

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT AND  
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.586 /Lkw/2019  
Assessment Year: 2006-07

Kwality Zippers Pvt. Ltd., 39-B Industrial Estate Dada Nagar, Kanpur PAN: AAACZ0418L	Vs.	DCIT, Range-6, Kanpur
(Appellant)		(Respondent)

Appellant by	Shri Rakesh Garg, Advocate
Respondent by	Shri Pankaj Sachan, DR
Date of hearing	02/06/2022
Date of pronouncement	28/07/2022

**ORDER**

**PER T.S. KAPOOR, A.M.:**

This is an appeal filed by the assessee against the order of Id. CIT(A)-II, Kanpur dated 05.08.2019. The grounds of appeal taken by the assessee are reproduced below:

- "01. Because the CIT(A) has erred on facts and in law in upholding the disallowance of Rs.63,324/- out of interest account on the premise that interest bearing funds had been utilized for interest free advances, which connotation of the CIT(A) is based on misconceived facts for the reasons that there being surplus interest free funds and internal accruals, the funds having been used fully for the purpose of business, no disallowance should ought to have been made, the disallowance made and upheld by the CIT(A) be deleted.*
- 02. Because the CIT(A) has erred on facts and in law in upholding the disallowance of Rs.2,35,493/- being contribution towards Group Gratuity Scheme, paid to Life Insurance Corporation of India on the premise that the Group Gratuity Scheme is not approved by the CIT, such pre-notion is totally misconceived, in as much as, the contribution made to the Group Gratuity Scheme, managed by Life Insurance Corporation of India, is an allowable expenditure, the same be allowed.*

03. *Because the CIT(A) has erred on facts and in law in upholding the addition of Rs. 15,00,000/- made u/s 68 of the I.T. Act, 1961 being advances received from customers, treating them as in genuine, the addition is contrary to facts, bad in law and be deleted.*
04. *Because the CIT(A) has failed to appreciate the fact that goods have been supplied to the customers against the advances of Rs. 15,00,000/- received which amount has been duly credited and included under the head 'Sales' in the subsequent years, the addition made is bad in law and be deleted."*

2. The Id. AR at the outset submitted that the appeal was earlier restored by ITAT vide order dated 28.07.2017 to Id. CIT(A) for readjudication of the issues and therefore, in view of directions of the ITAT detailed written submissions were filed before Id. CIT(A), who has wrongly noted that the assessee had not cooperated, whereas at the same time, he has noted the written submissions filed by the assessee in his order itself. The Id. AR submitted that the first ground related to disallowance u/s. 36(1)(iii) of the Act and in this respect, it was submitted that the Id. CIT(A) had upheld the disallowance by ignoring the complete written submissions filed by the assessee and it was submitted that the Assessing Officer had made disallowance on account of non charging of interest to loans to three Directors amounting to about Rs.15.00 lacs. It was submitted that the interest free funds consisting of total reserves and the share capital of the concern is Rs.4,23,30,014/- which is apparent from the copy of balance sheet of the assessee which is placed at PB pgs. 18 to 53 and it was specifically argued before Id. CIT(A) that in view of the surplus funds available with the assessee the disallowance cannot be made and reliance was placed on the judgment of Malwa Cotton Spinning & Weaving Mills Ltd, 80 ITD 65 (TM). It was submitted that the finding of the Id. CIT(A) that the assessee had not filed any cash flow statement to substantiate its claim of surplus fund is not correct as the balance sheet filed before him clearly states the interest free funds available with the assessee company. Therefore, it was prayed that the additions sustained by Id. CIT(A) may be deleted.

3. Coming to the second ground of appeal regarding disallowance out of contribution towards group gratuity scheme paid to Life Insurance Corporation of India, the Id. AR submitted that the detailed submissions were made before Id. CIT(A) and it was submitted that the payments made to Life Insurance Corporation of India towards group gratuity fund is allowable expenditure u/s. 37 of the Act and even if the same was not approved by the Pr. Commissioner of Income Tax and in this respect, Id. AR invited our attention to the detailed written submissions filed by the assessee as reproduced by the Id. CIT(A) in his order. The Id. AR submitted that reliance was placed on a number of case laws for the proposition that payments made to Life Insurance Corporation of India towards group gratuity scheme was deductible u/s. 37 of the Act which has not been considered by Id. CIT(A) and he has simply upheld the addition by holding that the scheme was not approved by Commissioner of Income Tax. It was submitted that in view of the clear judgments in favour of the assessee as relied on by assessee before Id. CIT(A) and in view of the fact that the assessee had actually made payment for Life Insurance Corporation of India group gratuity fund during the year, the disallowance sustained by the Id. CIT(A) may be deleted.

4. Coming to the last ground of appeal regarding addition of Rs.15.00 lacs u/s.68 of the Act, the Id. AR submitted that assessee had received advance payments against sales to be made by the assessee and assessee accordingly issued bills to the various persons who had given advances to the assessee. It was submitted that Id. CIT(A) has sustained the addition by holding that not all the sales bills were issued against all the advances. The Id. AR in this respect invited our attention to chart prepared by Id. CIT(A) and reproduced in his order at pg.17 where he has noted down the amount of sales against each persons in the F.Y. 2006-07 whereas he has ignored the amount of sales bill issued to the parties in the subsequent years despite of the fact that the bills issued in two succeeding years were filed before him and in this respect our attention was invited to copy of tax invoices placed in

the paper book. Our attention was also invited to PB pgs. 64 to 113, where the copies account of various persons were placed and to whom the sales bills were issued in the two succeeding years. Therefore, in view of these facts and circumstances, it was prayed that since the advances were received against the sales and sales has actually happened in the succeeding years addition sustained by Id. CIT(A) is not sustainable.

5. The Id. DR, on the other hand, submitted that despite of the fact that the ITAT had set aside the issue to Id. CIT(A) for readjudication yet the assessee did not attend the proceedings as noted by Id. CIT(A) in his order. Therefore, it was prayed that appeal of the assessee be dismissed and if at all the assessee is to be given a fresh opportunity the case may be again set aside to the Id. CIT(A) for readjudication.

6. We have heard the rival parties and have gone through the material placed on record. We find that Id. CIT(A) though has written in his order that the assessee had not appeared despite giving various opportunities but has further noted that the assessee had filed written submission through dak and which he has reproduced in his order, therefore, the contention of Id. DR that the case may be set aside for giving an opportunity to the assessee of hearing before Id. CIT(A) is not maintainable and moreover this is a very old case relating to AY 2006-07 and all the material for deciding the appeal is available in the file, therefore, we will be deciding the case herein only.

7. As regards the first issue of disallowance u/s. 36(1)(iii) of the Act, we find that the assessee during the proceedings before Id. CIT(A), vide written submission has clearly mentioned the fact of having interest free funds of an amount exceeding Rs. 4,23,30,014/- but the Id. CIT(A) has wrongly held that the assessee had not submitted any material or evidence in the form of cash flow statement to substantiate its claim. The finding of Id. CIT(A) is not correct as various courts as relied on by the assessee in his written submission before Id. CIT(A) has held that where assessee's own capital and current year profits are substantially more than the interest free

advances then the disallowance cannot be made u/s. 36(1)(iii) of the Act. In the present case, the balance sheet of the assessee, which was available with the Id. CIT(A) and which is placed at PB pgs. 18 to 53 clearly demonstrate that the capital of the assessee was more than Rs. 4,23,30,014/- as on 31.03.2006 and moreover the profit was Rs.41.70 lacs, which is much more than the amount of interest free advances amounting to approximately Rs.15.00 lacs. Therefore, the disallowance sustained by Id. CIT(A) is not in accordance with law and facts of the case and therefore we delete the same and allow Ground No.1 of the appeal.

8. Now coming to Ground No.2 regarding disallowance of contribution towards group gratuity scheme amounting to Rs.2,35,493/-, we find that the assessee has filed detailed written submissions and had relied on a number of case laws for the proposition that the amount paid to Life Insurance Corporation of India towards group gratuity scheme is an allowable expenditure u/s. 37 of the Act even if the fund is not approved by the Chief Commissioner of Income Tax. The Id. CIT(A) has reproduced in his order the written submission filed by the assessee but has decided against the assessee by holding that the payment to Life Insurance Corporation of India was not approved by Pr. Commissioner of Income Tax. While denying the claim to the assessee, the Id. CIT(A) has ignored various case laws which was relied on by the assessee for the proposition that the expenditure incurred by assessee towards payment for gratuity group scheme of Life Insurance Corporation of India is a deductible expenditure. We find that the assessee has made the payment to Life Insurance Corporation of India vide receipt dated 15.12.2005, a copy of such receipt is available in the paper book, therefore, the expenditure is an allowable expenditure in view of the judgment of ITAT, Visakhapatnam in the case of ACIT, Circle-1(1), Guntur vs. The Guntur District Cooperative Central Bank Ltd. in ITA No.77 & 78/Viz/2018 and in view of various other case laws in favour of the assessee, which the Id. CIT(A) has noted in his order. Therefore, Ground No.2 of the appeal of the assessee is also allowed.

9. Now coming to Ground Nos. 3 and 4 regarding addition u/s. 68 for amount of Rs.15.00 lacs, we find that the assessee had received certain advances from certain customers. The list of such advances have been reproduced by Id. CIT(A) in his order as chart-A. Before Id. CIT(A), it was claimed that such advances were received against the future sales to be made to the parties but it was not accepted by the Id. CIT(A) and he has reproduced a Chart-B, wherein he has held that only a part of advances were got adjusted against sales in the FY 2006-07. While reproducing such chart the Id. CIT(A) has ignored the sales made by the assessee during the FY 2007-08 the details of which was also filed before Id. CIT(A) and during these two years the assessee had issued various bills, whereby it has exhausted the amount of Rs.15.00 lacs. Such copy of accounts as submitted to Id. CIT(A) are placed in PB pgs. 64 to 113. Therefore, in view of these facts and circumstances, the sustenance of the addition of Rs.15.00 lacs is not justified and is deleted. Therefore, the Ground Nos. 3 and 4 is also allowed.

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

(Order pronounced in the open court on 28/07/2022)

**Sd/-**  
**(A.D.JAIN)**  
**Vice President**

**Sd/-**  
**( T. S. KAPOOR )**  
**Accountant Member**

Dated: 28/07/2022

Aks

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Asstt. Registrar