

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 1279/JP/2018
निर्धारण वर्ष/Assessment Years : 2012-13

M/s Galmor Enterprises Pvt. Ltd. F-46, Malviya Industrial Area, Jaipur.	बनाम Vs.	The ITO, Ward-6(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACG5149B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None (Written Submission)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (JCIT)

सुनवाई की तारीख / Date of Hearing : 22/03/2021
उदघोषणा की तारीख / Date of Pronouncement : 21/06/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Jaipur dated 14.03.2018 relevant for the assessment year 2012-13.

2. The Id. AR, Shri Anil Kumar Sharma, has submitted an application stating that the case of the assessee may be decided on the basis of written submissions filed by him on behalf by the assessee. Accordingly, the matter is being decided taking into consideration the written

submissions filed on behalf of the assessee and other material available on record.

3. In ground No. 1, the assessee has challenged the action of the Id. CIT(A) in confirming the addition of Rs. 72,79,773/- made by the AO.

4. The Id AR has submitted that the assessee was engaged in mining of stone grits taken on lease from Mining Department Jaipur since preceding year. The assessee during the relevant previous year claimed lease money of Rs. 4,76,67,240/- against Gross royalty collection of Rs. 4,81,41,766/-. During the course of assessment proceedings, the assessee vide letter dated 10.03.2015 produced the copy of ledger account of Mining Engineer Jaipur. It was submitted that the AO observed that lease money of Rs. 4,76,67,240/- claimed in Profit & Loss Account, has been credited to Mining Engineer Jaipur in Equal Monthly installment of Rs. 39,72,270/-($39,72,270/- * 12 = 4,76,67,240/-$). It was also observed by the AO that payment to Mining Engineer has been made in lump sum amounts on different dates and the balance remaining payable at the end of the year has been C/F to next year. The AO asked the copy of ledger account of the assessee from the Mining Engineer Jaipur u/s 133(6) of IT Act 1961 and perused the same. The said ledger account provided by Mining Engineer was also made available for inspection of the assessee. It was further submitted that the assessee vide letter dated 16.03.2015 pointed out that there are certain pages which are missing in the account statement provided by Mining Engineer. It was also submitted that the monthly lease

money of Rs.39,72,270/- as claimed by the assessee is fully verifiable from the said account statement.

5. It was submitted that the AO ignoring the monthly lease money of Rs.39,72,270/- credited to Mining Engineer in the books of the assessee and reciprocate confirming entries in the account statement supplied by the Mining Department, proceeded to compute the allowable lease money in his own way. The AO ignored the fact that certain pages are missing in the Account statement provided by the Mining Department and on the basis of such incomplete Account statement, the AO computed total of actual payments during the relevant previous year and in preceding year. The AO computed consolidated payments to Mining Department for both the preceding and relevant A.Y. 2012-13 at Rs.7,27,15,696/- (Rs.2,44,99,651/- for A.Y.2011-12 + Rs.4,82,16,045/- for relevant A.Y.2012-13) against lease money of Rs.7,99,95,469/- claimed by the assessee for both the years. (Rs. 3,23,28,299/- for A.Y.2011-12 + Rs. 4,76,67,240/- for relevant A.Y.2012-13). The AO held that there is a difference of Rs.72,79,773/- in the amount of lease money claimed by the assessee and that confirmed by the Mining Department. Thus the AO made an addition of Rs.72,79,773/- to the returned income.

6. During the appellate proceedings before Id. CIT(A), the AO vide his remand report dated 24.01.2018 admitted that "there is a break in date and amounts paid/payable as royalty in the information provided by the Mining Engineer. Pages containing details of royalty paid/payable for the month of December 2011 and January 2012 are not available in

the information copy of which is enclosed." The assessee vide letter dated 09.02.2018 submitted rejoinder and reiterated its earlier submission. As submitted before the AO, lease money of Rs.39,72,270/- per month claimed by the assessee is fully verifiable from the account statement collected from the Mining Department.

7. It was submitted that the difference of Rs. 72,79,773/- in lease money claimed by the assessee and actual payments to Mining Engineer computed by the AO on the basis of Account Statement provided by the Mining Department is due to Missing pages in the said account statement. The pages containing the details of payments of Rs.74,00,000/- made by the assessee during the period 16.11.2011 to 11.01.2012 are missing in the account statement provided by the Mining Department, which has not been taken in to account by the AO while computing the actual payment during the relevant previous year. Therefore the actual payment of Rs. 4,82,16,045/- computed by the AO during the relevant previous year is erroneous and liable to be increased by Rs.74,00,000/-towards payments made by the assessee during the period 16.11.2011 to 11.01.2012. Therefore the AO has no justification in making the relevant addition of Rs.72,79,773/- which may kindly be deleted.

8. Per contra, the Id. DR has submitted that in order to verify the payment of royalty claimed by the assessee, information was sought by the Assessing Officer U/s 133(6) of the IT Act from Mining Engineer and as per the report sent by the Mining Department over the period of two years i.e. A.Y. 2011-12 and A.Y. 2012-13, the assessee has made

total payment of Rs. 72,71,696/- as against the payment of Rs. 7,99,95,469/- claimed by the assessee over two assessment years, therefore difference of Rs. 72,79,773/- being the excess claimed towards royalty payment was disallowed by the Assessing Officer. It was further submitted that during the appellate proceedings the Id. CIT(A) has called for the remand report from the Assessing Officer and even as per remand report, the information received from the office of Mining Engineer U/s 133(6) of the Act was examined and it was found that the amount paid by the assessee to the Mining Engineer are exactly the same as mentioned in the assessment order. It was accordingly submitted that there is no infirmity in the order of Id. CIT(A) which has rightly confirmed the said disallowance made by the AO and hence, the order of the Id. CIT(A) may be confirmed.

9. We have heard the rival contentions and perused the material available on record. It is an admitted fact that the account statement received from the mining department is not complete and it doesn't contain the details of payments of royalty for month of December 2011 and January 2012 as admitted by the AO in his remand report dated 24.01.2018. Therefore, the said statement cannot be a sole basis for denying the claim of the assessee where the assessee has submitted the details of actual payment of royalty of Rs 74 lacs during the said period of Dec 2011 to Jan 2012. Therefore, on the face of actual payment which has been made and credited to the account of the mining department as so claimed, the claim of the assessee deserve to be allowed. Therefore, we set-aside the matter to the file of the AO for the limited purposes of verifying the said payments of Rs 74 lacs as so

claimed by the assessee as made to the mining department and where the same is found to be in order, allow the necessary relief to the assessee subject to Rs. 72,79,773/- as claimed by the assessee and which is subject matter of disallowance. The ground of appeal is thus allowed for statistical purposes.

10. In ground No. 2, the assessee has challenged the sustenance of addition of Rs. 1,24,906/- U/s 41(1) of the Act.

11. In its written submissions, the assessee has submitted that during the course of assessment proceedings, the Assessing Officer observed that certain trade creditors of Rs. 3,87,797/- have been brought forward from earlier years and there are no transactions during preceding year as well as year under consideration. The AO accordingly held that the liability towards the said trade creditors has ceased to exist within the meaning of Section 41(1) of IT Act and addition was made in the hands of the assessee. On appeal, the Id. CIT(A) deleted the addition to the extent of Rs. 2,62,891/- on the ground that the addition in respect of the said parties namely M/s Krial Singh & Sons and M/s Raimant Craft has been made u/s 41(1) in preceding assessment year 2011-12. However the balance addition of Rs. 1,24,906/- was sustained.

12. In the above factual background, it was submitted that the old outstanding balance towards sundry creditors were shown in the books of accounts as acknowledged liability of the company to respective parties. The receptive creditors have not waived the liability and the assessee having included the same in its books of accounts has

acknowledged the said liability. It was submitted that the said liability has neither been waived nor otherwise ceased during the relevant previous year and the assessee has not obtained any benefit by way of remission or cessation thereof. Therefore, the provisions of Section 41(1) of the Act has no application and the addition of Rs. 1,24,906/- sustained by the Id. CIT(A) may be deleted.

13. Per contra, the Id. DR relied on the findings of the lower authorities. It was submitted that during the course of assessment proceedings, the assessee could not show that any sum have been paid to its creditors which were outstanding for past several years or any transaction has been entered into with them in the previous years or any correspondence with these parties to show that there was a claim of the outstanding amount from the assessee. It was further submitted that no confirmation letters or any other evidence have been submitted to show that the said creditors are having their claim against the assessee and the said liability has been barred by limitation as provided under limitation Act, therefore, the liability towards the said creditors have ceased to exist within the meaning of Section 41(1) of the Act. It was accordingly, submitted that the Id. CIT(A) has rightly sustained the disallowances and there is no infirmity in the said order passed by the Id. CIT(A) and hence, the same may be confirmed.

14. We have heard the rival contentions and perused the material available on record. We find that the liabilities are still being recognized in the books of accounts of the assessee and there is nothing on record in terms of remission/cessation of liability. Therefore, the addition so

made is hereby directed to be deleted and the ground of appeal is allowed.

15. In ground No. 3, the assessee has challenged the action of Id. CIT(A) in confirming the ALP towards interest on loans to M/s Malmor Enterprises INC USA to whom the loan has been advanced by the assessee.

16. In its written submissions, the assessee has submitted that during the course of assessment proceedings, the AO observed that loan of Rs.1,63,21,021/- is outstanding in the name of M/s Glamor Enterprise INC NJ USA, an associated enterprises of the Assessee without any transaction during the relevant previous year. The AO also observed that for the A.Y.2007-08, the loan to the said entity, M/s Glamor Enterprise INC NJ USA, was held as International Transaction covered U/s 92CA(3) of IT Act, 1961 and arm length price of the interest was determined by applying interest rate of 11.40% p.a. under CUP method. The AO accordingly following the order of his predecessors for A.Y.2007-08 has applied interest rate of 11.40% p.a. under CUP method and made addition to the returned income. On appeal, the Id.CIT (A) following the order of the Tribunal for the A.Y.2007-08 restricted the interest rate to 8.9% p.a.

17. It was submitted that the outstanding loan has been brought forward from preceding year and there is no fresh loan/advance during the relevant previous year, therefore the same cannot be characterized as international transaction during the relevant previous year u/s

92CA(3) of the Act and therefore, the addition sustained by the Id. CIT(A) may kindly be deleted.

18. Per contra, the Id. DR relied on the findings of the lower authorities. It was submitted that the Id. CIT(A) has already restricted the ALP at 8.9% against 11.4% applied by the AO and therefore, given that the loan amount continues to remain outstanding and the transaction continues to qualify as an international transaction, the order of the Id. CIT(A) may be confirmed.

19. We have heard the rival contentions and perused the material available on record. The contention that the outstanding loan has been brought forward from preceding year and there is no fresh loan/advance during the relevant previous year, therefore the same cannot be characterized as international transaction during the relevant previous year u/s 92CA(3) of the Act is bereft of any merit. Once a transaction has been characterized as an international transaction and the same continue to remain outstanding during the relevant financial year, there is no necessity to record a fresh finding as far as characterization of the said transaction is concerned and only thing which needs to be determined is determination of ALP as relevant for the relevant year under consideration. In the instant case, the Id CIT(A) following the order of the Coordinate Bench for A.Y 2007-08 has restricted the ALP interest @ 8.9% as against 11.4% applied by the AO. The Revenue is not in appeal before us and the assessee has not been able to establish any alternate basis for determination of ALP, hence, the ground of appeal is hereby dismissed.

20. In ground No. 4, the assessee has challenged the sustenance of disallowance of depreciation claimed by the assessee on plant and machinery.

21. In its written submissions, the assessee has submitted that during the course of assessment proceedings, the AO observed that the assessee has claimed depreciation of Rs.10,25,961/- on plant and machinery relating to manufacturing of readymade garments of earlier business of the assessee and hence, the assessee has shifted to trading of fabrics/cloth and has no activity relating to manufacturing of readymade garments which has been carried out either in preceding year or in relevant previous year. The AO disallowed the depreciation of Rs 10,25,961/- so claimed by the assessee which has been confirmed by the Id CIT(A).

22. In this regard, it was submitted that though the assessee has no manufacturing activity during the relevant previous year, however the plant and machinery relating to manufacturing activities has been kept ready to use as and when required. It was submitted that a plant and machinery is subject to wear and tear even when the same has not been used for manufacturing. Therefore the assessee is eligible for depreciation as per the relevant provisions of the Income Tax Act and the disallowance of depreciation so made by the Assessing and sustained by the Id. CIT(A) may kindly be deleted.

23. Per contra, the Id. DR relied on the finding of the lower authorities and our reference was drawn to the findings of the AO which read as under:

"5. Disallowance of Depreciation:

As per details and explanation furnished during the course of assessment proceedings it has been observed that the assessee has claimed depreciation of Rs.1025961/- on plant and machinery relating to manufacturing of readymade garments. The assessee during the relevant previous year was engaged in trading of fabric/cloth and has no activity relating to manufacturing of readymade garments, therefore the plant and machinery relating to manufacturing of readymade garments has not been put to use during the relevant previous year.

As provided u/s 32 of IT Act, depreciation is allowable in respect of an assets which has been used for the purpose of the business. As the assessee during the relevant previous year as well as in the A.Y 2011-12 has not used the above said plant and machinery for the purpose of the business, The assessee has moved from manufacturing of garments to trading in cloth and therefore depreciation in respect of the same as claimed by the assessee cannot be allowed. Thus depreciation of Rs.1025961/- claimed on plant and machinery relating to manufacturing of readymade garments is hereby disallowed and added to returned income."

24. We have heard the rival contentions and perused the material available on record. We find that the AO has disallowed the depreciation on the plant and machinery as there was no activity towards

manufacturing of readymade garments carried on by the assessee during the year and as a result, the assets have not been put to use during the relevant previous year. We find that similar findings have been recorded by the AO in A.Y 2011-12 and against such findings, there is nothing on record that the assessee has challenged the said findings before the appellate authority. Once under similar fact pattern, depreciation claim has been disallowed by the AO and the assessee having not challenged the same and thus accepted the position adopted by the AO, the principle of consistency warrants that no interference is called for. Further, we find that similar contentions have been raised before the Id CIT(A) who has rightly considered the same and disallowance of depreciation claim has rightly been upheld by him. The findings of the Id CIT(A) are hereby affirmed and the ground of appeal is dismissed.

25. In ground No. 5, the assessee has challenged the sustenance of addition of Rs. 1,45,982/- made by the AO by disallowing the interest paid to Banks holding the same as attributable to interest free loans provided by the assessee to its sister concerns.

26. In its written submissions, the assessee submitted that during the course of assessment proceedings, the AO observed that the assessee has provided interest free loans of Rs. 10,42,730/- to its sister concerns and on the other hand claimed interest of Rs. 46,02,681/- paid to bank on borrowed funds. Therefore, the AO made proportionate disallowance of interest of Rs.1,45,982/- by applying interest rate of 14% per annum of interest which has been sustained by the Id. CIT(A). It was submitted that loans/advances in the name of sister concerns in

most of the cases have been brought forward from preceding years and have no nexus with interest bearing funds. Therefore, no interest paid to Bank on borrowed funds is attributable to interest free loans outstanding in the name of sister concerns of the assessee. Therefore, the addition so made by the Assessing Officer and sustained by the Id. CIT(A) may kindly be deleted.

27. Per contra, the Id. DR relied on the finding of the lower authorities and our reference was drawn to the findings of the Ld. CIT(A) which are contained at para 8.3 of the appellate order which read as under:-

"8.3 I have perused the facts of the case, the assessment order and submissions of the appellant. The AO observed that the appellant has advanced interest-free loans to its various sister concerns as enlisted in the assessment order. The appellant had claimed interest expenditure of Rs. 46,02,681/- paid to bank towards borrowed funds. AO disallowed Rs.145982/- on proportionate basis at 14%. In the present proceedings, it is stated that the loans are old and brought forward amounts. The AR could not prove the business expediency of these loans and availability of funds when the same were forwarded, hence the disallowance made by the AO is confirmed. Ground of appeal is dismissed."

28. We have heard the rival contentions and perused the material available on record. We find that all the contentions raised before us have been raised earlier before the Id CIT(A) and which have been duly considered by him. Though it is the claim of the assessee that loans/advances in the name of sister concerns in most of the cases have been brought forward from preceding years and have no nexus

with interest bearing funds, however, there is nothing on record to substantiate the said contentions. Even where the loans and advances have been lent in earlier years, the onus still lies with the assessee to demonstrate that in the year when the funds were advanced, the same had no nexus with borrowed funds and were from the interest free funds. Given that the loans and advances continue to remain outstanding as well as the fact that loans taken by the assessee continue to remain outstanding and the interest expense have been claimed, proportionate disallowance of interest has been made by the AO and which has rightly been upheld by the Id CIT(A). Therefore, we do not find any infirmity in the findings of the Id CIT(A) and the same are hereby confirmed and the ground of appeal is hereby dismissed.

29. In ground no. 6, the assessee has challenged the sustenance of addition of penalty of Rs. 1,95,000/- paid to Mining Engineer, Jaipur for breach of contractual obligations.

30. In this regard, the assessee has submitted that it has claimed penalty of Rs. 5,23,944/- levied by the Mining Department, Jaipur for delayed payments/breach of contractual obligations. It was submitted that the assessee has credited the said amount to the account of Mining Engineer, Jaipur and the payments have been made by account payee cheques, which is evident from the ledger account of Mining Engineer placed on the assessee's paperbook at page No. 27 and 28. It was submitted that the AO on the alleged ground that the Mining Engineer Jaipur has charged penalty of Rs. 3,28,944/- only has disallowed balance of Rs. 1,95,000/-. It was submitted before the AO vide letter

dated 16.03.2015, the account statement provided by the Mining Department is not complete and certain pages/details are missing there from. The difference of Rs. 1,95,000/- is due to missing pages in the said account statement. It was accordingly submitted that the addition so made by the Assessing officer and sustained by the Id. CIT(A) may be deleted.

31. Per contra, the Id. DR relied on the finding of the lower authorities and our reference was drawn to the findings of the Ld. CIT(A) which are contained at para 9.3 of the appellate order which read as under:-

"9.3 I have perused the facts of the case, the assessment order and submissions of the appellant. As per the account statement called for by the AO under section 133(6), there was a difference in the amount of penalty paid as per the assessee and the records of the mining engineer and the difference of Rs. 1,95,000/- was added back by the AO. In the present proceedings, the AR submitted that the account statement collected is not complete and certain pages or details are missing, it was also submitted that the claim of the assessee is fully verifiable from the ledger account of mining engineer Jaipur, as appearing in the books of accounts of the appellant. As per the remand report called, the entries have been verified by the AO, further the AR could not reconcile the difference between the 2 statements. In view of the same the disallowance made by the AO is confirmed, ground of appeal is dismissed."

32. We have heard the rival contentions and perused the material available on record. We find that all the contentions raised before us have been raised earlier before the Id CIT(A) and which have been duly considered by him. Merely passing a journal entry in the books of

accounts is not determinative of the incurrance of the expenses and claim thereof for tax purposes. There is nothing on record in terms of any demand notice from the mining department or actual payment by the assessee towards such penalty. Though it is the claim of the assessee that the amount has been paid by account payee cheques, however, there is nothing on record to substantiate the said contentions. Therefore, we do not find any infirmity in the findings of the Id CIT(A) and the same are hereby confirmed and the ground of appeal is hereby dismissed.

33. Ground no. 7 was not pressed as per written submissions filed by the Id AR on behalf of the assessee for which the DR. raised no objection. Hence, the same is dismissed as not pressed.

34. In ground No. 8, the assessee has challenged the addition of Rs. 1,96,360/- towards disallowance of various expenses.

35. In its written submissions, the assessee has submitted that during the course of assessment proceedings, the Assessing Officer has made lump sum disallowance of expenses of Rs.5,00,000/- on alleged ground of self made vouchers and possibility of personal element involved therein and on appeal, the Id. CIT(A) restricted the relevant addition to 10% of total expenses. It was submitted that the assessee has claimed the expenses on the basis of regular books of accounts, supporting vouchers and other relevant records, audited by a qualified Chartered Accountant as prescribed u/s 44AB of the Act. The books of accounts along with other records as required by the AO were produced before

the AO during the course of assessment proceedings. Therefore relevant addition may kindly be deleted or further, reduced to a suitable extent as deemed fit and appropriate in the interest of justice.

36. Per contra, the Id. DR relied on the finding of the lower authorities and our reference was drawn to the findings of the Ld. CIT(A) which are contained at para 11.3 of the appellate order which read as under:-

"11.3 I have perused the facts of the case, the assessment order and the submissions of the appellant. The AO made the disallowance as the expenditures mentioned in the ground of a total amount of Rs.19,63,598/- as the same were not properly vouched and could not be verified. In the present proceedings, it was claimed that above said expenses were claimed on the basis of regular books of accounts, supporting vouchers and other relevant records, audited by a qualified Chartered Accountant as prescribed u/s 44AB of the Act The AO without giving any specific finding and without having any logical and reasonable base has disallowed the above said expenses on lump sum basis and alternatively without prejudice to the above, it is also submitted that the estimated disallowances made by the AO are highly excessive and not reasonable. In view of the reasons cited by the AO, the disallowance is confirmed but restricted to 10% which shall be reasonable. The ground of appeal is partly allowed."

37. We have heard the rival contentions and perused the material available on record. We find that the disallowances have been made on the ground that the expenses have been claimed through self-made vouchers and possibility of personal expenses of directors cannot be

ruled out. Unless the nature and quantum of expenses are specified, merely stating that expenses are supported by self-made vouchers cannot be a reason for disallowance. Further, as far as personal expenses of directors are concerned, only an apprehension has been raised and in any case, the assessee being a corporate entity, where any expenses of directors are incurred/borne by the assessee, what is relevant to examine is whether such expenses have been incurred pursuant to any arrangement or understanding between the two for the purposes of business or not. However, in absence of any specific finding by either of the authorities below, the disallowance so made and sustained is clearly adhoc in nature and the same is directed to be deleted.

In the result, the appeal of the assessee is disposed off in light of aforesaid directions.

Order pronounced in the open Court on 21/06/2021.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 21/06/2021.

***Santosh**

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

1. अपीलार्थी / The Appellant- M/s Galmor Enterprises Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-6(1), Jaipur.
3. आयकर आयुक्त / CIT

4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 1279/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar