

आयकर अपीलिय अधीकरण, न्यायपीठ –“A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
[Before Shri J. Sudhakar Reddy, AM and Shri A. T. Varkey, JM]

I.T.A. No. 1179/Kol/2019
Assessment Year: 2012-13

Star Paper Mills Ltd. (PAN: AA ECS 0759 B)	Vs.	DCIT, Circle-4(2), Kolkata
Appellant		Respondent

Date of Hearing	10.02.2021
Date of Pronouncement	17.02.2021
For the Appellant	Shri Subash Agarwal, Advocate
For the Respondent	Shri Dhrubajyoti Roy, JCIT

ORDER

Per Shri A. T. Varkey, JM:

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-7, Kolkata dated 19.03.2019 for Assessment year 2012-13.

2. The first ground of appeal reads as under:

1. For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the addition of Rs. 1,00,000/- made by the AO on account of contribution made to Star Shiksha Samity which runs a school in the Mills compound of the appellant for education and welfare activities of the children of the employees.

3. The facts of the case is that AO noted that from the details of staff welfare expenses (others) filed by the assessee that a sum of Rs. 1,00,000/- has been paid to Star Shiksha Samity which according to AO is in the nature of donation and liable to be disallowed. On appeal, the Ld. CIT(A) confirmed the action of AO by holding as under:

“6.1. I have considered the submission of the A.R of the appellant along with the assessment order. As far as the Act is concerned expenditure of such nature should

come within the ambit of Section 80G or section 37 of the Act. I find that neither of the sections could come to the rescue of the appellant since the payment of Rs. 1,00,000/- could not be proved to be payment u/s 80G or expense allowable u/s 37 of the Act with any appropriate documentary evidences. In such circumstances, the action of the AO is upheld in making the addition of Rs. 1,00,000/-. This ground is dismissed.”

4. Aggrieved the assessee has preferred this appeal before us.

5. The written submission of the Ld. A.R. Shri Subash Agarwal on this ground is as under:

“In this ground the appellant is aggrieved by the action of the AO in treating a sum of Rs. 1,00,000/- paid by the Appellant to Star Shiksha Samity as donation and disallowing the same when such amount represents amount contributed by them or maintaining a school in its Mill Compound which facilitated education and welfare activities for the children of the employees. The Appellant looks after the management of a school named as “Star Paper Mills Higher Secondary School” which is funded by the State Government. The salaries of the teachers of the school are paid directly by the State Govt. into the bank account of the teachers. The other grants which are received from the Govt. are also directly transferred to the bank account of the school.

The amount of Rs. 1,00,000/- which has been paid by the Appellant to Star Shiksha Samity was used for maintenance of the school building and the playground of the school. The amount paid was used to pay salary of the casual/temporary staff and also for carrying out some welfare activities like celebration of festivals, independence day, republic day etc. Since the school is located in the Mills compound itself, children of many employees of the appellant are students of the school. Hence, it can be said that the amount paid by the Appellant to Star Shiksha Samity was used by them for the welfare of the school and children of its employees.

We pray that the amount should not have been treated as donation by the AO but as expenses incurred by the Appellant for the benefit of its employees and were allowable u/s 37 as expenses incurred for the welfare of the employees.

6. The Ld. D.R supported the action of the Ld. CIT(A) and does not want us to interfere.

7. Having heard both the parties. We note that the assessee company is engaged in the business of manufacture and sale of paper at its factory located at Saharanpur in the State of Uttar Pradesh. According to assessee, it has paid to Rs. 1,00,000/- to

Star Shiksha Samity which was debited under the head staff/labour and other welfare expenses. It is noted that the appellant-assessee maintains and runs school in their own name of Star Paper Mill Higher Secondary School in the mills compound itself. According to assessee, the school is being partly funded by the State Government and the salaries of the teachers and other grants are paid directly into the respective bank accounts of the teachers. According to assessee, the children of the staff and labour of the Mills are studying in this school and the assessee looks after the maintenance of the school. The amount paid to Star Shiksha Samity is used by the school to pay salary of the temporary staff and other welfare activities of the school. We note that the AO has treated this 1,00,000/- paid as donation whereas the assessee has shown it under staff/labour and other welfare expenses. It is noted that in the earlier years there was no disallowance on this issue. According to Ld. A.R the expenses have been incurred for looking after the welfare of the children of mill workers and the staff should have been allowed. According to Ld. A.R, the assessee takes care of the school by maintaining it for education of the children of the workers as well as to the children of the local areas and this can be even termed as part of the Corporate Social Responsibility (CSR) and therefore, it has to be allowed. According to Ld. A.R. the amendment in the scheme of Section 37(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) which has been introduced w.e.f 01.04.2015 cannot be construed as to the disadvantage to the assessee in the period prior to this amendment. According to him, this disabling provision, as set out in Explanation 2 to Section 37(1) refers only to such corporate social responsibility expenses as under section 135 of the Companies Act, 2013, and, as such, it cannot have any application for the period not covered by this statutory provision which itself came into existence in 2013. Thus, according to Ld. A.R Explanation 2 to section 37(1) is therefore inherently incapable of retrospective application any further. We note that explanation 2 to section 37(1) of the Act came into operation w.e.f 01.08.2015 and cannot be held as retrospective. We also find that this claim of the assessee is not as per the CSR. However, we note that the expenses have been claimed under the head staff/labour and other welfare expenses and the fact discernable is that the assessee maintains a school in the name of Star Paper Mill Higher Secondary School in its

own mill compound and as well as expenses are meant for the maintenance of the school as well as play ground etc. which are for the welfare of the children of the mill workers as well as to the local residents have not been controverted by the authorities below. Since such similar claims made by the assessee for maintenance of school has not been disallowed in the earlier years, so by applying principle of consistency we direct the AO to allow the expenditure of Rs. 1,00,000/- claimed by the assessee.

8. Ground no. 2 raised by the assessee reads as under:

2. For that the payments in respect of entry tax on fuel amounting to Rs. 46,44,362/- kept under advance account in the balance sheet be allowed on payment basis u/s 43B, which was not claimed in the return of income nor before the lower authorities.

9. From a perusal of the aforesaid grounds it is understood that this claim was not made by the assessee in the return of income and not before the lower authorities and this is for the first time the assessee has claimed this expenditure u/s 43B of the Act on the payment basis.

10. According to Ld. A.R this amount claimed by the assessee of Rs. 46,44,362/- was shown as advance in the balance sheet as on 31.03.2012 pertaining to this AY 2012-13. According to Ld. A.R this amount was paid as entry tax [UP Tax on entry of goods into the local areas, 2007]. The assessee challenged the Constitutional validity of this State Act by filing writ petition before the jurisdictional High Court in Writ Tax No. 1484 of 2007. In compliance with the Hon'ble High Court interim order in WP No. 2193 /2008 for the year 2008-09 to 2011-12 the bank guarantee totaling to Rs. 83,92,909/- was deposited with the State of UP. Later the Hon'ble Allahabd High Court dismissed the writ petition and upheld the Constitutional validity in respect of entry tax by order dated 23.12.2011 [placed at page 148 to 195 of PB]. Thereafter the assessee challenged this decision before the Hon'ble Supreme Court.

11. According to assessee on 17.01.2012 the Hon'ble Supreme Court while granting conditional stay on the operation of judgment passed by the Hon'ble Allahabad High Court dated 23.12.2019 directed the assessee to pay 50% of the accrued tax liability / arrears and furnish bank guarantees in respect of the balance amount. Consequently on 02.02.2012 in terms of Hon'ble Supreme Court's order Rs. 45 Lakhs were encashed by the Commercial Tax Department out of total bank guarantee worth Rs. 83,92,909/- given earlier and drafts amounting to Rs. 38,92,909/- was returned back to the assessee. According to the assessee in the audited accounts, it can be noted that Rs. 46,44,362/- was shown by the assessee as advance for entry tax [refer page 32 and 33] and was reflected in the final accounts under Note no. 18 [short term loan and advance under staff head deposits on Govt. Department and Others]. According to Ld. Counsel since the Hon'ble Allahabad High Court has finally dismissed the appeal of the assessee on 04.05.2018 wherein the Hon'ble Court has upheld the Constitutional validity of the State Legislature imposing Entry Tax, the assessee is claiming as deduction the amount paid to the tune of Rs. 46,44,362/- to the UP State Government. It is noted that since the assessee had challenged the Constitutional validity of the entry tax in Hon'ble High Court/Supreme Court the assessee had not claimed deduction of entry-tax paid to UP Government in its return of income, but showed it as 'Advance' in the Balance-Sheet as on 31.03.2012. However since the Hon'ble High Court has upheld the Constitutional validity of the legislation, the assessee intends to claim the tax paid as deduction which was shown by it in its audited accounts under advance as discussed supra. The entry tax levied by the Govt. of UP is an allowable deduction u/s 43B sub-clause (a) of the Act provided the amount is remitted by the assessee (entry tax) and will be allowed in the year in which the sum is actually paid by the assessee . Since the issue of tax which was paid to the UP Govt. was sub-judice, as discussed supra, the assessee did not claim the deduction but was shown in the balance sheet as advance, and did not claim in its return of income. And since this claim/ground is raised before us for the first time, in the interest of justice, this issue is remanded to the file of AO for verification. If the AO finds that the assessee has actually paid the entry tax to the Govt. of UP as entry tax to the tune of Rs. 46,44,362/-, and has not

claimed deduction in its ROI, then the sum may be allowed in accordance to section 43B of the Act.

12. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 17th February, 2021.

Sd/-
(J.S. Reddy)
Accountant Member

Sd/-
(A. T. Varkey)
Judicial Member

Dated:17 .02.2021

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Star Paper Mills Ltd., C/o Subash Agarwal & Associates, Advocates, Siddha Gibson, 1, Gibson Lane, Suite 213, 2nd Floor, Kolkata-700069.
2. Respondent – DCIT, Circle-4(2), Kolkata
3. The CIT(A)- 7, Kolkata (sent through e-mail)
4. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata