

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

ITA No. 457/DEL/2015 [A.Y 2011-12]

The Dy. C.I.T.
Central Circle - 8
New Delhi

Vs. M/s Comfort Net Traders (I) Pvt Ltd
Shop No. 26, Nathu Singh Market
Masood Pur, Vasant Kunj
New Delhi

PAN: AAACC 3286 D

ITA No. 6791/DEL/2014 [A.Y 2011-12]

M/s Comfort Net Traders (I) Pvt Ltd
Shop No. 26, Nathu Singh Market
Masood Pur, Vasant Kunj
New Delhi

Vs.

The Dy. C.I.T.
Central Circle - 8
New Delhi

PAN: AAACC 3286 D

(Applicant)

(Respondent)

Assessee By : Dr. Rakesh Gupta, Adv
Shri Somil Aggarwal, Adv

Department By : Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing : 17.10.2023

Date of Pronouncement : 19.10.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned two cross appeals by the Revenue and the assessee are preferred against the order of the Id. CIT(A) - 32, New Delhi dated 09.10.2014 pertaining to Assessment Year 2011-12.

2. Since common grievances are involved in the captioned appeals, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

ITA No. 457/DEL/2015 [Revenue's Appeal]

3. Ground No. 1 relates to the deletion of addition of Rs. 10,02,57,308/- on account of reversing amount.

4. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has reversed bills of Rs. 9.81 crores and Rs. 21.63 lakhs from M/s Nussli [Switzerland] Ltd and M/s Consortium

Nussli Comfort Net on account of uncertainty of receiving of sale proceeds.

5. The assessee was asked to show cause as to why these amounts should not be considered as income of the assessee.

6. The assessee explained that the said amounts are in respect of services/material supplied to these companies during the year under consideration, and since they have become irrecoverable, the same have been written off.

7. The explanation of the assessee did not find any favour with the Assessing Officer who was of the opinion that as per the MOU, the assessee and the said companies were to resolve the dispute through arbitration and since the assessee has not pursued the recovery through the mode prescribed under the MOU, claim of the assessee was denied and addition of Rs. 10,02,57,308/- was made.

8. The assessee carried the matter before the Id. CIT(A) and reiterated its claim.

9. After considering the facts and submissions, the ld. CIT(A) was of the opinion that it is for the assessee to decide whether the debt has become bad or not and whether the same had been accounted for in its books of account. Drawing support from the decision of the Hon'ble Supreme Court in the case of TRF Limited 323 ITR 397 and Vijaya Bank 323 ITR 166, the ld. CIT(A) deleted the addition.

10. The ld. DR placed strong reliance on the findings of the Assessing Officer and read the relevant operative part.

11. Per contra, the ld. counsel for the assessee reiterated what has been stated before the lower authorities.

12. We have carefully considered the factual matrix and are of the opinion that there is no relevance and compulsion on the assessee to put any effort for recovery of the debt post amendment under the relevant provisions of the Act after 01.04.1989. All that is required is to actually write off the debt in the books of account and show that the same was considered in the income of the earlier years.

13. As the assessee has fulfilled both the conditions, therefore, the ratio laid down by the Hon'ble Supreme Court in the case of TRF Limited [supra] squarely applies. No interference is called for in the findings of the ld. CIT(A). Ground No. 1 of the Revenue is, accordingly, dismissed.

14. Ground No. 2 relates to the deletion of addition of Rs. 1,02,184/- on account of additional Sales Tax.

15. The Assessing Officer noticed that the assessee has paid Rs. 1,02,184/- as additional Sales Tax and on receiving no conclusive proof, the Assessing Officer disallowed the same.

16. When the matter was agitated before the ld. CIT(A), the assessee furnished evidence of additional Sales Tax paid by it and on verification, the ld. CIT(A) found the claim to be in order and allowed the same.

17. We find that the additional tax was paid as liability by the assessee for additional tax payment raised by the Sales Tax Department, which was discharged during the year under consideration. Since the deletion of the addition is after verification of evidences by the ld. CIT(A), we do

not find any error or infirmity in the findings of the ld. CIT(A). Ground No. 2 is, accordingly, dismissed.

18. Ground No. 3 relates to the restricting of disallowance of Rs. 12,71,063/- to 20%.

19. Facts on record show that the assessee has claimed expenses of Rs. 12,71,063/- towards business promotion. The Assessing Officer observed that these expenses were claimed to be paid through credit cards of the Directors. According to the Assessing Officer, element of personal expenses cannot be ruled out and, therefore, the Assessing Officer disallowed the entire amount of Rs. 12,71,063/-.

20. The assessee strongly agitated the matter before the ld. CIT(A) and after considering the facts and submissions, the ld. CIT(A) restricted the disallowance to 20% holding the same to be in the nature of personal expenses.

21. We have carefully perused the underlying facts. At the very outset, since the assessee is a limited company, there cannot be any personal element in the expenses claimed by it. If the Assessing Officer is of the opinion that certain expenses may have the color of personal expenses/benefits extended to the directors of the company, then the same should be treated as perquisites in the hands of the directors but the expenses cannot be disallowed as having personal element in it.

22. Secondly, it is difficult to ascertain which vouchers or bills pertained to personal expenses and which pertained to business promotion, as the directors of the company were entertaining customers during the Common Wealth Games.

23. We do not find any merit in the disallowance made by the Assessing Officer and restriction done by the Id. CIT(A) on the given facts. The Assessing Officer is directed to delete the entire addition. Ground No. 3 is dismissed.

24. Ground No. 4 relates to the deletion of Rs. 31 lakhs disallowed by the Assessing Officer on account of additional professional charges.

25. While scrutinizing the return of income, the Assessing Officer noticed that the assessee has claimed professional charges at Rs. 39,89,150/- as against Rs. 5,26,297/- in the immediately preceding year. The Assessing Officer was of the opinion that there is a substantial increase in the professional charges claimed by the assessee and on receiving no plausible reply, the Assessing Officer made addition of Rs. 31 lakhs.

26. The assessee carried the matter before the Id. CIT(A) and reiterated its claim.

27. After considering the facts and submissions and on perusal of the documentary evidences, the Id. CIT(A) found that in the immediately preceding year, no such services were hired from M/s Gherzi Eastern Ltd as there was no such work awarded to it. The Id. CIT(A) found that all the payments were made to M/s Gherzi Eastern Ltd supported by bills. The Id. CIT(A) found that the said party provided services of electrical engineers, draughtsman.

28. Being convinced with the evidences, the ld. CIT(A) deleted the addition.

29. Before us, the ld. DR could not point out any factual error in the findings of the ld. CIT(A).

30. After giving thoughtful consideration, we are of the considered view that if the Assessing Officer had any doubt in his mind, he could have very well brought on record some adverse material by conducting enquiry u/s 133(6) of the Act. In the absence of any adverse material brought on record, we decline to interfere with the findings of the ld. CIT(A). Ground No. 4 is dismissed.

31. Ground No. 5 relates to the deletion of addition of Rs. 11,71,69,678/- disallowed by the Assessing Officer on account of unexplained purchases.

32. While scrutinizing the financials of the assessee, the Assessing Officer noticed that the assessee has made purchases during the year from the following parties:

Name	Address	Amount(Rs.)
Agility Logistics Pvt. Ltd.	Enkay Centre, A-Block, 1 st Floor, Vnijiya Nikuj, Udyog Vihar, Phase-V, Gurgaon, Haryana	2,53,13,483/-
E-Pack polymers Pvt. Ltd	61 B &C, Udyog Vihar, Kasna Road, Greater Noida	1,71,47,160/-
EMC Electromach Controls (P) Ltd.	E-6E, DDA Flats, Munirka, New Delhi	89,16,176/-
Gherzi Eastern Limited	AB-7, 2 nd Floor Community Centre, safdurjung Enclave, New Delhi	54,91,515/-
Kingsmen Faitech International Pvt. Ltd.	B-25, Lala Lajpat Rai Marg, Lajpat Nagar, New Delhi.	2,17,99,362/-
Narain Enterprises	E-3/7, Vasant Vihar, New Delhi	23,83,739/-
Stellar & Unimax India Ltd.	K. No. 401-403, Village-Ghitorni, New Delhi	3,61,18,243/-

33. The Assessing Officer issued notice u/s 133(6) of the Act for verification of the purchases. On receiving no plausible reply from the aforementioned parties, the Assessing Officer treated the purchases as unexplained and made addition of Rs. 11,71,69,678/-.

34. Before the Id. CIT(A), the assessee explained that due to controversy surrounding Common Wealth Games, all the parties became hostile and stopped responding to the statutory notices. The assessee furnished necessary evidences regarding purchases and payments made to

the said parties and pointed out that wherever necessary, tax has been deducted at source.

35. The Id. CIT(A), after verifying each and every evidence in respect of each and every party, deleted the addition.

36. The Id. DR strongly supported the findings of the Assessing Officer and read the relevant operative part.

37. Per contra, the Id. counsel for the assessee reiterated what has been stated before the Id. CIT(A).

38. We have carefully perused the orders of the authorities below. It is an undisputed fact that the entire Common Wealth Games was surrounded by controversy/complaints and legal actions.

39. Be that as it may, a careful reading of the Id. CIT(A) shows that the Id. CIT(A) has factually verified the evidences in respect of each and every party and after verification of the evidences, the Id. CIT(A) has deleted the addition.

40. Before us, the ld. DR could not point out any factual error in the findings of the ld. CIT(A) and since the ld. CIT(A) has deleted the addition on appreciation of evidences, we do not find it necessary to interfere with the findings of the ld. CIT(A). Ground No. 5 also stands dismissed.

41. In the result, the appeal of the Revenue stands dismissed.

ITA No. 6791/DEL/2014 [Assessee's Appeal]

42. Ground No. 1 relates to restriction of disallowance to 20%.

43. This issue has been elaborately discussed hereinabove by us in appeal by the Revenue qua Ground No. 3 of that appeal. For our detailed discussion therein, Ground No. 1 is allowed.

44. Ground Nos. 2 and 3 are taken together which relates to the addition of Rs. 27,96,916/- on account of scrap sales of carpet and Rs. 62,79,183/- on account of scrap sales of fence.

45. While scrutinizing the return of income, the Assessing Officer noticed that the assessee has made purchase of carpets at Rs. 57,28,832/-. The Assessing Officer further found that after the Common Wealth Games, 2010 were over, carpets have been sold as scrap for a meagre sum of Rs. 67,500/-.

46. The Assessing Officer was of the opinion that scrap value of the item must have been 30% to 40% approx of the purchase price and, accordingly, estimated the scrap value and made addition of Rs. 27,96,916/-.

47. Proceeding further, the Assessing Officer further noticed that the assessee has purchased fence of Rs. 4,53,55,648/- which was sold as scrap at Rs. 1,03,35,511/-. The Assessing Officer made a weird addition taking scarp at Rs. 73,27,511/- and deducted the same with the scrap value of the fence at Rs. 1,36,06,694/- and made addition of Rs. 62,79,183/-.

48. The assessee carried the matter before the Id. CIT(A) but without any success.

49. Before us, the ld. counsel for the assessee vehemently stated that because of the controversy surrounded around the Common Wealth Games, once the games were over, several enquiries were initiated against the Organizing Committee and participating contractors. Because of the Government enquiries, there were hardly any buyers for the scrap materials.

50. It is the say of the ld. counsel for the assessee that there was a time limit for removing the goods from the venue, failing which severe penalties were to be imposed. Therefore, on account of distress sales, the assessee was left with no choice but to accept whatever scrap value was received.

51. Though the ld. DR relied upon the findings of the Assessing Officer /ld. CIT(A), but could not controvert the submissions made by the ld. counsel for the assessee.

52. We have given thoughtful consideration to the orders of the authorities below. It is true that the scrap value of the impugned items have been shown on lower side, but it is equally true that what happened

during the construction of the Common Wealth Village and Sports Complex, the Government agencies were after the Organizing Committee and the participating contractors to which included CBI enquiry and other judicial enquiries. We are of the considered view that considering the distress sales surrounded by controversies, it is possible that the carpets must have been sold at throw-away prices.

53. Considering the nature of event, we are inclined to accept the version of the Id. counsel for the assessee. The Assessing Officer is directed to delete the addition of Rs. 27,96,916/- on account of scarp sales of carpets.

54. In so far as addition on account of scrap sales of fence is concerned, we do not find any logic in the addition made by the Assessing Officer. The assessee itself has shown scrap value at Rs. 1,03,35,511/- deducting the estimated sales value of Rs. 73,27,511/-. We do not find any sense in making the addition of the balance amount of Rs. 62,79,183/- when the assessee itself has shown scrap value at Rs. 1,03,35,511/-.

55. Considering the findings of the Assessing Officer, he is directed to delete the impugned addition. Ground Nos. 2 and 3 are, accordingly, allowed.

56. In the result, the appeal of the assessee is allowed.

57. In the result, the appeal of the Revenue ITA No. 457/DEL/2015 is dismissed and that of assessee in ITA No. 6791/DEL/2014 is allowed.

The order is pronounced in the open court on 19.10.2023.

Sd/-

[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 19th OCTOBER, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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