

आयकर अपीलीय अधिकरण  
मंबई पीठ " सी "   
श्री विकास अवस्थी. न्यायिक सदस्य एवं  
श्री एम बालगणेश, लेखाकार सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
आअसं. 8060/मुं/2019 (नि.व. 2003-04)  
ITA NO. 8060/MUM/2019(A.Y.2003-04)

CIT, Circle 7(3)(2),  
Room No.128A, 1st Floor,  
Aaykar Bhavan, M.K.Road,  
Mumbai - 400 020

..... अपीलार्थी /Appellant

बनाम Vs.

M/s. Piramal Glass Ltd.  
(Earlier known as Gujarat Glass Pvt. Ltd.)  
1 Piramal TowerAnnexe, Ganpatrao Kadam Marg,  
Lower Parel, Mumbai – 400 013.

PAN: AABCG-0093-R

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Minlind Chavan

प्रतिवादी द्वारा/Respondent by : Shri Ronak Doshi

सुनवाई की तिथि/ Date of hearing : 13/05/2022

घोषणा की तिथि/ Date of pronouncement : 05 /08/2022

**आदेश/ ORDER**

**PER VIKAS AWASTHY, JM:**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-13, Mumbai [in short 'the CIT(A)] dated 22/10/2019 for the Assessment Year 2003-04.

2. Shri Ronak Doshi appearing on behalf of the assessee submitted at the outset that Revenue in appeal has raised eight effective grounds. Majority of the grounds raised in appeal by Revenue are either covered by the order of

Tribunal in assessee's own case in ITA No.9645/Mum/2004 for Assessment Year 2001-02 decided on 02/08/2016 or by the order of Hon'ble Bombay High Court in the case of assessee titled PCIT vs. Piramal Glass Ltd. in Income Tax Appeal No.556 of 2017 decided on 11/06/2019.

3. Per contra, Shri Minlind Chavan representing the Department vehemently defending the assessment order prayed for reversing the findings of CIT(A) and upholding the additions made in the assessment order. However, Id. Departmental Representative fairly stated that substantial issues raised in the appeal have been considered by the Tribunal in assessee's own case for preceding Assessment Years.

4. In ground no.1 and 2 of appeal, the Revenue has assailed the findings of CIT(A) in deleting disallowance of depreciation claimed on Non-compete Fee. We find that before the Hon'ble Bombay High Court in the case of PCIT vs. Piramal Glass Ltd. (supra) one of the question of law for adjudication was:

*"(a) Whether on the facts and In the circumstances of the case and in law, the ITAT is right in deleting the disallowance of depreciation claim on the non-compete fees paid when it is clear that it does not represent any intangible asset qualified for the depreciation as per Section 32 of the I. T. Act, 1961 ?"*

The Hon'ble High Court referring to then decision rendered in the case of PCIT vs. Ferromattice Milacron India (P.) Limited, reported as 99 taxmann.com 154 (Guj) decided the issue in favour of assessee. Thus, the assessee was held to be eligible for claiming depreciation u/s. 32 of the Income Tax Act, 1961 [in short 'the Act'] on Non-compete Fee, an intangible asset. We find that in the impugned order the CIT(A) has allowed depreciation on Non-competent Fee by following the order of Tribunal in assessee's own case for Assessment Year

1999-2000, A.Y.2001-02, A.Y.2006-07 and for A.Y. 2011-12. We find no infirmity in the findings of CIT(A) on this issue. Hence, ground No.1 & 2 raised in the appeal by Revenue are dismissed.

5. In ground No.3 of appeal, the Revenue has assailed deleting of disallowance of interest on borrowed funds u/s. 36(1)(iii) of the Act by the CIT(A). The Id. Authorized Representative for the assessee pointed that CIT(A) has deleted the addition by following the order of Tribunal in assessee's own case in A.Y.2001-02, A.Y. 2005-06 to A.Y. 2009-10 and A.Y. 2011-12. The facts in the impugned Assessment Year are identical to the facts in the aforesaid Assessment Years. The Id. Authorized Representative for the assessee further pointed that the Hon'ble Bombay High Court in Income Tax Appeal No.556 of 2017(supra) has also considered the issue of disallowance of interest on borrowed funds in the appeal by the Revenue and has dismissed the question of law on this point. The Revenue has not been able to controvert the findings of the CIT(A) or has been able to demonstrate that the facts in the Assessment Year under appeal are in any manner different from the facts in the Assessment Years, wherein this issue has been decided in favour of the assessee by Co-ordinate Bench of the Tribunal. Hence, we see no reason to interfere with the findings of CIT(A) on this issue. The ground No.3 of the appeal is dismissed being devoid of any merit.

6. In ground No.4 of appeal, the Revenue has assailed disallowance of interest. The ground No.4 is connected to ground No.3 above. Since, we have dismissed ground No.3 of the appeal, ground No.4 raised in the appeal by Revenue has become infructuous and the same is dismissed as such.

7. In ground No.5 & 6 of appeal, the Revenue has assailed the findings of CIT(A) in deleting disallowance of interest on borrowed funds given to the sister concern and also disallowance of interest received from sister concern. It has been pointed by the Id. Authorized Representative for the assessee that facts in the Assessment Year under appeal are identical to the facts in Assessment Year 2001-02 and in the subsequent Assessment Years i.e. A.Y. 2006-07 to 2009-10. The Tribunal in ITA No.9645/Mum/2004 (supra) has deleted the addition and gave categoric findings that the advances were given to the sister concern out of commercial expediency. The Id. Authorized Representative for the assessee to further assert placed reliance the decision of Hon'ble Supreme Court in the case of S.A. Builders vs. CIT reported as 288 ITR 1.

We find that the CIT(A) has deleted the addition by following the order of Tribunal in assessee's own case for Assessment Year 2001-02, A.Y.2005-06 to A.Y. 2009-10 and also the decision of Hon'ble Bombay High Court in Income Tax Appeal No.556 of 2017 (supra). No contrary material is available on record to suggest any difference in facts or legal position. We find no reason to disturb the findings of CIT(A) on this issue. Consequently, the same are upheld and grounds No.5 and 6 of the appeal are dismissed, sans-merit.

8. In ground No.7 of appeal, the Revenue has assailed the findings of CIT(A) in deleting addition made u/s. 41(1) of the Act in respect of sundry creditors exceeding more than three years. The Id. Authorized Representative for the assessee pointed that in the Assessment Year 2001-02 similar addition was made by Assessing Officer. The CIT(A) deleted the addition. The Department accepted the findings of CIT(A) on this issue as no further appeal

was filed by the Revenue on this ground. The Id. Authorized Representative for the assessee further submitted that for the Assessment Year 2005-06, A.Y. 2007-08 to A.Y 2009-10 the addition u/s. 41(1) of the Act was deleted by CIT(A) in the orders for the respective Assessment Years. The Department never preferred an appeal against the orders of CIT(A) for the aforesaid Assessment Years. It clearly shows that the Revenue has accepted the findings of the First Appellate Authority. We find that the CIT(A) has deleted the addition u/s. 41(1) of the Act by following the orders of CIT(A) for the Assessment Years 2005-06, A.Y. 2007-08 to 2009-10. Facts being identical in the impugned Assessment Year we find no reason to interfere with the findings of the CIT(A) on this issue. Consequently, ground No.7 raised in the appeal is dismissed being devoid of any merit.

9. In ground No.8 of appeal, the Revenue has assailed the findings of CIT(A) in deleting the disallowance on deferred revenue expenditure. The Id. Authorized Representative for the assessee pointed that the assessee had claimed expenditure amounting to Rs.1,05,33,550/- as deduction u/s. 37(1) of the Act and the aforesaid expenditure was incurred for implementing profitability and cost optimization measures, pre- payment of premium on loans, repayment of loans, etc. The expenditure was treated as deferred revenue expenditure. The Assessing Officer held expenditure to the extent of Rs.98,83,350/- is on capital account and disallowed the same. The CIT(A) after examining the facts of the case and various decisions held that the expenditure is allowable being revenue in nature and deleted the addition.

9.1 The Id. Departmental Representative submitted that the expenditure incurred by the assessee would result in giving enduring benefit, hence, it was held to be capital in nature by the Assessing Officer.

9.2 We find that the expenditure claimed by the assessee was on account of : (i) consultancy fees paid to ECS Ltd. – Rs.7,35,000/-, (ii) consultancy fees paid to Accenture – Rs.90,50,889/-. The CIT(A) held that no new tangible or intangible asset has come into existence due to the aforesaid expenditure. The expenditure was incurred solely for the purpose of improvement in efficiency of various process employed by the assessee. The aforesaid findings of the CIT(A) are unrebutted. Hence, we find no reason to interfere with the same. Consequently, ground No.8 of the appeal by the Revenue is dismissed.

10. The ground No.9 of the appeal is general in nature, hence, need no adjudication.

11. In the result, appeal by the Revenue is dismissed.

Order pronounced in the open court on Friday the 5<sup>th</sup> day of August, 2022.

Sd/-

( M. BALAGANESH )

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 05/08/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt. Registrar) /  
Sr.Private Secretary  
ITAT, Mumbai