

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER AND  
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.1773/Bang/2018
Assessment year : 2014-15

<p>SKF Engineering and Lubrication India Pvt. Ltd., (previously known as SKF Engineering and Lubrication India Ltd. – as successor to SKF Technologies (India) Pvt. Ltd., Pursuant to the scheme of amalgamation between SKF Technologies (India) Pvt. Ltd., and Lincoln Helios (India) Ltd.) 249/250, Bommasandra Industrial Area, Phase – 3, Hosur Road, Bengaluru-560 099. PAN – AAACC 4393 D</p>	Vs.	<p>The Dy. Commissioner of Income-tax, Circle-6(1)(1), Bengaluru</p>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri K.R Vasudevan, Advocate
Revenue by	:	Shri Narayana K.R, Addl.CIT(DR)

Date of hearing	:	08.03.2022
Date of Pronouncement	:	16.03.2022

**ORDER**

*Per Padmavathy S, Accountant Member*

This appeal of the assessee is directed against the order of the CIT(A), Bengaluru-6 dated 31/01/2018 for the assessment year 2014-15.

2. The assessee raised grounds with regard to the following issues

*“1. Disallowance of product replacement (product development) expenditure – Rs.85,18,012/-*

*2. Depreciation on product development expenses of earlier years, not granted*

*3. Addition of Rs.9,83,580/- on account of undisclosed TDS appearing in Form 26AS*

*4. Adhoc disallowance of housekeeping expenses of Rs.1,25,12,856/-*

*5. Adhoc disallowance of other expenses of Rs.43,29,593/- “*

**The brief facts of the case**

3. The assessee is a Pvt. Ltd., company engaged in the business of manufacturing and trading of oil seals, bearing seals, engine radial shaft seals, wheel seals etc and also into manufacture of large size bearings. The assessee filed its return of income on 30/11/2014 declaring a total loss of Rs.62,52,90,853/-. The return was processed u/s 143(1) and subsequently, it was also selected for scrutiny under

CASS and notice u/s 143(2) was issued to the assessee. The assessee submitted various details as called for by the AO from time-to-time. The AO completed the assessment under section 143(3) vide order dated 23/12/2016 making various additions and assessing the loss of the assessee at Rs.60,10,55,965. In the appeal before the first appellate authority, the CIT(A) gave a marginal relieve of Rs.20,350 towards late payment of employee's contribution of ESI and confirmed the rest of the additions made by the AO.

4. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Tribunal.

**Disallowance of product replacement (product development) expenditure (Ground 1)**

5. The assessee claimed Rs.85,18,012/- under product replacement expenditure. On verification of the details, the AO found that these expenses pertain to new part development, improvement in the existing parts and prototype development as per customer requirement. The AO concluded that the expenditure incurred on such development results in evolution of a distinct technology which can be used as a base/compound and further exploited to develop products depending upon the requirements of the clients. The AO disallowed the expenditure treating it as capital in nature on the basis that the product replacement will be an asset of the assessee. The AO further allowed

depreciation at 25% on the expenditure so disallowed treating it as a capital asset.

5.1. Aggrieved by the order of the AO, the assessee filed an appeal before the CIT(A) who sustained the disallowance.

5.2. Aggrieved by the order of the CIT(A), the assessee is in appeal before us.

5.3. The ld.AR submitted that this issue is covered by the decision of the coordinate bench of the Tribunal in assessee's own case in (IT(TP)A No.330/Bang/2014 for the asst. year 2009-10 wherein this Tribunal held that the expenses are revenue in nature and deleted the disallowance made.

5.4. The ld.DR supported the decision of the lower authorities.

5.5. We heard the rival submissions and perused the materials on record. We notice that the coordinate bench of the Tribunal in assessee's own case (supra) on the same issue has held that

*“24. We shall now deal with corporate issues urged by the assessee. The first issue relates to disallowance of Product Development Expenses of Rs.41,57,479/-. (net amount of product development expenses less depreciation allowed by AO). The AO noticed that the assessee has claimed a sum of Rs.55,43,305/- as*

*product development expenses. From the details furnished, the AO noticed that it was incurred for new parts development, improvement in existing parts and prototype development expenses as per customer's requirements. The nature of expenses consisted of purchase of mold inserts, mold accessories, adaptors & fixtures holding plates, chemicals, compound, product and compound testing charges and fixtures, metal stamping development charges etc. The AO, accordingly, took the view that the above expenses have resulted in evolution of distinct technology, which could be registered as new patent or know how, i.e., an intangible asset. Hence the AO took these expenses as capital in nature and accordingly disallowed the claim. However, he allowed depreciation @ 25% and accordingly disallowed net amount of Rs.41,57,479/-. The ld DRP also confirmed the same.*

*25. The Ld A.R submitted that the product development expenses are routine expenses incurred in the normal course of business to meet the requirements of customers and it did not create any intangible assets as presumed by the AO. The assessee has also not registered any patent or know how, as assumed by the AO. Further, the expenses were incurred on purchase of moulds etc., which are incurred in the normal course of business. Accordingly, he submitted that there is no reason to treat this expenditure as capital in nature.*

*26. We heard Ld D.R and perused the record. We find merit in the contentions of the Ld A.R. We notice that the AO has only assumed that these expenses would give rise to creation of any patent or know-how and accordingly took the view that these expenses are capital in nature, i.e., there is no material with the AO to show that these expenses have resulted in creation of any patent or know how as assumed by him. Hence, we are of the view that the AO has disallowed this claim of the assessee on surmises and conjectures only. Accordingly, we direct the AO to delete this disallowance”.*

5.6. Respectfully following the decision of the coordinate bench of the Tribunal, we delete the disallowance made towards product development expenditure.

**Depreciation on product development expenses of earlier years (Ground no.2)**

6. This ground is consequential in nature as the AO allowed 25% depreciation treating the product development expenses as capital in nature. Since we have deleted the disallowance made by the AO on product development expenses and held that this is revenue in nature. This ground becomes infructuous.

**Addition towards unreconciled TDS in From 26AS**

7. During the course of assessment proceedings, the AO noticed that there is a difference between the total income as per the books of accounts of the assessee and as per From No.26AS. The AO called on the assessee to explain the differences to provide the details and reason for such difference. The assessee submitted reconciliation, which was rejected by the AO and proceeded to make an addition for the difference amount.

7.1. On the appeal before the CIT(A), the addition is confirmed on the basis that the assessee might have revenue, which have not been subjected to TDS.

7.2. Aggrieved by the order by the CIT(A), the assessee is in appeal before us.

7.3. The Id.AR contended that the assessee vide letter dated 23/12/2016 placed at Pg. 317 to 321 of paper book has submitted a detailed reconciliation of income and tax credit as per the books of accounts and form No.26AS. The Id.AR submitted that the AO did not take into account the explanations offered by the assessee and came to the conclusion that the assessee was unable to explain the difference. The Id.DR supported the additions made by the lower authorities.

7.4. We have heard both the parties and perused the material on record. We noticed that the assessee vide above mentioned letter, had provided the details of reconciliation of income and tax credit as per books of accounts and Form 26AS. He also provided the reasons for the differences in the said reconciliation statement. The CIT(A) and the AO did not provide any explanation for rejecting the reconciliation and merely stated that no explanation was provided. We are therefore of the considered view that the reconciliation statement submitted by the assessee needs to be looked into in detail and the reasons provided for difference needs to be considered on merits. Hence, we remand this issue back to the AO. The AO is directed accordingly and decide after providing reasonable opportunity of being heard to the assessee.

**Adhoc disallowance of housekeeping expenses and other expenses  
(Ground No 4 & 5)**

8. During the year under consideration the assessee incurred an expenditure on housekeeping amounting to Rs.2,15,25,712/- and other expenses amounting to Rs.86,59,187/-. The assessee during the course of asst. submitted ledger extract of housekeeping and other expenses and also copies of sample invoices towards the same before the AO. The AO based on the ledger extract concluded that some of the expenses as provided in the ledger extract does not pertain to housekeeping and other expenses and that the assessee has tried to claim unnecessary expenses under the head 'housekeeping and other expenses' without producing any bills and vouchers. Accordingly, the AO disallowed 50% of the housekeeping and other expenses to the extent of Rs.1,25,12,856/- and Rs.43,29,593/-.

8.1. Aggrieved by the order of the AO, the assessee filed an appeal before the CIT(A). The CIT(A) confirmed the disallowance stating that the assessee has very ingeniously booked expenditures by way of inducements to various people in the form of compliments, gifts etc. under the head Housekeeping and other expenses. The CIT(A) went on to state that the assessee has more to hide than reveal and knowing that expenses incurred are not for the purposes of business, decided to

give them respectability by hiding the same under the head 'Housekeeping and Other Expenses'.

8.2. The Id.AR submitted that during the course of asst., the assessee had indeed submitted the ledger extract of entire housekeeping and other expenses and based on AO's request the assessee also submitted sample invoices. The Id.AR submitted that the assessee was not given a proper opportunity of being heard before the lower authorities. The Id.AR further submitted that the details submitted were not considered by the lower authorities who went on to make adhoc disallowance. The Id.AR in this regard placed reliance on the decision of the Hon'ble Supreme Court in the case of Pr.CIT Vs. R.G Buildwell Engineers Ltd. (2018) 99 Taxmann.com 284.

8.3. The Id.DR relied on the written submission.

8.4. We have heard the rival submissions and perused the materials on record. We notice that the AO and the CIT(A) have made the disallowance on adhoc basis at 50% without going into the details of the expenditure and by merely relying on the narrations given in the ledger extract. We also notice that the AO and the CIT(A) did not call for further details or bills or vouchers supporting the claim of the expenditure. The addition made merely based on note that there is substantial increase in the expenditure in the relevant asst. year compared to the previous year is not appropriate for making an adhoc

adjustment. It is settled law that the AO cannot make ad-hoc disallowances without rejecting the books of accounts and without specifying any defects the vouchers /documents. Considering the judicial precedence and the facts in the present case, we are of the view that the details submitted by the assessee before the AO needs thorough examination before deciding the allowability of such expenses. Hence, we remand the issue back to the AO to the look into the documents/ vouchers afresh. The AO is directed accordingly, needless to say that the assessee should be given reasonable opportunity of being heard before deciding the issue on merits.

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

Order pronounced in court on 14<sup>th</sup> March, 2022

Sd/-

**(GEORGE GEORGE K)**  
Judicial Member

Sd/-

**( PADMAVATHY S)**  
Accountant Member

Bangalore,  
Dated, 14<sup>th</sup> March, 2022  
/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation  
.....
2. Date on which the typed draft is placed  
before the dictating Member .....
3. Date on which the approved draft comes to Sr.P.S  
.....
4. Date on which the fair order is placed  
before the dictating Member .....
5. Date on which the fair order comes back to the Sr.  
P.S. ....
6. Date of uploading the order on  
website.....
7. If not uploaded, furnish the reason for doing so  
.....
8. Date on which the file goes to the Bench Clerk  
.....
9. Date on which order goes for Xerox &  
endorsement.....
10. Date on which the file goes to the Head Clerk  
.....
11. The date on which the file goes to the Assistant  
Registrar for signature on the order  
.....
12. The date on which the file goes to dispatch section  
for dispatch of the Tribunal Order  
.....
13. Date of Despatch of Order.  
.....