IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI “B” BENCH, MUMBAI

BEFORE SHRI SHAILENDRA KUMAR YADAV, JUDICIAL MEMBER,
AND SHRI RAJESH KUMAR, ACCOUNTANT MEMBER.

ITA. Nos. 7027 & 7028/Mum/2011
(Assessment Years:2003-04 & 2004-05)

Neptune Container Line &
Logistics Pvt. Ltd.,
26-27, 4th Floor, Kamer
Building, 38 Cawasji Patel
Street, Fort, Mumbai – 400 001 Appellant

Vs.

DCIT 2(2)(OSD),
Mumbai 400 001 Respondent

PAN: AAACN5667P

अपीलार्थी की ओर से /By Appellant : Shri H. N. Motiwala, A.R.
प्रत्यर्थी की ओर से/By Respondent : Shri Randhir Gupta, D.R.
सुनवाई की तारीख/Date of Hearing : 02.08.2016
घोषणा की तारीख/Date of Pronouncement : 08.08.2016

ORDER

PER SHAILENDRA KUMAR YADAV, J.M:

Both appeals have been filed by assessee against the orders of Commissioner of Income-Tax (Appeals)-5, Mumbai, dated 06.07.2011 for both A.Ys. i.e. 2003-04 & 2004-05. Since, these appeals pertain to same assessee and on similar issue, so they are being disposed of by common order for the sake of convenience.

2. In ITA No.7028/Mum/2011 for A.Y. 2004-05, assessee has filed appeal on following grounds:

> "1) The Learned Commissioner of Income Tax (Appeal) – 5, Mumbai has erred in confirming the action of the Learned Assessing Officer in confirming the additions of Rs.8,53,910/- on account of Bogus Expenditure disallowed based on the investigations done by EOW, where as details available on the records shows proper care was taken at the time of payment and the Learned Assessing Officer has relied only on the findings of EOW.
>
> 2) The Learned Commissioner of Income Tax (Appeal) – 5, Mumbai has erred in confirming the action of the Learned Assessing Officer even known the fact that Shri Piyush Chheda was arrested and released on the bail, and these statements were recorded by EOW, which has no relevant on the our Company as we have given these cheques to M/s Eureka Corporation (Prop Dilip Mehta), which was fraudulently enchased by Shri Piyush Chheda and a case of fraud is already being filed by Dilip Mehta for recovery of Amount, and our party to this, then this amount can't be added back to us as Bogus Expense."

2. Assessing Officer made addition of Rs.8,53,910/- on account of bogus expenditure based on investigation done by Economic Offence Wing (hereinafter called as 'EOW'), wherein he observed that payments were made in the names of Shri Piyush Chheda, Shri Dhaval Naik and M/s. Eureka Corporation. On the basis of statements of Shri Piyush Chheda and Shri Dawal Naik to EOW, Shri Piyush Chheda

along with wife Smt. Meenal Chheda had opened fraudulent bank accounts where they had deposited chques, which they obtained fraudulently with the help of Shri Mayur Walia. The amount which was due to Eureka Corporation was being paid after obtaining the proper invoices deducting the TDS and issued account payee cheques. The owner of Eureka Corporation who has filed the FIR with the Police for not receipt of cheques and concerned Police Station found that these cheques were fraudulently encashed by Shri Piyush Chheda by opening the fraudulent account with the bank and for that, Police arrested him and recovered the details and amount from him. Eureka Corporation has shown the said amount outstanding. Cheques issued to Piyush Chheda and Dawal Naik was against proper invoices. Assessing Officer has made addition on account of bogus expenditure detailed as under:

S. No.	Name	F.Y. 2002-03	F.Y. 2003-04	Total
1	Piyush Chheda	180682	119755	300437
2	Eureka Corporation		632765	632765
3	Dhaval Naik	356208	101390	457598
	Total	536890	853910	13,90,800

In appeal, this addition was confirmed by CIT(A).

2.1 Assessee reiterated the submissions made before the authorities below and submitted that expenditure in question at the hand of assessee was genuine, so, same should be allowed. On the other hand, ld. Departmental Representative supported the orders of authorities below.

2.2 After going through rival submissions and perused the material on record, we find that assessee is engaged business of services related to Shipping Agent/Multimodal Transport Operator/International Freight forwarding Agents. Assessee's sales person canvas the cargoes and approach the Shippers/ Exporters/Custom House Agents and Freight Brokers. As per the industry practice, it offers Borkerage/Commission to customers which ranges as per the contract. The key person within the whole transaction is Sales Executive/Sales Person/ Sales Manager of the company who agrees to pay the commission on behalf of company through the broker Eureka Corporation, Piyush Chheda and Daval Naik and company was receiving the cargo and as per agreed terms by the Manager, company was liable to pay the brokerage/commission against the invoices raised by them. During this period, company has issued all the cheques against invoices raised by them. After checking the TDS certificates, Eureka Corporation complained that the cheques net amounting to Rs.5,99,398/- were not received by him as per the TDS certificates and lodged complaint for fraudulent encashment of cheques. It was submitted that the shipments in question were all genuine business transactions and not bogus as alleged. As per Section 37(1) of the Act, any expenditure (not being expenditure of the nature described in Sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of assessee), laid out or expended wholly and exclusively for the purposes of business or profession shall be allowed in computing income chargeable under the head "Profits and gains of business or profession". Commission paid to Piyush Chheda and Dhaval Naik should be allowed as business expenditure. Even commission was due/paid and payable to Eureka Corporation. However, these cheques issued to Eureka Corporation were fraudulently encashed by Piyush Chedda and Minal Piyush Chedda. It does not change the colour of liability in the hands of assessee. There is nothing on record to suggest that assessee had not incurred this expenditure in lieu of services rendered to it. There is connivance of assessee in fraudulent diversion of the amount to fraudulent persons instead of Eureka Corporation. Assessee has claimed the expenditure as it has shown and cheques were issued in the name of Eureka corporation against services rendered by it. Irrespective of the fact that same has not reached destination in spite of their usual mode of payment through banking channel. Moreover, the said amount was paid after deducting TDS. It shows that bonafide of payment in this regard. In this situation, expenditure in question should not be disallowed on the basis of statements of somebody in proceedings before EOW. Moreover, there is nothing on record that the proceedings of EOW were confronted to the assessee in this regard in any manner. Sequence of the facts show that assessee made payment to Eureka Corporation, which was fraudulently cornered by Shri Piyush Chheda and other. As stated above, for the same, Dilip Mehta of M/s. Eureka Corporation filed a complaint for recovery of the amount in question. It shows that Dilip Mehta of M/s. Eureka Corporation has no grievances against assessee. So, the expenditure in question should not be disallowed in the hands of assessee, irrespective of the fact that same has been fraudulently cornered by somebody, for which, separate legal proceeding claimed to be subjudice. Accordingly, this amount in question should not be disallowed. Regarding other amounts, payments had been made of Rs.1,19,755/- to Piyush Chheda and Rs.1,01,390/- to Dhaval Naik. Those payments to Piyush Chheda and Dhaval Naik should not be disallowed on the analogy of Eureka Corporation as same have been paid to respective parties against their services rendered to assessee. The facts of Eureka Corporation are different from the payments made to Piyush Chheda and Dhaval Naik. These have been incurred by assessee for the business purpose. So, same should not be disallowed for reasons discussed above. Accordingly, these amounts in question are directed to be allowed.

2.3 As a result, appeal filed by assessee for A.Y. 2004-05 is allowed.

3. In ITA No.7027/Mum/2011 for A.Y. 2003-04, assessee has filed appeal on following grounds:

> "1) The Learned Commissioner of Income Tax (Appeal) – 5, Mumbai has erred in confirming the action of the Learned Assessing Officer in confirming the additions of Rs.5,36,890/- on account of Bogus Expenditure disallowed based on the investigations done by EOW,

where as details available on the records shows proper care was taken at the time of payment and the Learned Assessing Officer has relied only on the findings of EOW.

2) The Learned Commissioner of Income Tax (Appeal) – 5, Mumbai has erred in confirming the action of the Learned Assessing Officer even known the fact that Shri Piyush Chheda was arrested and released on the bail, and these statements were recorded by EOW, which has no relevant on the our Company as we have given these cheques to M/s Eureka Corporation (Prop Dilip Mehta), which was fraudulently enchased by Shri Piyush Chheda and a case of fraud is already being filed by Dilip Mehta for recovery of Amount, and our party to this, then this amount can't be added back to us as Bogus Expense."

4. The issue of expenditure of Rs.5,36,890/- on account of alleged bogus expenditure is originating from EOW proceedings, with regard to some alleged bogus transactions in case of Eureka Corporation. In fact, both parties, namely, Piyush Chheda and Dhaval Naik have also rendered independent service to the assessee in the year consideration for which payment has been made. TDS on the amount has been paid but same has been disallowed on the analogy of Eureka Corporation. The payments of Eureka Corporation in A.Y. 2004-05 are on different footings and disallowed by Assessing Officer, which has also been deleted by us vide para 2 of this order. However, drawing same analogy i.e. investigation of EWO amount in question has been disallowed by Revenue authorities. In this regard, the stand of assessee is very clear that Piyush Chheda and other were given the amounts in question in lieu of services rendered by them.

Even though, these parties committed same fraud with regard to payment to Eureka Corporation in A.Y. 2004-05. It does not mean that the payment made to these parties in respect of their services rendered to assessee also goes bogus. So, relying on the decision for A.Y. 2004-05 on this issue, disallowance for the year under consideration for both parties is also not justified. Same is directed to be deleted.

5. In the result, both appeals filed by assessee are allowed.

Pronounced in the open Court on this the 08th day of August, 2016.

Sd/-	Sd/-
(RAJESH KUMAR)	(SHAILENDRA KUMAR YADAV)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai: Dated 08/08/2016

<u>*True Copy*</u>

S.K.SINHA

<u>आदेश की प्रतिलिपि अग्रेषित</u> <u>/ Copy of Order Forwarded to:-</u>

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार,
आयकर अपीलीय अधिकरण, मुंबई।