

IN THE INCOME TAX APPELLATE TRIBUNAL : 'A' BENCH : AHMEDABAD

(Before Hon'ble Shri T.K. Sharma, J.M. & Hon'ble Shri A.N.Pahuja, A.M.)

I.T.A. No. 2245/AHD./2010
Assessment Year : 2007-2008

The A.C.I.T., Circle-6, Ahmedabad -vs.- M/s. Raj Steel Industries, Ahmedabad
(Appellant) (PAN : AABFR 8750M)
(Respondent)

Appellant by : Shri R.K.Dhanesta, D.R.
Respondent by : Shri Tushar P. Hemani, A.R.

ORDER

Per Shri T.K. Sharma, Judicial Member :

This appeal filed by the revenue is against the order dated 12.04.2010 passed by the Learned Commissioner of Income Tax (Appeals)-XI, Ahmedabad for the assessment year 2007-08.

2. Various grounds raised in this appeal by the revenue are as under:

“1. The Ld. Commissioner of Income tax (A)-XVI, Ahmedabad has erred in law and on facts in deleting the addition made of Rs.90,000/- on account of Godown rent.

2. The Ld. Commissioner of Income tax (A)-XVI, Ahmedabad has erred in law and on facts in deleting the addition of Rs.27,000/- made on account of weigh-bridge rent.

3. The Ld. Commissioner of Income tax (A)-XVI, Ahmedabad has erred in law and on facts in deleting the addition of Rs.5,40,251/- made U/s. 40A(2)(b) of the Act.”

3. Brief facts relating to controversy involved in ground nos. 1 and 2 are that in the assessment order, the Assessing Officer disallowed Rs.90,000/- on account of godown rent and Rs.27,000/- on account of weighbridge rent by invoking the provisions contained in section 40A(2)(b) of the I.T. Act, 1961.

4. On appeal, in the impugned order, the Ld. Learned Commissioner of Income Tax(Appeals) deleted the disallowance of godown rent by observing that it is increased due to hiring of different godown, necessitated by the four-fold increase in appellant's turnover. Apart from this, the ld. Learned Commissioner of Income Tax(Appeals) observed that, while making the addition, the Assessing Officer has not brought on record any material that godown rent paid to Viklap P. Joisar is excessive or unreasonable as per the provisions of section 40A(2)(a) of the Act. In para 4.2 of the impugned order, the ld. Learned Commissioner of Income Tax(Appeals) deleted the disallowance of Rs.27,000/- which made by the Assessing Officer on account of increase in weighbridge rent by following the reasoning given, while deleting the disallowance of godown rent of Rs.90,000/-.

5. Aggrieved with the order of the Ld. Learned Commissioner of Income Tax(Appeals) deleting both the disallowances, the revenue is in appeal before the Tribunal.

6. At the time of hearing before us, Shri R.K.Dhanesta, ld. D.R. appeared on behalf of the revenue and pointed out that in the assessment order, the Assessing Officer has clearly mentioned that the assessee used to pay ground rent @Rs.6,000/- per month to Shri Venilal K. Kanthara up to June, 2006 and from July, 2006 to March, 2007, rent was paid to Shri Vikal Joisar @Rs.16,000/- per month. On the basis of this comparison, he took the view that there is an abnormal increase in the rent and now this has been paid to related person as mentioned in section 40A(2)(b). Therefore, he disallowed the same. He submitted that the area of the godown is the same. Only ownership has been changed. He submitted that due to change in ownership, the rent cannot be increased. Therefore, the provisions of section 40A(2)(b) are clearly attracted. Similarly, in respect of weighbridge rent also, the Assessing Officer observed that rent has been increased from Rs.6,000/- to Rs.16,000/-, due to change in ownership in the property. Therefore, disallowance was rightly made by invoking the provisions contained in section 40A(2)(b) of the I.T.Act, 1961. He submitted that before the Assessing Officer, the assessee has not furnished any evidence to indicate that increase in the godown rent is due to hiring of different godown. To sum up, he submitted that the explanation, which was submitted before the ld. Learned Commissioner of Income Tax(Appeals), was not submitted before the Assessing Officer and the

ld. Learned Commissioner of Income Tax(Appeals), without affording an opportunity to the Assessing Officer, deleted both the disallowances.

7. On the other hand, Shri Tushar P. Hemani, ld. A.R. appearing on behalf of the Assessee, vehemently supported the order of the ld. Learned Commissioner of Income Tax(Appeals). The ld. Counsel of the assessee contended that in the assessment order, there is no finding that the rent paid on account of godown and weighbridge is excessive and unreasonable. Therefore, on this ground, the view taken by the ld. Learned Commissioner of Income Tax(Appeals) be upheld. Apart from this, he pointed out that before the Assessing Officer, the assessee has clearly mentioned the different addresses and the Assessing Officer erred in holding that land is the same.

8. Having heard both the sides, we have carefully gone through the orders of the authorities below as well as the statement of facts furnished before the ld. Learned Commissioner of Income Tax(Appeals). It is also pertinent to note that neither before the Assessing Officer nor before the ld. Learned Commissioner of Income Tax(Appeals), the assessee has furnished the area of the land, etc. In case, it was a different godown, the assessee ought to have stated the same clearly before the Assessing Officer. Since this was not done, the order of ld. Learned Commissioner of Income Tax(Appeals) in respect of both the disallowances is set aside and the matter is restored to the file of the Assessing Officer with the direction that the assessee should furnish old and new rent agreements in respect of godown as well as weighbridge land. The Assessing Officer will examine the same and ascertain the area of land, whether it is different, the prevailing rate of rent in the nearby land and re-adjudicate both the additions afresh, after bringing record the comparable cases and giving necessary opportunity of hearing to both the parties.

9. The facts relating to the ground no.3 are that in the assessment order, the Assessing Officer disallowed Rs.5,40,251/- out of interest expenses under section 40A(2)(b).

10. On appeal, in the impugned order, the ld. Learned Commissioner of Income Tax(Appeals) deleted the same observing that interest paid by the assessee @18% to the family members is neither excessive nor unreasonable.

11. Aggrieved by this, the revenue is in appeal before us.

12. We have heard both the sides. The Id. Counsel of the assessee filed a copy of the decision of the ITAT, Ahmedabad 'A' Bench dated 09.07.10 in the case of Vipul Y. Mehta-vs- ACIT in ITA No. 869/Ahd/2010 for the assessment year 2007-08 wherein it was held that loan taken from the relatives cannot be compared with bank loan because loan from the relatives are without security, while loan from the bank is secured. In this decision, reliance was also placed in the decision of the Tribunal in the case of Omkarmal Gaurishanker -Vs- ITO reported in 92 TTJ (Ahd.) 223 wherein it was held that interest paid to relatives @24% is reasonable. It is also pertinent to note that interest paid by the assessee before us is only 18%. Keeping in view the decision of the ITAT, Ahmedabad 'A' Bench in the case of Vipul Y. Mehta (*supra*), we are of the view that it is neither excessive nor unreasonable. Therefore, we incline to uphold the order of the Id. Learned Commissioner of Income Tax(Appeals). This ground of the appeal is accordingly rejected.

13. In the result, for statistical purposes, the appeal filed by the revenue is treated as partly allowed.

The Order pronounced in the Court on 11-02-11.

Sd/-
(A.N.Pahuja)
Accountant Member

Sd/-
(T.K. Sharma)
Judicial Member

DATED : 11/02/2011

Copy of the order is forwarded to :

- 1) The Assessee
 - 2) The Department.
 - 3) CIT(A.) concerned,
 - 4) CIT concerned,
 - 5) D.R., ITAT, Ahmedabad.
- True Copy

By Order

Deputy Registrar, ITAT, Ahmedabad

Talukdar/Sr.P.S.