

आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, PUNE

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.425/PUN/2015

निर्धारण वर्ष / Assessment Year : 2002-03

The Deputy Commissioner of Income Tax,
Circle-8, Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

Atlas Copco (India) Ltd.
Mumbai-Pune Road,
Dapodi, Pune-411 012
PAN: AAACA4047D

.....प्रत्यर्थी / Respondent

Assessee by : Shri R Murlidhar &
Shri Prashant Gandhi
Revenue by : Ms. Kesang Y Sherpa

सुनवाई की तारीख / Date of Hearing : 17.07.2019

घोषणा की तारीख / Date of Pronouncement : 17.07.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the Revenue emanates from the order of the
Ld. CIT(Appeal)-1, Nashik dated 21.01.2015 for the assessment year 2002-03
as per the grounds of appeal on record.

2. The crux of the grievance of the Revenue in appeal is with regard to deletion of penalty levied u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the First Appellate Authority.

3. **Ground No.1** relates to the deletion of penalty on the issue of expenses incurred for increase in share capital after amalgamation process, not covered u/s.35DD of the Act.

4. On this issue, in the quantum appeal for assessment year 2002-03 in assessee's own case in ITA No.1311/PUN/2011, the Ld. CIT(Appeals) decided the matter based on the decision in assessee's own case for assessment year 2004-05 and 2005-06 wherein only stamp duty expenses on immovable property was found eligible for amortization u/s.35DD of the Act while fees for increase in authorized share capital was not eligible for amortization specially In view of the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Hindustan Insecticides Ltd., 250 ITR 338. The Ld. CIT(Appeals) allowed the stamp duty expenses as eligible for amortization u/s.35DD of the Act but fees for increase in authorized share capital was found as not eligible in view of the decision of the Hon'ble Delhi High Court (Supra.).

5. On this issue, the Co-ordinate Bench of the Tribunal, Pune has held as follows:

"22. We have perused the case records and heard the rival contentions. We have also analyzed the facts and circumstances on the issue. The Ld. CIT(Appeals) allowed the stamp duty expenses to be amortized u/s.35DD of the Act stating that to be part of amalgamation proceedings, following the decision of his predecessor in assessee's own case for assessment year 2004-05 and 2005-06 as on record. The Assessing Officer and the Ld. CIT(Appeals) has not denied the facts that there were amalgamation proceedings with respect to the assessee, however they have not brought out any reasons, specially in the order of the Ld. CIT(Appeals) that when entire expenses are in connection with amalgamation proceedings and the Revenue Authorities have allowed stamp duty expenses as deduction u/s.35DD of the Act then what is the

reason for not allowing the expenses incurred regarding fees for increase in authorized share capital which is also part of the same amalgamation proceedings. We are also inclined to agree with the submission of the Ld. AR after perusing facts of the case in the decision of the Hon'ble Delhi High Court (supra.) that it relates to fees for registration of company and essentially dealing with provision of section 35D(2)(c)(iii) of the Act. There is substantial difference between registration of a company and action taken for increase in authorized share capital.

In the case of the assessee because of amalgamation proceedings, there was need to increase in authorized share capital and therefore, such expenses cannot be segregated from the main amalgamation proceedings and therefore, these expenses are part of amalgamation expenses.

*23. In view of the matter, we set aside the order of the Ld. CIT(Appeals) on this issue and direct the Assessing Officer to delete the addition from the hands of the assessee. Thus, **ground No.4 raised in appeal by the assessee is allowed and ground No.3 of the Revenue's appeal is dismissed.**"*

In view of the above, we observe since the quantum has been deleted, there is no justification in sustaining the penalty. Further, we find the Hon'ble Rajasthan High Court in the case of **CIT Vs. cosmopolitan Trading Corporation reported in 274 ITR 640** and Hon'ble Punjab & Haryana High Court in the case of **CIT Vs. Prakash Industries Ltd reported in 322 ITR 622** has held that when the entire additions had been deleted in the quantum appeal, no reason survives for sustaining the penalty. Thus, we sustain the deletion of penalty from the hands of assessee on this issue, Thus, **ground No.1 of Revenue's appeal is dismissed.**

6. **Ground No.2** relates to the deletion of penalty on the issue of disallowance of warranty provision. On this issue, in quantum appeal of the assessee in ITA No.1311/PUN/2011 (Supra.) for assessment year 2002-03, the Co-ordinate Bench of the Tribunal has held as follows:

"10. We have perused the case records and analyzed the facts and circumstances on this issue. It is noticed that the assessee claimed Provision for warranty under two divisions, namely, Atlas Copco division and CP division. In so far as Atlas Copco division is concerned, it is seen that the Ld. CIT(Appeals) followed the Tribunal order for an earlier year in which such provision for warranty was held to be reasonable @ 0.4% of sales. No material has been placed on record to justify any

variation in percentage of provision for such earlier year. Following the precedent, we hold that provision at the rate of 0.40% of the sales of Atlas Copco division is reasonable and is accordingly directed to be allowed instead of the claim of the assessee at Rs.95,15,025/-. However, it is pertinent to have a look at a Table drawn by the ld. CIT(A) on page no.8 of the impugned order, which was furnished by the assessee itself. There is an item in the Table with a sum of Rs.67,55,915/-, being 'Expenses actually incurred'. This amount will be debited to the Provision for warranty and no separate deduction will be allowed for it. There is another sum of Rs.35,09,550/- in this Table, which has been described as 'Transfer or provision from other liability account'. As this is a separate provision from some 'other liability' account, no deduction can be allowed for the same. In case, it is a case of reversal of some provision, then it needs to be seen if any deduction was allowed at the time of creation of such a provision. If yes, then such reversal should be added now at the time of its reversal. There is another sum of Rs.27,95,163/- in the Table, which has been shown as 'Claims recovered'. The ld. AR stated that the assessee recovered claims from some parties. This amount is directed to be credited to Provision for warranty, thereby reducing the amount of expenses incurred during the year. There is another sum of Rs.55,03,000/-, which is 'Reversal during the year'. As the assessee is getting deduction on creation of provision, such reversal, being excessive provision created in the past, needs to be recognized as income for the year.

In so far as CP division is concerned, the assessee made provision during the year at Rs.3,10,33,820/-. As against that, the amount of actual expenditure is Rs.3,11,63,197/-. In view of the fact that actual expenditure incurred by the assessee in CP division is more than the amount of provision, we hold that deduction should be allowed for the amount of provision created. In the absence of such a position, we would have directed to follow the same rule of allowing provision at the rate of 0.40% of the sales of CP division. Once deduction is allowed on creation of provision, there can be no question of allowing deduction for actual expenses incurred in this division.

*The AO is directed to give effect to our above directions/observations after allowing opportunity of hearing to the assessee. Thus, **ground No.2 of the assessee's appeal is allowed for statistical purposes.***

In view of the above, it is seen that this issue had been allowed for statistical purposes and the issue has been remitted back to the file of Assessing Officer. The issue of penalty is also therefore remitted back to the file of Assessing Officer in the interest of justice. The Assessing Officer shall adjudicate the issue as per law in conformity with the principles of natural justice. Thus, **ground No.2 raised in appeal by the Revenue is allowed for statistical purposes.**

7. **Ground No.3** relates to the deletion of penalty on the issue of disallowance on account of excess claim of VRS expenses disregarding the provisions of section 35DDA of the Act. On this issue, in quantum appeal of assessee in ITA No.1311/PUN/2011 (supra.) for assessment year 2002-03, the view taken by the Tribunal is as follows:

“16. We have perused the case records and heard the rival contention. We observe that Section 35DDA of the Act does not make any reference to sums actually paid. It refers expenditure that expenditure can be actually incurred or paid. The spirit of interpretation with any scheme of Act provides that there has to be a holistic approach in interpreting the statutes and within the frame work of the statute itself there cannot be any isolated or secluded interpretation until or unless exclusively provided within the statute itself. We have to read Section 35DDA along with Section 43(2) of the Act and in view of the binding judicial pronouncements hereinabove referred, we hold that within the system of accounting followed by the assessee, they may have paid certain amount but the assessee has kept the provision as the expenses were also incurred. Therefore, as per the style of accounting, the term ‘paid’ shall include actually paid or incurred.

*In the instant case, the Revenue Authorities have only tried to interpret the provision of section 35DDA of the Act without considering the entire spirit and intent of the Act. We therefore, set aside the order of the Ld. CIT(Appeals) on this issue and the amount of VRS expenditure claimed by the assessee i.e. 1/5th of VRS expenses incurred of Rs.6,47,90,700/- is therefore allowed. However, it is made clear that once the assessee is allowed deduction on incurring expenses towards VRS, no deduction u/s.35DDA should be allowed at the time of actual payment thereof. The Assessing Officer is directed to verify if any deduction on this score is not claimed/allowed in the subsequent years at the time of actual payment. In case he finds that the assessee was allowed deduction at the time of payment, then such an amount should be added back. It goes without saying that once deduction has been allowed on the basis of incurring of liability, there cannot be any deduction on the basis of payment. Thus, **ground No.3 raised in appeal by the assessee is allowed for statistical purposes.**”*

In view of above, since this issue has been remitted back to the file of Assessing Officer, similarly the issue of penalty is also remitted back to his file in the interest of justice and he shall adjudicate the issue as per law after complying with the principles of natural justice. Thus, **ground No.3 raised in appeal by the Revenue is allowed for statistical purposes.**

8. **Ground No.4** relates to the deletion of penalty on the issue of disallowance on account of inventory written off.

9. That on the issue, the Tribunal in assessee's own case (supra.) for assessment year 2002-03 has taken following view in consonance with the decision of the Hon'ble Jurisdictional High Court in Income Tax Appeal(LOD) No.1107 of 2012 dated 1st February, 2013 :

"26. We have perused the case records and analyzed the facts and circumstances on this issue. We have also given thoughtful consideration to the judicial pronouncement placed before us in assessee's own case wherein it has been decided that such provision for stock obsolescence is allowed as deduction and it is not only limited to the stock actually written off. There is no difference in the facts and circumstances as appearing to that year and the relevant year in the case of the assessee. Further, we find as submitted by the Ld. AR that this decision of the Co-ordinate Bench of the Tribunal, Pune in assessee's own case has been upheld by the Hon'ble Jurisdictional High Court in Income Tax Appeal (LOD) No.1107 of 2012 decided on 1st February, 2013 wherein the Hon'ble Jurisdictional High Court has held as follows:

"6. So far as question (f) is concerned, the controversy is with regard to writing off of the closing stock to the extent of Rs.2.17 crores. The Tribunal in its order recorded a finding of fact that at the end of each age analysis of the inventory is carried out by them and any material which does not move for a period of 12 to 24 months is written off at 50% of the book value and at 100% of book value if it has not moved for more than 24 months and thereafter sold as a scrap and the income thereof is offered to tax. Before the Tribunal, the respondent-assessee had pointed out that similar dispute has arisen in the assessee's own case for the assessment years 1973-74 to 1975-76 and the Tribunal upheld the stand of the respondent-assessee. It also records the fact that the respondent-assessee's policy of identifying and making provision for the diminution of the value of the obsolete stock was accepted by the department for earlier assessment years and no disallowance was made in the earlier assessment years till the instant assessment year. The revenue has not been able to point out any distinguishable circumstances during the current assessment year from that existing and accepted in the earlier assessment years and also more particularly with regard to the order of the Tribunal for the assessment years 1973-74 to 1975-76. In the aforesaid circumstances, we see no reason to entertain question (f) as formulated by the taken revenue."

*Respectfully, following the decision of the Hon'ble Jurisdictional High Court, we direct the Assessing Officer to provide provision for stock obsolescence to the assessee and delete the addition therein. Thus, **ground No.5 raised in appeal by the assessee is allowed.**"*

Since in quantum appeal, the addition has been deleted, there is no justification in sustaining the penalty. We further find the Hon'ble Rajasthan High Court in the case of **CIT Vs. cosmopolitan Trading Corporation reported in 274 ITR 640** and Hon'ble Punjab & Haryana High Court in the case of **CIT Vs. Prakash Industries Ltd reported in 322 ITR 622** has held that when the entire additions had been deleted in the quantum appeal, no reason survives for sustaining the penalty. Thus, we sustain the deletion of penalty from the hands of assessee on this issue, Thus, **ground No.4 of Revenue's appeal is dismissed.**

10. **Ground No.5** relates to the deletion of penalty on the issue of disallowance on account of sale of scrap. The observation of the Ld. CIT(Appeals) on this issue is that the assessee has not suppressed any facts or details at any stage at the time of filing return of income or during the assessment proceedings or before the First Appellate proceedings. In this backdrop in the quantum appeal in ITA No.1311/PUN/2011 (supra.) for assessment year 2002-03, the Tribunal has held as follows:

*“31. We have perused the case records and analyzed the facts and circumstances on this issue. In order to meet the ends of justice, we find it deem and appropriate to restore this issue to the file of the Assessing Officer to verify the contentions of the assessee whether the amount reflected in the scrap sales account was actual income from sale of some cars in the financial year 2000-01 relevant to assessment year 2001-02 i.e. just preceding assessment year and whether same was offered to tax in that year. If the amount was offered to tax in that year then in this relevant year same amount again cannot be brought to tax and should be deleted. Hence, we set aside the order of the Ld. CIT(Appeals) on this issue and restore it to the file of the Assessing Officer as per directions hereinabove provided. Needless to say, the Assessing Officer shall grant reasonable opportunity of hearing to the assessee in accordance with law. Thus, **ground No.6 raised in appeal by the assessee is allowed for statistical purposes**”*

In view of above, since this issue in quantum appeal has been restored to the file of Assessing Officer for verification of the contentions of the assessee, thus in the interest of justice, the issue of penalty is also restored to the file of the Assessing Officer for proper adjudication as per law in compliance with the principles of natural justice. Thus, **ground No.5 raised in appeal by the Revenue is allowed for statistical purposes.**

11. **Ground No.6** relates to the deletion of penalty on the issue of disallowance on account of loss on sale of investment. On this issue also, we find that the Ld. CIT(Appeals) has categorically stated that the assessee has not suppressed any facts or details at any stage of proceedings either before the Assessing Officer or at the Appellate stage. The facts on records demonstrates specially from the findings of the Ld. CIT(Appeals) on the issue that there is no 'concealment of income' or 'furnishing of inaccurate particulars of income' by the assessee either before the Assessing Officer or before the Ld. CIT(Appeals). Relying on the decisions of the Hon'ble Supreme Court of India in the case of **Price Waterhouse Coopers Pvt. Ltd. in 348 ITR 306 (SC)** and in the case of **Reliance Petro Products (P) Ltd. in 322 ITR 158 (SC)** , the Ld. CIT(Appeals) deleted the penalty from the hands of the assessee.

12. That on perusal of facts and decisions referred herein above, we do not find any infirmity with the findings of the Ld. CIT(Appeals) on this issue and relief provided to the assessee is hereby sustained. Thus, **ground No.6 raised in appeal by the Revenue is dismissed.**

13. **Ground No.7** relates to the deletion of penalty on the issue of disallowance on account of advance to custom account and bad debts written off.

14. That on perusal of the records, we observe that with regard to the “advance to custom account” in assessee’s own case for assessment year 2002-03 (supra.), the Tribunal has taken a view to provide an opportunity to the assessee to explain before the Assessing Officer the modus of working of such provision in its books of account and to justify with supporting evidences that why this amount should be allowed as deduction and the matter has been restored to the file of Assessing Officer for proper adjudication as per law.

15. With regard to the issue of “bad debts”, the Tribunal has dismissed this ground of the assessee on merits. However, we observe that proceedings on penalty stand on two parameters i.e. ‘concealment of income’ or ‘furnishing of inaccurate particulars of income’. In the findings of the Ld. CIT(Appeals) itself has been stated that the assessee has neither concealed his income nor furnished inaccurate particulars of income. Following the judgment of the Hon’ble Apex Court in the case of **Price Waterhouse Coopers Pvt. Ltd. (Supra.)** and in the case of **Reliance Petro Products (P) Ltd.(Supra.)** we uphold the findings of the Ld. CIT(Appeals) and sustain the relief provided to the assessee with respect to the deletion of penalty on account of bad debts written off.

Thus, with regard to the deletion of penalty on the disallowance on account of “**advance to customs account**”, this issue is restored to the file of Assessing Officer for proper adjudication as per law. Hence, **this part of ground of Revenue’s appeal is allowed for statistical purposes.**

With regard to the deletion of penalty on account of “**bad debts written off**”, as per our aforesaid findings, we sustain the relief provided to the assessee by the Ld. CIT(Appeal). Thus, **this part of ground of Revenue’s appeal is hereby dismissed.**

16. In the combined result, appeal of the Revenue is partly allowed for statistical purposes.

Order pronounced on 17th day of July, 2019.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 17th July, 2019.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Nashik.
4. The CIT-V, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, “सी” बेंच,
पुणे / DR, ITAT, “C” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	17.07.2019	Sr.PS/PS
2	Draft placed before author	17.07.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		