

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

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No.1931/Del/2017
Assessment Year: 2002-03

Global Green Company Ltd., Thapar House, 124 Janpath, New Delhi	Vs.	Dy. Commissioner of Income Tax, Circle-10(1), New Delhi
PAN :AAACR0635H		
(Appellant)		(Respondent)

Appellant by	Sh. Yogesh Thar, CA Sh. Ankit Aggarwal, Advocate
Respondent by	Sh. Mrinal Kumar Das, Sr. DR

Date of hearing	21.10.2022
Date of pronouncement	19.01.2023

ORDER

PER SAKTIJIT DEY, JM:

Captioned appeal by the assessee arises out of order dated 31.01.2017 of learned Commissioner of Income Tax (Appeals)-37, New Delhi, pertaining to assessment year 2002-03.

2. In ground no. 1, the assessee has challenged disallowance of Rs.75,37,408/-, being payment made to M/s. Ballarpur Industries Ltd. towards administrative expenses.

3. Briefly the facts are, the assessee, a resident corporate entity, is engaged in the business of processing and export of pickled gherkins, baby corns etc. For the assessment year under dispute, the assessee filed its return of income on 31.10.2002 declaring loss of Rs.12,57,05,553/-. In course of assessment proceedings, the Assessing Officer noticed that in the year under consideration, the assessee had debited an amount of Rs.75,37,408/- to the profit and loss account towards payment made to M/s. Ballarpur Industries Ltd. He further noticed, while computing the taxable income, the assessee added back the amount to the income. Whereas, in course of assessment proceeding, vide letter dated 21.02.2005, the assessee again claimed it as expenditure under section 37(1) of the Act. After considering the submissions of the assessee to the effect that the expenditure was incurred on account of various facilities provided by M/s. Ballarpur Industries Ltd., the Assessing Officer observed that there is nothing on record to suggest that M/s. Ballarpur Industries Ltd. provided any services to the assessee. He further alleged that even, copy of agreement in this regard was not filed by the assessee, nor any details regarding services rendered by M/s. Ballarpur Industries Ltd. were filed. Accordingly, he rejected

assessee's claim of deduction. Learned Commissioner (Appeals), while deciding the issue in appeal upheld the disallowance.

4. Before us, learned counsel appearing for the assessee submitted that all details were furnished before the Assessing Officer in course of assessment proceedings. In this regard, he drew our attention to letter dated 15th January, 2014 stated to have been furnished before the Assessing Officer in course of remand proceeding. He also drew our attention to agreement dated 4th April, 2001 between the assessee and M/s. Ballarpur Industries Ltd. and submitted, the assessee actually received facilities and services from M/s. Ballarpur Industries Ltd. in terms of the agreement. In this context, he drew our attention to the debit notes issues by M/s. Ballarpur Industries Ltd. Finally, he submitted, no such disallowance was ever made by the Assessing Officer in the earlier or future assessment years.

5. Learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

6. We have considered rival submissions and perused the materials on record. Though, it may be a fact that certain details were not furnished by the assessee in course of the assessment

proceeding, however, it is evident, in course of proceeding before the first appellate authority and remand proceeding before the Assessing Officer, the assessee did furnish various details regarding the facilities/services availed from M/s. Ballarpur Industries Ltd. A copy of agreement was also furnished before the authority concerned. On perusal of the copy of agreement placed at page 302 of the paper-book, it is observed that M/s. Ballarpur Industry Ltd., which is the flagship company of the group is not only maintaining a head office at New Delhi but also maintaining various departments to provide services through its employees posted at its head office in the field of taxation, legal, insurance, secretarial, finance, computer services, people development and communication, administration & security services and liaison etc. For this purposes, M/s. Ballarpur Industries Ltd. is also maintaining necessary infrastructure at its own cost, such as, manpower, telephone, fax, EPABX, computer, electricity, library, office stay etc. and guest houses at various locations and takes care of its maintenance and other infrastructure. Thus, M/s. Ballarpur Industry Ltd. provides not only facilities but various services through its technically qualified personnel to other group companies as well as assessee and the cost incurred is shared

with the group companies. From the debit notes placed in the paper-book, it is observed, the cost incurred by M/s. Ballarpur Industries Ltd. for other companies, including assessee includes, car lease rent, traveling expenses, printing and stationary, professional expenses, office maintenance expenses, electricity and water expenses, corporate expenses like salary etc., computer maintenance expenses, telephone expenses etc. Thus, from the materials available on record it is noticeable that the assessee, in fact, has availed certain facilities and service from M/s. Ballarpur Industry Ltd., for which, payments have been made. From the history of such payments made, it is further evident that beginning from 2007-08, the expenditure claimed has been allowed in all assessment years, past and future, except, the impugned assessment year. It is relevant to observe, in assessment years 2007-08 and 2010-11, learned Commissioner (Appeals) has allowed such expenses. Thus, considering the overall facts and circumstances of the case, we are of the view that the assessee having incurred the expenses for its business, is entitled to claim deduction. Accordingly, we delete the disallowance.

7. In ground no. 2, the assessee has challenged disallowance of miscellaneous expenses of Rs. 56,31,745/-.

8. Briefly the facts are, in course of assessment proceeding, the Assessing Officer found that in the return of income, the assessee had added back an amount of Rs.56,31,745/- representing miscellaneous expenditure. Whereas, in course of assessment proceeding, the assessee again claimed it as deduction. Alleging that the assessee failed to furnish any evidence whatsoever to demonstrate that the expenditure was incurred wholly and exclusively for business purposes, he disallowed the same. While deciding the issue in appeal, learned Commissioner (Appeals) upheld the disallowance with the observation that the assessee failed to furnish any bills or vouchers in support of such expenses.

9. Before us, learned counsel appearing for the assessee submitted that at no stage of proceedings before departmental authorities, the assessee was called upon to furnish the bills and vouchers. He submitted, the expenditure incurred forms a miniscule part of the turnover of the assessee. Further, he submitted, no such disallowance has been made in any other assessment year.

10. Learned Departmental Representative strongly relied upon the observations of the Assessing Officer.

11. We have considered rival submissions and perused the materials on record. As observed earlier, the departmental authorities have disallowed assessee's claim of expenditure primarily on the ground that no supporting evidence for incurring of the expenditure was furnished. As could be seen, the assessee in its letter dated 21st February, 2005 submitted before the Assessing Officer claiming the expenditure. Though, in the return of income the assessee had *suo motu* added back the expenditure to the income. From the said letter filed before the Assessing Officer it is observed that the expenses are incurred under various heads, such as, market development expenditure, professional fee, gardening and housekeeping charges, head office reimbursement, reimbursement of top managements, directors expenses, office maintenance, factory maintenance, security charges, wastages and disposals, computer maintenance, printing and stationary etc. However, no supporting evidence, even sample copies of vouchers and bills have been submitted by the assessee, at any stage. It is also relevant to observe, on perusal of agreement with M/s. Ballarpur Industries Ltd. for availing certain

services and facilities, it is observed that some of the expenditure claimed as miscellaneous expenses are common to the expenses/payments made to M/s. Ballarpur Industries Ltd. for availing certain facilities and services. Therefore, the burden is on the assessee to establish the claim through authentic evidence. No material has been placed on record by the assessee to establish such claim.

12. In view of the aforesaid, we decline to interfere with the decision of the departmental authorities on the issue. This ground is dismissed.

13. Ground no. 3 is not pressed due to smallness of the addition made. Accordingly, this ground is dismissed as not pressed.

14. In ground no. 4, the assessee has challenged disallowance of Rs.19,44,344/- representing employees contribution to Provident Fund (PF). It is the case of the assessee before us that the payment having been made within the due date of filing of return of income, it has to be allowed.

15. However, in a recent decision in case of Checkmate Services Pvt ltd. Vs CIT- I , Civil Appeal No. 2833 of 2016 & Ors, dated 12th October, 2022, the Hon'ble Supreme Court has laid down the ratio that unless employee's contribution to PF is remitted

within the due date prescribed under section 36(1)(va) of the Act, no deduction can be allowed.

16. In view of the aforesaid, we remit the issue to the Assessing Officer to factually verify the actual date of payment by the assessee and thereafter decide the issue in the light of the ratio laid down in case of Checkmate Services Pvt. ltd. (supra). Ground is allowed for statistical purposes.

17. In the result, the appeal is partly allowed.

Order pronounced in the open court on 19th January, 2023

Sd/-
(G.S. PANNU)
PRESIDENT

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 19th January, 2023.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi