



ITA No 1875/Mum/2015
Kamadgiri Fashion Limited
Assessment Year 2010-11

आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

श्री डी.टी. गरासिया, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।

**BEFORE SHRI D.T. GARASIA, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No. 1875/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2010-11)

Kamadgiri Fashion Limited (CIN : L17120MH1987PLC042424) The Qube, B-104 1 st Floor, M.V.Road Marol, Andheri(E) Mumbai- 400 059	बनाम/ Vs.	Income Tax Officer Ward 4(2)(1) R.No.644,6 th Floor, Aaykar Bhavan, M.K.Road Mumbai -400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACK-1654-P		
(पीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	S.Sriram, Ld. AR
Revenue by	:	Saurabh Deshpande, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	22/08/2017
घोषणा की तारीख / Date of Pronouncement	:	04/10/2017



आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by Assessee for Assessment Year [AY] 2010-11 assails the order of Ld. Commissioner of Income Tax (Appeals)-9 [CIT(A)], Mumbai dated 14/01/2015. The assessee has filed revised grounds of appeal on 28/04/2017 and contest various additions as confirmed by Ld. CIT(A) vide *Appeal No. CIT(A)-9/Cir.4/162/2013-14 order dated 14/01/2015*. The assessment was framed by *Income Tax Officer 4(2)(1), Mumbai on 22/03/2013*.

2.1 Facts leading to same are that the assessee being *resident corporate assessee* engaged in *manufacturing and trading of fabrics* was assessed for impugned AY u/s 143(3) at Rs.5,35,97,480/- after certain additions / adjustments / disallowances as against returned income of Rs.3,95,45,621/- *e-filed* by the assessee on 30/09/2010. The additions which are the subject matter of this appeal are as follows:-

No.	Particulars	Rs.
1.	<i>Rent Paid</i>	<i>68,890/-</i>
2.	<i>Provision for incentive</i>	<i>97,37,699/-</i>
3.	<i>Excess depreciation claimed</i>	<i>42,45,274/-</i>
	TOTAL	1,40,51,863/-

2.2 During assessment proceedings, it was noted that the assessee paid a rent of Rs.3,68,560/- to an entity namely *ALD Automotive Private Limited* but did not deduct any TDS thereupon on the strength of 'No Deduction certificate' issued by *ACIT-TDS1(1)* dated 11/06/2009. The Ld. AO disallowed an amount of Rs.68,890/- being rent for the month of



April & May, 2009 on the premises that the certificate was dated 11/06/2009 and could be applied only from June, 2009.

2.3 From perusal of Profit & Loss Account, it was noted that the assessee debited *incentive expenses* of Rs.99,69,850/- out of which an amount of Rs.99,39,699/- was shown as provisions. The Ld. AO noted that the said incentive was credited to the respective parties in the subsequent years and therefore allowable in subsequent years only and not in the impugned AY.

2.4 Further, Ld. AO noted that the assessee transferred Rs.424.53 Lacs from *Amalgamation Reserve* to *General Reserve* in the previous year relevant to AY 2009-10 wherein the company *M/s Stripes Apparels Pvt. Ltd.* was amalgamated with the assessee company and the same resulted into increase in *general reserve* to Rs.623.06 Lacs. The Ld. AO opined that the assessee purchased assets at higher cost but make the payment thereof at lower rate and therefore, *amalgamation reserve* was required to be reduced from the cost of the asset acquired by the assessee from the amalgamating company and proportionate depreciation be reduced accordingly. Finally, the Ld. AO reduced the depreciation against amalgamation reserve of Rs.424.53 Lacs at estimated rate of 10% which led to depreciation disallowance to the extent of Rs.42.45 Lacs.

3. Aggrieved, the assessee contested the same without any success before Ld.CIT(A) vide impugned order dated 14/01/2015 where the additions against incentives were confirmed on the premises that the expenses did not crystallized during impugned AY and the same, being



contingent in nature, were not allowable u/s 37(1). The stand of Ld. AO was confirmed *qua* other additions also. Aggrieved, the assessee is in further appeal before us.

4. The Ld. Counsel for Assessee [AR] contested the addition against rent on the premises that the assessee did not deduct TDS against rental payment on the strength of '*no deduction certificate*' issued u/s 197 in payee's favor by the concerned Assessing Officer (TDS). Our attention is drawn to the fact that although the certificate is dated 11/06/2009, however, the same applies to whole financial year as evident from the annexure attached to the said certificate. In the alternative, it was contended that the impugned amount was much below threshold limit as provided u/s 194-I and therefore, even otherwise no tax deduction at source was required against the same. *Qua* addition against provision for incentives, Ld. AR drew our attention to the detailed documents placed at Page Nos. 52 to 101 of the *paper book* and contended that incentive was payable to the customers of the assessee against sales target achieved by them during impugned AY and the same had crystallized during impugned AY and allowable to assessee following mercantile system of accounting. The estimated addition against depreciation has been assailed on the ground that the assets were taken over by the assessee at book value only and full depreciation against the same was allowable to the assessee in terms of statutory provisions and lower authorities erred in understanding the issue in proper perspective.



5. Per contra, Ld. DR placed reliance on the stand of lower authorities and contended that deduction against mere provisions could not be allowed to the assessee.

6. We have carefully heard the rival contentions and perused relevant material on record. So far as the disallowance of rental expenses is concerned, we are inclined to delete the same for the simple reason that the impugned amount of Rs.68,890/- was well below the threshold limit of Rs.1,20,000/- as prescribed u/s 194-I during impugned AY so as to trigger the stated TDS provisions. Moreover, the annexure to certificate u/s 197 issued by concerned TDS officer quantifies the '*Estimated Total Billing for F.Y.2009-10' u/s 194-I*' which lead us to conclude that the same was applicable for the whole financial year. Resultantly, this addition stands deleted and this ground of assessee's appeal succeeds.

7. The main dispute regarding addition against *incentive expenses* is crystallization. It is beyond doubt that under mercantile system of accounting, expenses pertaining to impugned AY were allowable to the assessee in impugned AY only provided that the same has been quantified and crystallized. The only basis on which the same has been disallowed by Ld. AO is that the same has been credited to the accounts of the respective parties in succeeding assessment years. However, in our opinion, if the liability had already been quantified and crystallized and provision thereof was made in the books of accounts, the same was allowable to the assessee irrespective of actual credit to the respective parties since the assessee, following mercantile system of accounting, was eligible to claim the same. The Ld. AR has placed elaborate



documents in the *paper book* to demonstrate that the liability had actually crystallized during impugned AY. Therefore, without much deliberation, we restore the matter back to the file of Ld. AO to re-appreciate the documentary evidences submitted by the assessee and decide as per law. The assessee, in turn, is directed to demonstrate the crystallization thereof in the impugned AY. The Ld. AO is also directed to verify that deduction for these expenses is not claimed by the assessee in subsequent years. Resultantly, this ground of assessee's appeal stands allowed for statistical purposes.

8. The last issue pertains to disallowance of depreciation for Rs.42.45 Lacs which is estimated @10% of *amalgamation reserve* accruing to the assessee. The facts giving rise to *amalgamation reserve*, as evident from *Annual Report* of the assessee company, are that pursuant to a scheme of amalgamation u/s 391 to 394 of the Companies Act, 1956, as approved by High Court of Bombay, one undertaking of an entity namely *Stripes Apparels Ltd. (Transferor Company)* was amalgamated into the assessee company which became effective from 29/06/2009. The entire business and whole of undertaking of the transferor company, *on going concern basis*, stood transferred to Assessee Company with effect from 01/04/2008. Pursuant to exchange ratio as approved under the scheme, the assessee allotted shares valuing at Rs.173.98 Lacs i.e. 17,39,866/- equity shares of Rs. 10/- each to the shareholders of the transferor company as against *net assets* of Rs.598.51 Lacs taken over by the assessee company. The differential of the two i.e. Rs.424.52 Lacs gave rise to the *amalgamation reserve* in the books of assessee company. All



the assets and liabilities were taken over by the assessee at their book values as appearing in the books of transferor company, except minor adjustments so as to ensure uniformity in accounting policy and presentation of financial statements. The assessee has accounted the transaction on *Pooling of Interest Method* as envisaged in *Accounting Standard-14* issued by *ICAI*. This method is followed in case of amalgamation in the nature of merger and according to this method, no adjustment is intended to be made in the book value of assets and liabilities taken over except to ensure uniformity of accounting policy. The Ld. AO has disallowed depreciation against the said amalgamation reserve at estimated rate of 10% and the same is the subject matter of this appeal.

9. On the basis of above, we note that lower authorities has erred in concluding that the *amalgamation reserve* represent lower payment made by the assessee to acquire depreciable assets of higher value whereas we have noted that the same represent difference of *net assets* taken over by the assessee and share capital issued to transferor company upon amalgamation. Further, all the assets & liabilities have been taken over at the book values only as evident from the *Annual Report* of the Company and moreover, this fact is never been controverted by the revenue.

10. *Prima facie*, the transaction is in the nature of *demerger* as defined in Section 2(19AA), the written down value of which is governed by Explanation 2A and 2B to Section 43(6). Since, the assessee is resulting



company, Explanation 2B is applicable and the same is reproduced below:-

Explanation 2B.—Where in a previous year, any asset forming part of a block of assets is transferred by a demerged company to the resulting company, then, notwithstanding anything contained in clause (1), the written down value of the block of assets in the case of the resulting company shall be the written down value of the transferred assets of the demerged company immediately before the demerger.

Therefore, while deleting the impugned additions, we deem it proper to restore the matter back to the file of Ld. AO for limited purpose of verifying the fact that the written down value of the assets taken over by the assessee and on which depreciation is claimed by the assessee under Income Tax Act is the same as they stood in the depreciation chart as per Income Tax Act, 1961 in the books of transferor company immediately before demerger. In other words, Ld. AO is directed to verify that the depreciation allowable to the demerged entity, in case demerger had not taken place and the actual depreciation claimed by the assessee under Income Tax Act remains the same. Resultantly, this ground of assessee's appeal stands allowed for statistical purposes.

11. In nutshell, the assessee's appeal stands partly allowed.

Order pronounced in the open court on 04th October, 2017.

Sd/-

(D.T. Garasia)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 04. 10.2017

Sr.PS:- Thirumalesh



ITA No 1875/Mum/2015
Kamadgiri Fashion Limited
Assessment Year 2010-11

आदेश की प्रतिलिपि ढ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**