

**आयकर अपीलीय अधिकरण 'डी' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'D' BENCH, CHENNAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ **ITA No.1467/Chny/2019**  
(निर्धारण वर्ष / **Assessment Year: 2013-14**)

DCIT, Corporate Circle-4(2) Chennai.	<b>बनाम</b> / Vs.	<b>M/s. Kemin Industries South Asia Pvt. Ltd.</b> Plot No.K-3, SIPCOT Indl. Complex, 11 <sup>th</sup> Cross Street, Gummidipundi, Tamil Nadu – 601 201.
स्थायी लेखा सं./जीआइ आर सं./ <b>PAN/GIR No. AABCK-3316-P</b>		
(□ पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओरसे/ <b>Assessee by</b>	:	Shri N.V. Balaji (Advocate) – Ld. AR
प्रत्यर्थी की ओरसे/ <b>Revenue by</b>	:	Shri D. Hema Bhupal (JCIT) –Ld. DR
सुनवाई की तारीख/ <b>Date of Hearing</b>	:	11-07-2022
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	11-07-2022

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2013-14 arises out of the order of learned Commissioner of Income Tax (Appeals)-8, Chennai [CIT(A)] dated 31-01-2019 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 07-02-2017. The grounds taken by the Revenue are as under:

1. The order of the Ld. CIT(A) is contrary to the facts of the case and in Law.
2. The Ld. CIT(A) erred in admitting and ruling on additional evidence filed without giving an opportunity to the AO/TPO thereby violating Rule 46A of the Income tax Rules.

3. For these and other grounds that may be adduced at the time of hearing it is prayed that the order of the Ld. CIT(A) on the issues of co-ordination fee and disallowance of depreciation claimed by the assessee on the assets not owned by them, may be set aside and the order of the Assessing Officer regarding the above said issues may be restored.

As evident, the grievance of the revenue is that Ld. CIT(A) erred in admitting additional evidences and providing relief to the assessee.

2. The Ld. Sr. DR pleaded for restoration of matter back to the file of Ld. AO in the light of additional evidences filed by the assessee during appellate proceedings. The arguments have been controverted by Ld. AR. Having heard rival submissions and after due consideration of relevant material on record, our adjudication would be as under.

3.1 The assessee being resident corporate assessee is stated to be engaged in import and distribution of animal feeds. The issues which form subject matter of appeal before us are as under.

### **3.2 Disallowance of Depreciation**

The assessee claimed depreciation on plant and machinery referred to as 'Liquid Applicant Systems'. The same was used for spraying chemical at poultry farms. It transpired that these items were being used by the customers of the assessee. The Ld. AO opined that it was portable equipment and the equipment was sold to the customers and not owned by the assessee. Accordingly, depreciation of Rs.98.31 Lacs as claimed by the assessee was disallowed and added to the income of the assessee.

### **3.3 Determination fo Arm's Length price of Co-ordination fees**

During proceedings before Ld. Transfer Pricing Officer, it transpired that the assessee paid co-ordination fees for Rs.141.77 Lacs to its Associated Enterprises (Kemin Industries Inc., USA) which was

subjected to determination of Arm's Length Price (ALP). In support, it was explained by the assessee that the overall operations carried on by the Agricultural division were monitored by the agro-division of the AE to provide constant guidance on various aspects related to the strategic decisions taken by the assessee while carrying on its business operations. These includes services which aid assessee in budgeting, forecasting, modification of existing products manufactured and other strategic decisions. To procure the same, such payments were made.

The Ld. TPO noted that the assessee was paying lump sum payment on quarterly basis and there was no basis for allocation of expenses among the group companies. In the absence of constructive proof towards availment of services, the ALP of the services was determined as Nil and upward adjustment was made.

#### **4. Appellate proceedings & our adjudication**

4.1 The Ld. CIT(A) held that considering the turnover and profitability of the assessee, the coordination fees was to be allowed as legitimate business expenditure. The findings were as under: -

The submissions made by the assessee are considered. The assessee has claimed that its agro operations are monitored by its associated enterprise abroad for which the coordination and other service fees have be paid. Assessee has claimed that the finance, accounting planning, business/process review, internal audit, HR management other services are monitored by the parent company and as such fees have been paid. In the normal circumstances, these expenditures are liable to be incurred on personnel to be employed in India. In the assessee company has claimed that the expenditure incurred minimal compared to overall turnover and the profitability. Considering the same, the assessee company had been asked to of the overall profitability of the enterprise for three previous and years. This has been submitted by the assessee company as under:

<b>Particulars</b>	<b>AY 2010-11 31-Mar-10</b>	<b>AY 2011-12 31-Mar-11</b>	<b>AY 2012-13 31-Mar-12</b>	<b>AY 2013-14 31-Mar-13</b>
<i>Turnover</i>	64,98,09,105	80,82,26,566	1,04,96,38,181	1,24,73,24,927
<i>Total Income</i>	8,42,29,654	1,42,77,185	-6,00,89,843	1,09,25,070
<i>Profit Before Tax</i>	7,66,76,263	-80,86,017	-6,46,48,418	79,20,349

Tax paid	2,97,09,350	69,44,809	35,00,000	34,48,135
Coordination Fee	56,24,444	63,91,899	65,48,485	1,41,77,864

<b>Particulars</b>	<b>AY 2014-15 31-Mar-14</b>	<b>AY 2015-16 31-Mar-15</b>	<b>AY 2016-17 31-Mar-16</b>	<b>AY 2017-18 31-Mar-17</b>
Turnover	1,62,39,43,330	2,09,75,01,245	2,42,67,01,555	2,96,11,00,948
Total Income	5,98,86,130	23,27,83,350	32,61,75,600	51,46,68,980
Profit Before Tax	7,26,35,172	15,73,70,297	28,58,43,582	42,90,35,823
Tax paid	1,77,00,155	8,44,25,724	11,87,40,900	18,01,25,562
Coordination Fee	1,61,54,753	1,65,83,964	1,84,28,625	3,78,92,785

6. As above, the overall coordination fees paid by the assessee have continued to be reasonable in relation to the turnover as well as profit before tax declared. Subsequent to AY 2013-14, the assessee company has declared robust profits liable for taxation in India and this aspect deserves to be taken note of. The assessee company does not appear to be in the habitual practice shifting and deserves some leniency. In view of the same, it is held that the coordination fees paid of Rs.1,41,77,864/- is in line with the business of the assessee and deserves to be allowed as a legitimate business expenditure. Assessing Officer is directed to allow the same.

Upon perusal, it could be seen that the assessee is making regular payment to procure these services since AY 2010-11. The nature of services being received by the assessee was already enumerated before Ld. TPO which was supported by the email correspondences. The overall profitability of the assessee has remained robust. The payments are under contractual obligations. Therefore, Ld. TPO could not have determined the ALP of the services as Nil. BY confirming the order of Ld. CIT(A), we dismiss the grounds urged by the revenue. It could also be seen that no additional evidences were filed by the assessee during the course of appellate proceedings.

4.2 The disallowance of depreciation was deleted by Ld. CIT(A) with following factual findings: -

9. The submissions are considered. The assessee company has been asked to give further details of the purchase of liquid applicant systems and how they are reflected in the balance sheet. The assessee company has submitted the details of fixed asset purchase and how the fixed asset is reflected in the balance sheet as well as WDV statement field. The list of LAS equipment purchased and the utilization of the same has also been submitted. Considering the submission, it is viewed that the Assessing Officer did not have any reason to disallow the depreciation on legitimate and genuine purchase of fixed assets. The assets are

owned and operated by the assessee and are so reflected in the balance sheet filed. In view of the facts as above, I have no hesitation in directing the Assessing Officer to allow depreciation on assets claimed. The grounds of appeal on this issue are allowed.

It is undisputed finding that the aforesaid assets continue to form part of block of assets and the ownership has not been parted with by the assessee. This being so, the depreciation has rightly been allowed by Ld. CIT(A), The grounds thus raised stands dismissed.

5. In the result, the appeal stand dismissed.

Order pronounced on 11<sup>th</sup> July, 2022.

**Sd/-**  
**(MAHAVIR SINGH)**  
**उपअध्यक्ष / VICE PRESIDENT**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखसदस्य / ACCOUNTANT MEMBER**

चेन्नई / Chennai; दिनांक / Dated : 11-07-2022  
EDN/-

**आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF