

Naveen Projects Ltd. Vs. Dy Cit

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Sep-20-2004

Reported in : (2005)1SOT232(Delhi)

Appellant : Naveen Projects Ltd.

Respondent : Dy Cit

Judgement :

These appeals are preferred by the assessee as well as the revenue against the orders of the CIT (A) pertaining to the assessment years 1995-96 and 1996-97. Since common issues are involved in these appeals, these were heard together and being disposed of by this single consolidated order.

We have heard the rival submissions and carefully perused the orders of the authorities below and the documents placed on record.

This appeal is preferred by the assessee assailing the order of the CIT (A) on various grounds which are enumerated hereunder: "(1) That on the facts and circumstances of the case and in law the CIT (A) erred in sustaining the disallowance of the sum of Rs. 1,59,275 written off in the account of Shri H.C. Kohli.

(2) That on the facts and circumstances of the case and in law the CIT (A) erred in confirming the disallowance out of travel expenses incurred on trip of Mrs. Naveen Kohli to Singapore.

(3) That on the facts and circumstances of the case and in law the CIT (A) erred in confirming the action of the assessing officer in not excluding the sum of Rs. 1,56,699 from the total income on account of unclaimed balances written back in the profit and loss account.

(4) That on the facts and circumstances of the case and in law the CIT (A) erred in not excluding from the total income the sum of Rs. 23,73,415 credited to the profit and loss account by way of provision no longer required written back towards unrealized profit for earlier year which was added back in the assessment year 1994-95 and instead restoring the matter to the assessing officer for passing a speaking order." During the course of hearing, the learned counsel for the assessee opted not to press ground No. 4. Accordingly, ground No. 4 is dismissed as not pressed.

Apropos Ground No. 1, it is noticed from the break up of the written off sums that the major sum of Rs. 1,59,275 was an outstanding amount in the name of Shri H.C. Kohli, Ex-Director of the assessee company. In response to the query of the assessing officer as to how this amount would qualify as a business loss as this was in the nature of an advance to the Ex-Director of the company, it was submitted that the sum of Rs. 3.50 lakhs was advanced to Shri H.C. Kohli in March, 1987 as interest-free loan when he was a director of the company. This amount remained unpaid and meanwhile Shri H.C. Kohli resigned from the Board of directors of the company on 29-10-1988. The payment to the extent of Rs. 1,90,724.73 was recovered from Gujarat Hitech Limited owned by Shri H.C. Kohli and the balance amount of Rs. 1,59,275.27 remained unpaid which was written off in the assessment year 1995-96. The learned lower authorities did not find any business need of advancing this loan to Shri H.C. Kohli and they did not consider it to be a business loss. The CIT (A), accordingly confirmed the disallowance of this claim of the assessee.

Aggrieved, the assessee preferred an appeal before the Tribunal.

During the course of hearing, the assessee could not establish that interest-free loan advanced to Shri H.C. Kohli, one of the Directors in March, 1987 was on account of business need or pursuant to the terms and conditions of his

employment. The CIT (A) has also disallowed the claim of the assessee for the same reason. It is a settled position of law that only those expenditures can be allowed which were incurred for the business purpose or on account of business exigency. Since nothing has been placed on record that interest-free loan was advanced to Shri H.C. Kohli on account of business need, the unrecovered loan cannot be treated to be business loss of the assessee. We, therefore, do not find any infirmity in the order of the CIT (A) who has rightly confirmed the disallowance made by the assessing officer.

Apropos ground No. 2, it is noticed that the Managing Director of the assessee company and his wife Smt. Naveen Kohli had undertaken foreign travel. On account of foreign travel, the assessing officer made a disallowance of Rs. 8,60,219 against which an appeal was filed before the CIT (A) and the CIT (A) examined the claim of foreign travel expenses in the light of two reports and other facts. Being convinced with the explanation of the assessee, the CIT (A) allowed the claim of expenses except the expenses incurred on foreign travel of his wife to Singapore. The order of the CIT (A) on this issue is assailed by the assessee as well as the revenue before the Tribunal.

During the course of hearing, the assessee has also filed the report of foreign travels and the name of the parties who were visited by its Managing Director during his foreign visit. The details of his foreign visit were also filed before the assessing officer. In respect of the disallowance made on account of foreign travel expenses incurred on the wife of Managing Director Mrs. Naveen Kohli, the assessee could not place any evidence on record to establish that the foreign visit of the wife of the Managing Director was necessary on account of any business need or to attend any Conference or Seminar in which the delegates were invited along with their spouses. In these circumstances, we find no justification in allowing the foreign travel expenses incurred on the wife of the Managing Director. From the material available on record, it is not clear as to how many countries are visited by the Managing Director along with his wife. We, therefore, set aside the order of the CIT (A) and restore the matter to the file of the assessing officer to allow foreign travel expenses incurred only on foreign visit of the Managing Director and disallow the remaining expenses which were claimed on foreign visit

of his wife.

With respect to ground No. 3, it is noticed from the record that unclaimed balance of Rs. 1,56,669 was written back in the profit and loss account but it was not included in the total income of the assessee. The assessing officer, accordingly, made an addition of Rs. 1,56,669 against which an appeal was filed before the CIT (A) and it was claimed that the credit balances written back represents the amount that had been lying to the credit for sometime. The contention of the assessee that this write back in no way represents the remission or cessation of liability by the creditor and as such could not be regarded as income, was not accepted by the assessing officer as well as the CIT (A). While rejecting the claim of the assessee, the CIT (A) observed that the onus in this regard of showing how much each item of write back should not be treated as income was clearly on the assessee and the said onus has not been discharged. Therefore, no relief on this account is admissible to the assessee. Now the assessee is before the Tribunal and furnished the details of sundry debtors and creditors and from these details, we are unable to understand how written back sundry debts can be called to be an income of the assessee, but in any case, whenever sundry credit amounts were determined, it should have been offered as a part of the total income. From the perusal of the orders of the lower authorities, it appears to us that while disallowing the claim of the assessee details furnished by the assessee were not thoroughly examined. We are, therefore, of the view that this requires fresh look by the assessing officer in the light of the details of sundry debtors and sundry creditors. We, therefore, set aside the order of the CIT (A) and restore the issue to the file of the assessing officer for its adjudication in the light of the details of sundry creditors and sundry debtors appearing at page 85 of the compilation of the assessee.

This is a cross appeal by the revenue for the assessment year 1995-96 in which the revenue has assailed the order of the CIT (A) on various grounds, which are as under: "(1) On the facts and in the circumstances of the case, the learned CIT (A) has erred in holding that it cannot be said that sufficient opportunity was given by the assessing officer to the assessee company for filing evidence and allowing the company to file fresh evidence before him in the appellate proceedings.

(2) On the facts and in the circumstances of the case, the learned CIT (A) has erred in holding that PF dues deposited within 5 grace days after 15th of the next month would not be disallowable under section 43B read with section 36(1)(va) of the Income Tax Act and deleting the disallowance of Rs. 1,90,179.

(3) On the facts and in the circumstances of the case, the learned CIT (A) has erred in holding that the expenses incurred in foreign travel of Shri Naveen Kohli are admissible under section 37(1) without properly appreciating the fact that the assessee had no business needs for foreign travel and in the relevant previous year the assessee company had neither imported any material nor it had exported any finished goods to those countries and there was no nexus between these foreign trips and the business carried on by the assessee.

(4) On the facts and in the circumstances of the case, the learned CIT (A) has erred in deleting the disallowance of commission expenses of Rs. 29,56,245 by not appreciating the fact that the commission paid for procurement of the contracts cannot be allowed in one year as the income from these has not been disclosed in this year and that the assessee had failed to furnish confirmations from the parties to whom commissions were paid in the course of assessment proceedings in spite of having been allowed adequate opportunities.

(5) On the facts and in the circumstances of the case, the learned CIT (A) has erred in allowing the expenditure on computer software charges of Rs. 30,84,500 not appreciating the fact that these expenses were capital expenses.

(6) On the facts and in the circumstances of the case, the learned CIT (A) has erred in allowing depreciation on the whole amount at the rate of 100% on shuttering material not properly appreciating the following facts: (i) The assessee had failed to furnish sufficient evidence in support its claim of purchase of shuttering material during the relevant financial year.

(ii) The assessee had failed to establish that these shuttering materials were actually issued to the sites.

(iii) The assessee had failed to establish that these shuttering materials were actually used in the business during the relevant previous year.

(7) The order of the assessing officer may be restored and the order of the CIT (A) may be set aside with respect to the above mentioned grounds.' During the course of hearing, the revenue did not raise much arguments on ground Nos. 1 and 2. We, however, examined the findings of the CIT (A) on these grounds but find no infirmity therein. We, therefore, confirm the order of the CIT (A). Ground No. 3 has already been examined by us in the foregoing assessee's appeal. We, therefore, do not think it proper to adjudicate this ground again. Following our view taken in the foregoing assessee's appeal, we restore this issue to the assessing officer for its examination afresh in terms indicated.

Apropos ground No. 4, it is noticed that the assessee has claimed the payment of commission of Rs. 29,56,245. In the audited accounts, it has been mentioned that it was the cost attributable to securing contracts and, therefore, it was treated as deferred revenue expenditure and charged to revenue in proportion to the contract turnover. Guided by this note, the assessing officer has recorded in his order that item of expenses treated as deferred revenue expenditure were to be amortised over a period of five years from the year of incurrence. With this background, the assessing officer has held as under: "Thus, the commission paid for procurement of the contract cannot be allowed in one year as the income from all these contracts has not been disclosed in this year. Further the assessee did not furnish confirmation from the parties to whom commissions were paid. Copy of agreements with these parties have also not been furnished. The terms and conditions for payment of the commission have not been disclosed.

Hence, the commission claimed as deduction at Rs. 29,64,687 is disallowed." The assessee preferred an appeal before the CIT (A) with the contention that the assessing officer's main ground for disallowance of commission, namely, that the said expenditure has been shown as deferred revenue expenditure and should have been amortised over a period of five years is not tenable. In this regard, the assessee filed his written submissions, an extract of which is reproduced hereunder being relevant to the present controversy : "It may be mentioned that

often certain expenditure, which is of revenue nature, is shown and recorded in the books of account as a deferred revenue expenditure. This is done with a view to ensure that the profit and loss account and balance sheet of a company shall give "a true and fair view" of the state of affairs of the company as at the end of the financial year as per section 211 of the Companies Act, 1956. This may be a requirement of the Companies Act, 1956. However, the requirements of accountancy /company law of a "true and fairview", and the requirement of income-tax are totally different. How the deferred expenditure is to be treated for the purpose of Income Tax Act is no more res integra. Under the Income Tax Act, there is no concept of deferred revenue expenditure. This was considered way back by the Allahabad High Court in the case of Hindustan Commercial Bank Ltd., 21 ITR 353 (supra). This decision, it will not be out of place to mention, holds the field even on date. Their Lordships were categorical in observing that expenditure which causes benefit in more years than one does not render that expenditure deductible over a period of those years." 13. Before the CIT (A), it was contended that the assessee filed the details of commission in form of bills raised by the parties. The assessee has also filed the details of commission payment before the CIT (A) and the CIT (A) called the comments from the assessing officer.

In response thereto, the assessing officer has filed the remand report stating therein that he has afforded number of opportunities to the assessee to file the details but it was not filed. As such without affording an opportunity to the assessing officer, these documents should not be admitted. The CIT (A) having admitted the details of commission and having examined the claim and explanation of the assessee, he allowed the commission. Now the revenue is in appeal before us with the submission that from the details of payment, it is abundantly clear that the bill of commission was raised at the fag end of the financial year and in the contract between the parties, there is no narration about the fact that these contracts were obtained with the help of the commission agent. All these evidences were not thoroughly examined by the assessing officer and the CIT (A) without verifying the facts, has admitted these evidences and allowed the claim of the assessee. The best course available to the CIT (A) was to restore the matter to the assessing officer for examination of the details of commission and services rendered by the commission agent but the CIT (A) having admitted

these evidences, accepted the claim of the assessee.

The learned counsel for the assessee, on the other hand, has submitted that the assessee has filed all the relevant evidences before the assessing officer but he did not examine the same and disallow the claim of the assessee. The CIT (A) who is armed with coterminous powers with that of the assessing officer, has examined these documents and after being satisfied with the nature of the claim and services rendered by the commission agent has allowed the claim of commission payment of the assessee.

Having considered the rival submissions and from careful perusal of the record, we find that the assessing officer has specifically observed in his order and in his remand report that the assessee did not file the relevant evidence. The evidences, which the CIT (A) considered were not available before him. We have also examined the details of payment and correspondence and we find that the bills were raised at the fag end of the financial year. We have also examined the agreement /contracts but we do not find any inkling that those contracts were obtained at the instance of the commission agent. We are, therefore, of the view that the issue was not properly examined in the light of the aforesaid evidence. Since the assessee has claimed the payment of commission, the onus is upon him to prove its genuineness by placing an evidence with respect to services rendered by the Commission Agent. In these circumstances, we are of the considered view that the issue requires fresh look by the assessing officer in the light of documents filed before the Tribunal. We, therefore, set aside the order of the CIT (A) and restore it to the file of the assessing officer with a direction to examine the impugned issue in the light of the evidence filed by the assessee before the CIT (A) or the Tribunal.

The ground No. 5 relates to the disallowance of expenditure on Computer Software charges of Rs. 30,84,500.

Having heard the rival submissions and from careful perusal of the record, we find that the assessee has claimed an expenditure of Rs. 30,84,500 as computer software charges. This expenditure was treated to be as capital expenditure by the assessing officer on the ground that the assessee has acquired the capital asset in

the form of computer software which had an enduring benefit as it would be used for number of years and it would only require modifications for changing needs of the business in different years. It accordingly disallowed the claim of deduction. The assessee preferred an appeal before the CIT (A) with the submission that the company had acquired the said software package for updating its requirements for better conduct and improvement of existing business. As no new business could be acquired without acquiring such packages because the software packages became obsolete very rapidly. The learned counsel for the assessee further contended that it would be unrealistic to ignore rapid advancement on the software front in order to achieve the degree of performance to the same. Complete details were filed before the assessing officer. Before the CIT (A), the assessee has filed its written submissions stating therein the details of software developments and its needs by the assessee. The CIT (A) re-examined the claim of the assessee and after relying upon its order for the assessment year 1994-95, he allowed the claim of the assessee. Aggrieved, the revenue has preferred an appeal before the Tribunal.

During the course of hearing, the learned Departmental Representative was specifically asked to find out the fate of the CIT (A)'s order for the assessment year 1994-95 in which similar claim was allowed by him.

Despite affording sufficient time to the departmental Representative, he could not furnish that information about the fate of the CIT (A)'s order. We, however, examined the details of development charges for software package and the orders of the CIT (A) and we find that the expenditure was incurred to upgrade the developing software and its upgradation in the present era of software technology has become necessary for the business consciousness and also to stand in the competitive market. It is also clear that software packages become obsolete very rapidly and rapid advancement of software cannot be ignored. We are, therefore, of the considered view that the CIT (A) has rightly allowed the claim of the assessee. Accordingly, the order of the CIT (A) is confirmed.

The ground No. 6 relates to the disallowance of 100% depreciation on shuttering materials and in this regard, we find that the assessee company has claimed

depreciation at the rate of 100% on shuttering materials at Rs. 8,11,701 as the cost of each item was less than Rs. 5,000. This claim of the assessee was turned down by the assessing officer on the ground that the assessee could not establish that the shuttering materials were actually purchased as per requirements of the business and were put to use during the year under appeal. Before the CIT (A), it was contended on behalf of the assessee that the assessing officer did not give any opportunity to furnish the information in respect of the aforesaid query. The assessee has also filed the details of purchase of shuttering materials and supply at the site and also the shuttering materials sold as scraps. This additional evidence was confronted to the assessing officer but he did not raise any specific objection except highlighting the specific points which were mentioned in his order. The CIT (A) carefully examined the evidence and after being satisfied with the explanation of the assessee that the shuttering materials were put to use in the impugned financial year, he allowed 100% depreciation on the same.

Now, the revenue has preferred an appeal to the Tribunal but the Departmental Representative could not point out the specific defects in the order of the CIT (A). He, however, relied upon the remand report along with the proceedings conducted by the assessing officer during the course of the remand proceedings and pointed out that the assessing officer asked the assessee to furnish all these information. From the proceedings, it is obvious that the assessee has furnished some information but it is not clear from the proceeding that the assessing officer has made any enquiry with regard to the use of shuttering materials. The assessee has, however, filed all these details, viz., purchase of shuttering materials and supply of shuttering materials to different sites. From these details, it is not clear whether the shuttering material purchased by the assessee was in fact put to use by the assessee in the year under appeal. Since the CIT (A) has admitted the additional evidence and the assessing officer in remand proceedings has also not examined these details, we are of the considered view that this issue requires fresh adjudication. We, therefore, set aside the order of the CIT (A) and restore it to the file of the assessing officer for verification that the shuttering material purchased by the assessee during the year was in fact put to use for the business purposes. If the assessee succeeds in proving its use in this financial year, the assessing officer is directed to allow 100% depreciation on shuttering material.

Accordingly, this issue is disposed of.

In this appeal, the revenue assailed the order of the CIT (A) on the following grounds: "(1) On the facts and in the circumstances of the case, the learned CIT (A) has erred in holding that PF dues deposited within grace period would not be disallowed under section 43B read with section 36(1)(va) of the Income Tax Act and deleting the disallowance of Rs. 1,29,301.

(2) On the facts and in the circumstances of the case, the learned CIT (A) has erred in holding that the expenses incurred in foreign travel of Smt. Ashita Kohli while accompanying her husband in these trips are admissible under section 37(1) without properly appreciating the facts that the assessee has failed to provide any documentary evidences to prove the nexus between business needs/purpose and the expenditure incurred.

(3) On the facts and in the circumstances of the case, the learned CIT (A) has erred in allowing the expenditure on computer software charges of Rs. 25,35,000 not appreciating the fact that these expenses were capital expenditure.

(4) The order of the assessing officer may be restored and the order of the CIT (A) may be set aside with respect to the above mentioned ground(s)." We have heard the rival submissions and carefully examined the orders of the authorities below and the documents placed on record.

Apropos ground No. 1, we have noted from the record that the CIT (A) has allowed the claim of payment of provident fund following the judgment in the case of Hansoor Plywood v. CIT (1995) 54 ITD 394, according to which, the payment of PF made within the grace period is to be allowed under section 43B of the Act. Admittedly, the payment was made within the grace period. We, therefore, do not find any infirmity in the order of the CIT (A) who has rightly allowed the claim of the assessee.

Apropos ground No. 2, we have already examined the identical issue in the assessee's appeal for the assessment year 1995-96 in ITA No. 5725/ Del./99. We, therefore, do not find it proper to readjudicate this issue again. Following the

reasons taken in the assessee's appeal, we decide this issue and restore it to the file of the assessing officer to readjudicate it in terms explained in our order in ITA No.5725/Del./99.

Apropos ground No. 3, identical issue has already been examined by us in the revenue's appeal for the immediately preceding year in ITA No.528/Del./2000 and following the same, we decide this issue in favour of the assessee. Accordingly, the order of the CIT (A) is confirmed.

In the result, these appeals are partly allowed for statistical purposes.

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