

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “B” BENCH

**(BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT
MEMBER & SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 219/AHD/2015 & 2133/AHD/2017
(Assessment Year: 2011-12)**

Sakar Glazed Tiles Pvt. Ltd., 401, Shefali Centre, Paldi Char Rasta, Ahmedabad-380006	V/S	DCIT, Ahmedabad	Circle-8,
(Appellant)		(Respondent)	

PAN: AADCS3760K

**Appellant by : Shri Sakar Sharma, AR
Respondent by : Shri Mudit Nagpal, Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 24 -07-2019
Date of Pronouncement : 11 -09-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. These two appeals filed by the Assessee one for quantum proceeding and another is for penalty proceeding are directed against the order of the Ld. CIT(A)-8, Ahmedabad dated 03.12.2014 pertaining to A.Y. 2011-12.

2. Now we come to ITA No. 219/Ahd/2015. Assessee has taken following grounds of appeal:

1. The Ld. CIT (A) erred on facts and in law in confirming disallowance of depreciation of Rs. 1,62,562/- by holding that capital subsidy of Rs. 15,00,000/- was liable to be deducted from cost of plant 85 machinery even though in earlier assessment year identical addition was deleted by Ld. CIT (A).

2. The Ld. CIT (A) erred on facts and in law in confirming disallowance of transport payments of Rs. 19,51,012/- by invoking provisions of section 40A(3) r.w.r. 6DD(g)/(k) of the Act.

3. The Ld. CIT (A) erred on facts and in law in confirming disallowance u/s 36(1)(va) amounting to Rs. 39,198/- in respect of P.P. payments made before due date of filing of return u/s 139(1).

3. Facts of the case are that the appellant is a private limited company engaged in manufacturing of ceramic and vitrified tiles. For the year under consideration return of income was filed on 30.09.2011 declaring total income at Rs. 88,44,902/- after issue notice of u/s. 142(1) was issued and Assessing Officer has completed assessment u/s. 143(3) after verifying the details and determined total income at Rs. 1,10,93,344/- resulting into addition of Rs. 22,48,442/-.

4. Now we come to ground no. 1 relating to disallowance depreciation on capital subsidy received under Credit Link Capital subsidy Scheme being not reduced from the cost of machinery.

5. In this case, Assessing Officer has made disallowance of depreciation claimed on plant and machinery by reducing capital subsidy of Rs. 15 lacs received by the appellant in earlier year under Credit Link Capital subsidy Scheme. Due to adjustment in WDV of plant and machinery by the amount of capital subsidy of Rs. 15 lacs. The depreciation claim was received by Rs. 162562/-.

6. Thereafter in appeal ld. CIT(A) confirmed action of the A.O. Ld. A.R. cited judgment of this Bench in assessee's own case in Assessment Year 2009-10 where in similar circumstances appeal of the Revenue was dismissed. Relief was confirmed by the ITAT in ITA No. 1588/Ahd/2013.
7. Thus, in parity with the ITAT order, we allow this ground of appeal of the Assessee.
8. Now we come to next ground relating to disallowance u/s 40A(3) of Rs. 1951012/-.
9. In this case, ld. A.O. made disallowance of transport payment of Rs. 1951012/- by invoking provision of Section 40A(3) read with Rule 6DD(G)/(K) of the Act.
10. Thereafter in appeal ld. CIT(A) confirmed action of the A.O.
11. At the outset, ld. A.R. stated that issue is no more res integra and covered in favour of appellant in its own case by the ITAT in assessee's own case in ITA No. 1588/Ahd/2013 for Assessment Year 2009-10 wherein in similar facts and circumstances appeal of the Revenue was dismissed, relief to the assessee was confirmed. And apart from that ld. A.R. has also submitted a certificate from Talati that in the area nearby to the assessee, there are no banking facilities are available.
12. Thus in parity with the ITAT order and assessee has filed Certificate from the Revenue officials to the effect that there are no banking facility available in the area from where appellant is operating, we allow this ground of appeal of the assessee.

13. Now we come to ground relating to disallowance of PF Payment u/s 36(1)(va) of Rs. 39198/-.
14. During the course of assessment proceedings, it was noticed that assessee has made late payment of employees' contribution towards provident fund, ESI etc.
15. And in reply to the lower authorities, appellant could not give satisfactory explanation as to why late payment of employees' contribution to PF/ESI should not be added to total income as per Income Tax act.
16. As we can see, issue in question is squarely covered in favour of Revenue and against the assessee in the matter of GSRTC (supra) wherein it is held as under:

"Section 438, read with section 36(1)(va) of the Income-tax Act, 1961 - Business disallowance - Certain deductions to be allowed on actual payment (Employees contribution) - Whether where an employer has not credited sum received by it as employees' contribution to employees' account in relevant fund on or before due date as prescribed in Explanation to section 36(1)(va), assessee shall not be entitled to deduction of such amount though he deposits same before due date prescribed under section 43B i.e., prior to filing of return under section 139(1) -Held, yes - Assessee State transport corporation collected a sum being provident fund contribution from its employees - However, it had deposited lesser sum in provident fund account - Assessing Officer disallowed same under section 43B -However, Commissioner (Appeals) deleted disallowance on ground that employees contribution was deposited before filing return - Whether since assessee had not deposited said contribution in respective fund account on date as prescribed in Explanation to section 36(1)(va), disallowance made by Assessing Officer was just and proper - Held, yes [Para 8] [In favour of revenue]

17. Respectfully following the Jurisdictional High Court order, we dismiss this ground of appeal of the assessee.

18. In the result, appeal filed by the Assessee is partly allowed.

ITA No.2133/Ahd/2017 for A.Y. 2011-12

19. Now we come to penalty appeal consequential to the quantum appeal and appellant has taken solely ground:

“ The ld. CIT(A) erred on facts and in law confirming penalty u/s 271(1)(c) amounting to Rs. 7,02,100/-.”

20. Since we have given part relief to the assessee in quantum proceeding but we have confirmed action of the revenue authority with regard to confirmation of disallowance u/s 36(1)(va) amounting to Rs. 39,198/- is concerned same does not attract penalty because assessee has given all the details before the lower authorities and neither material was concealed from the authority nor any tax evasion was there. Thus in such circumstances as well penalty cannot be confirmed.

21. In the result, penalty imposed and confirmed by the lower authority is deleted.

Order pronounced in Open Court on 11- 09- 2019

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 11 /09/2019

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –