

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

[Before Hon'ble Shri J.Sudhakar Reddy, AM & Shri S.S.Viswanethra Ravi, JM]

ITA No.114/Kol/2014
Assessment Year : **2008-09**D.C.I.T., Central Circle-XXV,
Kolkata

-versus-

M/s. Warren Tea Ltd.
Kolkata
(PAN: AAACW 2894 H)
(Respondent)

(Appellant)

For the Appellant: Shri Anand R.Baiwar, CIT
For the Respondent: Shri J.P.Khaitan, Sr. Counsel

Date of Hearing : 24.08.2017.

Date of Pronouncement : 31.10.2017.

ORDER**PER J.SUDHAKAR REDDY, AM:**

This is an appeal by the Revenue directed against the order of the Commissioner of Income Tax-IV, Kolkata for the Assessment Year 2008-09.

2. The Assessee is a company engaged in the business of growing, manufacturing and marketing of black tea and travel agency. The grounds of appeal raised by the revenue are as under :-

"1. In the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the disallowance or the depreciation without considering the facts mentioned by the A.O. in his assessment order regarding assets not put to use.

2. In the facts and circumstances of the case the Ld. CIT(A) has erred in granting relief to the on the basis of the submission of the assessee without verified or getting verified the facts mentioned in the submission, thus violating the provisions of the Rule-46A of the I.T.Rules.

3. In the facts and circumstances of the case the Ld. CIT(A) has erred in granting relief in the form of the reduction of disallowance ignoring provisions of Rule-8D(2)(ii) of the I.T. Rules.

4. In the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the interest and reducing the value of average investment on the basis of

submission of the assessee without granting the AO an opportunity to examine the same, thus violating the provisions of Rule-46A of the I.T Rules.

5. In the facts and circumstances of the case the Id. CIT(A) has erred in accepting the additional evidences and the details etc. in respect of the issue of "provision of pension" without granting opportunity to the A.O. , thus violating provisions of Rule -46A of the I.T.Rules.

6. The appellant craves leave to make any addition, modification and remodelling or withdrawal of the grounds."

3. We have heard Shri Anand R.Baiwar, Id. CIT on behalf of the revenue and Shri J.P.Khaitan, Sr. Counsel on behalf of the assessee. On a careful consideration of the facts and circumstances of the case and a perusal of the papers on record and orders of the authorities below as well as the case law cited we held as follows :-

4. Ground No. 1 and 2 are against the admission of additional evidence by the Id. CIT(A). The case of the revenue is that Rule 46A of the I.T.Rules was violated. This ground has to be dismissed as misconceived, as the Id. CIT(A) has not admitted any of the additional evidence by invoking Rule 46A of the IT Rules. The Id. CIT(A) has not pointed out as to what is the additional evidence that was relied upon by the Id. CIT(A). The grievance of the revenue is that the claim of the assessee for depreciation on the assets was allowed by the Id. CIT(A), though the assets were not put to use. Out of many items of machinery, the Id. CIT(A) has given a factual finding that, paper pot burner system was not put to use whereas, in the case of other machinery, they were purchased much before the end of the financial year and hence the conclusion that these were not put to use is not correct.

5. In our view this plant and machinery form part of the block of assets and under this circumstances there is no requirement for each of the machinery to be put to use for enabling the assessee to claim depreciation. In any event the factual finding of the Id. CIT(A) is not controverted by the Id. DR.

6. In the result in view of the above these grounds of revenue are dismissed.

7. Ground Nos. 3 and 4 relate to the issue of disallowance u/s 14A r.w. Rule 8D(2)(ii) of IT Rules. The assessee earned dividend income of Rs.17,67,669/-. No disallowance was made u/s 14A in the computation of income. The AO was of the view that some disallowance u/s 14A of the act r.w.r.8D(2) of IT Rules has to be made. He disallowed an amount of Rs.22,20,831/- by invoking Rule 8D(2) of IT Rules. The First Appellate Authority directed the AO to verify the calculation made by the assessee and make disallowance under Rule 8D(2)(iii) @ 0.5% of the average value of investments. On the disallowance made under Rule 8D(2)(ii) of the IT Rules, the First Appellate Authority held that the interest expenses of Rs.3,69,57,000/- incurred by the assessee company on secured loans, working capital have no link with the investments made during the year. He held that the assessee had own funds of Rs..120 crores and that the investments made are Rs.4.17 crores and hence the presumption is that non interest bearing funds were utilised for such investments. This view of the Id. CIT(A) is supported by the judgment of the Jurisdictional High Court in the case of Principal CIT vs Rasoi Ltd Judgment dated 15th February, 2017, wherein the decision of the Hon'ble Bombay High Court in the case of CIT vs HDFC Bank (2014 49 Taxmn.com 335 (Bombay) was approved.

8. In view of the above discussion we find no infirmity in the order of the First Appellate Authority. Thus we dismiss ground nos. 3 and 4.

9. Ground No.5 is on the issue of provision of pension. The revenue's grievance is that opportunity was not given to the AO. Before us the Id. DR could not point out as to what is the error in the order of the First Appellate Authority. Merely asking for one more opportunity to the AO to reconsider the issue again cannot be entertained. The First Appellate Authority at para 10.3. held as follows.

“I have perused the assessment order as well as the submission & the documents produced in the course of the appellate proceedings. It is seen that the Ministry of Corporate Affairs, Govt. Of India vide Notification GSR No. 212(E) dt. 27.03.2008 made it mandatory for the companies to consider any unrecognized part of the transitional liability in accounting for subsequent actuarial gains. The relevant Part of this Notification dt.27th March, 2008 is reproduced as under:-

"G.S.R. No.;' 212 (E). - In exercise of the powers conferred by clause (a) of sub-section (1) of section 642 read with sub-section (1) of section 210A and sub-section (3C) of section 211 of the Companies Act 1956 (1of 1956/ the Central Government in consultation with the National Advisory Committee on Accounting Standards, hereby makes the following rules to amend the Companies (Accounting Standards) Rules, 2006; namely: -

1) These rules may be called the Companies (Accounting Standards) Amendment Rules, 2008.

(2) They shall come into force on the date of their publication in the Official Gazette.'

2. In the Companies (Accounting Standards) Rules, 2006, in the Annexure. in Part

B in Accounting Standard - 15 (Employee Benefits)-

(i)after paragraph 92 the following shall be inserted, namely:-

92A. Paragraph 145(b)(iii) explains the need to consider any unrecognised part of the transitional liability in accounting for subsequent actuarial gains."

(ii) for paragraph 116 and example illustrating Paragraph 116, the following shall be substituted, namely:-

"116. Where a curtailment relates only to some of the employees covered by a plan or where only part of an obligation is settled, the gain or loss includes a proportionate share of the' previously unrecognised past service cost (and of transitional amounts remaining unrecognised under paragraph 145(b)). The proportionate share is determined on the basis of the present value of the obligations before and after the curtailment or settlement. unless another basis is more rational in the circumstances.

(ili) under the heading 'Transitional Provisions' and before the sub- heading' .

"Employee Benefits other than Defined Benefit Plans and Termination Benefits". the following shall be' inserted, namely:-

"142 A. An enterprise may disclose the amounts required by paragraph 120(n) as the' . amounts are.' determined for each accounting period prospectively from the date the enterprise first adopts this Standard. "

(iv) for paragraph 145 and the example illustrating paragraph 144 and 140 the following shall be substituted, namely:-

"145: If the transitional liability is more than the liability that would have been recognised" at the same date. as per the ore-revised AS 15 the enterprise should make an irrevocable choice to recognise that increase as part of its defined benefit liability under paragraph 55:

(a) immediately as an adjustment against the opening balance of revenue reserve and surplus (as adjusted by any related tax expense): or

(b) as an expense on a straight-line basis over up to five years from the date of adoption.

If an enterprise chooses (b), the enterprise should:

(i) apply the limit described in paragraph 59(b) in measuring any asset recognised in the balance sheet;

(ii) disclose at each. Balance sheet date (1) the amount of the increase that remains unrecognised and (2) the amount recognised in the current period.;

(iii) limit the recognition of subsequent actuarial gains (but not negative past service cost) only to the extent that the net cumulative unrecognised actuarial gains (before recognition of that actuarial gain) exceed the unrecognised part of the transitional liability; and

(iv) include the related part of the unrecognised transitional liability in determining any subsequent gain or loss on settlement or curtailment; If the transitional liability is less than the liability that would have been recognized 'at the same date as per the pro-revised AS 15' the enterprise should recognise. that decrease immediately as an adjustment against the opening balance' of revenue reserves and surplus,"

"10.4. It is apparent from the above, the companies were directed to make an irrevocable choice to recognize the transitional liabilities immediately as an adjustment against the opening balance of revenue reserve and surplus (as adjusted by any related tax expense). Hence, the appellant, in terms of Accounting Standard 15 (Revised) on Employee Benefits, made an adjustment of Rs.9,72,66,813/- in the accounts in respect of pensions payable to certain categories of employees working in Tea plantations in Assam. Out' of this amount, a sum of Rs.9,31,95,686/- was reduced from Reserve & Surplus, which was relating to earlier year and the amount pertaining to this year has been debited in the Profit & Loss A/c and has been allowed by the A.O' as allowable expenses.' However, it appears that. due to oversight, the A.O mentioned nothing in the assessment order.

In my opinion, such recognition of transitional liabilities and adjustments thereof is allowable as the same has been made in accordance with the direction of the Government of India, Further, Sec.43B of the Act. covers unpaid Bonus, unpaid Leave Encashment, PF, ESI, Superannuation fund, gratuity fund even for the earlier years. But it does not include Pension Liabilities expenses.

Again, vide Notification dt. 27.03.2008 of the Government of India the companies were directed to make an irrevocable choice to recognize the transitional liabilities immediately as an adjustment against the opening balance of revenue reserve and surplus. This direction came into force from this year

itself. Hence, the expenses for the earlier years are also allowable in this year. It is immaterial whether the assessee has debited the 'expenses to the Profit & Loss A/c or reduced to the Reserve & Surplus. For allowing any expenses, it has to be examined whether the same is allowable or not. The A.O has himself allowed the portion of expenses debited in the Profit & Loss A/c and further on perusal of the assessment orders and the computation of total income for the AY 2009-10, 2010-11 & 2011-12, it is also observed that-such recognition of transitional liabilities and adjustments thereof have been allowed by the AO himself in the respective years, Hence, there is no dispute About the allowability of expenses. As such, I direct the A.O. to allow the claim of transitional liabilities amounting to Rs.9,72,66,813/- made by the appellant in respect of pensions' payable."

10. We find no infirmity in the order of the First Appellate Authority. Thus we do not interfere in the same. As the finding are self explanatory, we do not require to add anything further.

11. In the result the appeal of the revenue is dismissed.

Order pronounced in the Court on 31.10.2017.

Sd/-
[S.S.Viswanethra Ravi]
Judicial Member

Sd/-
[J.Sudhakar Reddy]
Accountant Member

Dated : 31.10.2017.

[RG PS]

Copy of the order forwarded to:

- 1.M/s. Warren Tea Ltd., 4B, Hugerford Street, Suvira House, Kolkat-7000017.
- 2.D.C.I.T., Central Circle-XXV, Kolkata.
3. C.I.T.(A)- IV, Kolkata 4. C.I.T-II, Kolkata
5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

Senior Private Secretary
Head of Office/D.D.O, ITAT Kolkata Benches

