

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 2043/Del/2017 : Asstt. Year : 2012-13

National Textile Corporation Ltd., Core-4, Scope Complex-7, Lodhi Road, New Delhi	Vs	Addl. CIT, Special Range-6, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACN2847D		

ITA No. 1969/Del/2017 : Asstt. Year : 2012-13

Addl. CIT, Special Range-6, New Delhi	Vs	National Textile Corporation Ltd., Core-4, Scope Complex-7, Lodhi Road, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACN2847D		

**Assessee by : Sh. Manoj Kumar Anand, CA
Revenue by : Sh. Ajay Kumar Arora, Sr. DR**

Date of Hearing: 06.12.2022	Date of Pronouncement: 07.02.2023
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ORDER

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

The present appeals have been filed by the assessee and the Revenue against the orders of Id. CIT(A)-33, New Delhi dated 27.01.2017.

2. The assessee has raised the following grounds of appeal:

"1. That the disallowance of Rs 30,84,050/- u/s 14A read with rule 8D of the I-T Act 1961 is incorrect in law and on the facts of the case & prayed for deletion.

2. That assessee be allowed Rs 19,08,26,076 as additional depreciation u/s 32(1) (iia) of preceding year (F.Y. 10-11) which was claimed 'A only & assessee is eligible to claim the

balance A in current financial year (F.Y. 11-12) & prayed for it allowance in the current financial year.

3. That raising of demand of Rs 36,41,59,287/- against the assessee ignoring BIFR order is bad in law and on the facts of the case & need to be deleted.

4. That assessee's income is to be reduced by Rs 2,24,00,00,000 being earned against sale of FSI, which isn't taxable income & prayed for its reduction."

3. The revenue has raised the following grounds of appeal:

"1. Whether in facts and on circumstances of the case, the Ld. CIT(A) is legally justified in deleting the disallowance of prior period expenditure of Rs. 2,85,98,000/- following its order in case of assessee for earlier assessment year and without recording material evidence to reach a conclusion that liability to incur the expenditure was actually crystallized during the year under consideration and by ignoring a fact that the assessee had not proved that liability to incur expenditure of Rs. 2,85,98,000/- was actually crystallized during the year under consideration?"

2. Whether in facts and on circumstances of the case, the Ld. CIT(A) is legally justified in allowing relief to the assessee on issue of prior period expense on the basis of its order in the case of the assessee for the earlier assessment year without realizing that the issue involving factual verification cannot be decided on the basis of its decision for earlier assessment year based on peculiar facts of that year?"

3. Whether in facts' and on circumstances of the case, the Ld. CIT(A) is legally justified in allowing relief to the assessee on the basis of its earlier order in the assessee's own case despite the fact that principle of res-judicata is not applicable to Income Tax proceedings as each assessment year is a separate year?"

Disallowance u/s 14A:

4. The AO made disallowance of Rs. 30,84,050/- u/s 14A read with Rule 8D. The Assessee has received dividend income of Rs. 7,02,91,580/- which was claimed as exempt u/s 10(34) of the Act. The assessee has disallowed an amount of Rs. 905915/-. A *suo moto* u/s 14A. The total investment made by

the assessee was Rs. 21.38 crores. The AO disallowed interest expenditure of Rs. 29,20,847/- attributable to income which does not form part of the total income. Before the Id. CIT(A), the assessee submitted the details of interest of Rs. 48,67,65,130/- as under:

<i>Details of Interest</i>		
<i>Particulars</i>	<i>Amount</i>	<i>Remarks</i>
<i>Interest on Loan from GO1</i>	<i>43,34,31,714</i>	<i>Working capital assistance from Govt. to run Sick Mills</i>
<i>Interest on Bank Loans for Working Capital</i>	<i>29,26,573</i>	<i>For working capital requirements of NTC</i>
<i>Interest on trade credits</i>	<i>15,13,299</i>	<i>Interest paid to Selling Agents against their Security Deposit</i>
<i>Interest on cotton dues</i>	<i>2,57,13,091</i>	<i>Interest paid against purchase of cotton</i>
<i>Interest on other loan and deposits</i>	<i>9,90,828</i>	<i>Interest paid to Employees against their Security Deposit</i>
<i>Interest on Provident Fund & ESI Dues</i>	<i>7,350</i>	<i>Interest paid for provident fund & ESI dues</i>
<i>Surcharge on Water/Electricity etc.</i>	<i>7,94,470</i>	<i>Mainly for delayed payment of Electricity bills.</i>
<i>Interest on Others</i>	<i>40,19,103</i>	<i>Usual Business Expenses</i>
<i>Bank Charges</i>	<i>89,84,761</i>	<i>Charges Paid to Bank</i>
<i>Cash Discount allowed'</i>	<i>83,56,209</i>	<i>Discount given on Cash Payment</i>
<i>Foreign Exchange Rate Difference</i>	<i>27,732</i>	<i>Expense due to Rate Difference</i>
<i>TOTAL</i>	<i>48,67,65,130</i>	

5. Provisions of Rule 8D are as under:

"Method for determining amount of expenditure in relation to income not includible in total income.

8D. (1) Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with—

- (a) the correctness of the claim of expenditure made by the assessee; or*
- (b) the claim made by the assessee that no expenditure has been incurred, in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in*

relation to such income in accordance with the provisions of sub-rule (2).

[(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:—

- (i) the amount of expenditure directly relating to income which does not form part of total income; and*
- (ii) an amount equal to one per cent of the annual average of the monthly average of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income :*

Provided that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee.]

*(3) [***]"*

(ii) In a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt an amount computed in accordance with the following formula, namely:

AXB

C

Where A=amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year;

B=the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

C=the average of total assets as appearing in the balance sheet of the assessee, on first day and the last day of the previous year;

6. In the instant case

A=amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year was Rs. 40,19,403/- as can be deciphered from the table. With regard to B&C of the Formula the AO is directed

to take into consideration the "dividend yielding investments" while computing the disallowance. The appeal of the assessee on this ground is allowed for statistical purposes.

Additional Depreciation:

7. The company claimed additional depreciation on new plant and machinery installed during the year from the details furnished, the AO found that the assessee claimed depreciation @20% on though the machinery was put to use for less than 180 days and hence, depreciation as well as additional depreciation was allowed @ 50% of the allowable amount in accordance with section 32(1)(iia). A concurrent reading of provisions of section 32(1) and 32(1)(iia) of the Act we hold that the assessee is eligible for 50% of depreciation allowance and additional depreciation on the plant and machinery procured.

Sale of FSI:

8. Assessee for the first time has taken up the issue of capital gains arising out of sale of FSI before the Id CIT(A). The same is as under:-

"Reduction in income by Rs 2,24,00,00,000 against sale of FSI: -
The brief facts of the case are that assessee Computed Capital Gain considering it as Sales Price. In this regard it is respectfully submitted in the very case of CIT Vs. Sambhaji Nagar coop Hsg Society Ltd, ITA No. 1356 of 2012, Date of Order: 11.12.2014, by Hon'ble Bombay High Court held that sale of FSI isn't taxable. Please note that this order is after the date of filling of return as on 29.09.2012 & this fact was duly submitted to Ld. AO as per paper book page No. 133 vide point no 4 (Not repeated here again for the

sake of brevity), which was ignored by him. Now it is prayed to direct the AO for reduction of income including profit u/s 115 JB by Rs 224.00 Crores.

This has reference to discussions held as on 17th Jan 2017, it is respectfully submitted that assessee has not paid any amount against acquiring of FSI of Rs. 2,24,00,00,000/- as sold during the year. This FSI was given by MHADA (Maharashtra Housing and Development Authority) & MCGM (Municipal Corporation Of Greater Mumbai) as per their policy against surrender of land acquired at nil cost. Please note that the land was transferred to NTC as per Nationalization Act 1974,1986 & 1995 as passed by Parliament of India to safeguard the interest of workers employed therein.

Note on FSI sale in Mumbai of Rs. 224,00,00,000 The following 3 agreement to Sale are submitted:

28,00,00,000.00	Page no 90-125
1,40,00,00,000.00	Page no 126-155
56,00,00,000.00	Page no 156-185
2,24,80,00,000.00	

In this regard it is respectfully submitted in the very recent case of CIT Vs. Sambhaji Nagar Coop. Hsg. Society Ltd., I.T.A. No. 1356 of 2012, Date of Order 11.12.2014, by honourable Bombay High Court held that sale of FSI isn't taxable. Please note that this order is after the date of filing of return as on 29.09.2012.

In our case Rs. 186,85,46,000 has been shown as long Term Capital Gain.

Your Goodself are requested to reduce the taxable income (MAT tax effect also) by Rs. 186,85,46,000 and oblige.

It is further submitted that as held in the following cases, if any expenses (or Excessive Income) isn't claimed (or reduced) in the ROI, it can be allowed (or reduced) by A. O. during assessment proceedings:-

- Jute Corporation Of India Ltd. vs CIT (1991 (187) ITR 688 (SC))
- National Thermal Power Co. Ltd. vs CIT (1998 (229) ITR 383 (SC))
- CIT vs Pruthvi Brokers & Shareholder (P) Ltd. (ITA NO 3908 of 2010)"

9. The Id. CIT(A) held that the above referred order Hon'ble Mumbai High Court dismissed Revenue's appeal by holding that the appeal does not raise any substantial question of law. No principle are laid down in the said order of Hon'ble Mumbai High Court. The same does not help the case of the assessee.

10. The Id CIT(A) held that during the appellant proceedings after discussion the counsel for the appellant submitted that ground no 9 is not pressed. Before us, it was argued that the matter indeed has been argued before the Id. CIT(A), however it was found to be omitted and hence another opportunity be given in the interest of justice. The Id. DR argued that having not pressed the issue before the Id. CIT(A) further recourse cannot be sought from the Tribunal. Having considered the entire factum and the issue involved, we hereby hold that no prejudice would be caused to the Revenue if the matter is remanded back to the file of the Id. CIT(A) for adjudication afresh who shall take a decision in accordance with the Income Tax Act after given an opportunity of being heard to the assessee.

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11. The solitary issue involved in the appeal of the revenue pertains to disallowances of "Prior period expenses".

12. We find that this is a covered issue & relief has been granted earlier also on the same ITAT & CIT(A) for the A.Y. 2008-09, 2009-10.

13. In the current year there is a prior period income of Rs. 285.98 Lakhs which is adjusted against prior period expenses of Rs. 531.57 Lakhs. This practice has been consistently followed by assessee since inception & duly accepted by the department also in all its earlier orders for A.Y. 2007-08 & 2008-09 & 2010-11. The details of Net Prior Period Expenses as has been added back in the COI are as follows:

A.Y.	2007-08	2008-09	2009-10
Amount	4,22,94,313.00	2,28,94,60,659.00	6,38,82,722.00
A.Y.	2010-11	2011-12	2012-13
Amount	5,20,36,911.00	Income(Net)	2,45,59,430.00
A.Y.	2013-14	2014-15	2015-16
Amount	Income(Net)	1,57,47,097.00	49,31,02,928.00

14. The coordinate bench of Tribunal while deciding the issue for A.Y.2009-10 held as under:

".....The assessee has incurred prior period expenses of Rs. 16,61,43,5087 It had prior period income of Rs. 10,22,60,782/-. The net prior amount of Rs. 63,88,272/-, was already added by the assessee in the computation of income. Thus the finding of the first Appellate Authority that there is a double addition of Rs.63,88,272/- is factually correct. As far as the balance amount is concerned the assessee's contention is that the amount has crystallized during the year, as the assessee came to know about these expenses only in the P. Y. 2008-09.

The second limb of the argument of the assessee is that, which has been consistently following the policy of netting out prior period income with prior period expenses and the net effect was disclosed in the computation of income. It was also submitted that such a treatment was accepted by the Revenue for the AY 2007-08 and 2008-09. The First Appellate

Authority has, on the principle of consistency, accepted the contentions of the assessee. We find no infirmity in the same. Thus ground no.3 and 4 are dismissed."

15. Having perused the issue, in the absence of any change in the factual content and the legal proposition we decline to interfere with the order of the Id CIT(A) which was rightly based on the earlier order of the Tribunal.

16. In the result, the appeal of the assessee is partly allowed and the appeal of the Revenue is dismissed.

Order Pronounced in the Open Court on 07/02/2023.

Sd/-

(Yogesh Kumar US)
Judicial Member

Dated: 03/07/2023

Subodh Kumar/AK, 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