law as to what the meaning of "material" is and whether the auditors' reports were material. But the question of law is well settled and is not capable of being disputed and does not, therefore, call for reference."

Similarly, we also find that there was no discrepancy in the books of accounts of the assessee with regard to the interest income and contractual receipts. As the assessee has justified that the bank and the contractors have deducted the TDS at different rate. Therefore the difference is arising in the income reported by the assessee and TDS deducted by the bank and the contractors. The assessee has submitted the TDS manual TDS certificates from the contractors and the Id. DR failed to bring anything contrary to the findings of the Id. CIT(A). In view of above discussion we do not find any infirmity in the order of Id. CIT(A). Hence this ground of appeal of the Revenue is dismissed.

7. Next ground of Revenue's appeal is general in nature and does not require any separate adjudication.

In the result, Revenue's appeal stands dismissed.

Order pronounced in open court on 09/09/2016

Sd/-
(S.S.Viswanethra Ravi)
Judicial Member

Sd/-
(Waseem Ahmed)
Accountant Member

*Dkp

दिनांक:- 09 /09/2016 कोलकाता / Kolkata

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

1. अपीलार्थी/Appellant-DCIT, Circle-8, Aayakar Bhawan, 5th Fl. P-7, Chowringhee Square, Kolkata-700 069
2. प्रत्यर्थी/Respondent-M/s Rawatsons Engineers Pvt. Ltd., 6, L.Rd., Belgachia, Howrah-711 108
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता