

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "C" : DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA.No.5023/Del./2016
Assessment Year 2012-2013

The Addl. Commissioner of Income Tax, Special Range-4, New Delhi.	vs.	M/s. Goyal Engineering Polymer (P.) Ltd., KP-13, Mourya Enclave, Pitampura, New Delhi PIN 110 034 PAN AABCJ8967D
(Appellant)		(Respondent)

For Revenue :	Shri Anuj Garg, Sr. D.R.
For Assessee :	Shri Rajat Jain, C.A. & Shri Akshat Jain, C.A.

Date of Hearing :	10.08.2022
Date of Pronouncement :	08.09.2022

ORDER

PER ANIL CHATURVEDI, A.M. :

This appeal by the Revenue has been filed against the Order of the Ld. CIT(A)-4, New Delhi, dated 20.07.2016 in Appeal No.18/15-16/CIT(A)-4 relating to the A.Y. 2012-13.

2. Briefly stated facts of the case are that the assessee company is a Private Limited Company engaged in the business of trading of Plastic Granules. The assessee company filed its return of income for the A.Y. 2012-13 on 25.01.2013 electronically declaring total income of Rs.1,88,80,180/-. The case of the assessee company was selected for scrutiny and thereafter, assessment was framed under section 143(3) of the I.T. Act, 1961 vide order dated 26.02.2015 and the total income of the assessee company was determined at Rs.8,14,10,824/-.

2.1. Aggrieved by the order of A.O, assessee carried the matter in appeal before the Ld. CIT(A) who vide order dated 20.07.2016 granted substantial relief to the assessee.

3. Aggrieved by the order of the Ld. CIT(A), the Revenue is now in appeal before the Tribunal and has raised the following grounds :

1. *“Whether on the facts and circumstances of the case, the Ld. CIT(A) was correct in deleting the addition of*

- Rs.2,43,90,691/- made on account of accrued interest by ignoring that the assessee was following the mercantile system of accounting and the assessee did not actually written off or reversed the interest credit entry in its accounts?*
2. *Whether on the facts and circumstances of the case, the Ld. CIT(A) was correct in deleting the addition of Rs.2,43,90,691/- made on account of accrued interest, ignoring the facts that this deduction was not claimed in the original return of income or by way of revised return of income and accordingly the claim made during the assessment proceedings was not in line with the decision of Hon'ble Supreme Court in the case of Toetze India Limited vs. CIT reported in 284 ITR 323 (SC)?*
3. *Whether on the facts and circumstances of the case, the Id. CIT(A) was correct in deleting the addition of Rs.2,74,42,000/- made u/s 68 of the Income Tax Act?*
4. *Whether on the facts and circumstances of the case, the Ld. CIT(A) was correct in restricting the addition of Rs.42,88,787/- made on account of disallowance of*

‘business promotion expenses’ to Rs.4,28,787/- by ignoring the fact that the assessee could not substantiate that the said expenditure was made wholly and exclusively for the purposes of its business?

5. *Whether on the facts and circumstances of the case, the Ld. CIT(A) was correct in deleting the addition to the extent of Rs.26,09,082/- out of ‘Diwali expenses’ ignoring the fact that the assessee could not substantiate that the said expenditure was wholly and exclusively for its business purposes?*

4. Grounds of appeal Nos.1 and 2 of the Revenue are inter-connected and are with respect to addition of Rs.2,43,90,691/- made on account of accrued interest. During the assessment proceedings A.O. on perusing the computation of income noticed that assessee had deducted Rs.2,43,90,691/- on account of “accrued interest not recoverable” from the total income. The assessee was asked to explain the reason for deducting the amount more so when the assessee has accounted for it in the books of

account and was following the mercantile system of accounting. In response to the query of AO the assessee, inter alia, submitted that assessee had charged the aforesaid interest to M/s. Polyplastics Automotive (India) Pvt. Ltd., on account of delay payment of outstanding sales payment, for which a debit note was raised, but the same was not accepted by M/s. Polyplastics Automotive (India) Pvt. Ltd., It was further submitted that due to uncertainty regarding its realisation, the aforesaid amount was not considered as part of income. It was thereafter submitted that in F.Y. 2012-13 the debit note was accepted by M/s. Polyplastics Automotive (India) Pvt. Ltd., and it had also deducted TDS and the same amount has been offered to tax in subsequent years. The submissions of the assessee was not found acceptable to A.O. The A.O. was of the view that deduction cannot be allowed as debts written off because for claiming deduction the primary condition is that debt should be written off in the books of account, but according to the assessee it had not written off the amount in the books of account. He further noted that assessee is

following the mercantile system of accounting and that no claim of deduction on account of accrued interest has been made in the return of income nor assessee has filed any revised return under section 139(5) of the I.T. Act, 1961 and the deduction has been claimed during the course of assessment proceedings which was not in line with the ratio of decision of Hon'ble Supreme Court in the case of Goetze India Ltd., vs., CIT reported in 284 ITR 323 (SC). He accordingly denied the claim of deduction and made the addition.

5. Aggrieved by the order of A.O. assessee carried the matter in appeal before the Ld. CIT(A) who deleted the addition made by the A.O. While deleting the addition, the Ld. CIT(A) has given a finding that since accrued interest on delayed payment of outstanding sales was not accepted by the concerned party viz., M/s. Polyplastics Automotive (India) Pvt. Ltd., the assessee has rightly deducted the alleged income from its computation of income and the assessee was justified in not offering the income to tax in view of real income theory for taxation according to which

no tax can be charged on hypothetical and unilateral income. He has further given a finding that assessee had not written off the amount in the books of account during the same financial year and assessee had also furnished the documents in respect of realisation of the aforesaid amount in subsequent years. The Ld. CIT(A) accordingly, set aside the addition made by the A.O.

6. Aggrieved by the order of the Ld. CIT(A), the Revenue is now in appeal before the Tribunal.

7. Before us, the Ld. D.R. took us through the findings of the A.O. and supported the order of A.O.

8. The Learned Authorised Representative, on the other hand, reiterated the submissions made before the authorities below and further submitted that the aforesaid amount which was not realised in A.Y. 2012-13 was realised by the assessee in A.Y. 2016-17 and was offered to tax in A.Y. 2016-17. In support of his contention, he has placed on record copy of the computation and the copy of acknowledgment of return of income for A.Y. 2016-17. He

also submitted that the contention of assessee that the ratio of decision in the case of Goetze India Ltd., vs., CIT (supra) is not applicable to the facts of the present case has been accepted by the Ld. CIT(A). He, therefore, submitted that considering the aforesaid facts, no interference is called for to the order of the Ld. CIT(A).

9. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to an addition of Rs.2,43,90,691/- made on account of accrued interest on delayed payment. We find that Ld. CIT(A) after considering the submissions of the assessee has given a finding that the aforesaid amount was not taxable in the year under consideration in view of real income theory. Before us, the Learned Authorised Representative has also placed on record the copy of the computation of income for the A.Y. 2016-17 demonstrating that the aforesaid amount has been offered to tax in the year under consideration. Considering the totality of the facts and circumstances of the case and in absence of any fallacy pointed by the Revenue in the findings of the Ld.

CIT(A), we find no reason to interfere with the order of the Ld. CIT(A) on this ground. We, therefore, **dismiss grounds of appeal nos.1 and 2 of the Revenue.**

10. Ground No.3 is with respect to deleting the addition of Rs.2,74,42,000/- by the Ld. CIT(A) made under section 68 of the I.T. Act, 1961 by the A.O.

11. During the course of assessment proceedings A.O. noticed that the Director of the Company Mr. Pawan Goyal deposited a sum of Rs.2,74,42,000/- as share capital. The assessee was asked to prove the identity, creditworthiness and genuineness of the transaction and identity of the deposits as per the provisions of Section 68 of the I.T. Act, 1961. The assessee, inter alia, filed copy of return of income of Mr. Pawan Goyal, copy of his bank statements. The A.O. on perusing the details furnished by the assessee noted that Mr. Pawan Goyal had introduced his income from undisclosed sources by depositing cash in his own bank account. The assessee was, therefore, asked to prove genuineness of the cash deposits, to which,

assessee, inter alia, submitted that Mr. Pawan Goyal is Proprietor M/s. Goyal Polymers engaged in Trading of Plastic Granules. It was submitted that a search operation under section 132 of the I.T. Act, 1961 was conducted on 22.10.2009 on residential and business premises of Mr. Pawan Goyal. Thereafter, consequent to the notice issued under section 153A of the I.T. Act, 1961, Mr. Pawan Goyal had filed his return of income disclosing aggregated income of Rs.4,20,00,000/- as unaccounted sales spread over in different assessment years i.e., from A.Y. 2007-08 to 2010-11. It was submitted that cash deposited in the Bank represented the unaccounted sales, disclosed in the return of income. The submissions of the assessee about the source and deposits was not found acceptable to A.O. as he was of the view that search was conducted on 22.10.2009 and thereafter after two years the amount was deposited in the Bank account and according to A.O. this period was sufficient to show that the assessee was not having any debtor from whom unrealized sales was recoverable. The A.O, therefore, concluded that assessee has failed to prove

the immediate source of earnings and nature of cash deposits in the bank by Mr. Pawan Goyal. He, therefore, held that share application money deposited by Mr. Pawan Goyal to be unexplained under section 68 of the I.T. Act, 1961 and accordingly, made it's addition of Rs.2,74,42,000/- to the total income of the assessee.

12. Aggrieved by the order of A.O. assessee carried the matter in appeal before the Ld. CIT(A). Before the Ld. CIT(A), assessee furnished detailed submissions and it was, inter alia, submitted that Mr. Pawan Goyal had explained the cash deposits as being out of the income surrendered during the course of search and in the assessment of Mr. Pawan Goyal the return of income has been accepted under section 143(3) of the I.T. Act, 1961 and no addition has been made on account of cash deposits from undisclosed income. The Ld. CIT(A) after considering the submissions of the assessee, deleted the addition made by A.O. by noting that assessee had established the identity of the share applicant, genuineness of the transaction of share application money and the addition has been made only for the reason that the

assessee could not explain the source of source of the deposits. The Ld. CIT(A) while deleting the addition has also noted that assessee is not required to explain the source of source. He accepted the genuineness of the source of cash deposits from unaccounted sales to be out of the income surrendered by Mr. Pawan Goyal and which has also been accepted by the jurisdictional A.O. of Mr. Pawan Goyal. He accordingly held that the creditworthiness of share application money has been proved. The Ld. CIT(A) accordingly directed the A.O. to delete the addition.

13. Aggrieved by the order of the Ld. CIT(A), the Revenue is now in appeal before the Tribunal.

14. The Ld. D.R. took us through the findings of A.O. and supported the order of A.O.

15. The Learned Authorised Representative for the Assessee reiterated the submissions made before the authorities below and supported the order of Ld. CIT(A).

16. We have heard the Learned Representative of both the parties and perused the material available on

record. The issue in the present ground is with respect to deletion of addition of Rs.2,74,42,000/- under section 68 of the I.T. Act, 1961. We find that before both the authorities the assessee had explained the source of cash deposits in the bank account of Mr. Pawan Goyal, from whom the assessee had received the share application money, to be out of the income surrendered on account of unaccounted sale during the course of search. Before us, the Revenue has not placed any material on record to demonstrate that the income surrendered in the case of share application money has not been accepted by the Revenue. Considering the totality of the facts and circumstances of the case and in absence of any fallacy pointed to in the findings of the Ld. CIT(A), we find no reason to interfere with the order of Ld. CIT(A) and thus, ground of appeal No.3 of the **Revenue is dismissed.**

17. Grounds of appeal Nos.4 and 5 of the Revenue is with respect to restricting the addition of Rs.42,88,787/- on account of 'business promotion expenses' and deleting

addition to the extent of Rs.26,09,082/- on account of 'Diwali expenses'.

18. During the course of assessment proceedings A.O. noted that assessee had debited a sum of Rs.47,88,165/- and a sum of Rs.56,68,240/- on account of business promotion expenses and Diwali expenses respectively. The assessee was asked to explain and justify the expenses, to which, assessee furnished details. The A.O. on examining the details noted that the expenses on account of purchase of gold coins, silver items, luxury holiday hotels, credit cards bills in the name of Directors of the company, which according to the A.O. was not incurred wholly and exclusively for assessee's business, inter alia, included purchase of gold coins and silver items. The assessee, inter alia, submitted that it was on account of gift distributed to its customers, suppliers etc., for promotion of the business. The A.O. did not accept the contention of assessee. He was of the view that the purchase of gold was for personal purpose and donated amounts were for other than business purposes and, therefore, the expenses cannot

be considered to be for business purpose. He also noted that assessee did not furnish details of persons to whom the gold coins and silver items were given. He, therefore, held that assessee has not discharged his onus to substantiate the claim that the expenses were wholly and exclusively incurred for the purpose of business and was not for personal in nature. He accordingly disallowed a sum of Rs.42,88,787/- towards 'Business promotion expenses' and Rs.56,18,586/- towards 'Diwali expenses'.

19. Aggrieved by the order of the A.O. assessee carried the matter in appeal before the Ld. CIT(A) . The Ld. CIT(A) while granting partial relief to the assessee noted that there was no finding in the assessment order that the business promotion expenses were actually incurred for the personal purpose of the Directors. He was also of the view that since assessee could not prove identity to whom the business/gifts promotion expenses were expended, but, since the disallowance made by the A.O. was on higher side, keeping in view of the large turnover of the assessee, the Ld. CIT(A) restricted the disallowance on account of business

promotion expenses to 10% i.e., Rs.4,28,878/- and granted relief to the extent of Rs.38,59,909/- and disallowed Diwali expenses to the extent of Rs.30,53,758/- and allowed the Diwali expenses to the extent of Rs.26,09,082/-.

20. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

21. Before us, the Ld. D.R. supported the order of the A.O.

22. On the other hand, the Learned Authorised Representative for the assessee reiterated the submissions made before the authorities below and further submitted that no evidence has been placed on record by the Revenue to demonstrate that the purchase of gold was for personal purpose and that the donated amounts was for purposes other than business purposes and the aforesaid conclusion of the A.O. is without any evidence on record. He, thus, supported the order of the Ld. CIT(A).

23. We have heard the Learned Representative of both the parties and perused the material available on record. We find that the Ld. CIT(A) after considering the detailed submissions made by the assessee before him has given a finding that there is no doubt about the genuineness of the expenditure and there is no finding in the assessment order that the business promotion expenses and Diwali expenses were incurred for the personal purpose / extraneous nature of expenses in the hands of Directors. The Ld. CIT(A), however, after considering that since the assessee could not give the full details, restricted the disallowance to the extent of 10% on business promotion expenses after considering the business and turnover of the assessee and similarly granted partial relief of Rs.26,09,082/- on account of 'Diwali expenses' against a sum of Rs.56,62,840/- claimed by the assessee on account of 'Diwali expenses'. Before us, the Revenue has not pointed out any fallacy in the finding of the Ld. CIT(A). We, therefore, find no reason to interfere with the order of the

Ld. CIT(A) and thus, the grounds of **appeal Nos.4 and 5 of Revenue are dismissed.**

24. **In the result, appeal of the Revenue is dismissed.**

Order pronounced in the open Court on 08.09.2022.

Sd/-
(MS. ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Delhi, Dated 8th Sept, 2022

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'C' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.