

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH : KOLKATA

[Before Hon'ble Sri N.V.Vasudevan, JM & Shri M.Balaganesh, AM]

I.T.A No.736/Kol/2014
Assessment Year : 2009-10

Auckland International Ltd.
Kolkata
[PAN : AACCA 1986 A]
(Appellant)

-vs.-

C.I.T., Central-I,
Kolkata

(Respondent)

For the Appellant : Shri Soumitra Choudhury, Advocate
For the Respondent : Shri G.Mallikarjuna, CIT(DR)

Date of Hearing : 29.11.2017.

Date of Pronouncement : 01.12.2017.

ORDER

Per N.V.Vasudevan, JM

This is an appeal by the Assessee against the order dated.25.03.2014 of C.I.T., Central-I, Kolkata passed u/s 263 of the Income Tax Act, 1961 (Act).

2. The Assessee is a company. It carries on the business of manufacturing, dealing and exporting of jute goods. The assessee also carries on the business of financing and investments. For A.Y.2009-10 the assessee filed return of income declaring total income of Rs. 2,91,05,429/-. An order of assessment dated 24.10.2011 was passed by the AO determining the total income of the assessee at Rs.2,91,62,920/- by making an addition of Rs.8,07,492/- consequent to disallowance of speculation loss.

3. The CIT-Central-I, Kolkata in exercise of his powers u/s 263 was of the view that the aforesaid order of the AO was erroneous and prejudicial to the interest of the revenue for the following reasons :-

(i) Donation/ subscription amounting to Rs. 1576709/- was debited in the P&L A/c under the head miscellaneous expenses. The Assessing officer while

completing the assessment order did not enquire allowability of the aforesaid claim as required under Section 37 of the I.T. Act.

(ii) Expenditure on account of food to workers amounting to Rs.4901555/- was debited in the P.L. A/c under the head miscellaneous expenses. During the scrutiny assessment proceeding the assessee company had explained that expenditure on food to workers, is reimbursement of fooding and refreshment expenses to the learners of job to fill the vacant posts in the Mill. As per section 115 WA of the I.T.Act, applicability of fringe benefit tax was leviable on the aforesaid expenditure. The Assessing Officer failed to examine its applicability.

(iii) The Assessing Officer did not consider depreciation on car amounting to Rs. 58590/- and depreciation on Mobile Phone amounting to Rs.11561/- in computing fringe benefit value of the assessee company.

4. Accordingly a show cause notice dated 25.02.2014 u/s 263 of the Act was issued by the CIT on the above three issues. The assessee sent a reply dated 19.03.2014 to the said show cause notice. The assessee took a stand that out of the sum of Rs.15,76,709/- debited in the profit and loss account under the head 'Miscellaneous Expenses' comprising donations and subscriptions a sum of Rs.15,00,000/- was paid towards donation and these donations were eligible for deduction u/s 80G of the Act. There cannot be any prejudice to the interest of the revenue, even if it is considered that the expenditure was not allowable u/s 37 of the Act. So far as the remaining sum of Rs.76,709/- is concerned, the assessee gave a break-up of each item of the expenditure and submitted that all these expenses are in connection with the business of the assessee and allowable u/s 37 of the Act. The detail break up given by the assessee is given as **Annexure** to this order.

5. As far as the sum of Rs.49,01,555/- which was the expenditure on account of food to workers is concerned, the assessee pointed out that under the provisions of section 115WB(2)(B)(i) any expenditure on, or payment for, food or beverages provided by the employer to his employees in office or factory shall not be included as fringe benefit. The assessee explained the reasons why food and beverages were provided to the workers. The Assessee pointed out that due to exodus of the large number of skilled and semi-skilled workmen to other state and number of employees retired from

the services in past few years, there was a huge vacuum in the number of workmen available & required. To meet the shortfall the Assessee provided facility to the local youths to learn the job of machine operation and other related functions. To keep them engaged to learn the job, the Assessee had to provide food. The expenses incurred under head "Food to Workers" was for the running of the business of the Assessee. The Assessee pointed out that the turnover of the Assessee was Rs.84 crore and after considering the explanation of the Assessee as above and duly examining the same, the AO framed the FBT assessment by not including the same under FBT ambit. Therefore there was no error in the order of the AO.

6. Regarding the issue of depreciation on car and on mobile phone the assessee submitted that the expenditure in question was for the purpose of business of the assessee and all the expenses were wholly and exclusively in connection with carrying on the business of the assessee.

7. The CIT, however was of the view that the AO had not examined any of the aforesaid issues while concluding the assessment and that rendered the order to be erroneous and prejudicial to the interest of the revenue. The CIT therefore set aside the order of AO and directed the AO to complete the assessment de novo after affording opportunity of being heard to the assessee. The following were the conclusions of the CIT on this issue :-

“The submissions of the assessee was carefully perused. It is evident from the assessment record that while completing the assessment order the Assessing Officer did not examine or enquire allowability of the expenditures incurred in respect of donations/subscriptions. The A.O. also failed to examine applicability of Fringe Benefit Tax in respect of expenditure incurred in providing lunch to its employees. It is also evident that the A.O. did not examine feasibility of adding depreciation claimed by assessee in respect of vehicle and mobile phone in working out value of fringe benefit, while working out Fringe Benefit Tax. The Hon'ble Supreme Court's decision in the case of Malabar Industries company Ltd.Vs CIT(2000) 243 ITR 83-87 is applicable. The Hon'ble Apex Court in the said decision has clearly held that where Assessing Officer has accepted entry in statement of account filed by the assessee, in absence of any supporting material

without making any enquiry, exercise of jurisdiction by' Commissioner u/s 263(1) was justified.

In view of the discussion made in the preceding paragraph, it is concluded that the assessment order passed u/s 143(3) of the I.T. Act is erroneous and prejudicial to the interest of revenue. The said assessment order is therefore set aside. The A.O. is directed to complete the assessment denovo after affording proper opportunity of being heard to the assessee.”

8. Aggrieved by the order of CIT the assessee is in appeal before the Tribunal.
9. We have heard the rival submissions. As far as the expenses under the head donations and subscriptions of Rs.15,76,709/- is concerned there was no enquiry by the AO on this aspect and therefore the CIT was justified in invoking his powers u/s 263 of the Act.
10. As far as the expenditure on account of food to workers of Rs.49,01,555/- is concerned, it is clear from the impugned order of CIT that in the scrutiny assessment proceedings, the AO called for an explanation from the assessee on this aspect and the assessee had explained that the expenditure was on food provided to workers to learn and to keep work force available at all time. The AO has accepted the explanation of the assessee and did not include the expenditure on providing food as part of the fringe benefit for levying of fringe benefit tax. It is clear from the provision of section 115WB(2)(B)(i) of the Act that expenditure on food provided by the employer to the employees in an office or factory does not form part of the fringe benefit. Firstly the AO has examined this issue while concluding this issue u/s 143(3) of the Act. Secondly, the view taken by the AO is a possible view. Thirdly, the CIT in the impugned order has not brought out facts as to how the expenditure in question will be a fringe benefit and why the plea of the assessee that the said expenditure falls within the exception of clause 115WB(2)(B)(i) of the Act is not correct. In these circumstances, we are of the view that the CIT was not justified in invoking the jurisdiction u/s 263 of the Act on this issue. To this extent the order of CIT is quashed.

11 As far as the sum of Rs.58,590/- and Rs.11,561/- claimed as depreciation on car and depreciation on mobile phone is concerned the element of personal use of this item of expenditure has not been examined by the AO in the assessment proceedings. Therefore the CIT was justified in invoking his jurisdiction on this issue u/s 263 of the Act. We therefore confirm the order of CIT in part on issue No.(i) & (iii) of the show cause notice set out in paragraph 3 of this order.

12. In the result the appeal by the assessee is partly allowed.

Order pronounced in the Court on 01.12.2017.

Sd/-

[M.Balaganesh]
Accountant Member

Sd/-

[N.V.Vasudevan]
Judicial Member

Dated : 01.12.2017.

[RG Sr.PS]

Copy of the order forwarded to:

- 1.Auckland International Ltd., 6, Little Russell Street, Kolkata-700071.
2. C.I.T., Central-I, Kolkata.
- 3.CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Sr. Private Secretary
Head of Office/DDO,, ITAT, Kolkata Benches