

आयकर अपीलीय अधिकरण, "बी" न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.2489/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2012-13)

M/s. Saint Gobain India Pvt.Ltd. Sigapi Achi Building, 7 th floor, 18/3, Rukmini Lakshmipathy Road, Egmore, Chennai-600 008.	Vs	The Deputy Commissioner of Income Tax, Corporate Circle-6(1), Chennai.
PAN:AABCS4338M		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. R.Vijayaraghavan, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. Suresh Periasamy, JCIT

सुनवाईकीतारीख/Date of hearing	:	28.12.2020
घोषणाकीतारीख /Date of Pronouncement	:	28.12.2020

आदेश / ORDER

PER G.MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the learned CIT(A)-9, Chennai dated 25.06.2019 and pertain to assessment year 2012-13.

2. The assessee has raised the following grounds of appeal:

"1. The order of the Commissioner of Income Tax (Appeals) CIT(A) is contrary to law, facts and circumstances of the case and against the principles of natural justice.

2. Fee and Service charges paid to Saint Gobain Placo SAS

2.1 The CIT(A) erred in confirming the disallowance of Rs.3,15,73,894 (Rs.2,40,57,443 plus Rs.75,16,451) towards fee and service charges paid to Saint-Gobain Placo SAS ("SG Placo") without appreciating that it is a revenue expenditure incurred for

the purpose of business and allowable under section 37(l) of the Act.

2.2 The CIT(A) erred in relying on the order of the CIT(A) for AY 2008-09 to decide on the issues in appeal without appreciating that the Income Tax Appellate Tribunal vide order dated 9 December 2015 in ITA No.990/Mum/2013 has set aside the alleged order for fresh consideration.

2.3 The CIT(A) erred in upholding the adhoc disallowance of Rs.75,16,451 being of 20 percent of fee and service charges made by the Assessing Officer as non-business expenditure.

2.4 The CIT(A) ought to have appreciated that the expenditure was incurred wholly and exclusively for the business and adhoc disallowance is not permissible under the provisions of the Act.

2.5 The CIT(A) erred in upholding the order of the AO in treating the balance 80% of fee and services charges as enduring in nature and disallowing an amount of Rs.2,40,57,443.

2.6 The CIT(A) failed to appreciate that the Act does not recognise the concept of deferred revenue expenditure and amortisation is allowed only for certain expenses specified under section 35D 35DD and 35DDA of the Act.

2.7 The CIT(A) failed to appreciate that the fee and service charges does not fall within the purview of the expenditure specified under section 35D of the Act and cannot be deferred to future years.

2.8 The CIT(A) ought to have appreciated that the Supreme Court in the case of Taparia Tools Limited 260 ITR 102 held that revenue expenditure incurred in particular year has to be allowed in that year and department cannot deny the same.

2.9 The CIT(A) erred in stating that the appellant has claimed deduction under section 35D of Rs.80,43,477 without appreciating that it is the deduction allowed by the AO consequent to the disallowances made in the earlier years."

3. Brief facts of the case are that the assessee company is engaged in the business of manufacturing of various construction

products like gypsum plasterboards, ceiling tiles, jointing and finishing products filed its return of income for the assessment year 2012-13 on 30.11.2012 declaring Nil taxable income after setting off brought forward unabsorbed depreciation under the normal provisions of the Act. The assessee has computed book profit under section 115JB of the Act at ₹ 24,97,22,737/-. The case was taken up for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that the assessee has claimed fees and service charges paid to Saint Gobain Materiaux De Construction (SGMDC) and Saint Gobain Placo SAS, France (SG Placo) and expenditure incurred under the head fees and service charges is in the nature of deferred revenue expenditure and accordingly, following order for assessment year 2008-09 disallowed a sum of ₹ 3,15,73,894/- u/s.40a(ia) of the Act for failure to deduct tax at source u/s.195 of the Act.

4. The assessee carried the matter in appeal before the first appellate authority, but could not succeed. The learned CIT(A) for the detailed reasons recorded in his appellate order dated 25.06.2019 has dismissed the appeal filed by assessee by following

his predecessor CIT(A)'s order for assessment year 2008-09, where additions made by the Assessing Officer towards 20% of ad-hoc disallowance of fees and service charges and remaining 80% of amortisation of deferred revenue expenditure has been upheld. Being aggrieved by the learned CIT(A)'s order, assessee is in appeal before us.

5. The learned AR for the assessee, at the time of hearing, submitted that appeal filed by assessee needs to go back to the file of the learned CIT(A) to decide the issue afresh in accordance with outcome of appeal filed by the assessee for assessment year 2008-09 pending before learned CIT(A), because issue in question for the impugned assessment year is relating to disallowance made by Assessing Officer towards fees and service charges paid to Saint GobainMateriaux De Construction (SGMDC)and Saint GobainPlaco SAS, France (SG Placo) for the assessment year 2008-09 and findings recorded for assessment year 2008-09 would have bearing on the present appeal.

6. The learned DR, on the other hand, fairly accepted that issue involved in the present appeal is linked to disallowances made by

Assessing Officer for assessment year 2008-09 and the Tribunal has set aside appeal filed by assessee for assessment year 2008-09 to the file of the learned CIT(A) to decide issue in accordance with law, after considering additional evidences filed by the assessee. Therefore, this appeal also needs to be set aside to file of learned CIT(A) to decide in accordance with findings or outcome of the appeal filed by the assessee for assessment year 2008-09.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The dispute in present appeal pertains to service charges and fees paid to related concerns of assessee i.e. Saint GobainMateriaux De Construction (SGMDC) and Saint GobainPlaco SAS, France (SG Placo) The Assessing Officer has disallowed fees and service charges paid to above two parties for the assessment year 2008-09 on ad-hoc basis and has also applied provisions of section 35D of the Income Tax Act, 1961, and amortized remaining expenditure over a period of five years. The appeal filed by the assessee for the assessment year 2008-09 has been set aside by the Tribunal to the file of learned CIT(A) and directed the CIT(A) to decide issue after

considering additional evidences filed by the assessee. The assessee claims before us that issue in present appeal is linked to disallowance made by Assessing Officer towards fees and service charges paid to above two concerns for the assessment year 2008-09 and finding or outcome of the appeal for assessment year 2008-09 would have bearing on the present appeal. Therefore, considering the facts and circumstances of this case and consistent with the view taken by the co-ordinate Bench for assessment year 2008-09 in ITA No.990/Mum/2013, we set aside the appeal to the file of learned CIT(A) and direct him to reconsider the issue in accordance with law, after considering outcome of appeal filed by the assessee for assessment year 2008-09.

8. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 28th December, 2020

Sd/-
(महावीर सिंह)
 (Mahavir Singh)
 उपाध्यक्ष/ Vice-President
 चेन्नई/Chennai,

Sd/-
(जी. मंजुनाथ)
 (G. Manjunatha)
 लेखा सदस्य / Accountant Member

दिनांक/Dated 28th December, 2020

DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.