

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 166/JP/2021
निर्धारण वर्ष/Assessment Year : 2015-16

M/s. Chem Colour (India) Ltd. G-209 (E), I.P.I.A Kota – 324 005 (Raj)	बनाम Vs.	The ACIT Circle-2 Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACC9610 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Vijay Goyal, CA
राजस्व की ओर से / Revenue by: Smt. Manisha Choudhary, JCIT

सुनवाई की तारीख / Date of Hearing : 01/09/2022
उदघोषणा की तारीख / Date of Pronouncement: 15 /09/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 13-08-2021, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2015-16 wherein the assessee has raised the following ground of appeal.

“1. That the AO grossly erred on law and facts in making assessment u/s 92CA/143(3) in December 2019 thus the assessment is time barred. The ld. CIT(A) faceless also erred in not considering the said ground and the limitation for

completion of assessment extended. The assessment is time barred and it is to be canceled.

2. That the AO grossly erred in law and facts in making disallowance out of Misc. Expenses of Rs.8,286/- and the ld. CIT(A) Faceless also erred in confirming the said addition.

3. That the AO grossly erred on law and facts in making disallowance and the ld. CIT(A) faceless also erred in not allowing the ground and confirming the addition made by the AO i.e. disallowance out of interest expenses of Rs.6,66,310/- .”

2.1 Brief facts of the case are that the assessee in this case filed e-return on 30-11-2015 declaring total income of Rs.16,53,640/-. The case of the assessee was selected for “Complete Scrutiny” through CASS. A notice u/s 143(2) was issued on 16-03-2016 by the ACIT, Circle-1, Kota which was duly served upon the assessee. Because of transfer of jurisdiction of the assessee, a notice u/s 142(1) alongwith query letter was issued to the assessee on 5-09-2019 by the AO (ITO, Ward 1(1), Kota for which assessee furnished required documents and details and these were examined by the AO on test check basis. In this case, it is noted that the AO made disallowances of Rs.8,286/- and Rs.6,66,310/- by giving following reasons.

“Disallowance out of Misc. Expenses of Rs.82,860/-

“4.1 It has been observed during the course of assessment proceedings that the assessee has claimed expenses of Rs.82,860/- under the head Misc. Expenses.

4.2 On perusal of the statement of account, the expenses are not properly vouched and are supported by self prepared vouchers. The said expenditures were mostly met through cash. As per judgement

256 ITR 701 (A.P.) in case of Transport Corporation of India, self made vouchers are only a claimant not a proof.

4.3 The assessee has not submitted any satisfactory explanation in this regard. Considering above fact, I make a disallowance @ 10% of aforesaid expenses which comes to Rs.8,286/- u/s 37(1) of the Income Tax Act, 1961 and added to the total taxable income of the assessee.

Disallowance of Rs.6,66,310/-

5.4 I have gone through the explanation given by the assessee and did not find any merit in the arguments placed by the assessee as the assessee cannot deny that the amount has been invested out of borrowed fund also and to make the justice and clarity of working for disallowance u/s 36(1)(iii) of the Income Tax Act, 1961, I have considered and taken the basis as provided in rule 8D of Income Tax Rules for making disallowance u/s 36(1)(iii) of the Income Tax Act, 1961.

5.5 I have gone through the findings of the judgement referred by the assessee and fully agreed with the arguments but I have proposed the addition u/s 36(1)(iii) of the Income Tax Act, 1961 and the interest has been worked out as per provision of Rule 8D to have proper and justified way of calculation and no addition u/s 14A of the Income Tax Act, 1961.

5.6 I, therefore, disallowed a sum of Rs.6,66,310/- u/s 36(1)(iii) of the Income Tax Act, 1961 and added to the total income of the assessee.”

3.1 During the course of hearing, the ld. AR of the assessee has not pressed the Ground No. 1. Hence, the same is dismissed being not pressed.

4.1 The Ground No. 2 raised by the assessee is regarding challenging the order of the ld. CIT(A) in upholding the action of the AO as to disallowance of miscellaneous expenses of Rs.8,286/-. In this regard, the ld. AR reiterated the same

arguments as raised by him before the lower authorities and further submitted before us that without any reason the ld. CIT(A) sustained the disallowance out of Misc. Expenses whereas the expenses are backed by Bills and vouchers and thus there is no need to make lumpsum addition. To this effect, the ld. AR of the assessee relied on following decisions.

- (1) Om Prakash Joshi vs ITO (2009) 345 OT 35 (Jodhpur)
- (2) Resonance Eduventures Pvt. Ltd. vs ACIT, Kota (ITA No. 383/JP/2016 A.Y. 2012-13 order dated 29-05-2017)
- (3) ACIT vs Vanesha Cosmetics (2021) 204 DTR 393 (ITAT Del.)

4.2 Thus, the ld. AR prayed for deletion of addition confirmed by the ld. CIT(A).

4.3 On the contrary, the ld. DR relied on the order of the ld. CIT(A) and submitted that the expenses so claimed by the assessee are not properly vouched and are supported by self prepared vouchers. Thus these self made vouchers can only be treated as claim of the assessee but not with proper proof. Therefore, the ld. DR prayed to dismiss this ground raised by the assessee.

4.4 The Bench heard both the parties and perused the materials available on record. From the arguments of the ld. AR, we noticed that the turnover of the assessee for the year under consideration is around 40 Crores and the expenses claimed by the assessee are amounting to Rs.82,860/-. Although the AO has allowed 90% of the expenses yet restricted disallowance @ 10% of the expenses

on guess work. The AO was expected to mention the sufficient reason for making disallowance @ 10% of the expenses whereas on the contrary the assessee has submitted all the bills and vouchers as to the expenses so incurred by the assessee. It is observed that the AO has not carried out necessary investigation to disprove the bills and vouchers submitted by the assessee. Taking into consideration the facts, circumstances as well as the decisions cited by the assessee, the Bench is of the view that when all the expenses as claimed by the assessee are backed by bills and vouchers then the AO was expected to carry out necessary investigations to disprove those bills and vouchers claimed by the assessee and the AO was not expected to make ad hoc disallowance on the basis of conjectures and surmises. Hence, the addition so sustained by the Id. CIT(A) is directed to be deleted by allowing the Ground No. 1 of the assessee.

5.1 In Ground No.3, the assessee is aggrieved that the Id. CIT(A) has erred in confirming the addition made by the AO i.e. disallowance of Rs.6,66,310/- out of interest expenses.

5.2 In this case it is noted that the AO has made an addition of Rs.6,66,310/- by observing as under:-

“5.4 I have gone through the explanation given by the assessee and did not find any merit in the arguments placed by the assessee as the assessee cannot deny that the amount has been invested out of borrowed fund also and to make the justice and clarity of working for disallowance u/s 36(1)(iii) of the Income Tax Act, 1961, I have considered and taken the basis as provided in rule 8D of Income Tax

Rules for making disallowance u/s 36(1)(iii) of the Income Tax Act, 1961.

5.5 I have gone through the findings of the judgement referred by the assessee and fully agreed with the arguments but I have proposed the addition u/s 36(1)(iii) of the Income Tax Act, 1961 and the interest has been worked out as per provision of Rule 8D to have proper and justified way of calculation and no addition u/s 14A of the Income Tax Act, 1961.

5.6 I, therefore, disallowed a sum of Rs.6,66,310/- u/s 36(1)(iii) of the Income Tax Act, 1961 and added to the total income of the assessee.”

5.3 In first appeal,, the ld. CIT(A) has confirmed the action of the AO by observing as under:-

“8.4 Appellant did not bring any material on record to establish that the property for which the advance was given was in fact used for the expansion of the business. Thus the appellant did not establish the commercial expediency as claimed. Hence, the disallowance of Rs.6,66,310/- u/s 36(1)(iii) is upheld.”

5.4 During the course of hearing, the ld. AR of the assessee submitted that the ld. CIT(A) has erred in confirming the action of the AO. However, the ld. AR tried to make out the case of the assessee in first appeal before the ld. CIT(A) who has not taken care of properly the submission raised before him. During the course of arguments before this Bench, the ld. AR submitted that Details of Financial Cost is at PB pg 33 showing total amount at Rs. 23,14,697.22 and Ledger a/c of Various expenses under Financial Cost are at PB Page 38 to 41. He further submitted that out of total Financial cost of Rs. 23,14,697.22, the interest payment was made of

Rs. 4,10,540/- only. Hence, the balance amount was currency fluctuation amounting to Rs. 11,97,877/-. He further submitted that Bank charges of Rs 6,66,034.22 & Commission to others of Rs. 40,336/- cannot not be categorised as interest whose bifurcation are available (PB Page 33 and 59) and thereupon provision of section 36(1)(iii) is not applicable. The Id. AR further submitted that interest was paid for loans taken for specific purpose (PB Page 59) and not for making the investments in properties and shares. The Id. AR thus submitted that no investment was made in mutual funds but investment was made in equity shares of other company amounting to Rs. 2.19 crore (PB pg 29 Note -2.10) and thereupon provision of section 36(1)(iii) is not applicable. The advance against property was of Rs. 8.70 Crore (detail at page 5 of WS/ PB 31 Note 2.16) . The property advance was given for expansion of business which should be considered as commercial expediency. The Id. AR further submitted that the assessee had Sufficient own funds whose details are as under:-

Share capital 6,56,60,000/- **(PB pg 27)**

Reserves and Surplus Rs. 16,97,240/- **(PB pg 27)**

Non-interest-bearing creditors etc. Rs. 13,39,10,462 **(PB 29,**

Other Current Liabilities Rs. 1,02,99,282/- **(PB page 29)**

Thus, Total own funds and non interest bearing funds was to the tune of Rs. 21,15,66,984/- against which the investment made was of Rs. 8.70 crore in advance against properties **(detail at page 5 of WS/ PB 31 Note 2.16)** and

investment of Rs. 2.19 crore (**PB pg 29 Note -2.10**) in shares of subsidiaries. The ld. AR submitted that the AO made disallowance u/s 36(1)(iii) by applying rule 8D of Income Tax Rules which is applicable for section 14A not for section 36(1)(iii). If sufficient non-interest-bearing funds are available with the assessee then no disallowance should be made on account of non-interest bearing investment made to that extent. To this effect, the ld. AR relied on following cases in support of his submissions

- a) *Commissioner of Income Tax Vs. Vijay Solvex Ltd. (2015) 113 DTR 0382 (Raj)*
- b) *Assistant Commissioner of Income Tax Vs. Ram Kishan Verma ITAT, Jaipur 'B' Bench ITA NO. 589/JP/2011; ASST. YR. 2006-07 order dated 31st October, 2011 (2011) 30 CCH 0561 JaipurTrib (2012) 143 TTJ 0001 (UO).*
- c) *Satish Katta vs. Assistant Commissioner of Income Tax ITAT, Jaipur 'A' Bench ITA NOS. 508 & 509/JP/2007 & 370/JP/2008; ASST. YRS. 2002-03 TO 2004-05 order dated 31st July, 2008 (2008) 27 CCH 0580 Jaipur Trib (2008) 13 DTR 0237.*
- d) *Supreme Court in Hero Cycles (P) Ltd Vs CIT 63 Taxmann,com 308 (SC)*

5.5 On the other hand, the ld. DR supported the orders of the lower authorities.

5.6 After hearing both the parties and perusing the materials available on record.

It is observed from the available records and arguments of the ld. AR of the assessee that interest is paid on bank borrowing late payment etc. which is not payment of interest for diversion of interest bearing funds. It indicates from the above details that the assessee was having sufficient non-interest bearing funds to make investment in shares and properties. In view of the above submissions and

details submitted by the assessee, the Bench does not find reason to concur with the order of the lower authorities and thus allow the Ground No. 3 by directing the AO to delete the addition so made by him. Thus Ground No. 3 is allowed.

6.0 In the result, the appeal filed by the assessee is partly allowed

Order pronounced in the open court on 15 /09/2022.

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 15/09/2022

*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- M/s. Chem Colour (India) Ltd.
2. प्रत्यर्थी / The Respondent- The ACIT, Circle-2, Kota
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 166/JP/2021)

आदेशानुसार / By order,

Asstt. Registrar