

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH,
KOLKATA**

Before: **Shri J. Sudharkar Reddy, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No. 589/Kol/2014
A.Y: 2003-04

**Deputy Commissioner of
Income-tax, Circle-5
Kolkata**

Vs.

M/s. H S I L limited
[Formerly Known as
Hindustan Sanitary ware
& Industries Ltd]
PAN: AAACH 7564H
(Respondent)

(Appellant)

Appearances by:
Shri R.S Biswas, CIT, Id. DR for the revenue
Shri P.K. Sanghai, FCA, Id.AR for the assessee

Date of hearing : 08-02-2017
Date of pronouncement : 28-02-2017

O R D E R

Shri S.S. Viswanethra Ravi, JM :

This appeal by the Revenue is directed against the order dated 17-01-2014 of the Commissioner of Income Tax (Appeals), VI, Kolkata for the assessment year 2003-04.

2. The only issued is to be decided as to whether the CIT-A justified in allowing the sales tax liability as deduction in the facts and circumstances of the case.

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3. The brief facts of the case are that the assessee is a company and engaged in the manufacturing of sanitary ware & glass ware. The AO computed the book profit u/s. 115JB of the Act at Rs. 8,69,37,787/- and to that effect an order u/s. 143(3) of the Act was passed on 31-3-2006. Thereafter, the assessment was reopened u/s. 147/143(3) on 30-11-2009 as on the perusal of the assessment records, the AO found that the Assessee has treated the payment of sales tax as paid though the same was deferred for certain period. The AO was of the view that as the Assessee did not produce any order from the concerned State Government in support of its claim that the deferred sales tax liability is to be treated as paid, he disallowed an amount of Rs.3,31,06,521/- u/s. 43B of the Act and added the same to the total income of assessee.

4. The Assessee challenged the same before the CIT-A and contended before him that the Govt. of Andhra Pradesh approved a policy under target 200 the new industrial policy for deferment of sales tax. In support of which the assessee filed eligibility certificate issued by the State authority, copy of the agreement between the assessee and the State Govt., schedule of deferment, copies of assessment orders to show the adjustment of sales tax liability as loan granted by the respective State Govt.

5. The CIT-A taking into consideration the earlier order of his predecessor for the AY 2004-05 and the above submissions of the Assessee deleted the impugned addition of Rs. 3,31,06,521/- as made by the AO.

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6. Before us the Id.DR has relied on the order of the AO.

7. In reply, the Id.AR of the assessee submits that the Co-ordinate Bench, ITAT, Kolkata has decided the similar issue in favour of assessee in assessee's own case in ITA No. 189/Kol/2011 for the AY 2004-05 vide order dated 04-03-2016 and placed on record the copy of the said order at page no's 1 to 11 in paper book and besides, the Assessee also placed on record the CBDT's Circular no-496 dated 25-09-1987 and Circular no-674 dated 29-12-1993 and argued that the Assessee is entitled to claim deduction as per the circular wherein the CBDT clarified the sales tax liability converted into loans are eligible for deduction and placed reliance on order of the Co-ordinate Bench in the case *supra*.

8. Heard rival submissions and perused the material available on record. We find that the Govt. of Andhra Pradesh formulated a scheme pursuant to a new industrial policy, wherein it granted deferment of payment of sales tax and treated the same as paid on a condition that identical amount is treated as loan advanced by the Government to the assessee, which is repayable to the Government by the assessee after completion of certain period. We further find that, as rightly pointed out by the Id.AR of the Assessee before us, the issue in hand is squarely covered by the order of the Co-ordinate bench in the assessee's own case. The relevant finding at para no-11 is reproduced herein below for better understanding.

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11. Ground no.3 regarding disallowance under section 43B of the Act, the AO found Rs.4,33,11,893/- as sales tax liability in Tax Audit Report under sales tax' deferral scheme remained unpaid which was converted into unsecured loan. AO was of the view, that for non-submission of any Government Order in converting the unpaid sales tax into unsecured loan, thereby; AO disallowed entire liability under sales tax to the extent above. Before the CIT(A), it was contended by the assessee that it is entitled to claim deduction as per the Circular no. 496 dated 29.09.1987 issued by the CBDT and further clarified that the sales tax liability' converted into loans eligible to be deducted vide circularno.674 dt. 29.12.1993 of the CBDT, basing on which the CIT(A) allowed the said liability as a deduction.

12. Before this Tribunal, the Id. DR relied on the orders of the AO and the Id. Counsel for the assessee relied on the order of the CIT(A).

13. Heard both representatives and perused the record. We find that the assessee collected sales tax of Rs.4~33,11,893/- and was not paid by the assessee to the Government account, but, however on the policy of the respective Government same was converted into a loan by the state sales tax department under a scheme called "sales tax deferment" scheme. According to assessee that it entered into an agreement with the Government of Andhra Pradesh, according to which sales tax payable by the assessee shall be treated as paid on the condition that an identical amount would be treated as loan extended to the assessee payable to the Government after fourteen years. On availability such the assessee entered into two agreements with the sales tax department vide agreements dt:19-01-2000 and 30-01-2001. The A.O did not find merit .in contention of the assessee. He was in the impression that as per section 43B of the Act that the assessee could be allowed deduction for sales tax only if it actually pays to the sales tax department of such Government. Accordingly the AO. disallowed Rs.4,33,11,893/- u/s. 43B of the Act on the ground that the assessee failed to submit any evidence for payment of such sales tax liability due to the Government. We find that there are two agreements between the assessee and the Sales Tax department representing Govt. of Andhra Pradesh. One such agreement dt: 19-01-2000 is for Ceramic Division-II located at Bibinagar, Nalgonda Dist., Andhra Pradesh and the other being the agreement dt:3 0-0 1-200 1 is for Glass' 'Division located at Kukatpally, Ranga Reddy Dist, Andhra Pradesh, it is seen, both the agreements the deferred sales tax policy of the State Government and it is reproduced as below for better appreciation:

"Whereas, the Government have directed in G O. Ms No. 7108, I&C(IP) Department dated 20.05. 1996 that deferral of Sales Tax will be given-for new industries as well as existing industries while undertaking expansion of units, for a period of 14 years and the total amount thus' given deferral shall not exceed 135% of total investment made on fixed-assets in such industries or in such units under expansion or the amount specified in the eligibility certificate issued by the Commissioner of Industries, Government of Andhra Pradesh whichever is lower.

And Whereas, Government has further directed in G. O. Ms No. 187 Industries & Commerce (IP) Department dated 21.11.95 that the amount of Sales Tax deferred shall be treated as deemed to have. been paid' on condition that an identical amount in treated as Government loan extended to the assessee, which shall be payable to the Government by the assessee after the completion of the period of deferral December, 2013 to corresponding .month December, 2026 without any interest along with the Sales Tax payable for the current year."

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This above statement about deferral policy shows that the Government of Andhra Pradesh had a policy of deferment of Sales Tax liability by converting it into loan payable at a later date.

It is observed from the above, that in the two agreements, that there has been an agreement between the assessee and the Sales Tax department representing state of Andhra Pradesh that the amount of Sales Tax dues is deferred which shall be treated as paid on condition that an identical amount is treated as Government loan advanced to the assessee, which shall be payable to the Government by the assessee after the completion of the certain as mentioned therein period. Therefore, In pursuance of which the CBDT has issued circular nos. 496 and 674 referred to above clarifying that such sales tax which is not paid, is deemed as paid and which is converted into a loan can be allowed as a deduction in the year in which it is converted into a loan. Therefore, the order of CIT -A in allowing as a deduction of deferred sales tax of Rs.4,33,11,893/- u/s. 43B of the Act is confirmed and the ground raised by the Revenue is dismissed."

9. In view of the same, we do not find any reason to interfere with the impugned order of the CIT(A) in allowing the claim of the assessee. Therefore, the same is hereby upheld. Accordingly, the ground raised by the Revenue is dismissed.

10. In the result, the appeal of Revenue is dismissed.

ORDER PRONOUNCED IN OPEN COURT ON 28-02-2017

Sd/-

J. Sudhakar Reddy
Accountant Member

Dated 28 -02-2017

Sd/-

S.S. Viswanethra Ravi
Judicial Member

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*PP/SPS: Copy of the order forwarded to:

1. The Appellant/Revenue: The DCIT, Cir-5, P-7 Chowringhee Square, Kolkata-69.
2. The Respondent/Assessee: M/s. HSIL Limited (Formerly known as Hindustan Sanitary ware & Industries Ltd) 2 Red Cross Place, Kolkta-1.
3. The CIT(A)
4. The CIT
5. DR, Kolkata Bench
6. Guard file. By Order, Asstt. Registrar

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