

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'C', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH, MUMBAI
सर्वश्री राजेन्द्र, लेखा सदस्य, एवं , राम लाल नेगी न्यायिक सदस्य के समक्ष

BEFORE SHRI RAJENDRA, AM AND SHRI RAM LAL NEGI, JM

आयकर अपील सं./ITA No. 4699/Mum/2016

(निर्धारण वर्ष / Assessment Year: 2011-12)

M/s Kamadgiri Fashion Ltd., 28, Y.A. Chunawala Industries - Estates, Kondivita Lane, Andheri (E), Mumbai - 400059	Vs.	The I.T.O., Ward- 4(2)(1), Aayakar Bhavan, M.K. Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACK1654P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Ms. Dinkle Haria (AR)
राजस्व की ओर से / Revenue by : Shri T.A. Khan (DR)

सुनवाई की तारीख / Date of Hearing : **01/06/2018**
घोषणा की तारीख/Date of Pronouncement: **11/07/2018**

आदेश / O R D E R

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 30.03.2016 passed by the Commissioner of Income Tax (Appeals)-9, Mumbai, pertaining to the Assessment Year 2011-12, whereby the Ld. CIT (A) has partly allowed the appeal filed by the assessee against assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee company engaged in the business of manufacturing and trading in Synthetic Fabrics and Garments, filed its return of income for the assessment year under consideration declaring the total income of Rs, 3,97,33,677/-. Since the case was selected for scrutiny, notice u/s 143 (2) and 142 (1) of the Act were issued to the assessee. In response to the said notices, the authorized representative of the assessee

appeared and submitted details and information called for by the AO. It was noticed that the assessee had debited Rs. 92,646/- towards prior period expenses. The AO disallowed the same holding that the assessee is not entitled to claim prior period expenses. Similarly, the AO disallowed the interest claimed by the assessee on TDS of Rs. 1,64,943/- and interest on VAT of Rs. 4,80,495/- holding that interest on late payment of TDS and VAT being penal in nature are not allowable as business expenditure. The AO also made disallowance of Rs. 42,45,274/- on account of excess depreciation claimed by the assessee.

3. In the first appeal, the Ld. CIT (A) deleted the disallowance of Rs. 92,646/- subject to verification by the AO for the reason that the appellant assessee has already disallowed the said amount. However, the Ld. CIT (A) confirmed the addition made on account of disallowance being interest on VAT to the tune of Rs. 4,80,495/- and interest on TDS of Rs. 1,64,943/- holding that the same are penal in nature and are not allowable as business expenditure. The Ld. CIT (A) also confirmed the disallowance made by the AO on account of excess depreciation claimed by the assessee. The assessee is in appeal against the order passed by the Ld. CIT (A).

4. The assessee has raised the following effective grounds of appeal against the impugned order passed by the Ld. CIT (A):-

1. "Natural Justice"

1.1 *The Learned Commissioner of Income-tax (Appeals)-9, Mumbai, ["Ld. CIT (A)"] erred in passing the appellate order in breach of the principles of natural justice.*

1.2 *While doing so, the Ld. CIT (A) failed to appreciate that:*

(i) *The Appellant was not given fair, reasonable and proper opportunity of being heard, and*

- (ii) *In any case, the Appellant was prevented by reasonable causes beyond its controls to make effective and proper representation.*

Without prejudice to the above

- 2.1 *The Ld. CIT (A) erred in confirming the action of the A.O. in disallowing Rs. 92,646/- towards prior period expenses.*
- 2.2 *It is submitted that in the facts and the circumstances of the case, and in law, no such disallowance was called for.*

Without further prejudice to the above

- 3.1 *The Ld. CIT (A) erred in confirming the action of the A.O. in disallowing Rs. 4,80,495/- being interest on Value Added Tax on the ground of same being penal in nature.*
- 3.2 *It is submitted that in the facts and the circumstances of the case, and in law, no such disallowance was called for.*
- 4.1 *The Ld. CIT (A) erred in confirming the action of the A.O. in disallowing Rs. 42,45,274/-, out of the total depreciation claimed by holding that the Appellant had paid Rs. 1,73,98,660/- as purchase consideration for the assets of Rs. 5,98,51,409/- of the amalgamating company.*
- 4.2 *It is submitted that in the facts and the circumstances of the case, and in law, no such disallowance was called for.”*

5. Vide Ground No. 1, the assessee has challenged the validity of impugned order on the ground that the Ld. CIT (A) has passed the said order in violation of principles of natural justice. The Ld. Departmental Representative (DR), on the other hand submitted that there is no merit in the contention of the assessee as the Ld. CIT (A) has passed the order in question after affording a reasonable opportunity of being heard to the assessee.

6. Since ground No 1 is of general nature, we do not consider it necessary to adjudicate the same separately.

7. The second ground pertains to addition of Rs. 92,646/- towards prior period expenses. We notice that the Ld. CIT (A) has directed the AO to delete the said addition subject to verification of the details filed by the appellant. The Ld. CIT (A) has ordered to delete the addition on the ground that the Ld. AR submitted before him that the appellant had already disallowed the said amount. Hence, in our considered view, this ground does not arise from the impugned order. Hence, we dismiss this ground of appeal of the assessee.

8. The third ground pertains to disallowance of Rs. 4,80,495/- claimed by the assessee on account of interest on Value Added Tax (VAT). The Ld. counsel submitted that this ground is covered by the decision of the Mumbai ITAT in the case of *Chandra K Raichandani Vs. ACIT Circle-2, ITA No. 799/Mum.2012* for the A.Y, 2007-08, in favour of the assessee. The Ld. DR relied on the concurrent findings of the authorities below.

9. We have perused the material on record including the order relied upon by the assessee in the light of the rival contentions of the parties. The coordinate Bench has already dealt with the identical issue in the case of *Chandra K Raichandani Vs. ACIT(supra)* and the Bench has decided the issue in favour of the assessee. The relevant para of the order of the coordinate Bench reads as under:

“5. The Hon’ble Supreme Court in the case of Mahalakshmi Sugar Mills Co. vs. CIT, 123 ITR 429 (SC) have held that interest for delay payment of statutory dues is an allowable deduction u/s 37(1) of the Act. Same view has also been taken by Hon’ble Supreme Court in the case of Lachmandas Mathuradas vs CIT, 254 ITR 799 sc). We also find that Hon’ble Allahabad High Court in the case of Commissioner of Income tax v. Ishwai Khetan Sugar Mills

(Pvt.) Ltd. 272 ITR 224 (All) have held that interest on delayed payment of provident fund is an allowable deduction u/s 37(1) of the Act. Hon'ble Delhi High Court in the case of Commissioner of Income-tax v. Delhi Automobiles, 272 ITR 381 (Del) has held that interest payments on delayed sales tax is an allowable deduction u/s 37(1) of the Act. In view of above and respectfully following the judicial pronouncements (supra), we are of the view that interest on late payment of MVAT to the extent of Rs. 6,41,348/- is an allowable deduction u/s 37(1). Hence, we reserve the orders of authorities below by allowing the deduction of interest u/s 37(1) on account of late payment tax under MVAT Act, 2002. Hence, grounds of appeal taken by assessee is allowed."

10. Since, the coordinate Bench has decided the identical issue in favour of the assessee under the similar set of facts, there is no reason to deviate from the view taken by the coordinate Bench in the aforesaid case. Hence, respectfully following the decision of the coordinate Bench in the case of *Chandra K Raichandani Vs. ACIT*(supra), we allow this ground of appeal of the assessee.

11. Vide ground No 4 the assessee has challenged the Action in confirming the disallowance of Rs. 42,45,274/-out of the total depreciation claimed by the assessee holding that the assessee had paid Rs. 1,73,98,660/-as purchase consideration for the assets of Rs. 5,98.51,409/- of the amalgamating company. The Ld. counsel for the assessee submitted that the ITAT has already dealt with the identical issue in assessee's own case for the assessment year 2010-11 and restored the issue to the file of AO. The Ld. DR did not controvert the aforesaid facts, however, relied on the order passed by the Ld. CIT(A).

12. We have perused the material on record and also gone through the order passed by the coordinate Bench in assessee's own case for the assessment year 2010-11. We notice that the coordinate Bench has dealt with the identical

issue in assessee's own appeal ITA No 1855/Mum/2015 and restored the issue to the file of the AO with certain directions. The relevant paras of the said order read as under:

“ 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/s 391 to 394 of the Companies Act, 1956, as approved by High Court of Bombay, one undertaking of entity namely Striples 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 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 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".

13. Since, the coordinate Bench has dealt with the identical issue in assessee's own appeal for the assessment year 2010-11 and restored the issue to the file of the AO, we respectfully following the decision of the coordinate Bench restore this issue to the file of the AO with the same direction. Accordingly, we allow this ground of appeal for statistical purposes.

In the result, appeal filed by the assessee for assessment year 2011-12 is partly allowed.

Order pronounced in the open court on 11th July, 2018.

Sd/-

(RAJENDRA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 11/07/2018

Alindra, PS

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

आदेश प्रतिलिपि अग्रेषित/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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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