



IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA no.2729/Mum./2018
(Assessment Year : 2013-14)

Sapa building Systems Pvt. Ltd.
726, 7th Floor, Neelkanth Business Park
Near Vidyavihar Railway Station
Vidyavihar (W), Mumbai 400 086
PAN – AAPCS4488N

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-13(2)(1), Mumbai

..... Respondent

Assessee by : Shri Santosh Thanvi
Revenue by : Shri Nitin Waghmode

Date of Hearing – 05.08.2019

Date of Order – 16.08.2019

ORDER

PER SAKTIJIT DEY. J.M.

Captioned appeal by the assessee arises out of order dated 23rd January 2018, passed by the learned Commissioner of Income Tax (Appeals)-21, Mumbai, for the assessment year 2013-14.

2. The only issue arising in the present appeal is with regard to the disallowance of provision made for obsolete stock amounting to ₹ 1,36,63,070. Of course, the assessee has raised additional grounds which are also in relation to the aforesaid issue.

3. Brief facts are, the assessee, a company, is engaged in the business of construction activities. For the assessment year under consideration, the assessee filed its return of income on 30th November 2013, declaring loss of ₹ 12,20,03,608. During the assessment proceedings, the Assessing Officer while examining the financial statement of the assessee found that an amount of ₹ 2,47,64,179, was debited to the Profit & Loss account towards certain provisions. Out of which, an amount of ₹ 1,36,63,070, was provision for obsolete stock. Noticing this, the Assessing Officer called upon the assessee to justify its claim of deduction in respect of the provisions made. Alleging that the assessee did not furnish any reply, the Assessing Officer concluded that the amount debited to the Profit & Loss account being in the nature of provision is not allowable. Accordingly, he disallowed the amount of ₹ 2,47,64,179. Such disallowance resulted in determination of loss at ₹ 9,72,39,430. The assessee challenged part of the aforesaid disallowance before the first appellate authority.

4. The learned Commissioner (Appeals) after considering the submissions of the assessee allowed assessee's claim in respect of the provision for service tax receivable amounting to ₹ 53,18,039. However, he sustained the disallowance with regard to the provision for obsolete stock amounting to ₹ 1,36,63,070.

5. The learned Authorised Representative submitted, the assessee under a business transfer agreement executed on 5th April 2011, had acquired the business of Orkla India Pvt. Ltd., on slump sale basis, which, also included a part of the stock of that company. She submitted, over passage of time the quality of stock has degraded to such an extent that it was not marketable and the management adopted a conservative approach for creating the provision for the diminishing value of stock as per generally accepted accounting policy. She submitted, since the stock so acquired had become obsolete and was of no use, the assessee created the provision for write off of such obsolete stock. In support of such contention, the learned Authorised Representative referred to various documentary evidences including the business transfer agreement with Orkla India Pvt. Ltd., which she sought to furnish as additional evidence.

6. The learned Departmental Representative submitted, neither before the Assessing Officer nor before learned Commissioner (Appeals) the assessee had produced any documentary evidence to justify the deduction claimed on account of provision for obsolete stock. Thus, he submitted, in such circumstances, assessee's claim could not have been allowed.

7. We have considered rival submissions and perused the material on record. A reading of the impugned assessment order would reveal that in reply to the query raised with regard to the provision of obsolete stock, the assessee did not furnish any reply. Therefore, the Assessing Officer proceeded to disallow the provision created for obsolete stock. As it appears, even before learned Commissioner (Appeals) also the assessee did not furnish any cogent evidence to establish that the stock acquired under the business transfer agreement have become obsolete. Further, learned Commissioner (Appeals) has recorded a finding that the stocks claimed as obsolete are aluminum goods and their demand never diminish in market. Pertinently, in response to a query raised by the Bench, learned Authorised Representative submitted, various documentary evidence including the business transfer agreement were not furnished before the Departmental Authorities. However, she submitted, given an opportunity, the assessee would furnish all the documentary evidences before the Assessing Officer to justify its claim of deduction in respect of provision for obsolete stock. The learned Departmental Representative has no objection if the issue is restored back to the Assessing Officer for de novo adjudication. In view of the aforesaid, we are inclined to restore the issue to the Assessing Officer for enabling the assessee to furnish all documentary evidences to justify its claim of deduction in respect of provision for obsolete stock. The Assessing

Officer must consider the evidences filed by the assessee and decide the issue in accordance with law after providing reasonable opportunity of being heard to the assessee. Accordingly, the issue is restored to the Assessing Officer for de novo adjudication in terms of our observation hereinabove. Grounds raised are allowed for statistical purposes.

8. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in the open Court on 16.08.2019

Sd/-
N.K. PRADHAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED:

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

Assistant Registrar
ITAT, Mumbai