

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.167/Ind/2023
(Assessment Year: 2013-14)

ACIT, Circle 5(1) Bhopal	Vs.	M/s MP Warehousing and Logistics Corporation Office Complex, Block-1 Gautam Nagar Bhopal
(Appellant / Revenue)		(Respondent/ Assessee)
PAN: AADCM7742B		
Revenue by	Shri Ashish Porwal, Sr-DR	
Assessee by	Shri Shri S.S. Deshpande AR	
Date of Hearing	12.12.2023	
Date of Pronouncement	22.02.2024	

O R D E R

Per Vijay Pal Rao, JM :

This appeal by the Revenue is directed against the order dated 31.01.2023 of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) for A.Y. 2013-14. The revenue has raised following grounds of appeal:

“1. On facts & in the circumstances of the case, the order of the CIT(A) is perverse in so much so that the CIT(A) has decided the appeal in the favour of the assessee towards disallowance of

deduction of 35AD of the Act from the receipts of non- specified business merely on the basis of the facts that the assessing officer hasn't made certain verification and determined a random figure as income of the assessee from specified business, without even not verifying the actual expense incurred by the assessee wholly and exclusively for the specified business by ignoring the facts of the case which were brought on record by the assessing officer.

2. On facts & in the circumstances of the case, the CIT(A) has erred in omitting the verification with respect to the determination, of amount of expenditure which were incurred wholly and exclusively for the specified business as mandated under section 35AD(1) of the Act, however prima facie it apparent from was the modus- operandi of the assessee as well as the information available on the website of the assessee that the godowns of the assessee weren't strictly used for storing agricultural produce or sugar as specified under section 35AD(8)(c) of the Act and allowed deduction under section 35AD of the Act by circumventing the section 35AD(1)of the Act.

3. On facts & in the circumstances of the case, the CIT(A) has erred in allowing deduction under section 35AD of the Act as due to absence of the details of godowns of the assessee which were only used for storage of agricultural produce and sugar as specified under section 35AD(8)(c) of the Act, all the godowns are prima-facie appearing to be not strictly used for storage of agricultural produce and sugar only. Accordingly, the assessee wasn't liable to claim deduction under section 35AD of the Act.

4. On facts & in the circumstances of the case, the CIT(A) has erred in ignoring the findings of the assessing officer that assessee hasn't reported any income from specified business under section 35AD of the Act in the 1TR and hasn't submitted any figure during the entire assessment proceedings as well as appellate proceedings about the income accrued from the godowns which were used wholly and exclusively for the specified business of the assessee i.e., for storing the agricultural produce and sugar. However, the CIT(A) has agreed with the assessee with the claim that total income accrued by

the assessee from storing agricultural produce and sugar from his all the godowns as his income from the specified business under section 35AD of the Act and thereby the CIT(A) circumvented the intention of the legislature towards inserting the section 35AD for promoting capacity building towards storage facilities for agricultural produce and sugar.

5. On facts & in the circumstances of the case,, the order of the CIT(A) is perverse in so much so that the CIT(A) has merely quoted earlier judgements with respect to disallowance of the expense booked under the head "salary, allowance and other expenses - construction" of Rs. 2,35,67,9951- without even discussing the facts of the case.

6. On facts & in the circumstances of the case, any expenditure booked in the year under Consideration is liable to be verified and the CIT(A) has erred in omitting on any discussion of facts of the case and has decided the appeal in favour of the assessee without verification on whether the expenses incurred are revenue in nature or capital in nature with respect to disallowance of the expense booked under the head "salary, allowance and other expenses construction" to the tune of Rs. 2,35,67,995/-.

7. On facts & in the circumstances of the case, the CIT(A) has erred while ignoring the facts of the case that the assessee is engaging the expense booked under the head "salary, allowance and other expenses construction" to the tune of Rs. 2,35,67,995/- towards construction of new fixed assets, repair and maintenance and supervision of the construction of the fixed asset, which will extend benefit to the assessee company for a long period of time. Captioned expenditure incurred by the assessee is in relation to an income which may be earned by the assessee in subsequent years and it is settled position of law in view of the judgement of the Hon'ble HIGH COURT OF BOMBAY in the case of RPG Enterprises Ltd. v. Deputy Commissioner of Income- tax, Circle 5(6), Mumbai [2016] [71 taxmann.com 137 (Bombay)] vide order dated 29.06.2016 that the said expense is capital expense and the whole expenditure cannot be allowed to be booked in the year of expenditure.

8. *On facts & in the circumstances of the case, the IT(A) is erred in stating that the assessing officer acted illegally when the question of law has not been decided either by Jurisdictional High Court or the Apex Court and the facts and circumstances might differ for year to year and CIT(A) hasn't stated facts and therefore has passed a non-speaking order without deciding or bringing the facts on record to support the contention of allowing assessee's claim.*

9. *On facts & in the circumstances of the case, the CIT(A) is erred in allowing the appeal of the Assessee without verification of facts and circumstances of expenses booked and merely on the basis of working submitted by Assessee which is without narration and proofs regarding what was the nature of work undertaken/description of work undertaken and therefore, CTT(A) has erred in stating that the expenses are Revenue in nature only on the basis of segregation submitted by Assessee without any documentary proof and the expenses as per narration are Capital in nature and therefore, liable to be disallowed.”*

2. Ground no.1 to 4 are regarding disallowance made by the AO of deduction u/s 35AD was deleted by the CIT(A). The assessee is statutory Corporation established under the Warehousing Corporations Act 1962 and engaged in the business of construction and maintenance of warehouses for storage for goods mainly agricultural produce. The assessee claimed deduction u/s 35AD of the Act in respect of the investment made for construction of warehouses. The AO denied the claim of deduction u/s 35AD on the ground that the assessee is leasing out the warehouse for storage of goods other than agricultural produce. The AO then proceeded to estimate the income for specified business eligible for deduction u/s 35AD and arrived to the total income at loss from

the specified business and thereby denied the claim of the assessee. The assessee challenged the action of the AO before the CIT(A). The CIT(A) allowed the claim of the assessee by considering the details of income as well as investments made by the assessee.

3. Before the Tribunal Ld. DR has submitted that the assessee has claimed additional depreciation u/s 35AD of Rs.26,70,15,797/- and explained that operations of the assessee providing warehouse facility for storage of agricultural produce are eligible for deduction u/s 35AD(8)(c)(iii) of the Act. Ld. DR has submitted that the AO has found that the assessee is also operating many godowns under joint venture mechanism and entered into contracts with Private warehouses. Those warehouses are being used for storing commodities other than the agricultural produced and therefore, the assessee is not exclusively engaged in the business as specified u/s 35AD(8)(c)(iii) of the Act. The AO asked the assessee to provide bifurcation details of profit and loss account and income derived by the assessee from specified business activities as well as non-specified business activities but assessee failed to do so and consequently the AO estimated the income of the assessee at loss of Rs.19.45 crores from specified business and consequently the claim of the assessee for depreciation/deduction u/s 35AD was denied. He has relied upon the order of the AO.

4. On the other hand Ld. AR of the assessee has submitted that the deduction u/s 35AD has been claimed by the assessee on the income from specified business only. He has produced bifurcated

details of income from specified business and other than specified business and submitted that the assessee has calculated deduction u/s 35AD based on the income from specified business. He has further submitted that the AO has estimated the income of the assessee from specified business on the basis of the report available from the website of the assessee regarding the nature of business and by ignoring books of accounts and relevant detail of actual business activities and income of the assessee. He has submitted that out of the total quantity of warehousing of the product 97.47% belongs to agricultural produce including food grains, sugar and pulses and only 2.53% were other than agricultural produce for which the assessee has furnished the details.

5. We have considered rival submission as well as relevant material on record. The assessee is earning income from activities of warehousing and storing the agricultural produce as well as non-agricultural produce. The assessee has claimed that 97.47% storage in the warehousing was in respect of agricultural produce and only 2.53% storage was done for non-agricultural produce. The AO has estimated the income of the assessee from the specified business eligible for deduction u/s 35AD and come to the conclusion that the business profit and gain derived from specified business is Rs. 19.45 crores as against the total income of Rs.59.47 crores. It is pertinent to note that in the assessment order the AO has not given any calculation or basis for estimation of the income from specified business carrying out the activities of warehousing and storage of agricultural produce and sugar. The

CIT(A) has allowed the claim of the assessee by accepting contention of the assessee that 97.47% of the total storage/warehousing was in respect of agricultural produce and only 2.53% storage facility was used for non-agricultural produce. These details appears to have not been produced before the AO as the AO has specifically mentioned that the assessee had not provided the profit and gain derived by the undertaking from the operating warehouses on which the deduction u/s 35AD has been claimed. Since the assessee has not disputed the fact that warehouse facilities were provided for agricultural produce as well as non-agricultural produce therefore, the only dispute is regarding the bifurcated details of income earned from the specified business activities being the warehouse facility provided for storage of agricultural produce as well as non-agricultural produce. Now the Ld. AR has produced bifurcated income and expenditure details. Accordingly in the facts and circumstances of the case this issue of deduction u/s 35AD is set aside to the record of the AO for proper verification and consideration of the bifurcated details of income from specified and non-specified business of the assessee and then adjudicate the issue as per law. Needless to say the assessee be given an appropriate opportunity of hearing before passing fresh order.

6. Ground No.5 & 6 are regarding the disallowance of salary expenditure by treating the same as capital in nature. Ld. DR has referred to the assessment order and submitted that the assessee has debited a sum of Rs.2,35,67,955/- in the profit and loss

account under the head salary and other expenses (construction) which shows that the salary expenditure is for construction of godown/warehousing and therefore, it is a capital expenditure not allowable u/s 37 of the Act. He has relied upon the order of the AO.

7. On the other hand, Ld. AR has submitted that this issue is covered by the decision of this tribunal in assessee's own case for A.Ys.2005-06 to 2008-09, 2010-11 to 2011-12. Further for A.Y.2012-13 an identical issue has been considered by the CIT(A) and allowed the claim of the assessee. Thus, he has submitted that the CIT(A) has allowed the claim of the assessee by following earlier decision of this tribunal.

8. We have considered rival submission as well as relevant material on record. At the outset, we note that an identical issue has been considered by this Tribunal in assessee's own case for A.Ys.2005-06 to 2008-09,2010-11 to 2011-12. The CIT(A) has considered this issue in para 5.12 & 5.13 as under:

"5.12 Secondly issue (Ground No.5 & 6) is the observation of the A.O. that the company has debited an amount of Rs.2,35,67,995/- under the head salary put under the major head of construction. The A.O. is of the view that this expenditure is capital in nature and should not have been claimed by the appellant as revenue expenditure. The A.O. has disallowed this expenditure and the appellant is aggrieved on account of the same. The appellant claims that this issue was involved in earlier year in appellants own case and he has made the following observations in this regard :-

"You're Honor it is to further submit that the identical issue was involved in earlier in appellant's own case and the issue has been decided in favour of the appellant by the Ld.CIT(A) as well as the Hon'ble ITAT.

1. A.Y. 2005-06 to 2008-09 by d. CIT(A) - I and Hon'ble ITAT
2. A, Y, 2010-2011 by Ld.CIT(A)) - I and Hon'ble ITAT
3. A.Y. 2011-12 by Ld.CIT(A)) - I and Hon'ble ITAT
4. A.Y. 2012-13 by Ld.CIT(A))-1, Bhopal

Copies of orders are enclosed. It is therefore summarized as under :-

The expenses of salary, allowances and other expenses (construction) are bifurca in to revenue expenditure and capital expenditure on the basis of actual time/ma days spent on construction of own godowns and repair and maintenance of abc 1000 own godowns of the appellant. These bifurcations of revenue and cap expenditure is being allowed year to year by the appellant authorities. On simi issue the additions were deleted by the Hon'ble ITAT and the CIT(A), Bhopal in th assessment year 2005-2006 to 2008-2009, A.Y. 2010-2011 and A.Y. 2011-2012.

The observation that the assessee did not produce detailed working of the basis apportionment is not correct. The appellant has produced and submitted the details c expenses alongwith its apportionment between revenue and capital expenditur before the Assessing Officer on dated 24.2.2016. The same are again enclosed before your Honor.

In this connection we also place reliance on the judgment of the ITAT Visakhapatnam in the case of M/s. Cargo Handling Private Workers Pool Vs DCIT(ITA Nos 152 to 156/Vizag/2011) in which it is held that order of Jurisdictional Tribunal is binding on the lower authorities. This also order also refers to the Hon'ble MP High Court in the case of Agrawal Warehousing and Leasing Ltd Vs CIT (257 ITR 235) and supreme court decision in the case of UOI Vs Kamlakshi Finance Corporation Ltd. (AIR 1992 Supreme Court 711). Hence the learned AO has acted illegally in not considering the order of the Hon'ble ITAT Indore dated 03.05.2012 for the assessment years 2005-2006 to 2008-2009 in which the similar issue has been allowed in appellants favor.

It is thus prayed that the disallowance of Rs.2,35,67,955/- made by the AO treating the overhead expenditure of construction division

as capital expenditure may please be deleted since the basis of apportionment has already been submitted and again enclosed."

5.13 On the basis of above discussion and the fact that the issue has been decided by the higher appellate forum in favour of the appellant therefore following the same the addition made by the A.O. on this account is directed to be deleted."

9. Accordingly in view of the earlier order of this tribunal on this issue we do not find any error and illegality in the impugned order of the CIT(A) the same is upheld. Ground no.5 & 6 of the revenue's appeal are dismissed.

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

Order pronounced in the open court on 22.02.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 22.02.2024

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore