

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'B', NEW DELHI

BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER

ITA No. 2952/Del/2014
AY: 2002-03.

DCIT, Circle 11(1) New Delhi	vs.	Federal Mogul Geotze India Ltd. (earlier known as M/s Goetz India Ltd.) 52 B, Okhla Industrial Estate Phase III New Delhi 110 020 PAN: AAACG3769M
(Appellant)		(Respondent)

Department by : Sh. Mithun Shete, Sr.D.R.
Assessee by : Sh.R.K.Kapoor, FCA

Date of Hearing : 14/02/2019
Date of Pronouncement: 13/03/2019

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present appeal has been filed by revenue against order dated 28/02/2014 passed by Ld.CIT(A)-18, New Delhi on following grounds of appeal:

"1. On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the disallowance of Rs.1,12,33,667/- made u/s 14A of the I.T.Act, 1961.

2. *On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the disallowance of Rs.22,47,597/- being expenses related to prior period.*

3. *On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the disallowance of Rs.18,25,000/- being paid to M/s Umang Credit Capital Ltd. Which has not provided services in arranging the loan to the assessee company.*

4. *The appellant craves leave to add, alter or amend any ground of appeal raised above at the time of hearing."*

2. Brief facts of the case are as under:

Assess filed its return of income on 31/10/2002, declaring total income of rupees "Nil" under normal provisions of the Act, after set off brought forward losses and depreciation, totalling ₹3,94,78,003/-. The total income under section 115 JB was computed at ₹9,71,65,895/-, and tax was computed accordingly. Return was processed under section 143(1). On 13/03/2003, assessee filed revised return of income at the same income, revising calculation mistake in original return. Gross total income before set off of brought forward losses and depreciation, now totalled to ₹5,90,35,575/-. Case was selected for scrutiny and notice under section 143 (2) was issued, followed by notice under section 143 (2) and 142 (1).

2.1. Assessing officer completed assessment by making various additions and computed income in hands of assessee at Rs.9,98,51,978/-

2.2. Aggrieved by order of Ld.AO, assessee preferred appeal before Ld.CIT (A), who deleted additions made by Ld.AO.

3. Aggrieved by order of Ld.CIT (A), revenue is in appeal before us now.

4. Ground No. 1 has been raised against deleting disallowance of ₹1,12,33,667/-, under section 14 A of the Act.

4.1. It has been submitted that assessee has earned dividend income on investments amounting to ₹55.96 lakhs. Ld.Sr.DR submitted that assessee's financial resources and expenses are mixed and that assessee has not maintained separate accounts for investments and business funds. Ld.DR submitted that assessee incurs interest on its borrowings and since funds are maintained in a mixed account part of interest expenditure is to be held towards earning of dividend income.

4.2. On the other hand Ld.AR placed reliance upon order passed by this Tribunal in ITA No. 410 and 1032/Del/2017 vide order dated 27/11/2009 in assessee's own case for assessment year 2001-02, wherein proportionate disallowance made was deleted.

5. We have heard submissions advanced by both sides in light of records placed before us.

5.1. Assessee placed reliance on assessment order for assessment year 2003-04, wherein no disallowance under section 14 A has been made and order of ITAT for assessment year 2001-02, wherein disallowance of 1% has been deleted.

5.2. We have perused Annexure C, Schedules 6 to audited accounts, wherein investments made by assessee have been listed. It is observed that assessee has sufficient investments made in government securities, subsidiary companies, unit trust of India, trade investments etc. and to manage these, it cannot be

held that no expenditure could have been incurred by assessee. Further upon perusal of audited accounts placed at ANNEXURE C of paper book, it is observed that assessee had sufficient reserves and surplus for investment made during year. We therefore do not agree with disallowance computed by Ld.AO in respect of interest expenditure being allocated for earning exempt income.

5.3. In the present scenario of judicial review, view taken by this Tribunal for assessment year 2001-02 (supra) in assessee's own case cannot be applied, in view of decision of *Hon'ble Supreme Court* in case of *Maxopp Investments vs. CIT* reported in (2018) 91 taxmann.com 154 (SC). However we are conscious of the fact that, for year under consideration, disallowance cannot be made as per Rule 8D of Income Tax Rules, 1963. We are therefore inclined to set aside the issue back to Ld.AO to compute disallowance having regard to assessment year under consideration, as well as decision of *Hon'ble Supreme Court* in case of *Maxopp Investments vs. CIT (supra)*. Ld. AO is also directed that the disallowance so computed shall not exceed the exempt income earned by assessee during year under consideration.

5.4. Accordingly this ground raised by revenue stands allowed for statistical purposes.

6. Ground No. 2 raised by revenue is in respect of deleting disallowance of ₹22,47,597/-, being expenses related to prior period.

6.1. Ld.Sr.DR submitted that, these expenses pertain to prior period, and hence are not allowable against income of current

year. Placing reliance upon order passed by Ld.AO he submitted that assessee has been using mercantile system of accounting of expenses and liability of the same depends upon time when services are provided, which is in preceding year.

6.2. On the contrary, Ld.AR submitted that, bills in respect of services provided were received during year and therefore expenses related to current year and were allowable. It has been submitted that for similar reason proceedings under section 263 was initiated, for assessment year 2000-01 and Ld.CIT therein upon being satisfied granted relief to assessee by dropping proceedings under section 263 of the Act. It has been submitted that this Tribunal for assessment year 2003-04 upheld view of Ld.CIT (A) in deleting similar addition.

6.3. We have perused submissions advanced by both sides in light of records placed before us, and orders relied upon by Ld.AR.

6.4. It has been submitted that assessee has been following consistent method of accounting according to which, such expenditure is treated to be crystallised in year in which bills are received and claimed. There is no allegation by Ld.DR regarding expenses having not been incurred by assessee or are not genuine or not for any business purposes. It has been submitted that only reason for disallowance by Ld.AO is that services rendered in view of such expenditure, does not pertain to year under consideration.

6.5. It is observed that this Tribunal in ITA No. 1375/Del/2011 passed for assessment year 2003-04 in assessee's own case has observed that expenses are always claimed by assessee in year

in which the same are quantified, while allowing claim of assessee.

6.6. It is observed that this method of accounting has been accepted by authorities below from assessment year 1991-92 to 2000-01. It is also observed that for assessment year 2000-01 notice under section 263 has been issued by Ld.CIT, for examining this issue, and the same has been dropped.

6.7. On the basis of same reasoning we do not find any infirmity in view taken by Ld. CIT (A) and same is upheld.

6.8. Accordingly this ground raised by revenue stands dismissed.

7. Ground No. 3 has been raised by revenue against deleting of disallowance of commission expense amounting to ₹18,25,000/- paid to M/s.Umang Credit Capital Ltd.

7.1. Ld.Sr.DR submitted that bank had issued notice under section 133 (6) to Export Import Bank, Mumbai Head Office calling for details towards sanction of term loan of ₹ 25 crores to assessee. In response to notice under section 133 (6) Bank informed Ld.AO regarding details as well as confirmed that M/s. Umang Credit Capital Ltd., was not involved in negotiating and/or arranging for loan facilities on behalf of assessee. Ld.Sr.DR submitted that, there have been no services rendered by M/s.Umang Credit Capital, in lieu of which commission has been paid, and therefore payment made by assessee has been rightly held to be not genuine by Ld.AO.

7.2. On the contrary, Ld.AR submitted that, said sum has been paid for raising term loan of ₹25 crore from Exim Bank. It has been submitted that sum of ₹18,25,000 has been paid to M/s.

Umang Credit Capital Ltd., towards commission for arranging term loan of ₹25 crores. Assessee submitted that M/s.Umang Credit Capital Ltd., raised bill dated 31/03/2002, upon assessee, which has been placed before authorities below.

8. We have perused submissions of both sides in light of records placed before us.

8.1. Ld.AO alleged that assessee has not been able to establish genuineness of payment in the nature of commission, paid to M/s. Umang Credit Capital Ltd. Assessee has placed reliance upon order of this Tribunal for assessment year 2003-04 in assessee's own case (supra), wherein commission paid for processing loan from bank/financial institutions has been allowed on the ground that nothing contrary has been proved by revenue to establish its ingenuity. It is observed that Ld.CIT (A) for year under consideration is also placing reliance upon the said order passed by this Tribunal and has deleted addition.

It is observed that Ld.CIT(A) has ignored enquiries made by Ld.AO with bank wherein there is a categorical denial by bank in dealing with M/s.Umang Credit Capital Ltd., for disbursement of loan. We are of view that Ld.CIT (A) failed to examine whether party to whom commission has been paid by assessee during this year is same as that in earlier year, and whether such loan has been taken for purposes of assessee's business. Under such circumstances we do not agree with Ld. CIT(A) as well as Ld.AR that issue stands covered by orders of this Tribunal in earlier years. We accordingly set aside this issue to Ld.AO for due verification in the light of relevant documents on record. Ld. AO is to verify the same as per law to ascertain true nature of

transaction. Assessee is directed to file all requisite details as called for by Ld. AO in order to decide this issue.

8.2. Accordingly this ground raised by revenue stands allowed for statistical purposes.

9. In the result appeal filed by revenue stands allowed for statistical purposes.

Order pronounced in the open court on 13/03/2019.

Sd/-

(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. 13th March, 2019

- GMV

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

ITA No.2952/Del/2014
M/s Federal Mogul Goetze (India) Ltd.
AY 2002-03

	Date
Draft dictated on	12/03/2019
Draft placed before author	12/03/19
Draft proposed & placed before the second member	
Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	
Kept for pronouncement on & Order uploaded on :	13/03/2019
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	