IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH 'C' MUMBAI

ITA No.1355/Mum/2010
Assessment Year: 2006-2007

M/s CRESCENT CHEMICALS
201, WINDSOR, 2nd FLOOR
CST ROAD, KALINA, SANTACRUZ (E)
MUMBAI-400098
PAN NO:AAAFC0755A

Vs

INCOME TAX OFFICER
19(2)(1), MUMBAI

R S Padvekar, JM and B Ramakotaiah, AM

Dated: January 21, 2011

Appellant Rep by: Shri H N Motiwalla
Respondent Rep by: Shri Sumeet Kumar

ORDER

Per: R S Padvekar:

In this appeal the assessee has challenged the impugned order of the Ld. CIT (A) Mumbai-30, Mumbai for the A.Y. 2006-07 dated 15.12.2009. The first issue is in respect of disallowance of Rs.38,449/- being 10% out of freight & forwarding expenses.

2. We have heard the parties. The assessee firm is an importer and traders in chemicals, consignment agents indenting agents and plastics and polymer products. The assessee has GSFC Baroda (Gujarat State Fertilizers & Chemicals Ltd.) as well as GACI Baroda (Gujarat Alkalics & Chemicals Ltd.) etc. The return of income filed by the assessee declaring total loss of Rs.94,48,799/- was selected for scrutiny and assessment was completed u/s.143(3) of the Act. The A.O. has noted that the assessee firm claimed the expenditure on account of freight and forwarding charges to the extent of Rs 3,84,499/-. The A.O. further noted that the some of the expenditure was incurred in cash towards freight and forwarding, transport, loading and unloading charges and that was only supported by self-made vouchers. The A.O., therefore, made the ad-hoc disallowance of 20% of the freight expenditure, as in his opinion, there is no proper evidence to support the claim to some extent. The assessee challenged the said disallowance before the first appellate authority who sustained the disallowance at 10%. Now, the assessee is in appeal before us.

3. The Ld. Counsel submits that in this line of business, it is difficult to obtain each and every bill of the party. It is argued that merely in earlier year, disallowance made that should not be the ground to confirm the disallowance made in this year. He, therefore, pleaded for the addition sustained by the Ld. CIT (A). We have also

heard the Ld. D.R. who submits that it is a reasonable disallowance made by the Ld. CIT (A) due to lack of supporting evidence.

4. After giving our conscious consideration to the reasonings of the Ld. CIT (A), we find that both the authorities below have made the ad-hoc disallowance. We find force in the argument of the Ld. Counsel that on many occasions, isolated transporters and labourers are required to be engaged when it is not possible to get their bills. He further finds that nowhere it is a case of the A.O. that any of the expenditure was found to be bogus. We, therefore, do not find any reason to confirm the disallowance made by the Ld. CIT (A). Accordingly, the same is deleted and ground no.1 is allowed.

5. The next issue is disallowance out of motor-car expenses of at Rs.58,108/-. The A.O. has noted that the assessee has claimed various motor-car related expenditure to the extent of Rs.11,62,159/-. The A.O. observed that the very nature of the said expenditure, the same motorcars may have the element of personal use. The A.O. made an ad-hoc disallowance of 5% out of the total motor-car expenditure and which was confirmed by the Ld. CIT (A). The A.O. has also noted that in the earlier years on the said account this disallowance made at 25%. The assessee challenged the disallowance made by the A.O. before the first appellate authority, but the same was confirmed. Now, the assessee is in appeal before us. The Ld. Counsel reiterated this argument made before the authorities below. FBT at 20% has been paid and hence no disallowance can be made. It is argued that the ad-hoc disallowance is not sustainable, as there is no rational behind it. We have also heard the Ld. D.R. who supported the order of the Ld. CIT (A).

6. After hearing both the parties and also perusal of the order of the Ld. CIT (A) it is seen that in the earlier years also 25% disallowance was made which was sustained to 15% when the assessee filed the appeal before the Tribunal. In our opinion, the disallowance made by the A.O. and sustained by the Ld. CIT (A) is a reasonable one. We confirm the same. Accordingly, ground no.2 is dismissed.

7. The next issue is the disallowance out of the telephone expenses at 15%.

8. We have heard the parties. In the preceding year i.e. A.Y. 2004-05, the A.O. has made 10% disallowance, which was confirmed by the Tribunal. Considering the very nature of the expenditure, in our opinion, the 5% disallowance made out of total telephone expenses by the A.O. and sustained by the Ld. CIT (A) is a reasonable. Accordingly, the same is confirmed and ground no.3 is dismissed.

9. The next issue is ad-hoc disallowance of 20% out of repairs and maintenance expenditure which is Rs.1,54,151/-.

10. The A.O. has noted that the assessee has claimed the total expenditure towards office maintenance of Rs.7,70,754/-. The A.O. made the ad-hoc disallowance at 20%, which was at Rs.1,54,151/- by giving the reason that for want of proper verification. The said disallowance was confirmed by the Ld. CIT (A). The assessee challenged the said disallowance before the Ld. CIT (A) who confirmed the same after examining the accounting entries of the assessee.

11. It appears that provision on account of maintenance charges was made which was to the extent of Rs 6,09,000/- out of the total expenditure claimed at Rs.7,70,754/-. The Ld. CIT (A), therefore, came to the conclusion that the liability

was not crystallized. He confirmed the said disallowance. The Ld. Counsel argued that if was the provision towards unascertained liability then the entire expenditure should have been disallowed and there is no concept of ad-hoc disallowance if liability or provision made is in nature of un-ascertain nature. We find force in the argument of the Ld. Counsel. If the Ld. CIT (A) was of the opinion that the disallowance made by the A.O. deserves to be confirmed on the different reasons that the liability in respect of the provision made was not crystallized then the same should have disallowed at entirety. We find no justification to support the finding of the Ld. CIT (A) for confirming the said disallowance. Accordingly, disallowance made out of the maintenance charges is deleted and ground no.4 is allowed

12. The next issue is the addition of Rs.9,09,966/-, which is based on AIR Report.

13. The A.O. has noted that as per the AIR, the assessee received various receipts. The assessee filed the details. The A.O. has noted that after the verification of the details filed by the assessee, after comparing with the AIR report the said receipts were not found to be recorded in the books of account. The A.O. has given names of the four parties as well as the date and the amounts. The assessee contended that the two parties viz. M/s. Unimark Remedies Ltd. and M/s. Meghmani Organics Ltd. have wrongly mentioned their PANs while filing their TDS returns. The A.O. rejected the claim of the assessee. The Ld. Counsel submits that the affidavit was filed in support of details but that was also rejected. It is argued that the confirmation letters from the said parties were also filed but those were also not considered. He, therefore, pleaded that the addition made by the A.O. and sustained by the Ld. CIT (A) is totally misplaced. Per contra, Ld. D.R. supported the order of the Ld. CIT (A).

14. We have perused the record and also gone through the paper book filed by the assessee in the compilation. It appears that there is mismatch of PAN numbers at the time of e-filing of the TDS returns. It is also seen that confirmation letters of the parties were filed but there is no discussion in the assessment order. Before making the addition, the A.O. could have verified the said receipts from the concerned parties. We, therefore, consider it proper to restore this issue to the file of the A.O. for fresh adjudication and verification. The A.O. is directed to verify from the concerned parties, whether, in fact, the assessee has done any transaction as per the AIR report. Accordingly, ground no.5 is restored to the file of the A.O. Needless to say the A.O. should give reasonable opportunity of being heard to the assessee.

15. In the result, assessee's appeal is partly allowed for the statistical purposes.

(Order pronounced in the open court on this day of 21.1.2011.)