

आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

माननीय श्री शक्तिजीत दे, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI SAKTIJIT DEY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.7939/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2014-15)

Rochem Separation Systems (India) Pvt. Ltd. 101, HDIL Tower Anant Kanekar Marg Bandra (East), Mumbai-400 051	बनाम/ Vs.	DCIT CC-2(4) Old CGO Bldg (Annex), R. No. 802, 8 th floor M. K. Road Mumbai-400 020
स्थायीलेखासं. /जीआइआरसं. /PAN/GIR No. AABCR-1955-P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Gaurav Bansal, Ld. AR
Revenue by	:	Shri R.A.Dhyani, Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	03/11/2021
घोषणा की तारीख / Date of Pronouncement	:	23/11/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2014-15 arises out of the order of learned Commissioner of Income-Tax (Appeals)-48, Mumbai [CIT(A)], dated 30/10/2019 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s 143(3) on 23/12/2016.
2. The Ld. AR submitted that substantial issues are covered by earlier orders of Tribunal in assessee’s own case. The copies of the orders

have been placed on record. The Ld. DR supported the assessment framed by Ld.AO. In the background, our issue-wise adjudication would be as given in succeeding paragraphs.

3. Gr. Nos. 1 & 2 : Payment of Rent to OPC Assets Solutions Private Limited

3.1 The assessee paid rent of Rs.120.19 Lacs to an entity namely M/s OPC Asset Solutions Private Limited. The payment was in the nature of lease rent for office furniture etc. Upon perusal of relevant agreements, Ld. AO noted that the assessee was paying higher rent for initial years whereas for 4th and 5th year, it was paying nominal rent of Rs.4/- per quarter or Rs.16/- per year. The rent paying pattern indicated that the assessee was postponing its Income tax liability. It was noted that the hired furniture mostly consisted of wooden furniture like chairs, table counters, electrical fittings and Air conditioners etc. The cost of all these items was approx. Rs.2 Crores against which the assessee was paying rent of Rs.120.19 Lacs for the first three years and therefore, the same was on the higher side considering bank borrowing rate of 15%, depreciation rate of 15% and profit on investment of 10%. The aggregate of all these i.e. 40% of cost of Rs.2 Crores would work out to Rs.80 Lacs. Therefore, there was excess payment to the extent of Rs.40.19 Lacs which was ultimately disallowed u/s 37(1). The amount of disallowance was reduced to Rs.3.83 Lacs u/s 154 since the total cost of items was found to be Rs.290.89 Lacs.

3.2 Upon further appeal, Ld. CIT(A) observed that average rent per month for entire tenure of 61 months starting from 01/10/2012 to 31/12/2017 was Rs.5.91 Lacs which would translate into yearly rent of Rs.70.93 Lacs. Therefore, the allowable rent would be Rs.70.93 Lacs

and not Rs.120.19 Lacs as claimed by the assessee during the year. Accordingly, the disallowance of Rs.3.83 Lacs as made by Ld. AO was enhanced to Rs.49.26 Lacs. Aggrieved, the assessee is in further appeal before us.

3.3 We find that this issue is covered in assessee's favor by the decision of this Tribunal for AY 2015-16 in ITA No.7940/Mum/2019 order dated 28/06/2021 wherein it was held as under: -

4.3 Upon careful consideration of material fact, we find that the assessee has taken on lease office equipment, furniture & fixtures for a period of 5 years pursuant to certain agreements between the assessee and M/s OPC Asset Solutions Private Ltd. As per the terms of agreements, the assessee is required to pay yearly lease rent of Rs.120.19 Lacs for a period of first three years. Thereafter, it is required to pay yearly lease rent of Rs.16/- for the remaining two years. Undisputedly, the assessee has paid the said amount to the lessor pursuant to the terms of agreement after due compliances and claimed the deduction of the same during the year. The lessor is unrelated party to the assessee. The agreements between the two parties have not been held to be non-genuine and it is also not the case that the expenditure was not incurred wholly and exclusively for the purpose of assessee's business. This being so, in our considered opinion, it is not open for revenue authority to sit on the armchair of a businessman so as to ascertain the quantum of deduction allowable to the assessee as held by Hon'ble Apex Court in **CIT Vs. Walchand & Co. Pvt Ltd (1967; 65 ITR 381); J.K. Woollen Manufacturers Vs. CIT (1969; 72 ITR 612)** and also in **Hero Cycles (P) Ltd. Vs. CIT (2015; 63 Taxmann.com 308)**.

Another pertinent fact is that while framing assessment for AY 2013-14 (which is the first year of payment of rent), the lease rent paid the assessee as per the agreements has not been disturbed by Ld. AO.

Therefore, on the facts & circumstances of the case, the revenue authorities were not justified in tinkering with the claim made by the assessee. Therefore, we delete the disallowance as made by Ld. CIT(A) in the impugned order and allow this ground of appeal.

Facts being similar in this year, we delete the impugned disallowance and allow this ground of appeal.

4. Gr. Nos. 3 to 5 : Payment of Lease Rent to Tata Capital Finance Services Limited (TCFSL)

4.1 It transpired that the assessee sold its machinery to Tata Capital Finance Services Ltd. (TCFSL) and the machinery was again taken on lease by the assessee company. These machineries were then given by

assessee to its clients on hire for rent and maintenance contract. It was observed that when the client would approach assessee for taking the machinery on hire, the same would be first sold by assessee to the finance company and after taking it on lease, it would be rented on hire to the clients. However, no corresponding rent was received from clients where the equipment was installed. Thus, AO held that the equipment remained idle without its usage and therefore, the expenses were incurred for non-business purposes. Accordingly, the lease rent of Rs.21.60 Lacs paid by the assessee was disallowed.

4.2 The Ld.CIT(A), upon perusal of relevant lease agreements, noted that the asset would be taken on rent only when the client would take it from the assessee which was evident from the matching payment schedules. The lease payment to TCFSL started in December, 2013. However, the assessee's client (M/s Essar Oil Ltd.) rejected invoices raised by the assessee during this year due to operation inefficiency of the RO plant and the assessee started earning lease rentals from financial year 2014-15 only. Since there was no corresponding income offered by the assessee during this year, the action of Ld.AO in making disallowance was upheld. Aggrieved, the assessee is in further appeal before us.

4.3 Upon careful consideration of factual matrix, we find that the only reason to make the disallowance is that the invoices raised by the assessee on the client have been rejected and no revenue has been booked by the assessee for the year under consideration. However, it is undisputed fact that the assessee has taken the machinery on lease and paid lease rental to the finance company which is evident from payment schedule and the same is not in doubt. In our considered upon, as long

as the expenditure was incurred for business purposes and the same was not personal or capital in nature, the same would be an allowable expenditure notwithstanding the fact that no revenue was earned by the assessee against the same. Earning of corresponding revenue would not be a prerequisite before a deduction is allowed to the assessee. More so, as per sanction letter of TCFSL, the equipment was installed at location of assessee's clients during the year. As per contractual agreement, the assessee was required to pay lease rent commencing from December, 2013. It was only due to operation inefficiency of the plant, the invoices were rejected by the assessee's clients. Nevertheless, the expenditure incurred by the assessee was business expenditure and it fulfilled the conditions of Sec. 37(1). Therefore, we direct Ld. AO to allow the deduction of the same. This ground stand allowed.

5. Gr. Nos. 6 & 7: Professional fees paid to Inventa Research Private Limited

5.1 The assessee paid professional fees of Rs.4.50 Lacs to an entity namely M/s Inventa Research Private Limited. In support of claim, the assessee furnished copies of invoices, TDS certificates etc. It was submitted that this entity was engaged to undertake research to develop processes / techniques to modify / customized the membranes used by the assessee in the manufacturing process. The payee has raised two invoices of Rs.2.25 Lacs each against the assessee during the year. However, the transactions with the payee were held to be sham transaction by Ld. AO particularly in view of the fact that the assessee and payee had common directors.

5.2 During appellate proceedings, though the assessee relied upon favorable decision of Tribunal for AY 2010-11. However, Ld. CIT(A) held

that the assessee did not demonstrate that the payee had sufficient and competent manpower or plant & machinery to carry out the research and therefore, the addition was upheld. Aggrieved, the assessee is in further appeal before us.

5.3 We find that as submitted by assessee during appellate proceedings, this issue is covered in assessee's favor by the decision of this Tribunal for AY 2010-11, ITA No.1707/Mum/2015 order dated 05/02/2019. The bench, at para 3.2.7, observed that the assessee had produced sufficient documentary evidences viz. invoices raised by inventa, ledger account, confirmation of account by inventa, TDS certificates etc. in support of the claim. No addition could be made merely on the basis of assumption or guess-work. Therefore, the addition as made by lower authorities could not be sustained. We find that similar are the facts in this year and the assessee has produced similar documents in support of the claim. Therefore, facts being parimateria the same, we are inclined to take the same view. Accordingly, we direct Ld.AO to allow the deduction of this expenditure. The ground stand allowed.

6. Gr. No.8: Disallowance of Professional Fees

6.1 The assessee paid professional fees of Rs.5.94 Lacs each to two director viz. Mrs. Namrata Goel and Mrs. Nidhi Goel. In support of the same, the assessee furnished copies of qualification certificates, TDS certificates and copies of invoices issued by them. It was submitted that two employees were appointed as financial consultant and corporate relation consultant on retainer-ship basis to provide financial input / advisory and to assist the assessee to maintain and develop corporate relations with existing and potential clients. Smt. Namrata Goel was

stated to be Masters in Management Studies whereas Mrs. Nidhi Goel was stated to be Bachelor in Mass Media. However, Ld. AO opined that the assessee did not furnish any evidence showing the nature of services rendered by each of them which has resulted into an increase in business of assessee. Both these employees were wives of the directors of assessee Company and the transactions were nothing but accommodation entries for claiming expenses. Moreover similar disallowance was confirmed by Ld. DRP in AY 2013-14. Finally, the aggregate payment of Rs.11.88 Lacs was disallowed and added to the income of the assessee. The action of Ld. AO, upon confirmation by Ld. CIT(A), is in further challenge before us.

6.2 We find that this issue has been restored back by the Tribunal in AY 2015-16, ITA No.7940/Mum/2019 order dated 28/06/2021 with the following observations: -

5.4 After due consideration of submissions made before us and keeping in mind the principle of natural justice, the bench deem it fit to provide another opportunity to the assessee to substantiate its claim before lower authorities. Therefore, the matter of this disallowance stand remitted back to the file of Ld. AO for fresh adjudication with a direction to the assessee to substantiate his claim. The ground stand allowed for statistical purposes.

Facts being pari-materia the same in this year, the issue for this year stand restored back to the file of Ld. AO on similar lines. This ground stand allowed for statistical purposes.

Conclusion

7. The appeal stand partly allowed in terms of our above order.

Order pronounced on 23rd November, 2021.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 23/11/2021
Sr.PS, Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.