

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

श्री ए. मोहन अलंकामणी , लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष

BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI. G. PAVAN KUMAR, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. Nos.2173 & 2177/Mds/2015
निर्धारण वर्ष /Assessment years :2003-04 & 2004-05

The Deputy Commissioner of
Income Tax,
Corporate Circle 1(1)
Chennai

Vs. M/s. AE & E Chennai Works
Limited,
18/2A, Sennerkuppam Bye Pass
Road, Poonamalee,
Chennai 600 056.

[PAN AABCB 5946J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. N. Madhavan, IRS
प्रत्यर्थी की ओर से /Respondent by : Shri. Ravi Sharma, Advocate.

सुनवाई की तारीख/Date of Hearing : 19-05-2016
घोषणा की तारीख /Date of Pronouncement : 28-06-2016

आदेश / O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeals filed by the Revenue are directed against different orders of the Commissioner of Income-tax (Appeals)-1, Chennai dt 20.08.2015 for the above assessment years passed u/s.143(3) r.w.s 147 and 250 of the Income Tax Act, 1961 (herein after referred to as

'the Act'). Since the issue in these appeals are common in nature, these appeals are clubbed, heard together, and disposed of by this common order for the sake of convenience. First, we take up ITA No.2173/Mds/2015 of assessment year 2003-2004 for adjudication.

2. The Revenue has raised the following grounds of appeal:-

"2.1 The learned CIT(A) erred in allowing consumption of raw material and employee cost of ₹79,37,994 to the assessee for the assessment year under consideration.

2.2 The learned CIT(A) ought to have appreciated the fact that due to labour disruptions, the factory was closed by the order of the Poonamallee Court with the management being prohibited from entering the premises.

2.3 The learned CIT(A) ought to have appreciated the fact that in Form 3CB it was admitted by the Statutory auditors that due to labour disruptions and in the absence of relevant document, the audit could not verify the inventories as on 31-03-2003 and total consumption during the year for raw-materials, stores, spares and consumables amounting to Rs.1,69,19,065/-. Hence, in the absence of certification by statutory auditors, it is not possible to accept the genuineness of the claim of consumption of raw-materials and employee cost claimed by the assessee".

3. The Brief facts of the case are that the assessee is in the business of manufacture of boilers and boiler components and assessment u/s.143(3) of the Act was completed on 28.02.2006 after setoff brought forward losses of assessment year 2001-2002 and the taxable income determined a Nil. The Id. Assessing Officer subsequently found that income chargeable to tax escaped assessment and issued notice u/s.148 of the Act. In compliance to notice, the assessee has filed a letter to treat original return filed on 28.11.2003 in response to notice u/s.148 of the Act. The Id. Assessing Officer issued notice u/s.143(2) of the Act and the Id. Authorised Representative of assessee appeared from time to time and filed details as called for. The Id. Assessing Officer on perusal of the financial statement as per Tax Audit Report u/sec. 44B on note 4 to Schedule 17, the Auditors have admitted that "due to labour disruptions and in the absence of relevant documents, Auditor could not verify the inventory for the year consisting of raw materials, stores, spares and consumables aggregating to ₹1,69,19,065/- and the company has declared factory closed w.e.f. 30.09.2002. The Id. Assessing Officer based on the observations of the Auditors has doubted the claim and genuineness of consumption of raw materials and employees cost claimed by the assessee and under suspicion and surmises observed that cost of raw materials and employees cost were inflated in the absence of certification of the Statutory Auditors during the financial year 2002-2003,

were the assessee claimed employee cost as per Schedule -14 of its profit and loss account ₹2,43,33,432/- and stores and consumables included under Schedule -13 materials and services ₹74,18,544/- total aggregating to ₹3,17,51,976/- and on the presumption of inflation disallowed 25% of ₹3,17,51,976/-, which worked out to ₹79,37,994/- and also disallowed contribution to the Superannuation Scheme and assessed total income as Nil after setting off of brought forward losses of assessment year 2001-2002 ₹1,20,13,221/- and assessment year 2002-2003 ₹14,09,947/- aggregating to ₹1,34,23,168/-. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Authorised Representative argued that the Id. Assessing Officer erred in disallowing 25% of employees cost and other consumables unilaterally without assigning any direct and specific reasons and the employees cost includes salary, wages, contribution to Provident Fund and Staff welfare benefits are included purely for the purpose of business and disallowed on suspicion is not in accordance with law. The Id.CIT(A) considering the grounds and facts that the assessee company factory was closed w.e.f. 30.9.2002 and the findings of the Id. Assessing Officer has observed that view taken by the Id. Assessing Officer is without any investigation or enquiry and the

disallowance on presumptive basis cannot be sustained and deleted the addition and allowed the appeal of the assessee. Aggrieved by the order of Commissioner of Income Tax (Appeals), the Revenue has assailed an appeal before Tribunal.

5. Before us, the Id. Departmental Representative argued the grounds that the Id. Commissioner of Income Tax (Appeals) erred in deleting the addition made by the Id. Assessing Officer in respect of employees cost, consumables of raw materials irrespective of the fact that the factory was closed by the order of the Court and the management is prohibited from entering the premises. The Auditor has admitted that due to labour problems and in the absence of relevant document could not verify inventory as on 31.03.2003 and the Id. Commissioner of Income Tax (Appeals) has overlooked the fact that in the absence of certification by the Auditors the genuineness of claim of employees cost and raw material cost is doubtful and prayed for setting aside the order of Commissioner of Income Tax (Appeals).

6. Contra, the Id. Authorised Representative relied on the orders of the Commissioner of Income Tax (Appeals), filed written submissions to substantiate the claim with judicial decisions and paper book of financial

statements pertaining to of subsequent assessment years to show the activity of the business and prayed for dismissing the appeal.

7. We heard the rival submissions, perused the material on record. The only disputed issue being that the Id. Authorised Representative contention that the Id. Assessing Officer has purely relied on the observations of statutory Auditor report in note 4 forming part of accounts at para 4 in Schedule 17 of Auditors report and the para 6(b) of form 3CB were the Auditors could not verify the inventory as on 31.03.2003 in respect of raw materials stores and spares. With these observations, the Audit was completed and Statutory Auditor report was issued. The Id. Assessing Officer has not done any enquiry or investigation and relied that the factory was declared closed on 30.09.2002 and also in the absence of certification of Statutory Auditor is under the presumption and suspicion that there are possibilities of inflation of employees cost and raw materials. The Id. Assessing Officer further without applying the rationality and scientific methodology disallowed 25% of the cost. The Id. Authorised Representative demonstrated before us referring to the schedule 14 were the assessee has claimed employee cost. On comparing the ratio of employee cost to the fabrication charges of earlier year 2002, the employee cost has decreased and the percentage being less than earlier years. Similarly, stores consumables difference has come down in comparison with the balance as on 31.03.2002 and the

action of the Id. Assessing Officer is purely based on the assumption of inflation without being any analogy for the calculation. The Id. Assessing Officer has relied on the observation in Auditor report and capitalized views. The Id. Assessing Officer if not satisfied with the particular type of expenditure could not disallow the same without verification and on adhoc basis. The Id. Assessing Officer has not pointed out any defects in the Books of Account but made the adhoc disallowance on general observations. The action of the Id. Assessing Officer in making adhoc disallowance is without any cogent reasons is not acceptable and the Id. Commissioner of Income Tax (Appeals) has observed in his order based on the finding of the Assessing authorities that no enquiry was conducted by the Id. Assessing Officer. Accordingly, we are inclined to uphold the order of Commissioner of Income Tax (Appeals) who has dealt on the facts and reasonableness of the assessee's working conditions and the ground of the Revenue is dismissed.

8. Now we take up ITA No.2177/Mds/2015 of assessment year 2004-05 for adjudication:- The assessee filed return of income for the assessment year 2004-05 on 30.10.2004 declaring loss of ₹2,65,65,547/- and the Id. Assessing Officer has reasons to believe that there is escapement of income and issued notice u/s.148 of the Act and in compliance to notice, the assessee filed letter to treat the return filed

originally on 30.10.2004 in response to notice u/s.148 of the Act. Subsequently, notice u/s.143(2) of the Act was also issued. The Id. Authorised Representative of assessee appeared and filed details which were examined by the Id. Assessing Officer. The Id. Assessing Officer on perusal of the Annexure -1 of form 3CD issued by the statutory auditor found the company has declared closure of factory w.e.f. 30.09.2002 and verification of books of accounts was restricted. Further, the Id. Assessing Officer on perusal of the profit and loss account found that the assessee company has claimed ₹1,27,42,203/- towards depreciation on plant and machinery though the factory was under the closure throughout the year and they are not put into actual use. The assessee company also claimed ₹15,63,488/- towards repairs and maintenance. The Id. Assessing Officer observed that due to Court orders the management has been restrained from entering into factory premises and there cannot be any repairs and maintenance during the period of closure. In response to show cause notice of disallowance of depreciation on plant and machinery and repairs and maintenance total aggregating to ₹1,43,05,691/-. The Id. Authorised Representative of assessee filed letter dated 26.12.2008 relying on the decision of *LVE Vairavan Chettiar vs. CIT 72 ITR 114*. The Id. Assessing Officer distinguished the judgment due to closure of factory the plant and machinery were not put to use and no question of allowing repairs and maintenance and disallowed the claim alongwith other

additions and passed order u/s.143(3) r.w.s.147 of the Act dated 30.12.2008. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

9. In the appellate proceedings, the Id. Authorised Representative submitted that the factory is under closure and the Id. Assessing Officer disallowed depreciation and repairs and maintenance only on the ground that machinery was not put to use but the closure was only temporary suspension of business operations and not complete closure of business and the assessee company in subsequent assessment years commenced its business operations with the same line of activities. The Id. Assessing Officer failed to appreciate the decisions of jurisdictional High Court on closure of business. The assessee company was following the accounting system of writing off of loose tools over a period of three years. The expenditure on repairs and maintenance pertaining to the 1/3 value of the loose tools was claimed as Revenue expenditure otherwise the Id. Authorised Representative claim was alternatively to allow depreciation on disallowance value of tools. The Id. Commissioner of Income Tax (Appeals) considering the arguments, findings of the Id. Assessing Officer and submissions of the Id. Authorised Representative and background of the company and material evidence concludes that the temporary closing

down of business shall not prohibit the claim of Revenue expenditure and observed at 4.2 of the order as under:-

“4.2 I have carefully considered the facts in issue, the view taken by the AO, the arguments advanced by the appellant and material on record. This is a case where the appellant which is in the business of manufacturing boilers and boiler components had to temporarily close down business resulting from a lock out on account of labour unrest. The machineries no doubt were not put to use during the period of closure. Notwithstanding the same the business operations were resumed after a lull. This is not a case of termination of business or where business had ceased to exist. The ratio in the case of *Vairavan Chettiar v. CIT 72 ITR 114* relied upon by the AO would therefore not apply to the facts of the case. The appellant will be entitled to claim some depreciation and repairs and maintenance as claimed by it. This view is fortified by the decision of the Hon'ble Bombay High Court in the case of *Hindustan Chemical Works Ltd v. CIT 124 ITR 561 (Bom)*. On the facts of that case it was found *This was really a case where the company had completely gone out of its production, it had stopped production, it had decided to discontinue its business and either sell away the plant and machinery and buildings or, in the absence of proper purchasers being found, had decided to develop its real property, so that it could become a useful source of income. There is a marked distinction between "lull in business" and "going out of business". A temporary discontinuance of business may in certain circumstances give rise to an inference that a business is going through a lean period of transition and it could be revived if proper circumstances arise. But where in a case like this the company had decided to dispose of its property, the plant and machinery had been dismantled and taken away from the factory premises, there was not even the slightest chance of the company restarting production, there was no finance available, and even the licences had ceased to be*

effective, it is difficult to hold that there was a lull in business which was of a temporary nature.) In our view, the inference drawn by the Tribunal that the company had 'completely stopped its business and had gone out of business and that the only source of income for the company was income from property was eminently justified by the facts which have appeared in this case. We must, therefore, confirm the finding that in the years in question, the company had not carried on any business so as to enable it to claim either depreciation or deductions claimed by it or a right to set off un absorbed depreciation carried forward. Question No. 1 must, therefore, be answered in the negative...' In the case of the appellant the facts are indicative that it was a mere lull before business was resumed therefore qualifying it for all claims and deductions permissible under the Act. This ground is allowed''.

and allowed the appeal of the assessee. Aggrieved by the Commissioner of Income Tax (Appeals) order, the Revenue has assailed an appeal before Tribunal.

10. Before us, the Id. Departmental Representative reiterated that the Id. Commissioner of Income Tax (Appeals) has erred in deleting the addition of depreciation on plant and machinery ₹.1,27,42,203/- and repairs and maintenance charges ₹15,63,488/- without appreciating the facts that the factory was under closure and Court has prohibited the management from entering the premises and there could be could be no occasion for repairs and maintenance of plant and machinery used in the previous year and prayed for allowing the appeal.

11. On the other hand, the Id. Authorised Representative relied on the order of Commissioner of Income Tax (Appeals) and argued that the factory was in operation and was temporally suspended and resumed in subsequent assessment years carrying on the same line of business activities and filed copies of financial statements for subsequent assessment years and judicial decisions to support his arguments and vehemently to he grounds.

12. We heard the rival submissions, perused the material on record and judicial decisions cited. The Id. Departmental Representative contention in the first ground that the depreciation was claimed on plant and machinery irrespective of the fact that the factory was under closure. We on perusal of the profit and loss account for the year ended 31.03.2004, found that the assessee company has disclosed other income under Schedule -9 though there are no fabrication charges received in comparison with earlier years 2002-2003 and the assessee company has not claimed any expenditure on material and services as per schedule 11 of profit and loss account but claimed depreciation of ₹1,27,42,203/- as per annexure-2 to form 3CD which the Id. Assessing Officer disallowed. Prima facie, the assessee company is a going concern and with active business operations as per financial statements, the assessee company

claimed depreciation on building, furniture and fittings, computers and motor vehicles apart from depreciation on plant and machinery. The Id. Assessing Officer accepts depreciation claimed on the other business assets but not on plant and machinery and the reasons mentioned by the Id. Assessing Officer are not conceiving. The Id. Authorised Representative produced Audited financial statement for the year ended 31.03.2004 and also form 3CD for verification. We found there is Business activity though main business operations are temporary suspended. On verification of Audited statements of financial years 2006-07 and 2007-08, the assessee company has started its business operations. Considering the apparent facts, material evidence and judicial decisions, we are not inclined to interfere with the order of the Commissioner of Income Tax (Appeals) and uphold the same and dismiss the Revenue grounds.

13. Similarly, on second ground in respect of repairs of plant and machinery, the Id. Authorised Representative brought to the knowledge of Bench that it is a accounting policy of the company to write off loose tools over a period of three years and 1/3 value of loose tools amounting to ₹15,63,488/- was claimed as deduction in the nature of Revenue expenditure was not disputed by the Revenue in the earlier years. Since the accounting policy is followed by the company from earlier years and the fact that loose tools are written off over a period of three years as per

schedule -15 notes to accounts of Audit report and the Id. Assessing Officer has not denied the claim in earlier years and action of the Assessing Officer in the assessment year 2004-05 in disallowing the claim of loose tools written off due to temporary closure of business cannot be tenable. The Id. Commissioner of Income Tax (Appeals) has dealt elaborately and considered viz-a-v-z explanation of the assessee and deleted the addition and we uphold the order of the Id. Commissioner of Income Tax (Appeals) on this ground and dismiss the Revenue ground.

14. In the result, the appeals of the Revenue in ITA Nos.2173 & 2177/Mds/2015 for assessment years 2003-2004 and 2004-05 are dismissed.

Order pronounced on Tuesday, the 28th day of June, 2016 at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A. MOHAN ALANKAMONY)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 28th June, 2016.

kv

आदेश की प्रतिलिपि अग्रेषित/Copy to:

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य /JUDICIAL MEMBER

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF