

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'D', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. KUL BHARAT, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.3772/Del/2016
(Assessment Year : 2011-12)

M/s. Hindustan Insecticides Ltd., 2 nd Floor, Core-6, Scope Complex, 7, Lodhi Road, New Delhi-03 PAN : AAACH 0905 Q (APPELLANT)	Vs.	DCIT (LTU) New Delhi (RESPONDENT)
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Assessee by	Shri Rajesh Arora, C.A.
Revenue by	Shri Lakshminarayan, Sr. D.R.

Date of hearing:	26.10.2021
Date of Pronouncement:	24.11.2021

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order dated 04.04.2016 of the Commissioner of Income Tax (Appeals) - 22, New Delhi for Assessment Year 2011-12.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company stated to be engaged in the business of manufacturing and sale of pesticides. Assessee electronically filed its return of income for A.Y. 2011-12 on 29.09.2011 declaring total income of Rs.5,20,89,034/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 19.03.2014 and the total income was determined at Rs.22,59,51,180/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 04.04.2016 in Appeal No.09/14-15/CIT(A)-22, New Delhi granted partial relief to the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following revised ground:

- “1. The Ld. CIT(A) has erred in law and facts of the case in confirming the disallowance of the amount of expenditure of Rs.14,72,530/- incurred by the appellant company as corporate social responsibility by holding that this expense has not direct or indirect nexus with the objects of the appellant company, disregarding the submissions made by the appellant, which is highly unjustified, uncalled for and bad in law.*
- 2. The Ld. CIT(A) has erred in law and facts of the case in confirming the action of the Ld. AO in making the addition of Rs.33,40,492/- attributable to obsolescence for which the provision was made for the year under reference but not disallowed by the appellant company in the Computation of Income on account of the fact that the closing stock taken in P&L account was inclusive of the said amount and obsolescence was not excluded from the value of stock while*

determining the net profit. Hence, the provision was made by the appellant company in the P&L account but not added back as the amount was included in the stock already and thus resulting into revenue neutral transaction. Thus, the addition made was unjustified, uncalled for and bad in law.”

4. During the course of assessment proceedings and on perusing the computation of income, AO noticed that assessee had reduced an amount of Rs.33,40,492/- on account of finished goods written off and reduced it from closing stock. Assessee was asked to justify reduction and its claim. Assessee *inter alia* submitted that the amount represents the finished goods which has out lived its life and is non-moving over the past number of years and accordingly provision has been made to the extent of write off from the closing inventory. The submissions of the assessee was not found acceptable to AO as according to AO there is no provision in the Income Tax Act to allow the write off of non moving goods so long they are in the inventory of the assessee. He accordingly rejected the claim of the assessee and made addition of Rs.33,40,492/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who upheld the order of AO by observing that assessee had failed to establish that inventory was of Nil market value and assessee could not explain the facts properly. Aggrieved by the order of CIT(A), assessee is now before us.

5. Before us, Learned AR reiterated the submissions made before the lower authorities and further pointed to the details of

expired material which are placed at page 93 to 95 of the paper book. From the aforesaid table, he pointed to the fact that the item of finished goods which are listed in the table did not have the realisable value and therefore it was written off. He thereafter fairly submitted that the aforesaid details could not be furnished before the lower authorities and given a chance, assessee would explain the details before the authorities and also furnish the required details. He therefore prayed that the matter may be remitted to lower authorities for their verification.

6. Learned DR on the other hand supported the order of lower authorities and objected to the prayer of restoring the issue back to lower authorities.

7. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is disallowing the claim of the obsolete stock written off by the assessee. Assessee had claimed the write off of obsolete stock which was denied by AO. When the matter was carried before CIT(A), CIT(A) while upholding the order of AO has noted that though assessee was given an opportunity to explain the case and furnish the necessary details, assessee could not explain the facts and had failed to establish that inventory was of Nil market value. Before us, assessee in the paper book has furnished the detail of finished goods / materials which according to it have no market value. It is also a fact that aforesaid details were not furnished by

the assessee before the lower authorities. Considering the aforesaid facts and in the interest of justice, we are of the view that one more opportunity be granted to the assessee to explain its case on the issue. We therefore restore the issue back to the file of AO and direct him to decide the issue afresh after considering the submissions and details furnished by the assessee. Needless to state that AO shall grant adequate opportunity of hearing to the assessee. Assessee is also directed to promptly furnish all the details called for by the AO. **Thus the ground of the assessee is allowed for statistical purposes.**

8. **Ground No.2** is with respect to disallowance of Rs.14,72,530/- incurred towards the Corporate Social Responsibility (CSR).

9. During the course of assessment proceedings, AO noticed that assessee has spent Rs.13,483/- on distribution of books to SC/ST students; Rs.2,21,236/- towards drinking water facilities through Rasayani Unit; Rs.7,250/- on shirts for poor and needy; and Rs.12,30,561/- towards drinking water facilities through its Always Unit. He thus noticed that assessee spent aggregate amount of Rs.14,72,530/- towards Corporate Social Responsibility (CSR). Assessee was asked to justify the claim of expenses to which assessee *inter alia* submitted that incurring of such expenditure is mandatory as required by Companies Act and that as per the guidelines, the expenditure towards CSR

budget should be 0.5 to 2% of net profit during the year. The submissions of the assessee was not found acceptable to AO as he was of the view that the budget being 0.5 to 2% of net profit means that the amount had to be spent out of the income at its disposal earned by it after reducing the same by all such expenses as incurred by the assessee to earn the said income. He was of the view that incurring of expenditure under CSR scheme was not mandatory but was only advisory in nature. He was further of the view that the expenditure neither helps growth of assessee business nor gives any advantage over the competitors. He therefore disallowed Rs.14,72,530/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who following his own order for A.Y. 2012-13 dismissed the ground of the assessee. Aggrieved by the order of CIT(A), assessee is now before us.

10. Before us, Learned AR reiterated the submissions made before the lower authorities. He further submitted that CIT(A) while upholding the order of AO had relied upon his own order for A.Y. 2012-13 wherein he had followed the order in the case of **M/s. GAIL (India) Limited in Appeal No.24/12-13 order dated 05.10.2015**. He submitted that while deciding the appeal in the case of M/s. GAIL (India) Limited, the Co-ordinate Bench of Tribunal vide order dated 29.07.2016 in Appeal No.1782/Del/2012 had decided the issue in favour of the assessee. He therefore submitted that the basis on which CIT(A) had decided the issue against the assessee has itself being set

aside by the Co-ordinate Bench of Tribunal, the addition made by AO needs to be deleted. He further placed reliance on the decision of Hyderabad Bench of Tribunal in the case of **NDMC Ltd. Vs. ACIT in ITA No.1823 & 1824/Hyd/2017**, Hon'ble Karnataka High Court in the case of **CIT vs. Infosys Technologies Ltd. [2014] 43 taxmann.com 251 (Karnataka)**, decision of Delhi Tribunal in the case **NTPC Electric Supply Company vs. ITO in ITA No.4591/Del/2017** and the decision of Co-ordinate Bench of Hon'ble Jurisdictional Tribunal in the case of **Nalwa Steel Power Ltd. vs. ACIT in ITA No.7176/Del/2017**. He thus submitted that addition be deleted.

11. Learned DR on the other hand supported the order of AO and also placed reliance on the decision rendered by Hon'ble Andhra Pradesh High Court in the case of **CIT vs. Singareni Collieries Company reported in 221 ITR 48**.

12. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to the denying the claim of expenditure towards CSR activities. We find that CIT(A) while upholding the order of AO had relied on his own order in assessee's own case for A.Y. 2012-13 wherein he had followed his own order in the case of **M/s. GAIL (India) Limited (supra)**. We find that in the case of **M/s. GAIL (India) Limited (supra)** when the matter was carried before Co-ordinate Bench of Tribunal, Co-ordinate Bench of Tribunal vide

order dated 29.07.2016 in ITA No.1784/Del/2012 decided the issue in favour of the assessee by observing as under:

“11. Similarly, with respect to CSR expenditure vide Sl. No. 4 of the letter dated 10.11.2009 the details of other expenses wherein these expenses are grouped asking for the purpose and its nature and note on its allowability as revenue expenditure was asked. The same query was replied by para No. 4 of letter dated 10.11.2009 explained. In particular para the CSR expenses of Rs. 8.53 crores was mentioned. Therefore, it is apparent that specific questions on account of the claim of the expenses was raised by the Assessing Officer during assessment proceedings and assessee replied to the queries of the Assessing Officer as desired by him. In view of this it is apparent that there was a specific query on the allowability of this expenditure which was raised by the Assessing Officer and same were replied by the assessee. Undisputedly it was not the case of ‘no Inquiry’. Therefore, it is apparent that during the course of assessment proceedings some inquiry was made by the Assessing Officer before these expenditures were allowed. Similar claims in the case of the assessee were also allowed in the previous years and subsequent years as stated by the Assessing Officer in his reply before the 1d CIT which is reproduced at Page 22 and 23 of the order of the 1d CIT u/s 263 of the Act wherein the Assessing Officer has stated that this proposal u/s 263 was made taking into consideration mistake reported by the audit party. As the above expense have been allowed to the assessee in past years as well as subsequent years by the revenue and no action u/s 263 or 147 of the Act has been initiated the issue has become settled in case of the assessee with respect to allowability of these expenses u/s 37 (1) of the act. On this score itself it cannot be said that expenditure incurred by the assessee on CSR activities following the government directive is not allowable. Further, as submitted by the 1d AR that assessee is one of the Navratna PSU and is under legal obligation to incur these expenditures according to the policy of the Govt. of India. Such expenditure is held to be allowable as a business expenditure in several judicial precedents notably amongst them is Hon’ble Delhi High Court in case of CIT Vs. DTTDC Ltd 350 ITR 1 wherein, expenditure on development of flyovers etc was held to be allowable. Furthermore, coordinate bench in 96 ITD 186 has held that even implementation of the 20 points programmes expenditure are also allowable u/s 37(1) of the Income Tax Act in

case of Public Sector Undertaking. In view of these judicial precedents the above expenditure on CSR activities of the assessee cannot be held to be disallowable. It was not shown before us that the view taken by the Assessing Officer is erroneous in allowing these expenditures. In view of above discussion it is apparent that the order of ld AO is not unsustainable in law, there are judicial precedents where in such claim is allowable in case of assessee, Therefore, and on this count the jurisdiction invoked by ld CIT u/s 263 of the Act is not sustainable.”

13. We find that against the order passed by the Co-ordinate Bench of Tribunal in ITA No.1784/Del/2012 order dated 29th July 2016, Revenue has carried the matter before Hon'ble Delhi High Court. Hon'ble Delhi High Court in ITA No.362/2017 order dated 03.07.2017 dismissed the appeal of Revenue. We further find the Hon'ble Gujarat High Court in the case of **PCIT vs. Gujarat Narmada Valley Fertilizer & Chemicals Ltd. (2020) 121 Taxmann.com 82 (Guj)** has held that when the assessee company, a State Government undertaking, incurred expenses towards contributions/donations made to educational institutions, trusts, local bodies for discharging its Corporate Social Responsibility, same was to be allowed as deduction u/s 37(1) of the Act. We are therefore of the view that the ratio of aforesaid decision rendered by Hon'ble Gujarat High Court is applicable to the present facts. We further find that the decision relied upon by DR to be distinguishable on facts and therefore cannot be applied to the facts under consideration and therefore not applicable. In view of the aforesaid facts, we hold that AO was not justified in denying the claim of deduction. We thus direct the

AO to allow the deduction. **Thus the ground of assessee is allowed.**

14. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 24.11.2021

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 24.11.2021

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI