

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 3828/MUM/2014
Assessment Year: 2008-09**

Plus Paper Foodpac Ltd.,
501, Mahalaxmi Chambers,
22 Bhulabhai Desai Road,
Mumbai-400026.

Vs. Assistant Commissioner
of Income Tax 10(3),
Mumbai.

PAN No. AABCM8267B
Appellant

Respondent

Assessee by : Mr.Divyesh I. Shah, AR
Revenue by : Mr. Abi Rama Kartikiyen, DR

Date of Hearing : 18/02/2019
Date of pronouncement : 30/04/2019

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2008-09. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-22, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3)(ii) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under:

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A)-22, Mumbai erred in confirming the action of the ACIT 10(3), Mumbai (the AO) in disallowing the expenditure of Rs.6,47,28,816/- on the alleged ground that the said expenses were incurred for the setting up the new unit instead of expansion of existing facilities.

1.1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the said expenditure were revenue in nature incurred toward trial run expenses.

1.2 The appellant prays that it be held that the said expenses so incurred were revenue in nature and related to expansion of the existing unit.

Without prejudice to the above,

2. The Ld. CIT(A) erred in treating the entire expenditure as work-in-progress on the alleged ground that the unit had not commenced the production and as such depreciation on the same would not be allowed.

2.1 The Ld. CIT(A) erred in not appreciating the fact that the appellant had commenced its trial production and as such the depreciation on the same would be allowable.

2.2 The appellant prays that the claim for depreciation be allowed.

Without prejudice to the above,

3. The Ld. CIT(A) erred in confirming the action of the AO in not considering the expenditure of Rs.1,59,97,166/- treated as capital expenditure in the AY 2007-08 as a part of the cost of Plant & Machinery in the block of assets.

3.1 The Ld. CIT(A) erred in not appreciating the fact that the appellant was entitled to claim depreciation on the said cost in as much as the appellant had started the trial production.

3.2 The appellant prays that the said expenditure of Rs.1,59,97,166/- be treated as a part of cost of Plant & Machinery.

3.3 The appellant prays that the depreciation on the same be allowed.

3. Briefly stated, the facts are that the assessee is engaged in the business of manufacturing, trading and sale of laminated paper containers, printed/cut to size poly-coated paper, plastic lids etc. It filed its return of

income for the assessment year (A.Y.) 2008-09 on 29.09.2008 declaring loss of Rs.5,67,63,459/-.

During the course of assessment proceedings, the Assessing Officer (AO) observed that assessee had claimed trial run expenses of Rs.6,47,28,816/-. The AO asked the assessee *vide* order sheet noting dated 01.12.2010 to furnish the complete details and justifications for allowability of the trial run expenses claimed. However, the assessee failed to furnish any explanation or details of it, as observed by the AO. The AO thus came to a finding that the said trial run expenses are not allowable since these were incurred prior to the commencement of the business of the new factory. Further, noting that even otherwise, the assessee had not furnished the party-wise and other details of these expenses and also supporting documentary evidence, the AO made the disallowance of the above trial run expenses.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT (A). During the course of appellate proceedings, the assessee submitted the details regarding trial run expenses. The Ld. CIT(A), observing that the assessee was prevented from circumstances beyond its control to file those details before the AO, sent a copy of it to the AO to make an enquiry and submit a remand report. The AO submitted the remand report on 24.07.2013, which was sent by the Ld. CIT(A) to the assessee to file a rejoinder, if any. The assessee filed the rejoinder on 15.10.2013 stating that (i) the company had embarked upon expansion plan by increasing the capacity of manufacturing; the said plan were at two different levels, one by expanding the manufacturing capacity at Baddi-H.P. and the other by expanding the capacity of Badlapur, and (ii) due to the accounting policy adopted by the company, all expenses that were, if any-

may be remotely related to such expansion were capitalised in the book, however, they were completely revenue in nature.

Further, during the course of hearing before the Ld. CIT(A), the assessee filed (i) subsidy approval letter received from Govt. of H.P. in respect of capacity expansion, (ii) list of major machineries installed earlier with description and names of the suppliers.

However, the Ld. CIT(A) was not convinced with the above expansion of the assessee for the reason that (i) the assessee had started two units at Baddi, after putting up the original manufacturing facility in the year 2005; one is for manufacture of "Plastic lids and folding cartons" and another for manufacture of "laminated hot and cold paper cups", (ii) the assessee was given approval for manufacturing the paper cups only from 09.12.2008 and hence it does not pertain to the assessment year in question, (iii) the approval shows that the initial date of commencement in respect of the folding cartons as 27.03.2010, which also does not pertain to the impugned assessment year, (iv) the assessee had manufactured plastic lids from 17.10.2007 onwards which was claimed as extension of the existing unit, (v) the product manufactured in the original limit is of laminated paper cups-hot and cold, whereas in the new unit at Baddi, it had started manufacturing plastic lids during the assessment year.

Therefore the Ld. CIT(A) arrived at a finding that since the products are totally different, it cannot be said that it is an extension of the existing unit. It is further observed by him that though the assessee claimed that there was a similar expansion at Badlapur Factory, details connected to that were not filed before him. Therefore, the Ld. CIT(A) declined to accept the claim of the assessee that the new unit put up during the impugned assessment year was extension of the existing business. To summarise, the

Ld. CIT(A) held that the assessee had put up a new manufacturing unit for a new product and hence, they are independent units, which has no connection with the existing unit, though it was put up in the spare space available in the existing unit. Therefore, the Ld. CIT(A) confirmed the disallowance of Rs.6,47,28,816/- made by AO towards trial run expenses.

5. Before us, the Ld. counsel for the assessee refers to the details of pre-operative expenses claimed in the impugned assessment year; letter dated 14.03.2011 filed before the Ld. CIT(A) along with a note on trial run expenditure; remand report of the AO dated 05.07.2013; rejoinder dated 15.10.2013 in response to the remand report and the details of subsidy approval letter for capacity expansion and list of major machineries installed in Unit-1 and Unit-2 and submits that the trial run expenditure of Rs.6,47,28,816/- was for expansion of the present capacity of manufacturing and not for setting up of any new plant. Thus, it is stated by him that these are completely revenue in nature.

The ld. counsel relies on the order of the ITAT "C" Bench, Mumbai in assessee's own case for A.Y. 2007-08(ITA No. 7130/MUM/2010) and submits that the issue has been decided in favour of the assessee.

6. On the other hand, the Ld. Departmental Representative (DR) submits that though the assessee had claimed that there was a similar expansion at Badlapur Factory, details connected to that could not be filed before the ld. CIT(A). Referring to the reasons given by the Ld. CIT(A), the Ld. DR submits that the disallowance of Rs.6,47,28,816/- be confirmed.

7. We have heard the rival contentions and perused the relevant materials available on record.

We find that similar issue arose before the ITAT "C" Bench, Mumbai in assessee's own case for A.Y. 2007-08 (ITA No. 7130/MUM/2010) and the Tribunal vide Para 8 held as under:

"We have heard the rival submissions and perused the relevant finding given in the impugned order. The assessee, earlier had two units, one at Baddi, HP and second at Turbhe which is at Vashi, Navi Mumbai. During the relevant assessment year the assessee had purchased a land and building at Badlapur for establishing a unit and shifted its machineries from Turbhe unit plant to Badlapur unit. The expenses for both the units were capitalized by the assessee in the books of accounts as pre-operative expenses in the following manner:-

Expansion capacity at Baddi unit: Rs.1,29,24,438/-

Badlapur Shifting cum expansion: Rs.2,30,72,728/-

However, these expenses were claimed as revenue expenditure in the computation of income. So far as expansion of capacity in Baddi unit for achieving higher manufacturing capacity it cannot be said to be incurred for setting-up of a new unit or starting of a new line of business, albeit it was for expansion of already existing unit. There is no dispute that there was unity of control, and management and also interlacing of the funds. The advantage to the assessee may be of slightly enduring in nature but it is mainly for increasing the assessee's manufacturing operations and supplement, the existing business. No new line of business or product have been started, therefore, we agree with the contention of Ld. Counsel that expenditure incurred on capacity expansion should be treated as revenue expenditure.

7.1. Facts being identical, we follow the above order of the Co-ordinate Bench and allow the first ground of appeal. As the first ground of appeal has been allowed, the without prejudice further 2nd and 3rd grounds of appeal become infructuous.

8. In the result, the appeal is allowed.

Order pronounced in the open Court on 30.04.2019.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 30/04/2019

Subhankar Samanta, P.S (On Tour).

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Private Secretary)
ITAT, Mumbai