

आयकर अपीलीय अधिकरण "G" न्यायपीठ मुंबई में।

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.4036/Mum/2017

(निर्धारण वर्ष / Assessment Year : 2013-14)

ITO 17(3)(4) Aayakar Bhavan, M.K Road, R.No. 123, 1 st Floor, Mumbai-400020	बनाम/ v.	Standard Shipping Agency, 13, 2 nd floor, Anand Bhavan Building, 290, Shahid Bhagat Singh Road, Fort, Mumbai- 400001.
स्थायी लेखा सं./PAN:AALFS7224H		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:		Shri. Chaudhary Arun Kumar Singh
Assessee by :		Shri. R.B. Popat

सुनवाई की तारीख /**Date of Hearing** : 13.11.2018

घोषणा की तारीख /**Date of Pronouncement** : 08.02.2019

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member:

This appeal, filed by Revenue, being ITA No. 4036/Mum/2017, is directed against appellate order dated 14.03.2017 passed by learned Commissioner of Income Tax (Appeals)-28, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2013-14, the appellate proceedings had arisen before learned CIT(A) from assessment order dated 29.03.2016 passed by learned Assessing Officer (hereinafter called as "the AO") u/s 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2013-14.

2. The grounds of appeal raised by Revenue in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") reads as under:-

1) *"On the facts and circumstances of the case and in law, the learned CIT(A) has erred in deleting the adhoc disallowance of Rs.37,70,055/- being 50% of the cash expenses of Rs.75,40,109/-, relying on the assessee's assessment order for A.Y.2014-15, ignoring the crucial fact that the assessee had inspite of numerous opportunities provided during the course of assessment proceedings in A.Y.2013-14, failed to produce basic details like bill, vouchers pertaining to the expenses debited, due to which the assessing officer had made a disallowance of 50% of the said expenses."*

2) *"On the facts and circumstance of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance of 5% of reimbursement expenses of Rs.14,37,98,850/- amounting to Rs.71,89,942/- without appreciating the crucial fact that the disallowance was made on account of on-submission of the requisite details by the assessee, hence the same were not fully verifiable."*

3) *"The appellant prays that the order of the A.O. should be restored and order of the CIT(A) should be set aside."*

4) *"The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*

3. The brief facts of the case are that the assessee is a firm and is engaged in the business as clearing , forwarding and shipping agent. The AO observed from the Profit and Loss account that the assessee has claimed expenses of Rs. 75,40,109/- as against the net agency commission of Rs. 1,71,50,290/- earned by it, as detailed hereunder:-

a)	Custom Examination Expenses	Rs. 2,54,122/-
b)	Dock Expenses	- Rs. 5,29,228/-
c)	Documentation Charges	Rs. 15,24,148/-
d)	Incidental Charges	Rs. 2,92,165/-
e)	Sundry Expenses	Rs. 4,38,165/-
f)	Container Grounding Expenses	Rs. 6,26,505/-
g)	Transportation Expenses	<u>Rs. 38,75,776/-</u>
		<u>Rs. 75,40,109/-</u>

The AO asked the assessee to provide the details of these expenses debited to Profit and Loss account. The assessee in response filed ledger copy of the above expenses appearing in the assessee's books of accounts. The AO observed from the ledger accounts of these expenses submitted by the assessee that most of these expenses are incurred in cash. The AO asked assessee to produce vouchers/bills in respect of these expenses claimed by the assessee. The assessee failed to produce the same before the AO which led AO to make addition to the tune of 50% of these expenses leading to the addition to the tune of Rs. 37,70,055/- as the AO observed that assessee has credited net agency commission to Profit and Loss Account and has also claimed reimbursements of the expenses. It was also observed by the AO that these expenses were incurred in cash by the assessee as also these expenses were supported by self made vouchers. The matter travelled to Ld. CIT(A) at the behest of the assessee who after considering the fact that for AY 2014-15 i.e. immediately succeeding year, the AO has made additions to the tune of 5% of these expenses as against 50% made in this year i.e. AY 2013-14, the learned CIT(A) restricted the addition to income by disallowing 5% of these expenses, vide appellate order dated 14.03.2017 passed by learned CIT(A).

4. The Revenue is aggrieved by the relief granted by Ld. CIT(A). The Ld. DR relied upon the assessment order passed by the AO. The Ld. Counsel for the assessee submitted that AO itself has made disallowance of 5% of these expenses in the subsequent assessment year i.e. AY 2014-15 and Ld. CIT(A) has rightly upheld the disallowance of expenses to the tune of 5% of these expenses. The said assessment order for AY 2014-15 is placed in paper book/page 239-241 and learned counsel for the assessee drew our attention to the assessment order for AY 2014-15. It is claimed by learned counsel for the assessee that the assessee had accepted the said additions to the tune of 5% of the expenses and the assessee has not filed any further appeal challenging the sustenance of additions to the tune of 5% of total expenditure for AY 2014-15 and also AY 2013-14.

5. We have considered rival contentions and perused the material on record. We have observed that the assessee is engaged in the business as a clearing, forwarding and shipping agent. The assessee has earned net agency commission of Rs. 1,71,50,290/- which is arrived at after adjusting the reimbursement of the expenses claimed by the assessee from its clients. The assessee has debited expenses to the tune of Rs. 75,40,109/- in its Profit and Loss Account for the year under consideration, as under:-

a)	<i>Custom Examination Expenses</i>	Rs. 2,54,122/-
b)	<i>Dock Expenses</i>	Rs. 5,29,228/-
c)	<i>Documentation Charges</i>	Rs. 15,24,148/-
d)	<i>Incidental Charges</i>	Rs. 2,92,165/-
e)	<i>Sundry Expenses</i>	Rs. 4,38,165/-
f)	<i>Container Grounding Expenses</i>	Rs. 6,26,505/-
g)	<i>Transportation Expenses</i>	<u>Rs. 38,75,776/-</u>
		<u>Rs. 75,40,109/-</u>

The AO had asked for the details of these expenses but the assessee could only file ledger account of these expenses. The AO had observed that most of these expenses were incurred in cash and are prepared through self made vouchers, which led the AO to ask for further details from the assessee by way of bills/invoices of these expenses. The assessee did not submit bills/invoices before the AO and the same were not even submitted before the appellate authorities including tribunal. The AO disallowed 50% of these expenses as the assessee had failed to produce bills/invoices of these expenses, these expenses were stated to be incurred in cash and also the said expenses were supported by self made vouchers, while the disallowance was restricted by learned CIT(A) to 5% of these expenses for AY 2013-14 based on the decision of the AO for AY 2014-15 wherein the AO had restricted disallowance to 5% of the expenses for AY 2014-15, vide appellate order dated 14.03.2017 passed by learned CIT(A) for AY 2013-14. However, we have observed that the assessee has incurred following expenses to the tune of Rs. 26,74,333/- for AY 2014-15 (refer to assessment order dated 02.12.2016 passed by the AO u/s 143(3) (per book/page 240), as detailed hereunder:

“ 3. It is seen from the Profit and Loss Account that the assessee has claimed various expenses against the net agency commission.

a)	Custom Examination Expense	Rs. 2,44,331/-
b)	Dock Expenses	Rs.8,35,074/-
c)	Incidental Charges	Rs.1,45,483/-
e)	Sundry Expenses	Rs. 3,64,559/-
f)	Office expenses	Rs. 1,33,080/-
g)	Container grounding expenses	<u>Rs. 9,51,806/-</u>
		<u>Rs. 26,74,333/-</u>

From the details of these expenses it is noted that these expenses are incurred mainly in cash and supported only by self-generated vouchers and no third party evidence in this regard are not available with the assessee. Further some expenses are found unverifiable for want of complete bills and vouchers. Hence, 5% of these expenses on estimate basis are made to cover up possible leakage. According, an amount of Rs. 1,33,716/- being 5% of the above expenses are disallowed and added to the total income.”

We have perused this assessment order passed by the AO u/s 143(3) for AY 2014-15 . First of all the assessee has filed vouchers in this year i.e. AY 2014-15 before the AO albeit the same were self made vouchers but some of the expenses remained unverifiable for AY 2014-15 . While for AY 2013-14, no bills/vouchers were submitted by the assessee before the AO. There is another distinction in AY 2014-15 i.e. expenses were only to the tune of Rs. 26.74 lakhs while in the AY 2013-14 the expenses were threefold to the tune of Rs. 75.40 lacs. We have also observed a note worthy distinction in AY 2013-14 vis-a-vis AY 2014-15 , wherein we have observed that documentation charges to the tune of Rs. 15,24,148/- as well Transportation charges to the tune of Rs. 38,75,776/- were incurred by the assessee in the AY 2013-14 which were not claimed as reimbursements from clients , while we could not find any such expenses being incurred by the assessee in immediately succeeding year i.e. AY 2014-15 which is quite strange and it missed the attention of learned CIT(A) while adjudicating appeal

for impugned assessment year i.e. AY 2013-14. The business remaining the same in both AY 2013-14 and AY 2014-15 there is no plausible explanation for not incurring these expenses for AY 2014-15. The assessee in any case has not submitted any invoices/vouchers for these expenses for AY 2013-14 even before us while for AY 2014-15, the assessee duly submitted invoices/vouchers before the AO and in our considered view, the matter need to be remitted back to the file of the AO for de-novo adjudication of this issue after giving the assessee an opportunity of being heard in accordance with principles of natural justice in accordance with law. The assessee is directed to produce all relevant invoices/bills/vouchers before the AO in set aside de-novo proceedings and also to provide justification for incurring these Documentation Expenses and Transportation Expenses in this year under consideration which was stated to be not incurred in immediately succeeding year i.e. AY 2014-15. The Revenue appeal is allowed for statistical purposes on this issue. We order accordingly.

6. Second issue relates to reimbursement of the expenses. The assessee had received a sum of Rs. 14,37,98,850/- as reimbursement of expenses. The assessee was asked to give complete details of these expenses. The assessee submitted list of parties from whom it claimed reimbursement of expenses. The assessee submitted that these are neither the income nor the expenses of the assessee. These are expenses incurred on behalf of the Customers and the assessee is merely acting as the agent of these customers so far as these expenses are concerned. The assessee claimed that it is maintaining records of these reimbursements expenses on purely individual billing basis. The assessee did not submit requisite details before the AO which led the AO with a view to check leakage of revenue to disallow 5% of these expenses. The AO, however, was of the view that these expenses incurred by the assessee are incidental to the business carried on by the assessee.

7. The assessee carried the matter before learned CIT(A) by filing first appeal. The Ld. CITA) deleted the addition as in the view of Ld. CIT(A) there is no concept of making addition in order to check leakage of revenue.

8. The matter is now before us at the behest of Revenue who is aggrieved by the decision of learned CIT(A) in deleting additions as were made by learned AO. The learned counsel for the assessee has submitted before us the details of these expenses, Profit and Loss Account and sample invoices it raised on its clients to make home a point that these expenses incurred by the assessee were on behalf of its clients . It is also claimed that income embedded in these reimbursement of the expenses to the tune of Rs. 13,08,911/- was also offered for taxation by the assessee and no prejudice is caused to Revenue. The assessee has placed on record details of these expenses, claim of reimbursement of these expenses and income of Rs. 13,08,911/- embedded in these expenses which was transferred to Profit and Loss Account which is placed on record in the file. The said details were stated to have not been filed before lower authorities. The assessee relied upon the decision of Ld. CIT(A) while the Ld. DR relied upon the assessment order passed by the AO.

9. We have considered rival contentions and have perused the material on record. We have observed that the assessee is clearing , forwarding and shipping agent. The assessee claimed net agency commission from its clients and also claimed reimbursement of the expenses. The assessee did not filed requisite details before the AO. The assessee has filed details of these expenses before us which was stated to have been claimed as reimbursement of expenses from its clients. The assessee has also filed some of the bills raised by it on its various clients to make home its point that these are merely reimbursement of expenses. The assessee has also contended that profit element embedded in these reimbursement of expenses to the tune of Rs. 13,08,911/- was offered for taxation and has already

suffered taxation . The P&L account is placed on record in file. These details required verification and with a view to render complete justice to both the parties, it is considered necessary and fit to restore the matter back to the file of the AO for making proper verification of these details filed by the assessee before the tribunal , after giving proper opportunity to the assessee in accordance with principles of natural justice in accordance with law. The assessee is directed to produce all the details as are filed before the tribunal and such other details necessary for the AO to come to conclusion that no disallowance is warranted under these circumstances. The AO shall admit all evidences/explanations filed by the assessee in its defence in the set aside denovo proceedings. The appeal of the Revenue is allowed for statistical purposes on this issue. We order accordingly.

10. In the Result appeal of the Revenue in ITA No. 4036/Mum/2017 for AY 2013-14 is allowed for statistical purposes.

Order pronounced in the open court on 08.02.2019.

आदेश की घोषणा खुले न्यायालय में दिनांक: 08.02.2019 को की गई

Sd/-

(SAKTIJIT DEY)

JUDICIAL MEMBER

Sd/-

(RAMIT KOCHAR)

ACCOUNTANT MEMBER

Mumbai, dated: 08.02.2019

Nishant Verma
Sr. Private Secretary

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

// Tue copy//

BY ORDER
DY/ASST. REGISTRAR
ITAT, MUMBAI