

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'डी' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER AND
SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 1540/Ahd/2015

निर्धारण वर्ष/ Assessment Year : 2011-12

Crest Composite & Plastics Pvt. Ltd. - 808, Abhishree Adroit, Judges Bungalow Road, Vastrapur, Ahmedabad - 380 054	Vs	ITO, Ward - 1(2), Ahmedabad.
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आयकर अपील सं./ ITA No. 1456/Ahd/2015

निर्धारण वर्ष/ Assessment Year : 2011-12

ITO, Ward - 1(2), Ahmedabad.	Vs	Crest Composite & Plastics Pvt. Ltd. - 808, Abhishree Adroit, Judges Bungalow Road, Vastrapur, Ahmedabad - 380 054 PAN : AAACC 6333 R
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Prakash Udeshi, AR
Revenue by :		Shri V. K. Singh, Sr. DR

सुनवाई की तारीख/Date of Hearing : 04/01/2018

घोषणा की तारीख /Date of Pronouncement: 08/01/2018

आदेश/ORDER

PER MAHAVIR PRASAD, JUDICIAL MEMBER:-

These cross appeals by the assessee and Revenue are directed against the order of the Commissioner of Income-Tax (Appeals)-6, Ahmedabad dated 10.03.2015 for Assessment Year 2011-12.

2. The assessee has taken following grounds in its appeal vide ITA No.1540/Ahd/2015:

1. The Hon'ble Commissioner of Income Tax (Appeals)-6, Ahmedabad has erred on the facts and in law by confirming the disallowance of Depreciation of Rs.1,45,617/-.

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2. *The Hon'ble Commissioner of Income Tax (Appeals)-6, Ahmedabad has erred on the facts and in law by confirming the disallowance of unapproved gratuity of Rs.2,83,300/-.*

3. The Revenue has raised following grounds in its appeal vide ITA No. 1456/Ahd/2015:

1. *The ld. CIT(A) has erred in law and on facts in deleting the disallowance of interest expenses and finance charges of Rs.16,75,605/- without appreciating the fact that the assessee has not furnished any supporting evidence regarding the utilization of fund when the assessee is having enough fund for utilization.*
2. *The ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs.20,00,000/- made by AO as unexplained/unsecured loan without considering the fact that the assessee has not proved the creditworthiness and identity of the party.*
3. *The ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.95,274/- made by AO towards late payment of employees contribution to PF & ESIC even though the same was not paid within due date.*

4. The brief facts of the case are that the AO noticed that appellant had claimed depreciation at 15% on electrical equipments instead of 10% so that the difference of 5% i.e. Rs.1,36,878/- and further the additional deprecation of Rs.77,178/- was inadmissible. Ld. CIT(A) held that AO has failed to appreciate that the appellant company has claimed the depreciation at 15% because the electrical installations were installed at the plant of the factory. The electrical installation includes items like Control panel board cooling and temperature control in plant, HP motor, Utility panel, gland KCE for plant etc. which are being used in the plant of the assessee company as a part of plant and machinery. Hence it cannot be construed as Furniture and Fixtures. The appellant explained these facts. As per CIT(A), Ld. AO has erred in not granting depreciation at 15% by not considering the electrical installation as plant & machinery and requested to allow the depreciation at 15% as electrical installations are part of plant and machinery and not Furniture and fixtures. Ld. CIT(A) also not convinced with the plea of the

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assessee and hence he confirmed the addition of Rs.1,45,617/- made by the AO.

5. We have gone through the relevant record and impugned order. Ld. AR cited an order of co-ordinate bench in ITA No.4172/Ahd/2007. Co-ordinate bench has held as under:

“We find from the arguments of both the sides as well as the orders of the lower authorities that the nature of assets i.e. electrical installation that consists of electrical wires, switches, plugs, cables, MCB box and electrical items, which cannot function independently, rather, this is a part of plant and machinery and it cannot be classified under furniture and fittings. Accordingly, we are of the view that assessee is eligible for depreciation under the block of plant & machinery @25%. We allow the claim of the assessee and this issue of the assessee’s appeal is allowed.”

6. Similarly co-ordinate bench in ITA No.3175/Ahd/2010 has held as under:

“We have heard the rival contentions and perused the material on record, it is undisputed that electrical items are fitted with projector and other film exhibition systems. Without electrical items, the projector as well exhibition systems cannot be run. Therefore, it is a part and parcel of the plant and machinery. Thus, the assessee is entitled to higher rate @25%. We confirm the order of the CIT(A) and dismiss the Revenue’s appeal on this ground.”

7. Respectfully following the aforesaid decision of coordinate bench, we hold that assessee has rightly claimed depreciation at 15% on electrical equipments. Therefore, this ground of appeal is allowed.

8. So far as ground related to disallowance of unapproved gratuity of Rs.2,83,300/- is concerned. During the course of assessment proceedings, the AO observed that appellant has deposited the gratuity amount into LIC - Gratuity Fund and hence made disallowance of Rs.2,83,300/-. In this appeal Ld. CIT(A) also confirmed the same. We have gone through the relevant record and impugned order, in this case, appellant has filed an application for approval of Gratuity Fund under Part-C of the 4th Schedule

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to Income Tax of 31st Jan, 2007 as on date, same was not disposed off by the department. In this case, amount was paid to LIC group of Gratuity Fund, which is under the control of the Central Government and an application for approval of Gratuity fund is pending before the department. As per decision of Hon'ble Punjab & Haryana High Court, in the case of CIT vs. Bitoni Lamps Ltd. 277 ITR 396. The AO however, held that gratuity liability cannot be allowed when the assessee did not have any approved gratuity fund. The claim was accordingly DCIT, Bharuch vs. Baroda Gujarat Gramin Bank disallowed. Same submissions were made before the learned CIT(A). The learned CIT(A) considering the order of ITAT Ahmedabad Bench in the case of Crystal Solvent Pvt. Ltd. (ITA No.655/Ahd/2005) allowed the appeal of the assessee in which it was held that disallowance u/s.40A(7) of the IT Act cannot be made on the ground of absence of approval of gratuity fund as the deduction was not claimed on account of any provision.

As per order of co-ordinate bench, in the case of New Bharat Engineering Works (Jam) Ltd. vs. ITO 44 TTJ (Ahd) 522. The learned Counsel for the assessee further submitted that the assessee made a claim on actual expenses incurred under the head gratuity contribution. Therefore, provisions of section 40A(7) of the Act would not apply in the matter.

9. Respectfully following the aforesaid decisions, we allow this ground of appeal.

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

11. Now, we come to Revenue's appeal in ITA No.1456/Ahd/15. So far as deleting of disallowance of interest expenses and finance charges of Rs.16,75,605/- is concerned. During the course of assessment proceeding AO observed that the appellant had paid interest to the tune of

Rs.14,68,149/- to depositors and Rs.2,07,456/- to others, further he observed that the appellant had not utilized its reserve and surplus and used the borrowed funds in the business. Hence, he disallowed the whole of the interest amount of Rs.16,75,605/-. In appeal Id. AO disallowed ground of appeal.

12. We have gone through the relevant record and impugned order. In this case, AO has failed to appreciate that vide reply No.3 dtd.10/03/2014 utilization of borrowings taken during the year under consideration. The appellant had demonstrated the utilization of borrowed funds by way of producing the relevant extract of Bank Statement and AO has failed to appreciate that disallowance of interest expenses cannot be made even though fund are utilized for business purposes. So far as utilization of reserve and surplus is concerned. The AO failed in calculating that appellant had utilized reserve and surplus and AO has failed to appreciate that it goes to prudence of the appellant company to utilize the reserve and surplus. AO has no right to suggest as to how the funds, reserves and surplus, share capital etc. should be utilized. It is the company who decides the time of utilization of reserve and surplus funds. During the year under consideration appellant has taken fresh loans from (i) Ranjit Sen, (ii) Aditya Sen, (iii) Supriya Sen, (iv) Suparna Sen, (v) R. R. Gopal. All other balances are opening balances. Thus without prejudice to the above and in the alternative, the appellant stated that the proposition that when advance have been made in the past for which no disallowance has been made in the year of advance, there could be no disallowance in the subsequent year and now it is settled by the decision in case of Shridev Enterprise [189 ITR 165] (Kar.) and CIT vs. Sushma Kapoor [230 CTR 262] (Del.).

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13. In our considered opinion, It does not require any interference in the order passed by the Id. CIT(A). Therefore, this ground of appeal of the department is dismissed.

14. So far as disallowance of 20,00,000/- made by AO as unexplained/unsecured loan is concerned. During the year of assessment proceeding, the AO had asked for the confirmation of parties to the Unsecured Loan. Assessee filed confirmations of 11 parties to the unsecured loans alongwith their PAN. But in absence of source, credit worthiness, identity etc. one of the parties to the Unsecured loans i.e. Standard Cal Chem, the Ld. AO made addition of Rs.20,00,000/- as Unsecured loan. In appeal Id. CIT(A) deleted the addition.

15. We have gone through the relevant record, the amount of Rs.20,00,000/- is an opening balance which is being carried forward for F.Y.2007-08 and there is no new amount has been taken during the year under consideration and an addition u/s.68 is not legal and assessee cited a judgment CIT vs. Usha Stud Agricultural Famrs Ltd. (301 ITR 384)(Delhi HC) in the appeal, it has been held that no addition u/s.68 with respect to opening balance. In our considered opinion, in such circumstances this ground of appeal cannot sustain. In the result, this ground of appeal is dismissed.

16. So far as ground related to deleing the addition of Rs.95,274/- made by AO toward the late payment of employees contribution to PF and ESIC, even though same was not paid within due date. The Id. AO made disallowance of contribution of the employee towards PF & ESI of Rs.95,274/- observing that the same were paid after due date. In appeal Id. CIT(A) allowed the claim of Rs.95,274/-.

17. We have gone through the relevant record and impugned order. In this case, Jurisdictional High Court has held in the matter of **CIT vs. Gujarat State Road Transport Corporation**, relevant Para of the same is reproduced here as under:

"Section 43B, read with section 36(1)(va) of the Income-tax Act, 1961 - Business disallowance - Certain deductions to be allowed on actual payment (Employee contribution) - Whether where an employer has not credited sum received by it as employees' contribution to employees' account in relevant fund on or before due date as prescribed in Explanation to section 36(1)(va), assesses shall not be entitled to deduction of such amount though he deposits same before due date prescribed under section 43B i.e., prior to filing of return under section 139(1) - Held, yes - Assessee State transport corporation collected a sum being provident fund contribution from its employees - However, it had deposited lesser sum in provident fund account - Assessing Officer disallowed same under section 43B - However, Commissioner (Appeals) deleted disallowance on ground that employee, contribution was deposited before filing return - Whether since assesses had no deposited said contribution in respective fund account on date as prescribed in Explanation to section 36(1)(va), disallowance made by Assessing Officer was just and proper - Held, yes [para 8] [In favour of revenue]"

18. Respectfully following the order of the Hon'ble Gujarat High Court in the aforesaid matter, we allow this ground of appeal in favour of department.

19. In the result, appeal filed by the Revenue is partly allowed.

20. In the result, the appeal filed by the assessee is allowed and the by Revenue is partly allowed.

Order pronounced in the Court on 8th Jan, 2018 at Ahmedabad.

Sd/-
एन.के. बिल्लैया
(लेखा सदस्य)
(N.K. BILLAIYA)
ACCOUNTANT MEMBER
Ahmedabad; Dated 08/01/2018

Sd/-
महावीर प्रसाद
(न्यायिक सदस्य)
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Priiti Yadav, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-6, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./ Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad