IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH, "SMC" AT KOLKATA

(समक्ष) श्री ऐ. टी. वर्की, न्यायीक सदस्य)

[Before Shri A. T. Varkey, JM]

I.T.A. No. 1442/Kol/2018
Assessment Year: 2012-13

Mercury Car Rentals Pvt. Ltd. [PAN: AACCM 0488 P]	Vs.	DCIT, Circle – 4(2), Kolkata
Appellant		Respondent

Date of Hearing	14.01.2019
Date of Pronouncement	10.04.2019
For the Appellant	Shri A.K. Tibrewal, AR
For the Respondent	Shri Biswanath Das, Addl. CIT

ORDER

This appeal has been preferred by the assessee against the order of the Ld. Commissioner of Income-tax (Appeals)-2, Kolkata ['Ld. CIT(A)] dated 11.04.2018for the Assessment Year 2012-13.

2. The first ground of appeal is against the Ld. CIT(A)'s order confirming the disallowance of lease rentals of Rs.21,57,334/- holding it to be excess/double deduction claimed in the computation of income. Briefly stated the facts of the case are that the appellant company is engaged in the business of rendering car rental services. In the assessment completed u/s 143(3), the AO had disallowed the claim for lease rentals of Rs.21,57,334/- paid by the appellant in respect of the cars used by their employees. The AO had noted that the staff welfare expenses of Rs.2,20,37,335/- incurred by the appellant company had already been debited to the P&L A/c and in that view of the matter he held that the separate claim for deduction of lease rentals of Rs.21,57,334/- made by the appellant in computation of income was an excessive / double claim since in AO's view such expenditure already formed part of the staff welfare expenses of Rs.2,20,37,335/- debited in P&L A/c. On appeal the Ld. CIT(A) confirmed the disallowance on the ground that the appellant was unable to provide any cogent evidence that it was not an excessive deduction claimed in the return of income. Aggrieved, the appellant is now in appeal before us.

3. We have heard the rival submissions of both the parties. The Ld. AR of the appellant submitted that the claim for deduction of lease rentals was in accordance with the decision of the Hon'ble Supreme Court in the case of I.C.D.S. Ltd Vs CIT (350 ITR 527) and therefore urged that the impugned disallowance be deleted. Per contra the Ld. DR supported the order of the lower authorities and argued that the issue at hand was claim of double deduction rather than allowability of the lease rentals. He submitted that the appellant was unable to produce any evidence to show that the separate claim made in respect of lease rentals did not form part of the staff welfare expenses and hence urged that the order of the lower authorities be upheld.

4. After examining the contentions put forth by both the parties, it is noted that the issue at hand does not concern the legal allowability of the claim of lease rentals and to that extent I agree with the Ld. AR of the appellant that the allowability of principal component of the lease rentals stands decided in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of I.C.D.S. Ltd Vs CIT (supra). It is however noted that in the assessment order the AO has nowhere questioned the allowability of the deduction of lease rentals but disallowed the impugned sum on the ground that it was an excessive deduction claimed by the appellant since according to him this amount formed part of the 'staff welfare expenses' and which were separately debited in the P&L A/c. I note that before the Ld. CIT(A) as well this Tribunal the appellant was unable to provide any evidence to show that the expenses debited in P&L A/c did not include this amount of lease rentals separately claimed as deduction in the computation of income. The Ld. AR appearing on behalf of the appellant therefore requested that the matter be remanded back to the AO and sufficient opportunity be allowed to the appellant to prove that the claim was not an excessive deduction and that the impugned sum did not form part of the staff welfare expenses debited to P&L A/c. Therefore in the interest of justice and fair play, I deem it fit and appropriate to remand this issue to the file of AO for de novo adjudication after examining the additional evidences, if any, filed by the appellant in support of his contentions. Needless to say, the AO shall allow sufficient opportunity of hearing to the appellant in this regard. This ground accordingly stand allowed for statistical purposes.

5. The second ground in the appeal of assessee is against the Ld. CIT(A)'s order confirming the action of AO in sustaining the addition of interest income of Rs.67,939/-

relying on Statement in Form 26AS. During the course of assessment proceeding, the AO observed that assessee failed to reconcile interest income to the extent of Rs.67,939/- with its books of accounts and therefore added back the said amount as undisclosed interest income of the appellant as shown in the Form 26AS. Aggrieved by this order, the assessee preferred an appeal before Ld. CIT(A), where it submitted that this income did not pertain to it and for that reason the company did not even claim the credit for the corresponding taxes deducted at source on the impugned sum of Rs.67,939/-. The appellant therefore urged before the Ld. CIT(A) that the impugned addition be set aside. The Ld. CIT(A) however disregarded the plea taken before him and confirmed the impugned addition. Aggrieved by the order of the Ld. CIT(A), the appellant is now in appeal before us.

6. Having heard the rival submissions and having perused the material on record, I am of the considered view that based on 26AS alone no additions can be made. This can at best be a starting point for necessary verification but it cannot, on standalone basis, justify the impugned addition. I therefore consider it appropriate to remit the matter to the file of the AO strictly for the limited purpose of verifying the information. In case, he can find any independent evidence for the relevant AY 2012-13 that the appellant had actually received the impugnedinterest income, then only he can bring the same to tax. It is made clear that the onus will be on the AO to bring on record independent evidence after making enquiries from the payees and that the assessee cannot be expected to discharge the impossible burden of proving a negative i.e., that the assessee did not receive such interest income.With these observations, and for the limited purposes as set out in the foregoing, the matter stands restored to the file of the Assessing Officer. Needless to add that any material found adverse to the assessee, will have to be confronted to the assessee by the AO and in that case the AO shall pass a fresh speaking order after giving due and fair opportunity of hearing to the assessee. This ground accordingly stand allowed for statistical purposes.

7. The third ground of appeal is against the Ld. CIT(A)'s action of confirming the addition made by the AO on account of the provision set aside for long-term employees' benefits in the form of gratuity, leave encashment, ex-gratia & bonus while assessing the book profit u/s 115JB of the Act. Briefly stated the facts of the case are that the appellant had provided for the long term employees benefits inter alia including provision for gratuity, bonus and leave encashment etc. in terms of the mandatory Accounting Standards -15

issued by the Institute of Chartered Accountants of India. From the Notes forming part of the Annual Financial Statements for the relevant FY 2011-12, it is observed that provision for employee benefits have been provided on a scientific and systematic basis. Actuarial valuation reports were obtained to determine the said liability; copies of which have been placed in the paper book as well. The AO without assigning any reason added back these provisions to the computation of book profit u/s 115JB. On appeal, the Ld. CIT(A) also confirmed the impugned additions. Aggrieved by the order of Ld. CIT(A), the appellant is now in appeal before us.

8. Having heard the rival submissions and after perusing the material on record; it is noted that the provisions in respect of gratuity, leave encashment, ex-gratia & bonus were created on actuarial basis and had been estimated with reasonable certainty. Accordingly such provisions cannot be said to be provisions of unascertained liabilities so to add it back under clause (c) of the Explanation to section 115JB(2). Since these provisions are in the nature of ascertained liabilities, I am of the considered view that the same is allowable while computing book profit u/s 115JB of the I.T. Act. In this regard, I rely on the decision of this Tribunal in the case of Eastern Power Distribution Co. of AP Ltd Vs ACIT (139 TTJ 94) wherein on identical set of facts this Tribunal held as follows:

> *"8.2 It is not in dispute that, in the instant case, the impugned amount of Rs. 9.08 crores has been appropriated towards the terminal benefits of the employees of the assessee company viz., gratuity and pension payable, on the basis of actuarial valuation. In the following cases it has been held that such kind of provision falls under the category of "Ascertained liability" :*
>
> *(a) CIT v. Ilpea Paramount (P.) Ltd. [2010] 192 Taxman 65 (Delhi)*
>
> *(b) CIT v. National Hydro Electric Power Corpn. Ltd. [2010] 45 DTR (Punj..&Har.) 117*
>
> *In both the cases it has been held that the provision made for gratuity is an ascertained liability and hence the same is deductible while computing book profit under section 115JA/115JB. In the second mentioned case, it has been held that the provision made for leave encashment, post-retirement medical benefit are also ascertained liabilities, which are deductible under section 115JB from the book profits. In the instant case, though the amount provided for the terminal benefits has been transferred to a "Reserve Fund", in our view, the amount so provided relates to a provision only. Since the said provisions falls in the category of "Ascertained liability", the same is allowable while computing the book profit under section 115JB. In view of the above, we reverse the order of learned CIT(A) and direct the*

Assessing Officer to exclude the amount relating to provision made for terminal benefits while computing the profits under section 115JB of the Act."

9. Following the decision of the coordinate Bench of this Tribunal in the case of Eastern Power Distribution Co. of AP Ltd Vs ACIT (supra), the AO is directed to delete the additions made in respect of the provisions for gratuity, leave encashment, ex-gratia & bonus in the computation of book profit u/s 115JB. This ground accordingly stands allowed.

10. In the result, the appeal of the assessee is partly allowed for statistical purpose.

Order is pronounced in the open court on 10th April, 2019

Sd/-

(Aby T. Varkey)
Judicial Member

Dated : 10 April, 2019
Biswajit (Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Mercury Car Rentals Pvt. Ltd., 4, Mangoe Lane, 6th Floor, Kolkata – 700 001.
2 Respondent – DCIT Circle – 4(2), Kolkata.
3. The CIT(A),
4. CIT ,
5. DR,

/True Copy, By order,

Assistant Registrar/H.O.O
ITAT, Kolkata