



IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.2737/Mum./2016
(Assessment Year : 2010-11)

M/s. Tokheim India Pvt. Ltd.
A-174, TTC Industrial Area
Kharine Village, MIDC
Navi Mumbai 400 709
PAN - AACCK3414F

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-10(3), Mumbai

..... Respondent

ITA no.2668/Mum./2016
(Assessment Year : 2010-11)

Dy. Commissioner of Income Tax
Circle-10(3), Mumbai

..... Appellant

v/s

M/s. Tokheim India Pvt. Ltd.
A-174, TTC Industrial Area
Kharine Village, MIDC
Navi Mumbai 400 709
PAN - AACCK3414F

..... Respondent

C.O. no.81/Mum./2017
(Arising out of ITA no.2668/Mum./2016)
(Assessment Year : 2010-11)

M/s. Tokheim India Pvt. Ltd.
A-174, TTC Industrial Area
Kharine Village, MIDC
Navi Mumbai 400 709
PAN – AACCK3414F

..... Cross Objector
(Original Respondent)

v/s

Dy. Commissioner of Income Tax
Circle-15(3)(1), Mumbai

..... Respondent
(Original Appellant)

Assessee by : Shri Jitendra singh
Revenue by : Shri Saurabh Kumar Rai

Date of Hearing – 10.01.2018

Date of Order – 19.01.2018

ORDER

PER SAKTIJIT DEY, J.M.

Captioned appeals and the cross objection arise out of common order dated 14th January 2016, passed by the learned Commissioner (Appeals)-24, Mumbai, for the assessment year 2010-11.

ITA no.2737/Mum./2016
Assessee's Appeal

2. Ground no.4 is of general in nature, hence, does not require adjudication.
3. In ground no.1, the assessee has challenged disallowance of bad debt of ₹ 35,50,044.

4. Brief facts are, the assessee a company is stated to be engaged in the business of assembling and selling range of fuel dispensers, oil station management system and providing maintenance service catering to down stream oil retail industries. For the assessment year under dispute, the assessee filed its return of income on 30th September 2010, declaring loss of ₹ 1,54,68,900. During the assessment proceeding, the Assessing Officer noticing that the assessee has debited an amount of ₹ 35,50,044, to the Profit & Loss account towards bad debt written-off called upon the assessee to furnish necessary details and justify the claim. Alleging that the assessee failed to furnish any details justifying its claim the Assessing Officer disallowed the deduction claimed. Being aggrieved of the disallowance made, assessee preferred appeal before the first appellate authority.

5. In the course of hearing of appeal before the learned Commissioner (Appeals), the assessee produced supporting evidence to justify the deduction claimed. On the basis of evidence produced by the assessee, the learned Commissioner (Appeals) directed the Assessing Officer to examine them and submit his report. After verifying the remand report submitted by the Assessing Officer, the learned Commissioner (Appeals) observed that in respect of impugned assessment year neither the assessee has submitted any supporting

evidence to justify the claim nor has filed any rejoinder against the remand report. Accordingly, he confirmed the disallowance.

6. Learned Authorised Representative submitted before us, all the details relating to claim of bad debt was filed not only at the assessment stage but also before the first appellate authority and during the remand proceedings. In this context, he drew our attention to the party-wise details of bad debt as enclosed in the paper book. The learned Authorised Representative submitted, though, the assessee submitted the details of bad debt for the assessment years 2009-10 and 2010-11, however, the learned Commissioner (Appeals) accepting the genuineness of the evidences submitted, though, allowed the claim of the assessee in the assessment year 2009-10, however, he sustained the disallowance for the impugned assessment year. In this context, he drew our attention to the observations of the first appellate authority in the appeal order passed for the assessment year 2009-10. Learned Authorised Representative drawing our attention to the written submission filed before the first appellate authority on 16th April 2015 submitted, though, the assessee made submissions justifying its claim of deduction of bad debt with supporting evidence, the learned Commissioner (Appeals) completely ignored the claim of the assessee. He submitted, the details submitted clearly revealed that the bad debts arose in the course of regular

business of the assessee and were offered as income in the earlier assessment years. He submitted, since the amount was actually written-off in the books of account no disallowance can be made in view of the decision of the Hon'ble Supreme Court in TRF Ltd. v/s CIT, [2010] 230 ITR 14 (SC).

7. Learned Departmental Representative relying upon the observations of the Departmental Authorities submitted, in the absence of supporting evidence, assessee's claim could not have been allowed.

8. We have heard rival contentions and perused material on record. As it appears from facts on record, disallowance of claim of bad debt was made in identical manner for the assessment years 2009-10 and 2010-11. Before the first appellate authority, the assessee produced supporting evidence justifying its claim of bad debt in both these assessment years and on the basis of evidences submitted by the assessee, first appellate authority called upon the Assessing Officer to examine the evidence and submit his report. On a perusal of the remand report dated 14th October 2015 submitted by the Assessing Officer it appears that it is a combined report for the assessment years 2009-10 and 2010-11. Further, on a perusal of the said remand report, it is evident the Assessing Officer has not made any comment with regard to assessee's claim of bad debt. However, the first

appellate authority on independently examining the evidence brought on record and taking note of the fact that the Assessing Officer has not made any adverse comment in the remand report allowed assessee's claim of bad debt in assessment year 2009-10. On a perusal of submissions dated 16th April 2015, a copy of which is at Page-24 of the paper book, it is evident in Para-7.1 of the said submissions, the assessee has not only justified its claim of bad debt but has also furnished supporting evidence like party-wise details of bad debt, amount written-off, etc. When, on the basis of similar evidence the first appellate authority has allowed assessee's claim for the assessment year 2009-10, we fail to understand why it was not allowed for the impugned assessment year. Further, when the Assessing Officer has not offered any adverse comment with regard to claim of bad debt in the remand report, what further rejoinder was expected from the assessee. As it appears, the first appellate authority without properly applying his mind to the evidences brought on record has sustained the disallowance. Therefore, we are of the opinion that no disallowance is required to be made. Accordingly, we delete the addition made by the Assessing Officer and sustained by the first appellate authority. Ground no.1 is allowed.

9. In ground no.2, assessee has challenged disallowance of ₹ 4,22,090, representing write-off of advance to employees.

10. Brief facts are, during the assessment proceeding, the Assessing Officer noticing that the assessee has debited an amount of ₹ 4,22,090 towards write-off of advance given to employees called upon the assessee to justify its claim. Alleging that the assessee failed to furnish supporting details the Assessing Officer disallowed and added back the amount of ₹ 4,22,090. The assessee challenged the disallowance before the first appellate authority.

11. The learned Commissioner (Appeals) after perusing the remand report submitted by the Assessing Officer sustained the disallowance by following his order on identical issue passed for the assessment year 2009-10.

12. Learned Authorised Representative submitted before us that as per the demands of its business, the assessee has to give advance to its employees for travelling expenses for purchase of raw material, spare parts, etc. He submitted that some of the employees left their job without submitting the details of expenses incurred by them against the advance received. Therefore, amount of advance which remained unadjusted and outstanding had to be written-off in the books as they cannot be recovered. He submitted, all the details were furnished before the Departmental Authorities, without properly examining them disallowance has been made. However, the learned

Authorised Representative fairly submitted that similar disallowance made in assessment year 2009–10, though, was sustained by the first appellate authority, the assessee has not contested the same.

13. Learned Departmental Representative supported the decision of the learned Commissioner (Appeals).

14. We have heard rival contentions and perused material on record. As could be seen, the disallowance of advance given to employees being written-off was primarily made in the absence of supporting details and evidence. For this very reason, similar disallowance was made in assessment year 2009–10, which has been accepted by the assessee. In the impugned assessment year also, the factual position is no different. Except furnishing the name of some persons with amounts written against their names no other details or supporting evidence have been produced by the assessee to demonstrate advancement of money to the concerned persons. No supporting bills / vouchers have been produced either before the Departmental Authorities or before us. In view of the aforesaid, we do not see any reason to interfere with the order of the learned Commissioner (Appeals) on this issue. Ground no.2, is dismissed.

15. In ground no.3, the assessee has challenged disallowance of ₹ 52,329, towards delayed payment of employee's contribution to P.F.

16. Brief facts are, during the assessment proceeding, the Assessing Officer noticing that employee's contribution to provident fund (P.F) amounting to ₹ 52,329, was not paid within the due date as per Explanation to section 36(1)(va) of the Act disallowed the same.

17. The learned Commissioner (Appeals) also sustained the disallowance.

18. We have heard rival contentions and perused material on record. It is evident, the only reason for disallowance of payment made towards employee's contribution to P.F. is, such payment was not made within the due date as provided under Explanation-2 to section 36(1)(va) of the Act. However, there is no dispute to the fact that such payments were made before the due date of filing of return of income for the impugned assessment year. That being the case, following the decision of the Hon'ble Jurisdictional High Court in Hindustan Organics Ltd. v/s CIT, 366 ITR 001 we allow assessee's claim of deduction. The addition made is deleted. Ground no.3, is allowed.

19. In the result, assessee's appeal is partly allowed.

ITA no.2668/Mum./2016
Revenue's Appeal

20. In ground no.1, the Revenue has challenged allowance of warranty expenditure claimed by the assessee.

21. Brief facts are, during the course of assessment proceeding, the Assessing Officer noticed that the assessee has debited an amount of ₹ 32,55,695, towards warranty expenses. When he called upon the assessee to justify the same, it was found that such claim was computed on provisional basis @ 3% of the sales. The Assessing Officer being of the view that the expenditure claimed was merely a provision, disallowed the same and added back to the income of the assessee.

22. The learned Commissioner (Appeals) following his decision in assessee's own case for A.Y. 2009-10, allowed assessee's claim.

23. Learned Departmental Representative relying upon the observations of the Assessing Officer submitted that the deduction claimed being in the nature of a provision cannot be allowed under section 37(1) of the Act.

24. Learned Authorised Representative submitted, though the assessee has computed the expenses towards warranty @ 3% of the sales, however, it cannot be considered to be provisional / un-ascertained in nature since it has been computed on a scientific basis. He submitted, in assessee's own case for assessment year 2007-08, the Tribunal allowed assessee's claim, since, it was on the basis of past experience and scientific basis. In this context, he drew our

attention to the order passed by the Tribunal in ITA no.7351/Mum./2010 dated 1st July 2015. Without prejudice to the aforesaid contention, learned Authorised Representative submitted, the assessee though has claimed deduction of provisions made towards warranty expenses amounting to ₹ 32,55,695 in the impugned assessment year, however, it has offered it as income in assessment year 2011-12. Therefore, any disallowance in the impugned assessment year would amount to double taxation of the same income.

25. We have heard rival contentions and perused material on record. It is the specific contention of the assessee before us that the disputed amount claimed as deduction in the impugned assessment year has been offered as income in the subsequent assessment year i.e., assessment year 2011-12. If the aforesaid claim of the assessee is correct, then, upholding of disallowance in the impugned assessment year would amount to addition of the same income in two assessment years, which in our view should not be made. Considering the aforesaid factual position, we direct the Assessing Officer to allow assessee's claim of deduction of provisions made for warranty expenses in the impugned assessment year subject to verification of the fact that the amount in question was offered as income in

assessment year 2011-12. This ground is considered to be allowed for statistical purposes.

26. In ground no.2, Revenue has challenged the decision of the learned Commissioner (Appeals) in allowing the expenditure on consumables.

27. Brief facts are, during the assessment proceeding, the Assessing Officer noticing that the assessee has debited an amount of ₹ 6,73,089, as consumable expenditure called for the necessary details from the assessee and also directed the assessee to justify the claim. In response, it was submitted by the assessee that it had purchased a material called ISOPAR for testing of dispensary. It was submitted, since, the material purchased was consumed in the process for the purpose the assessee has claimed it as revenue expenditure. The Assessing Officer was, however, not convinced with the submissions of the assessee. He was of the view that the material purchased by the assessee is a capital asset, hence, is to be capitalized. Accordingly, disallowing assessee's claim of revenue expenditure he allowed depreciation @ 7.5% on the amount expended which worked out to ₹ 50,482.

28. The learned Commissioner (Appeals) following his decision on identical issue in assessee's own case for assessment year 2009-10, allowed assessee's claim.

29. We have heard rival contentions and perused material on record. After considering the factual aspect of the issue, we are of the view that the expenditure incurred by the assessee is in respect of a material which is in the nature of consumable. This fact is very much evident from the discussion of the first appellate authority while dealing with identical issue in assessee's own case for assessment year 2009-10, a copy of which was placed before us. The Assessing Officer without properly verifying the facts has disallowed assessee's claim. Therefore, we do not find any reason to interfere with the decision of the first appellate authority on this issue. Ground no.3 is dismissed.

30. In the result, Revenue's appeal is dismissed.

C.O. no.81/Mum./2017 – By Assessee

31. In view of our decision in ground no.1, raised by the Revenue in its appeal being ITA no.2668/Mum./2016, ground raised by the assessee in the present cross objection becomes infructuous, hence, dismissed.

32. In the result, cross objection is dismissed.

33. To sum up, assessee's appeal is partly allowed, Revenue's appeal is partly allowed for statistical purposes.

Order pronounced in the open Court on

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 19.01.2018

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai

		Date	Initial	
1.	Draft dictated on	12.01.2018	}	Sr.PS
2.	Draft placed before author	15.01.2018		Sr.PS
3.	Draft proposed & placed before the second member	--		JM/AM
4.	Draft discussed/approved by Second Member	--		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	19.01.2018	}	Sr.PS
6.	Date of pronouncement	19.01.2018		Sr.PS
7.	File sent to the Bench Clerk	19.01.2018		Sr.PS
8.	Date on which file goes to the Head Clerk			
9.	Date of dispatch of Order			