

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member
Sh. Yogesh Kumar US, Judicial Member**

ITA No. 4206/Del/2018 : Asstt. Year. 2011-12

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| DCIT, Central Circle-II, Faridabad | Vs | M/s Voestalpine VAE VKN India Pvt. Ltd., (Formerly known as M/s VAE VKN Industries (P) Ltd., 24/5, Sri Ram Road, Civil Lines, New Delhi-110054 |
| (APPELLANT) | | (RESPONDENT) |
| PAN No. AAACV3943J | | |

**Assessee by : Sh. Ajay Wadhwa, CA &
Ms. Ragini Handa, CA
Revenue by : Sh. Girish Kr. Kohli, Sr. DR**

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| Date of Hearing: 26.07.2022 | Date of Pronouncement: 13.09.2022 |
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-9, New Delhi dated 19.03.2018.

2. Following grounds have been raised by the Revenue:

"(i) Whether on the facts and in the circumstances of the case, the Id. CIT(A) was right in deleting the addition of Rs.2,41,98,983/- made on account of disallowance of R&D expenses being expenses of capital nature with enduring benefits.

(ii) Whether on the facts and in the circumstances of the case, the Id. CIT(A) was right in deleting the addition of Rs.5,38,36,475/- made on account of disallowance of bad debts claimed in respect of late delivery charges deducted by the Indian Railways which are penal in nature.

(iii) Whether on the facts and in the circumstances of the case, the Id. CIT(A) was right in deleting amount of Rs.4,60,762/- out of total addition of Rs.12,35,000/- made on account of disallowance of expenses of personal nature without assigning any reason."

3. The assessee company is engaged in the business of manufacturing of CMS Crossings, Point & Crossing/Switches and Castings, SG/CI Casting etc. The assessee filed return of income on 24.09.2011 declaring an income of Rs.7,50,08,030/-.

R&D Expenditure:

4. The assessee company claimed an expenditure of Rs.2,41,98,983/- in the P&L account for the year on account of R&D expenditure under the head "Manufacturing Expenses". The AO treated this amount as "capital expenditure" in nature and brought this amount to tax.

5. The Id. CIT(A) deleted the addition.

6. Aggrieved the revenue filed appeal before us.

7. Heard the arguments of both the parties and perused the material available on record.

8. The facts with regard to this issue reveal that the assessee entered into technology license fee agreement with VAE Gmbh Austria and others, Service Level agreement for Marketing services with Digvijay System & Services Pvt. Ltd. and for technical services with RDSO for capacity assessment. The assessee has debited the license fee, marketing fee and other technical fee paid during the year under the head R & D. As per the agreement, payment of technical license fee and marketing as payable for user and quantum dependent upon

the sales in the year and it is not an exclusive right and the use of the technology is not perpetual. Since the payment of license fee is based on the annual sales and it paid for the improvement in the production by using the knowhow and to provide the training to the personnel for using the technology for betterment of existing business, it was argued that the expenses should be considered as revenue in nature.

9. The assessee company has claimed an expenditure of Rs.2,41,98,983/- on account R & D Expenditure under the head of manufacturing expenditure. We have perused the details which have been enclosed at page no. 80 of the paper book. The same was also before the revenue authorities. The assessee paid an amount ranging from Rs.200/- to Rs.27,963/-, in total Rs.50,000/- (approx.) to Research Development and Standard Organization Lucknow (RDSO). The amounts have been paid for product drawing and regular assessment fee. The amounts have been paid from September 2010 to November 2010. An amount of Rs.75 lacs (approx.) has been paid to Digvijay System & Services Pvt. Ltd. from November 2010 to March 2011 after due deduction of TDS on account of annual fee for assistance in marketing activities which has been determined based on annual sale as per the terms of agreement. We find that an amount of Rs.66.30 lacs has been paid to Voestalpine VAE GmbH, Australia on account of Annual Technology License Fee as per the agreement. The clauses of the agreement have been perused and they indicate that this fee is for non-transferable license for production in India. Similar payments were made to JEZ Sistmasferroviarios, Spain of Rs.90.85 lacs on account of technical support for customers and examination of the simulation patterns with regard to the designs on ground.

10. In the background of the facts, we have examined the provisions of Section 37(1) of the Income Tax Act, 1961 which reads as under:

"Any expenditure (not being an expenditure of the nature described in section 30 to 36) and not being in the nature of capital expenditure or personal expenditure of the assessee (laid out or extended wholly and exclusively) for the purpose of the business shall be allowed in computing the income chargeable under the profit and gains of the business."

11. On examination of the details, we find that these expenses are incurred during the normal course of business. The expenditure such as annual technology licence fee, technical support services, assistance in canvassing orders, marketing services which are calculated and paid on the basis of annual sales made by the assessee every year in accordance with the agreement entered between the parties cannot be treated as capital expenditure. The Assessing Officer misread the head "R&D expenditure" which in fact was a manufacturing expenditure. On this issue, we are guided by the judgment of the Hon'ble Supreme Court in the case of Travancore Sugar and Chemical Ltd. Vs 62 ITR 566 wherein it was held that whenever an amount is paid based on a percentage of turnover or profit, it would have no relation to the capital value of the assessee. The facts in the instant case reveal that the payments have made for utilization of services on annual basis taking the turnover as baseline for computation and since no augmentation of the capital asset or transfer of technology or any right thereof accrued to the assessee, we hold that the expenditure ought to be treated as revenue in nature.

Bad Debts:

12. The company is an approved contractor for supply of railways crossing, switches etc. and other track components and the orders were obtained through open participation in tenders and has to follow the Indian Railways Standard Conditions issued by the Government of India, Ministry of Railways. The purchase orders were issued by the Zonal Railways Office and the assessee had to adhere to the delivery schedule. Whenever the orders are delivered late, the railways deduct a certain percentage of the invoice price as liquidated damages.

13. As per the Assessing Officer the assessee has claimed an expenditure of Rs.5,38,36,475/- out of which Rs.3,34,16,672/- have been shown as transfer from provision of bad debts, however as per audited financial statement for F.Y. 2010-11, no provisions for bad debts exists as on 01.04.2010. Further, the assessee has claimed these directly in the ITR instead of routing through the profit and loss account. The assessee has claimed an amount of Rs.2,04,19,803/- as bad debts in the profit & loss account.

14. The AO further held that the amounts written off were those which have already been deducted by the buyer on account of late delivery charges which is penal in nature imposed by the Indian Railways which is Government authority.

15. As could be deciphered from the complex order of the AO, it could be interpreted that the AO has made disallowance on the grounds that these amounts have not been reflected as provisions in the balance sheet and also that these amounts

were penal in nature imposed by Indian Railways which is a Government authority and hence disallowable.

16. The Id. CIT(A) deleted the addition.

17. Aggrieved the revenue filed appeal before us.

18. Heard the arguments of both the parties and perused the material available on record.

19. The assessee has furnished complete details giving the invoice wise deduction made by the railways. From the perusal of the details, it can be found that deductions made by the railways are being made in the earlier year and the assessee had made provisions under the head provision for bad and doubtful debts in the profit and loss account of respective financial years and the same amount has been added back to the income of the assessee while computing the income under head income from business or professions u/s 28. The said provision of the bad and doubtful debts has duly been reflected in the "Schedule F" of the balance sheet. The method of accounting is that the assessee raises bills for the sales of goods to the Indian Railways which gets credited to the sales account in the profit and loss account of the respective years. To verify this sales account for the respective years is examined along with the copies of sample sales invoices. The payment has been made by the railways after deducting the late delivery charges, and other taxes and provision has been made in the books on account of deduction with regard to late deliveries. The said amount has already been passed through the profit & loss account of earlier respective financial years under the head of provisions for bad and doubtful debts and had been disallowed while computing the income of the

assessee u/s 28 of the Act and the assessee has claimed the said amount as deduction directly in the computation of income as the amount was added back directly in the computation of income only in earlier assessment years. The assessee has furnished complete details of deductions made by the railway from the sales bill giving invoice wise deductions and nature of deduction. It is also fact on record that an amount of Rs.3,37,16,672/- directly shown in the computation of income as transfer from provisions for doubtful debts as the amount has already been debited to the profit & loss of the earlier years which has been added back by the assessee while calculating the taxable income. The balance amount of Rs.2,04,19,803/- pertain to the deduction made by the railways on the invoices raised for the year. Hence, it can be held that the amounts have been duly accounted under sales in the books of accounts, the due provisions have been made and when the recovery from the contractor/supplier have been made and liquidated damages are levied for late deliveries, they cannot be treated as penal in nature. Hence, the appeal of the revenue on this ground is liable to be dismissed.

Gift and Presents:

20. During the year ended 31.03.2011, the assessee debited amount of Rs.17,35,781/- on account of entertainment. It was found from the details of expenses by the AO that expenses have been incurred on marriage and gifts of personal in nature. The AO held that such expenses incurred on marriage cannot be termed as expenses incurred for business. In view of the fact, out of expenses on gift and presents amounting to Rs.17,35,781/- and amount of Rs.12,35,000/- was disallowed and added back to the income of the assessee. The Id. CIT(A)

confirmed an amount of Rs.7,74,238/- and deleted an amount Rs.4,60,762/-

21. Aggrieved, the revenue filed appeal against the relief granted by the Id. CIT(A) of Rs.4,60,762/-.

22. Before us, the Id. DR argued based on the Assessment Order. The Id. AR of the assessee reiterated the arguments taken up before the Id. CIT(A).

23. We find that the Id. CIT(A) has diligently worked out the details of the gifts and bills and confirmed an amount of Rs.7,74,238/- out of the disallowance of Rs.12,35,000/-. The relief given by the Id. CIT(A) was after due verification and corroboration. Hence, we decline to interfere with the order of the Id. CIT(A).

24. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 13/09/2022.

Sd/-
(Yogesh Kumar US)
Judicial Member
Dated: 13/09/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR