

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

Before Shri R.V. Easwar, Hon'ble President
and Shri P.M. Jagtap, Accountant Member

I.T.A. No. 2397/Mum/2010.
Assessment Year : 2006-07.

Hansraj Mathuradas,
Chetan C-Wing, Rajawadi,
Ghatkopar (East),
Mumbai – 400 077.
PAN AACFH 3210R

Vs. The Income Tax Officer,
22(1)(2), Mumbai.

Appellant.

Respondent.

Appellant by : Shri Mehul Singh.
Respondent by : Shri A.G. Nayak.

Date of Hearing : 06-09-2011
Date of pronouncement : 16-09-2011.

ORDER.

Per P.M. Jagtap, A.M. :

This appeal filed by the assessee is directed against the order of learned CIT(Appeals)-33, Mumbai dated 18-01-2010.

2. Ground No. 1 raised by the assessee in this appeal involves two issues. First relating to disallowance of Rs.46,751/- made by the AO and confirmed by the learned CIT(Appeals) on account of contract fees and second relating to disallowance of Rs.2,07,965/- made by the AO out of direct expenses which has been sustained by the learned CIT(Appeals) to the extent of 50%.

3. The assessee in the present case is a partnership firm which is engaged in the business of providing services as insurance surveyor and loss assessor. The return of income for the year under consideration was filed by it on 31-10-2006 declaring total income of Rs.1,32,780/-. In the said year, the assessee had received survey fees amounting to Rs.26,72,587/- against which expenses inter alia on account of contract fees amounting to Rs.46,751/- and direct expenses amounting to Rs.2,07,965/- were claimed as deduction. Although the assessee tried to explain before the AO that the said expenses were incurred at Port on various occasions, the AO did not find the same to be acceptable in the absence of proper documentary evidence produced by the assessee to support and substantiate the same. Accordingly the contract fees and direct expenses claimed by the assessee were disallowed by him. On appeal, the learned CIT(Appeals) confirmed the disallowance made by the AO on account of contract fees observing that besides producing the copy of ledger account of Shri Ritesh Bhatia to whom contract fees was claimed to be paid, the assessee could not produce any other evidence in the form of confirmation, return of income of Shri Ritesh Bhatia, his P.A. No. or bank account details etc. to justify its claim for deduction on account of contract fees. As regards direct expenses, the learned CIT(Appeals) agreed with the stand of the assessee that some expenses at ports were required to be incurred by the assessee keeping in view the nature of its business. He held that in the absence of proper documentary evidence, the claim of the assessee for direct expenses, however, was not fully verifiable. Accordingly the disallowance of Rs.2,07,965/- made by the assessee on account of direct expenses was sustained by him to the extent of 50%.

4. The learned counsel for the assessee submitted before us that there was no reason for the authorities below to doubt the genuineness of the contract fees paid by the assessee for the purpose of its business especially when the said payment

was subjected to deduction of tax at source. As regards the direct expenses, he submitted that even though the said expenses incurred by the assessee at ports were paid in cash, the disallowance sustained by the learned CIT(Appeals) to the extent of 50% out of direct expenses is excessive and unreasonable keeping in view the nature of the assessee's business.

5. The learned DR, on the other hand, submitted that disallowance out of contract fees and direct expenses was made by the AO and sustained by the learned CIT(Appeals) mainly on the ground that the assessee could not discharge the onus that lay on it to support and substantiate its claim for the said expenses by producing the relevant supporting documentary evidence. He contended that merely because TDS was made from the payment of the said expenses will not result in discharging the said onus and in the absence of any proper documentary evidence produced by the assessee, its claim for deduction on account of contract fees and direct expenses was rightly disallowed by the authorities below.

6. We have considered the rival submissions and also perused the relevant material on record. As regards contract fees, it is observed that the deduction claimed by the assessee on payment of Rs.46,751/- to one Shri Ritesh Bhatia was disallowed by the AO for lack of proper documentary evidence to support the same and the learned CIT(Appeals) has confirmed the said disallowance on the ground that the assessee has not produced evidence in the form of confirmation, return of income of Shri Ritesh Bhatia as well as his P.A. No., bank account details etc. As pointed out by the learned counsel for the assessee in this regard, tax at source was deducted by the assessee from the payment of Rs.46,751/- made to Shri Ritesh Bhatia on account of contract fees and the same. In our opinion, coupled with other details filed by the assessee was sufficient to establish the genuineness of the expenses incurred by the assessee on payment of contract fees to Shri Ritesh Bhatia.

There is no dispute that such expenditure is required to be incurred for the purpose of assessee's business but the disallowance was made mainly for the lack of supporting evidence to support the claim of the assessee. In our opinion, the factum of deduction of tax at source by the assessee from the said payment is sufficient to fill this gap and relying on the same, we are of the view that the deduction claimed by the assessee on payment of contract fees to Ritesh Bhatia can reasonably be allowed. As regards direct expenses, it is observed that the learned CIT(Appeals) has rightly held in his impugned order that such expenses are required to be incurred at ports by the assessee keeping in view the very nature of its business. The disallowance made by the AO on account of direct expenses, however, was sustained by him to the extent of 50% of the total expenses due to unverifiable element involved in the said expenses. In our opinion, the disallowance so sustained by the learned CIT(Appeals) is on the higher side keeping in view the nature of the expenses incurred by the assessee which are essentially required to be paid in cash by way of self made voucher. We, therefore, find it fair and reasonable to restrict the disallowance made on this issue to 25% of the total expenses. Ground No. 1 of the assessee's appeal is thus partly allowed.

7. The issue raised in ground No. 2 relates to the disallowance of Rs.1,68,925/- made by the AO and confirmed by the learned CIT(Appeals) being 50% of the total bulk survey material expenses claimed by the assessee.

8. The assessee had claimed bulk survey material expenses to the tune of Rs.3,37,849/-.It was explained by the assessee before the AO that it had outsourced their bulk survey activities to one concern, namely, M/s A.K. Marine. It was submitted that the said concern was carrying on activity of unloading the oil from ship into oil tanker at port on behalf of the assessee and the expenses pertaining to the said activity as incurred by M/s A.K. Marine were claimed by the assessee

under the head “Bulk Survey Material Expenses”. The assessee, however, could not produce any documentary evidence in support of its claim for bulk survey material expenses and in the absence of the same, the claim of the assessee for deduction on account of bulk survey material expenses was disallowed by the AO to the extent of 50%. On appeal, the learned CIT(Appeals) confirmed the said disallowance made by the AO observing that there was nothing produced by the assessee even before him to support its claim for bulk survey material expenses. He held that the said expenses in the absence of such supporting evidence were unverifiable and the disallowance made by the AO to the extent of 50% of such expenses was quite fair and reasonable in the facts and circumstances of the case.

9. The learned counsel for the assessee submitted that some of the work entrusted to the assessee firm was assigned by it to a sub contractor, namely, M/s A.K. Marine. He invited our attention to the ledger account extract of bulk survey expenses placed at page No. 46 and 47 of his paper book to show that most of the payments made to M/s A.K. Marine were by account payee cheques and even tax at source was also deducted from such payment. He submitted that such payments were regularly made by the assessee even in the earlier years and there was no disallowance made out of the said expenses in the earlier years. The learned DR, on the other hand, relied on the orders of the authorities below in support of Revenue’s case on this issue that the disallowance of 50% out of bulk survey material expenses was justifiably made for want of proper documentary evidence.

10. We have considered the rival submissions and also perused the relevant material on record. It is observed that the nature of bulk survey expenses claimed by it was explained by the assessee before the authorities below and even the details thereof were furnished. The said expenses to the extent of 50%, however, were disallowed by the authorities below on the ground that in the absence of

proper documentary evidence, the same were fully verifiable. In this regard, the learned counsel for the assessee has placed on record before us a ledger account extract of bulk survey expenses at page No. 46 and 47 of his paper book and a perusal of the same shows that most of the payments appearing therein were made to M/s A.K. Marine by cheques and even tax at source was also deducted from the said payments. In our opinion, having regard to these facts of the case as well as the fact that the assessee firm had earned income of about Rs.22 lakhs from the survey activity, there was no reason for the authorities below to make any disallowance out of bulk survey expenses. In this view of the matter, we delete the disallowance made by the AO and confirmed by the learned CIT(Appeals) on this issue and allow ground No. 2 of the assessee's appeal.

11. The issue raised in ground No. 3 relates to the disallowance of Rs.80,000/- made by the AO and sustained by the learned CIT(Appeals) out of professional fees.

12. Under the head "Administrative expenses", the assessee had claimed a sum of Rs.1,83,500/- incurred on professional fees. The said amount was comprising of a sum of Rs.1,60,000/- paid on account of fees for carrying out office administration and business promotion work. During the course of assessment proceedings, the assessee failed to furnish any details whatsoever regarding the fees of Rs.1,60,000/- claimed to be paid for carrying out office administration and business promotion work. The assessee also could not offer any satisfactory explanation as regards the nature of the services rendered to justify the payment of fees of Rs.1,60,000/-. The AO, therefore, disallowed the said fees to the extent of 50%. On appeal, the learned CIT(Appeals) confirmed the said disallowance made by the AO observing that the assessee could not either furnish any details of the work done by Mr. Ritesh Bhatia to whom the amount of Rs.1,60,000/- was paid or

produce any evidence to support and substantiate its claim for the deduction on account of fees paid for office administration and business promotion work.

13. The learned counsel for the assessee invited our attention to the ledger extract of professional fees account placed at page No. 48 of his paper book to show that 8 instalments of Rs.20,000/- each were regularly paid to Shri Ritesh Bhatia by cheques. He contended that there was thus no reason for the authorities below to doubt the genuineness of the payment of professional fees paid by the assessee to Shri Ritesh Bhatia and disallowance made on this issue is not sustainable.

14. The learned DR, on the other hand, submitted that in the absence of any explanation offered by the assessee as regards the nature of professional services rendered by Shri Ritesh Bhatia in connection with office administration and business promotion work, the disallowance to the extent of 50% out of fees paid to him was rightly made by the authorities below. He contended that merely because the payment to Shri Ritesh Bhatia was made by the cheques and tax was deducted at source will not discharge the onus that lay on the assessee to establish that the said payments were made for the purpose of its business.

15. We have considered the rival submissions and also perused the relevant material on record. It is observed that no explanation whatsoever has been offered by the assessee either before the authorities below or even before us in respect of the exact nature of services rendered by Shri Ritesh Bhatia in connection with office administration and business promotion work. As rightly contended by the learned DR, the onus in this regard is on the assessee to establish that expenses incurred on professional fees paid to Shri Ritesh Bhatia were wholly and exclusively for the purpose of its business and this onus cannot be said to be

discharged merely by showing that such professional fees was paid by cheque and tax at source was also deducted from such payment. We, therefore, find ourselves in agreement with the learned CIT(Appeals) that the disallowance of Rs.80,000/- out of professional fees was rightly made by the AO due to the failure of the assessee to establish the business expediency of the said payment and upholding the impugned order of the learned CIT(Appeals) on this issue, we dismiss ground No. 3 of the assessee's appeal.

16. The issue raised in ground No. 4 and 5 relates to the disallowance made by the AO and confirmed by the learned CIT(Appeals) out of conveyance and telephone expenses of Rs.4,818/- and Rs.17,224/- respectively. In its profit & loss account, the assessee firm had debited a sum of Rs.24,088/- on account of conveyance expenses and a sum of Rs.86,120/- on account of telephone expenses. In the absence of any record maintained by the assessee in the form of log book or call register to establish that the said expenses were wholly and exclusively for the purpose of its business, the same were disallowed by the AO to the extent of 20%. Before the learned CIT(Appeals), the assessee submitted that the conveyance expenses and telephone expenses were already subjected to Fringe Benefit Tax (FBT) and since FBT was already paid by the assessee on the said expenses, disallowance of the said expenses for personal element was not permissible. The learned CIT(Appeals) did not find merit in this contention of the assessee and proceeded to confirm the disallowance made by the AO out of conveyance and telephone expenses.

17. We have heard the arguments of both the sides and also perused the relevant material on record. The learned counsel for the assessee has taken us through the CBDT Circular No. 8/2005 dated 29-08-2005 giving explanatory notes on the provisions relating to fringe benefit tax as introduced by the Finance Act, 2005 and

invited our attention to the relevant portion thereof to explain the object behind levying fringe benefit tax. As indicated in the said circular, the fringe benefit tax has been introduced as a surrogate tax on employer with the objects of resolving the problems in taxing some perquisites/fringe benefits in the hands of the employees in terms of section 17. Further, as explained in para No. 3.2 of the Circular, the scope of the term “fringe benefits provided” is defined in section 115WB(1) to mean any consideration for employment provided by way of any privilege, service facility or amenity, directly or indirectly, provided by an employer, whether by way of reimbursement or otherwise, to his employees. Moreover, as clarified in the said circular while answering frequently asked question No. 15, fringe benefit is deemed to have been provided if the employer has incurred expenses for any of the purposes referred to in the relevant provisions and there is no requirement to segregate such expenses between those incurred for official purposes and personal purposes. It was further clarified while answering question No. 81 that when expenditure on running and maintenance of motor cars is liable to fringe benefit tax, the employees will not be liable to income tax on the perquisite value of motor car provided by the employer. As rightly contended by the learned counsel for the assessee, circular No. 8/2005 dated 29-08-2005 issued by the Board explaining the provisions relating to fringe benefit tax thus makes it clear that fringe benefit tax is levied on the expenses incurred by the employer irrespective of whether the same are incurred for official or personal purposes. In our opinion, once fringe benefit tax is levied on such expenses as has been done in the present case, it follows that the same are treated as fringe benefits provided by the assessee as employer to its employees and the same have to be appropriately allowed as expenses incurred wholly and exclusively incurred by the assessee for the purpose of its business. In that view of the matter, we delete the disallowance

made by the AO and confirmed by the learned CIT(Appeals) out of conveyance and telephone expenses and allow ground No. 4 and 5 of the assessee's appeal.

18. In the result, the appeal of the assessee is partly allowed.

Order pronounced on this 16th day of Sept., 2011.

Sd/-
(R.V. Easwar)
President.

Sd/-
(P.M. Jagtap)
Accountant Member

Mumbai,
Dated : 16th Sept., 2011.

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, H-Bench.

(True copy)

By Order

Asstt. Registrar,
ITAT, Mumbai Benches,
Mumbai.

Wakode.