

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH ‘B’

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 3365/Ahd/2016

निर्धारण वर्ष/Assessment Year: 2013-14

Ocean Agro (India) Ltd. A/207, Oxford Avenue Ashram Road Ahmedabad 380 009. PAN : AAACO 1849 A	Vs	DCIT, Cir.3(1)(2) Ahmedabad.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Ms.Ira Kapoor, with Shri P.M.Mehta, ARs.
Revenue by :	Shri Mudit Nagpal, Sr.DR

सुनवाई की तारीख/Date of Hearing : 01/08/2018

घोषणा की तारीख /Date of Pronouncement : 13 /08/2018

ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER : Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-9, Ahmedabad dated 17.10.2016 passed for the assessment year 2013-14.

2. Though the assessee has raised five grounds of appeal, it has pressed only ground no.2 and 3 for adjudication. Ground no.2 is regarding disallowance of deduction under section 36(1)(va) of the Act towards Provident Fund and Employees State Insurance, while ground no.2 is

- 2 -

against upholding of disallowance of Rs.26,000/- paid towards legal expenses.

3. Brief facts of the case are that the assessee has filed its return of income on 30.9.2013 declaring total income at Rs.57,96,180/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) was issued and served upon the assessee. During the assessment proceedings, it was noticed by the AO that an amount of Rs.5,01,183- received by the assessee from its employees towards employees' contribution to PF and ESIC has not been deposited by the assessee on or before the due date. The details amounts of contribution by the employees, due date and date of payment have been mentioned by the AO in the assessment order at page no.10. AO proposed to disallow the same, and for that a show cause notice was issued to the assessee to explain the reason for late payment of PF and ESCI collected from the employees. Assessee submitted a reply dated 7.1.2016, but such reply of the assessee did not find favour from the AO. The AO accordingly disallowed the same and added to the income of the assessee. Dissatisfied with the order of the AO, the assessee went in appeal before the Id.First Appellate Authority. The Id.CIT(A) considering submissions and details furnished by the assessee restricted the disallowance to Rs.4,10,932/-.

4. Before us, the Id.counsel for the assessee reiterated submissions as were made before the Revenue authorities, while Id.DR relied upon the orders of Revenue authorities.

5. We have considered submissions of both the sides and gone through the record carefully. The claim of the assessee is that since PF

- 3 -

contributions have been made within the due date of filing of return, the same would be allowable as deduction under section 43B of the Act. We find that amount in dispute relates to “employees’ contribution” and not “employer’s contribution”. Section 43B relates to sum payable by the assessee as an employer by way of contribution to any provident fund etc., whereas section 36(1)(va) relates to any sum received by the assessee from any his employees to be credited to the employee’s account in the relevant fund or before the due date provided in relevant Act. Therefore, these two sections are distinct and independent to each other and apply in different situations. The claim of the assessee falls within the ambit of section 36(1)(va) and the “due date” defined in the *Explanation* attached to this section for depositing the sum deducted from the salary of the employees with the relevant fund is the date provided relevant Act and not the due date as provided in section 139(1) of the Income Tax Act. Revenue authorities have considered this position of law and disallowed the deduction. Further, in number of similar cases, Tribunal has consistently dismissed such claim of the assessee by following the judgment of Hon’ble jurisdictional High Court in the case of CIT Vs. GSRTC, 265 CTR 64 (Guj) wherein it has held that where assessee did not deposit employees' contribution to employees' account in relevant fund before due date prescribed in *Explanation* to section 36(1)(va), no deduction would be admissible even though he deposits same before due date under section 43B. This being the position, as interpreted by the Hon’ble jurisdictional High Court, we are not inclined to interfere in the order of the Revenue authorities on this issue, which is upheld, and this ground of assessee is dismissed.

- 4 -

6. Coming to the next issue of the assessee regarding disallowance of alleged legal expenses of rs.26,000/-, brief facts are that during the assessment proceedings the AO noticed that the assessee debited a sum of Rs.26,000/-, which according to the AO was in the nature of penalty for an offence. AO by issuing a show cause notice proposed disallowance of the same, and accordingly sought for explanation from the assessee. Assessee submitted that the payment in question was towards compounding fees levied by the Legal Metrology department, Nagpur, which was compensatory in nature and not penal as alleged by the AO. It was submitted that expenditure cannot be allowed under *Explanation* to section 37 only when it was incurred for an offence or the acts prohibited by the law. The payment of compounding fees, which was neither an offence nor prohibited by the law, cannot be disallowed. The AO did not accept this submission of the assessee and held that since legal expenses claimed by the assessee has an element of breach of law, therefore, the same was penalty and not allowable under section 37. Aggrieved assessee went in appeal before the Id.First Appellate who also concurred with the finding of the AO and confirmed addition. Assessee is now before the Tribunal.

7. Before us also the assessee reiterated submissions as were made before the Revenue authorities below. She further contended that in the claim of the assessee there is no element of penalty. It was an expenditure motivated by commercial purpose and would be eligible for deduction under section 37(1) of the Act. She also placed on record copy of letter of Inspector of Legal Metrology Deptt. Nagpur dated 11.7.2012 requesting to make payment of compounding fees. The Id.DR, on the other hand, supported the orders of the Revenue authorities.

- 5 -

8. We have considered rival submissions and gone through the record carefully. A short issue before us is, whether compounding fees expended by the assessee is compensatory in nature, and allowable expenditure under section 37(1) or not. We find that *Explanation 1* appended to section 37(1) of the Income Tax Act prohibits allowance of any expenditure, if it was incurred for illegal activities or towards infringement of law. The Id.Revenue authorities construed the payment made by the assessee to Inspector of Legal metrology Department as incurred towards violation of law which is penal in nature. On the other hand, the stand of the assessee is that it is a compensatory in nature and not penal nature and accordingly the same should not be disallowed. On due consideration of the facts and circumstances, we find that the impugned expenditure incurred by the assessee is more in the nature of compensatory and necessitated by commercial expediency. In the normal incidences of business, certain damages are to be paid by an assessee and the expenses so incurred is an allowable deduction in the ordinary course of the business. The letter of Inspector of Legal Metrology, Nagpur dated 11.7.2012 states that the assessee to make payment of Rs.20,000/- to avoid any future litigation. The assessee has settled the issue by paying the sum as compensation/damages for the interest of its business, which according to us, cannot be treated as incurred for infraction of any law and therefore to be disallowed. We are not convinced with the action of the AO in disallowing the impugned claim of the assessee, as there is no finding recorded by the Revenue authorities below to demonstrate that expenses incurred by the assessee is a penal in nature and assessee has committed any contravention of law. Revenue authorities simply treated the

- 6 -

expenses as inadmissible without examination of any facts. In the absence of the same, we are not inclined to uphold orders of both the authorities below on this issue, which is accordingly deleted and the ground of appeal of the assessee on this issue is allowed.

9. In the result, the appeal of the assessee is partly allowed.

Pronounced in the Open Court on 13th August, 2018.

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

**Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER**