

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI PRAMOD KUMAR (VICE PRESIDENT) AND
MS. SUCHITRA RAGHUNATH KAMBLE (JUDICIAL MEMBER)**

**ITA No. 7373/MUM/2017
(Assessment Year: 2012-13)**

M/s Shree Krishna Woolen Mills Pvt. Ltd., Krishna Mill Compound, Behind Sonapur, Bhandup (West), Mumbai – 400 078
Income Tax Officer 15(3)(2)
Vs. Mumbai

PAN No. AABCS9353G

(Assessee)

(Revenue)

Assessee by : Shri Subramanian, A.R
Revenue by : Shri Hoshang B. Irani, D.R

Date of Hearing : 12/01/2022
Date of pronouncement : 05/04/2022

ORDER

PER SUCHITRA RAGHUNATH KAMBLE, J.M:

This appeal is filed by the assessee against the order dated 20.09.2017 passed by the CIT(A)-24, Mumbai, for assessment year 2012-13. The assessee has raised the following grounds before us:

- “1. The learned Commissioner of Income tax (A) has erred in view of the facts and in the circumstance of the case in confirming the treatment of the damages received of Rs.4,88,19,661/- as a revenue receipt instead of it being a capital receipt. This is against the fact that the order of the National Consumer Redressal Forum (NCDM) has clearly held that the damages were for deficiency of service as stated in the learned CIT (A)'s order in para 2.4.1 itself.
2. The learned Commissioner of Income tax (A) has erred in fact in not appreciating that the NCDM as confirmed by the Honorable Supreme Court that the payment to be made to the assessee are in the nature of damages, which damages are for purely for deficiency of service and that merely the method for calculating the damages is

to adopt a notional interest for the period of default and delay by the Insurance company for the payment of compensation to the insured.

3. The learned Commissioner of Income tax (A) has erred in law in not applying the decisions of the Honorable Courts, cited by the appellant, which have clearly held that compensation for deficiency of service is clearly damages and a capital receipt and merely because computation of the same is based on notional interest such calculation does not convert the damages into a revenue receipt.”

2. The assessee is engaged in the business of trading & investment in shares and other assets, property/rental income and manufacturing of textile non woven products. The assessee revised its return of income on 15.03.2014 declaring the total income at Rs.2,87,77,652/-. During the year under consideration, in the profit and loss account, the assessee had shown revenue from operations at Rs.24,60,97,916/-, other income at Rs.9,54,90,043/- and closing stock at Rs.12,89,60,367/-. The net profit as per the profit and loss account was computed at Rs.4,54,38,000/-. The original return was filed on 28.09.2012 declaring total income at Rs.2,87,77,652/-. The assessing officer made addition of Rs.4,88,19,661/- towards the interest received over and above the amount of compensation and treated the same as revenue in the hands of assessee. The said interest was received in respect of compensation received from insurance company due to fire in 01.06.1989 with interest at the rate of 10% from 6 months after the date of fire till the date of payment.

3. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

4. The ld. A.R submitted that on 05.12.1988 a fire accident took place at company's factory premises causing heavy damage to building, plant and machinery, stock etc. and claim for loss was made with the United India Insurance Company Ltd. In December, 1996, the insurance company repudiated the claim. In 1997, the assessee filed petition before the National Consumer Disputes Redressal Commission. On 10.03.2006, the National Consumer Disputes Redressal

Commission passed an order in directed the United India Insurance Company to pay a sum of Rs.2,83,39,608/- with interest @ 10% per annum from 6 months after the date of fire i.e 01.06.1989 till the date of payment as compensation. On 17.08.2011 the Hon'ble Supreme Court confirmed the order passed by the National Consumer Disputes Redressal Commission by dismissing the appeal of the insurance company. The ld. A.R submitted that the assessee received the damage compensation only in the year 2011 i.e. after the lapse of over 22 years. The compensation consisted of an amount of Rs.2,83,39,608/- towards loss of stock and plant and machinery and an amount of Rs.4,88,19,661/- interest calculated @ 10% per annum from 6 months after the date of fire.

5. The ld. A.R submitted that the only dispute as regarding the chargeability to tax of the amount received of Rs.4,88,19,661/-. The assessee claim the same as capital receipt not exigible to tax being compensatory in nature though nomenclature as interest. In other words it only compensate the time taken to compute and determine the loss the fall in money value from the date the compensation becomes payable to the day of payment etc. and therefore, capital in nature. In this connection, the ld. A.R relied upon the following decisions, i.e (i) Rupesh Rashmikant Shah Vs. Union of India and Others 182 DTR 203 (Bom); and (ii) Urvi Chirag Sheth Vs. ITO, Ward 5(2)(3), Ahmedabad, 159 ITD 199. Thus, the ld. A.R submitted that the appeal of the assessee be allowed and it should be held that interest of compensation is not exigible to tax.

6. The ld. D.R submitted that the assessing officer as well as the CIT(A) has rightly held that these are the revenue receipts as the interest was not part of the compensation. The ld. D.R submitted that the Hon'ble Supreme Court in the case of Ghaziabad Development Authority Vs. Dr. N.K. Gupta (2002) IND Law BCDRC 189. The assessee has rightly treated these receipts of damages of Rs.4,88,19,661/- as revenue receipts and accordingly liable to tax and therefore, properly treated the

total income of the assessee. The ld . D.R submitted that assessee in the present case has declared the said amount as capital loss and therefore in this particular year offered the same to the tax. Therefore, the treatment given by the assessee itself shows that it is a revenue receipt hence appeal of the assessee be dismissed.

7. We have heard both the parties and perused all relevant material available on record. It is pertinent to note that in order to decide whether the receipt is capital or income/revenue receipt, the receipt has to be examined from a commercial point of view and also has to be examined what character of the receipt is in the hands of the receiver. One test for ascertaining as to whether what was received was a capital receipt or a revenue receipt is to find out whether the assessee suddenly changed the link of income/receipt with the profit making apparatus, that was transferred. The taxability of an amount would depend upon the nature and character of the receipt at the initial stage. If the amounts are initially not taxable, they cannot be taxed despite the magnitude of the accumulation and despite its appropriation by the assessee to his own credit subsequently. In the present case the assessee has given a treatment of these receipts in the initial period when the fire broke as revenue receipts and claimed business loss accordingly. The decisions cited by the ld. A.R are factually different as the compensation received by the parties therein were not in respect of any business activities and there was no business damage of such. In commercial world, in respect of business exigencies the compensation specially in respect of damage to properties through fire or any other activities, the businessman ensures his business equipment as well as assets. While claiming the compensation, the assessee was very well aware about the business loss and has given a treatment of the receipts as revenue receipts. Thus, the colour of the receipts in respect of the interest received on

compensation amounts to a revenue receipt and thus, the assessing officer as well as the CIT(A) has rightly given the finding of making the said additions to the income of the assessee. Thus, the appeal of the assessee is dismissed.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 05.04.2022

Sd/-
(Pramod Kumar)
Vice President

Sd/-
(Suchitra Raghunath Kamble)
Judicial Member

Place: Mumbai

Date 05.04.2022

Rohit, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.