

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ "B",
अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL AT
AHMEDABAD, "B" BENCH

सर्वश्री श्री जी.सी.गुप्ता, माननीय उपाध्यक्ष, एवं तेज राम मीणा, लेखा
सदस्य के समक्ष ।

BEFORE S/SHRI G.C. GUPTA, VICE-PRESIDENT AND
TEJ RAM MEENA, ACCOUNTANT MEMBER)

ITA No.2456/Ahd/2010
[Asstt.Year : 2006-2007]

ITO, Ward-5(1)
Surat.

बनाम/Vs. M/s.Bhadreh Yarn Traders
203, Pratik Chamebrs
Hathi Falia, Zampa Bazar, Surat.
PAN : AACFB 6104 A

(अपीलार्थी / Appellant)

(प्रत्यर्थी / Respondent)

राजस्व की ओर से/

Revenue by

निर्धारिती की ओर से/

Assessee by

सुनवाई की तारीख/

Date of Hearing

घोषणा की तारीख/

Date of Pronouncement

: Shri Y.P. Verma, Sr.DR

: Shri Mehul R. Shah

: 7th May, 2013.

: 21-06-2013

आदेश / O R D E R

PER T.R. MEENA, ACCOUNTANT MEMBER: This appeal by the Revenue for the assessment year 2006-2007 is directed against the order of the CIT(A)-IV, Surat dated 17.5.2010.

2. The ground no.1 of the Revenue's appeal is as under:

“1. On the facts and in the circumstances of the case and in law, the ld.CIT(A) has erred in deleting the addition of Rs.4,74,650/- made on account of disallowance u/s.40(a)(ia) of the Act.”

3. The brief facts as emerged from the relevant orders are that the assessee is engaged in the business of trading yarn and are mostly purchased through imports. The assessment under section 43(3) of the IT Act was completed determining total income at Rs.19,04,050/-. In the assessment so finalised, the AO made various additions, which were deleted by the learned CIT(A). With regard to first ground, the learned DR submitted that the assessee has made payment of transport expenses to a single transport contractor directly and no TDS was deducted therefrom as per law. However, the finding of the CIT(A) that there is no contract between the assessee and the transporter, and the impugned payment is for purchases as well as services, which is not tenable, as the assessee has not furnished any documentary evidences that the transporter was appointed by the clearing and forwarding agent. The learned AR of the assessee, on the other hand, submitted that since there is no contract between the assessee and the transporter, and therefore, the assessee is not liable to deduct TDS on the payment paid for purchases of materials, and it is the clearing and forwarding agent who engaged the transporter, and the assessee to pay the charges on receipts of goods and services. This fact has been appreciated by the learned CIT(A), and therefore, his order on this issue may be confirmed and that of the Revenue be rejected. Reliance was placed on the decision of Hon'ble Punjab & Harryana High Court in the case of CIT Vs United Rice Land Ltd., 322 ITR 594 to the proposition that the assessee was not liable to deduct tax under section

194C from the payments made to the transporters, in the absence of any oral or written agreement.

4. We have heard rival submissions and perused the material on record and also the orders of the revenue authorities. We find that there is no contract between the assessee and the transporter and the section 194C is applicable to work contract. The learned CIT(A) has found that in the instant case the clearing and forwarding contractor appoints for transportation of goods, and hence the only responsibility of the assessee was to make payment on receipts of goods. Admittedly, the assessee is engaged in purchase of yarn and trading thereon, and receive the goods from transporters, through clearing and forwarding agents. The AO has made the impugned addition on the assumption that the assessee was having agreement with the transporter for transportation of its goods, was not based on any evidence on record. Therefore, in the absence of any documentary proof to establish that there is an agreement between the assessee and the transporter for carriage of goods, we are not inclined to interfere with the order of the CIT(A) on this issue, which is confirmed and this ground no.1 of the Revenue is dismissed.

5. The ground no.2 of the Revenue's appeal is as under:

"2. On the facts and in the circumstances of the case and in law, the ld.CIT(A) has erred in deleting the addition of Rs.1,36,276/- made on account of disallowance of cooli & cartage expenses paid to Shri T.V. Patil u/s.40(a)(ia) of the Act."

6. We have heard both the parties on this issue and perused the orders of the Revenue authorities. The assessee has claimed coolie and cartage expenses of Rs.1,36,276/- paid to Shri T.V.Patil in cash.

We find that this addition was made by the AO on the assumption that there is a contract between the head of the labourers and that the vouchers are self-generated without any supporting evidences. The CIT(A) has observed that these types of expenses are very petty in nature and incurred in the day-to-day running of any business, and that payments to labourers, who are usually illiterate and normally do not provide any bill or vouchers for the payment they receive. The AO has not doubted the payment made to Shri T.V.Patil, and has not made any inquiry with him as the genuineness of the payment, and has not put on record any evidence to show that any contract between Shri T.V.Patil and the assessee. If the AO has doubted the vouchers and bills, then the AO should have inquired and examined with the labourer. This has not been done by the AO. In a business, expenses of this type do happen in all regularity, which is a business necessity. Therefore, we are not convinced with the findings of the AO on this issue, as there is nothing more has been brought on record by the Revenue before us. Accordingly, we confirm the order of the CIT(A) on this issue, and dismiss the ground no.2 of the Revenue.

7. The ground no.3 of the Revenue reads as under:

“3. On the facts and in the circumstances of the case and in law, the ld.CIT(A) has erred in deleting the addition of Rs.1,11,813/- made on account of disallowance of bad debts expenses.”

8. We have heard both the parties on the issue, and perused the orders of the Revenue authorities. As the facts emerge from the record, the assessee claimed bad debts of Rs.1,11,813/- for the money advanced to Vector Divisas for import of goods and claimed as deduction. The AO denied the same on the ground that the same was not incurred in the previous year and was incurred fully and

exclusively for the purpose of business. The learned CIT(A) allowed the claim of the assessee on the ground that the AO has accepted in his order the fact that the bad debts was on account of advance for supply of raw-materials, and the party to whom the payment was being weak, the said bad debts became bad in nature. The CIT(A) has recorded that the assessee has succeeded in proving that the advances for the purpose of business and that the debt has been written off in the books of accounts, and following the judgment of the Hon'ble Supreme Court in the case of T.R.F. Ltd. Vs. CIT, allowed the claim of the assessee. This finding of the learned CIT(A) has not been controverted by the Revenue before us, and therefore, we are not inclined to interfere with this order of the learned CIT(A) on this issue, which is accordingly confirmed and this ground of the Revenue is also dismissed.

9. The ground no.4 of the Revenue is as under:

“4. On the facts and in the circumstances of the case in law, the ld.CIT(A) has erred in deleting the addition of Rs.6,33,828/- on account of disallowance of interest expenses.”

10. We have heard both the parties on the issue, and perused the orders of the Revenue authorities. The assessee claimed Rs.6,33,828/- on account of interest expenses on borrowed money. The AO rejected the claim of the assessee on the ground that the assessee failed prove that the “interest free advances” made by him were out of “interest free funds” and not from the “interest bearing funds” and the claim of the assessee was not reasonable and excessive, and that instead of exhausting the credit facility from the banks, the assessee borrowed the funds from the persons specified under section 40A(2)(b) of the Act. It was the contention of the assessee before the learned CIT(A)

that since the assessee is a trader and most of the goods are being purchased through imports from other countries, and the payments were to be made either by opening LC or by TT/DP, which has to be made 100% immediately to release the documents otherwise heavy charges have to be paid. It was further submitted that payment to the importers/suppliers have to be made within the time contracted otherwise the deal would be cancelled. Besides this, the assessee has to make payment for custom duty immediately for clearance of goods from customs department for avoiding heavy demurrage charges. It is submitted that for all these purposes, the assessee has to keep the funds ready to make timely payments which could not be generated in a single day or within a single week. FDRs. are kept in the bank as security for granting of LC for import of the goods and payment to the suppliers, and these FDRs. cannot be utilised for other routine and regular purposes of the business need. It is further submitted that the assessee firm had no cash credit account but had overdraft account against FDRs. Therefore, borrowing made by the assessee from other persons is wholly and exclusively for the purpose of its business only and therefore, the payment of interest on such loans allowable as deduction. We find that the CIT(A) while allowing the claim of the assessee has recorded that the AO was not justified in making addition based on the balance sheet figures or merely assumption of his own but to marshal concrete evidence for his findings. Accordingly, the CIT(A) held that the rate of interest of 12% of borrowed funds should not have been considered as excessive. We find that the assessee has satisfactorily explained the business exigencies for raising loan from other parties, and utilising the same wholly and exclusively for the purpose of business, and the rationale for keeping funds with the banks in the form of FDRs, which in our opinion are valid points as a

prudent businessman does normal course of business. These submissions of the assessee were not disputed by the Revenue. The Revenue has mainly disputed the rate of interest and payment of interest made to some 'specific persons'. In the circumstances narrated hereinabove, we do not find that the rate of interest @12% claimed by the assessee was too excessive or unreasonable, so as to prohibit the assessee from claiming the deduction in respect of loan taken from the relatives or for that matter, 'specified persons.' The Assessing Officer had made general observations without pointing out any specific instance where an interest bearing borrowing utilised for non-business purpose by the assessee. Therefore, in our view, the CIT(A) has justified in deleting the addition of Rs.6,33,828/- on account of disallowance of interest expenses by the AO, which we confirm, and this ground of the Revenue is also rejected.

11. The fifth and last ground of the Revenue's appeal is as under:

"5. On the facts and in the circumstances of the case in law, the ld.CIT(A) has erred in deleting the addition of Rs.3,74,449/- made on account of disallowance of brokerage expenses."

12. Both the parties relied on the respective orders of the Revenue authorities to support their cases.

13. Having heard rival submissions and gone through the orders of the Revenue authorities, we find that the assessee claimed brokerage expenses of Rs.3,74,449/- which was rejected by the AO on the ground that the claim of the brokerage was increased substantially from Rs.1,74,752 to Rs.5,49,201/- as compared to the last year, but no improvement in the sales of the current year, and that majority of payment of brokers were outstanding at the end of the year, and that

brokers have only rendered services but did not receive payment of their services during the year and thereby there were no further scope for any brokerage payment as has been claimed by the assessee, and that the assessee failed to establish the actual nature of services rendered by the brokers. We find that the CIT(A) has recorded that the AO was not justified disallowance of brokerage charges especially when such elements of expenditure can never be static and change from year to year, and that the additions seems to be made only on assumption and hurried generalization. The learned counsel for the assessee has drawn our attention to page no.10 of the paper book, containing reply of the assessee dated 14.11.2008 to the show cause notice of the AO dated 7.11.2008, wherein the assessee has clarified on the issue of claim of brokerage raised by the AO in the assessment proceedings. With regard to necessity of engaging brokers for the sale goods, it was clarified by the assessee in the reply that in the earlier year total sales were not made through brokers, but during the year the entire sales were made through brokers, looking to the market situations and to avoid possibilities of bad debts. The assessee has also given reason for variation in brokerage rate in the items of sales viz. viscos yarn and nylon yarn. The assessee has furnished before the AO the copies of sales register and other records to prove its case, as is evident from its reply and the observations of the CIT(A) in the impugned order. The assessee has also produced before us the copies of ledger account of brokerage expenses and bills and ledger account of parties at page no.16 to 84 of the paper book. This has not been disputed by the Revenue before us. The learned CIT(A) has observed that the addition was made only on assumption and hurried generalisation of the fact and observed that appellant has duly discharged his burden. The Revenue has not brought any material to

convince us that the impugned expenditure was not genuine or reasonable for the business purpose, on the other hand, the assessee has established with explanations and the accounts that the claim of the assessee is genuine and reasonable, and therefore CIT(A) is justified in deleting the disallowance made by the AO. In this view of the matter, we uphold the finding of the CIT(A) on this issue, and reject this ground no.5 of the Revenue.

14. In the result, appeal of the Revenue is dismissed.

Order pronounced in Open Court on the date mentioned hereinabove.

Sd/-
(जी.सी.गुप्ता/G.C. GUPTA)
उपाध्यक्ष /VICE-PRESIDENT

Sd/-
(तेज राम मीणा / TEJ RAM MEENA)
लेखा सदस्य /ACCOUNTANT MEMBER

Copy of the order forwarded to:

- 1) : Appellant
- 2) : Respondent
- 3) : CIT(A)
- 4) : CIT concerned
- 5) : DR, ITAT.

BY ORDER

DR/AR, ITAT, AHMEDABAD