

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S.SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1675/Mds/2016
निर्धारण वर्ष /Assessment Year: 2010-11

The Dy. Commissioner of Income
Tax, Central Circle-2(1),
Investigation Wing, 46,
Nungambakkam High Road,
Chennai-600 035.

Vs. M/s.Binny Ltd.,
No.1, Cooks Road,
Permbur, Ch-12.

[PAN: AAACB 2529 G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Mr.M.M.Bhusari, CIT
प्रत्यर्थी की ओर से /Respondent by	:	Mr.B.Ramakrishnan, CA
सुनवाई की तारीख/Date of Hearing	:	14.03.2017
घोषणा की तारीख /Date of Pronouncement	:	26.05.2017

आदेश / O R D E R

PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER:

This is an appeal filed by the Revenue against the Order dated 14.03.2016 of Commissioner of Income Tax (Appeals)-18, Chennai, in ITA No.505/15-16 for the AY 2010-11.

2.0 The Revenue has filed an appeal raising five grounds originally along with the appeal memo. Subsequently revised grounds of appeal were filed. After hearing both the parties the revised grounds of the appeal filed by the Revenue is accepted and decided as under.

3.0 Ground Nos.1 & 5 are general in nature which do not require specific adjudication.

4.0 Ground Nos.2 to 2.4 are related to the addition of Rs.14,64,58,265/- relating to the debit balances written off in respect of Interest and other expenses made by the promoter group which was written off.

During the assessment proceedings, the Assessing Officer (in short 'AO') found from the notes on accounts that the assessee has written off Miscellaneous and Profit & Loss A/c debit balances amounting to Rs.247.86 Cr. and adjusted against the revaluation reserve. The AO called for explanation of the assessee and on receipt of assessee's reply reduced the amount of Rs.3.17 Cr. related to the TDS and the balance amount of Rs.244,68,79,341/- was added to the returned income. The amount of Rs.14,64,58,265/- relating to the debit balances written off relating to Interest and other expenses made by the promoter group which was written off, was also included in total sum of Rs.244.68 crores.

5.0 Aggrieved by the order of the AO, the assessee went on appeal before the Ld.CIT(A) and argued that the amount of Rs.244.68 Cr. was never debited to the Profit & Loss A/c and never claimed as expenditure in

the hands of the assessee and hence the same cannot be treated as income u/s.41(1) of Income tax act. The Ld.CIT(A) called for the Remand Report and the AO submitted remand report accepting the contention of the assessee for ` 230.04 Crores but in respect of debit balances amounting to Rs.14.64 crores representing interest expenses met by Promoter Group, the AO has not accepted stating that the assessee did not furnish the details.

5.1 The Ld.CIT(A) placing reliance on the Remand Report deleted the entire addition stating that the AO has accepted the claim of the assessee in toto. Hence, the Department is on appeal before us challenging the deletion of addition of Rs.14,64,58,265/- relating to interest and expenses met by Promoter Group, which was not accepted by the AO in Remand Report.

5.2 Appearing for the Revenue, the Ld.DR argued that the Ld.CIT(A) called for the Remand Report and AO has submitted the Remand Report accepting the claim of the assessee, except for Rs.14.64 Cr. relating to debit balances of interest and expenses relating to Promoter Group. The AO in his Remand Report clearly stated that the assessee has not furnished the details. Therefore, the Ld.CIT(A) would have confirmed the addition instead of deleting the same. On the other hand, the Ld.AR argued that the Ld.CIT(A) has deleted the addition placing reliance on the Remand Report. However, he did not object for remitting the matter

back to the file of the AO for verification of the details in respect of interest and expenses written off amounting to Rs.14.64 Cr.

6.0 We heard the rival submissions and perused the material placed before us.

The AO in the Remand Report has clearly stated that the assessee has not furnished the relevant details in respect of interest and expenses made by the Promoter Group. The Ld.CIT(A) has neither called for the details nor examined the genuineness and correctness of the expenses and applicability of the provisions relating to Sec.41(i) of Income tax Act. This issue requires further verification to decide the allowability. Both the Ld.DR and the Ld.AR failed to furnish the information with regard to partywise breakup of liabilities, whether the expenses debited to profit & loss account or not? Whether the expenses were paid subsequently and the nature of liability, etc. Both the parties agreed to remit the matter back to the file of the AO. Therefore, we remit the matter back to the file of the AO, with directions call for the necessary details and examine whether the provisions of Sec.41(1) are applicable or not and decide the disallowance afresh on merits. Needless to say that proper opportunity should be given to the assessee.

7.0 Ground No.3 & 3.1 are related to the disallowance of cooperative expenses to the tune of Rs.1,13,47,899/- and travel expenses written off amounting to Rs.35,63,867/-.

During the assessment proceedings, the AO found that the following amounts were written off in the Profit & Loss A/c. The cooperative society write off from corporate office of Rs.1,13,47,899/-, travel write off of Rs.35,63,867/-. The AO disallowed the amount of Rs.1,49,11,766/- holding that the expenses are capital in nature and has not been admitted as income in any of the previous year. The assessee went on appeal before the Ld.CIT(A) and the Ld.CIT(A) allowed the deduction accepting the explanation of the assessee stating that the amount paid to Cooperative Credit Society as per the Courts order and expenditure in relation to the travel expenses was offered as income in the earlier years.

8.0 Aggrieved by the order of the Ld.CIT(A), the Revenue is on appeal before this Tribunal.

During the appeal hearing, the Ld.DR argued that the Ld.CIT(A) has not called for the details and examined whether the amount written off was actually allowable expenditure or not. The assessee has neither furnished the details regarding the nature of payment made to the Cooperative Employees Credit Society nor the nature of travel expenses which were said to be offered earlier as income. Therefore, the Ld.DR argued that the issue should be remitted back to the file of the AO for verification of the nature of expenses and allowability as bad debts or otherwise. On the other hand, the Ld.AR supported the orders of the lower authorities.

9.0 We heard the rival submissions and perused the material placed before us.

Neither Ld.CIT(A) not the AO has given a finding whether the expenditure debited as bad debts was examined. From the order of the Ld.CIT(A) as well as the AO, the facts could not be ascertained. Though, the Ld.CIT(A) stated that the amount was paid to Cooperative Employees Credit Society as per the Court Order, the reason for payment, the nature of the expenditure, was not furnished. Genuineness and nature o of the payment required to be verified from the Court's order. The contents of the Court order has not been discussed in the Assessment Order or in the Ld.CIT(A)'s Order. Similarly, in the case of travel expenses though assessee stated that the amount was offered as income in the earlier years, he has not furnished the details of earlier years in which it was offered as income, the names and persons from whom the travel expenses recovered and reasons for write off etc., were not furnished. All the facts are requires verification at the end of the AO. Therefore, we remit the matter back to the file of the AO to call for the details and decide the issue a fresh on merits. Accordingly, we set-aside the orders of the lower authorities and remit the matter back to the file of the AO for de novo consideration. Ground No.3 is allowed for statistical purposes.

10.0 Ground No.4 is related to the disallowance u/s.40(a)(i) of the Income Tax Act.

During the assessment proceedings, the AO found that the assessee has debited expenses relating to the car, tractor, transport charges legal

expenses consultant fee, miscellaneous, etc., aggregating to Rs.1,22,77,439/- u/s.40(a)(i) of Income Tax Act for non deduction of tax at source.

11.0 The assessee went on appeal before the Ld.CIT(A) and the Ld.CIT(A) allowed the assessee's appeal placing reliance on the decision of the Hon'ble ITAT Special Bench, Visakhapatnam in the case of Marilyn Shipping and Transport [16 ITR (Trib) 1] and the decision of this this Tribunal in the case of ITAT No.985/Mds/2012 ITO v. M/s.Theekathir Press.

12.0 We heard both the parties from the orders of the lower authorities, the facts are not ascertainable, no details are placed regarding the name of payees, the amount paid date of payment whether TDS is applicable or not on the payment etc., are not furnished by the AO as well as the Ld.CIT(A). Therefore, the facts regarding the payment and the applicability of the provisions of Sec.40(a)(i) required further verification. Now the issue of paid/payable in relation to the addition u/s 40(a)(ia) is settled in favour of the Department by Hon'ble Apex court in Palam Gas v. CIT. Both the parties have agreed for remitting the matter back to the file of the AO for verification of the facts. Accordingly, the issue is remitted the matter back to the file of the AO to verify the facts and reconsider the issue afresh on merits.

13. The appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the Open Court on 26th May, 2017, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S.SUNDER SINGH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 26th May, 2017.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF