

आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
श्री राजेश कुमार, लेखासदस्य एवं श्री संजय शर्मा, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 225/Kol/2019
Assessment Year: 2012-13

ACIT, Circle-2(1), Kolkata	Vs.	M/s Semall Impex Private Limited (PAN: AADCS 6554 P)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	20.12.2022
Date of Conclusion of Hearing/ सुनवाई के समापन की तारीख	24.03.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	28.03.2023
For the Appellant/ निर्धारिती की ओर से	Shri K. M. Roy, CA
For the Respondent/ राजस्व की ओरसे	Smt. Ranu Biswas, Addl. CITDR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-1, Kolkata (hereinafter referred to as the Ld. CIT(A)”) dated 28.11.2018 for the AY 2012-13.

2. The First issue raised by the revenue is against the deletion of addition of Rs. 55,546/- by the Ld. CIT(A) as made by the AO u/s 36 (1)(va) of the Act in respect of employees contribution to provident fund deposited beyond the due date under the relevant Act.

3. After hearing the rival submissions and perusing the material on record and also considering the decision of Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. vs. CIT in (2022) 143 taxmann.com 178 (SC) dated 12.10.2022, we are of the view that the issue is squarely covered by the above mentioned decision against the assessee and in favour of the revenue. In this case the EPF was beyond the time limit specified under the relevant Act and therefore disallowed by the AO. The addition was deleted by the Ld CIT(A) on the ground that the payments were made before filing the return of income. Now this issue is settled by the Hon'ble Apex Court. Accordingly ground no. 1 is allowed.

4. Issue raised in ground no. 2 is against the order of Ld. CIT(A) deleting the addition of Rs. 1,56,10,764/- as made by the AO on account of foreign exchange loss suffered by the assessee during the year as the assessee is neither exported nor it had made any foreign transactions.

5. Facts in brief are that the assessee company has its unit set up in Falta Special Economic Zone and is registered with Development Commissioner FSEZ. Since the assessee is situated in special economic zone so the entire turnover was deemed to be export turnover u/s 2(m) of the SEZ Act, 2005 and any loss arising in the process of conversion of foreign currency receivables and realization thereof is a part of trading loss and is deductible. The AO, during the course of assessment proceedings, observed that the assessee has claimed Rs. 1,56,10,764/- on account of foreign exchange loss as against the corresponding preceding year claim of Rs. 14,05,494/- for AY 2011-12. Accordingly the assessee was requested to furnish the details of other expenses. From the details filed by the assessee, the AO noted that the assessee has claimed foreign exchange loss of Rs. 1,45,21,940/- which has been incurred for converting its loan to foreign currency and due to fluctuations in foreign currency exchange rate. The AO further observed that the assessee has not engaged in the business of export nor made any foreign transactions and therefore the foreign exchange fluctuation loss in foreign currency is not incidental to the core business of the assessee and accordingly rejected the same.

6. The Ld. CIT(A) allowed the appeal of the assessee on this issue by following the decision of Hon'ble Apex Court in the case of CIT vs. Woodward Governor India (Pvt.) Ltd. in 312 ITR 254 (SC) wherein it has been held that loss incurred on reappraisal of the foreign contracts or resettlement of its liability/receivable at the exchange rate at the year end is admissible as business loss though the contracts or receivables or payables were not finally settled. In the present case also, we note that the assessee has claimed similar loss in the earlier year. Therefore we do not find any infirmity or anomaly in the order of Ld. CIT(A). Undisputedly u/s 2(m) of the SEZ Act, 2005 the entire turnover was to be as export turnover and thus AO is not correct in concluding that the assessee has not done any export turnover and therefore we are inclined to uphold the order of Ld. CIT(A) by dismissing the appeal of the revenue. The ground no. 2 is dismissed.

7. Issue raised in ground no. 3 is against the deletion of addition of Rs. 4,40,00,000/- by Ld. CIT(A) as against the addition made by the AO u/s 68 of the Act being unexplained cash credit.

8. Facts in brief are that the assessee has raised share capital of Rs. 4,40,00,000/- by issuing 4,00,000/- shares of Rs. 10/- each at a premium of Rs. 100/- to Deltmal Safety Shoes Pvt. Ltd. a 100% holding company. The assessee has issued shares to the holding company in lieu of money payable or outstanding to holding company for supply of materials. The AO doubted the transactions to be sham and bogus and added the same to the income of the assessee u/s 68 of the Act.

9. The Ld. CIT(A) allowed the appeal of the assessee by holding that the money has not come into the assessee's books of account of the assessee during the year and it is only a book adjustment entry against the money payable to the holding company and thus allowed the appeal of the assessee on this issue. The Ld. CIT(A) held that that the money was payable by the assessee to holding company for the supplies of goods by the holding company to the assessee company as assessee used to make purchases from holding company.

10. We have heard the rival contentions and perused the material on record. We find that undisputedly the assessee company has issued shares of Rs. 4,00,000/- of face value of Rs. 10/- each at a premium of Rs. 100/- to the holding company Deltmal Safety Shoes Pvt. Ltd. We also note that the assessee used to make purchases from the holding company and the assessee owed huge money to the holding company for the said supplies. This is also undisputed that there was no money transactions between the assessee and holding company and the shares were issued amounting to Rs. 4,40,00,000/- out of money owed by the assessee company to the holding company. In our opinion, the doubt of the AO about the genuineness and creditworthiness is misplaced. We also note that the Ld. CIT(A) has deleted the addition on the ground that no money has come into the books of account of the assessee during the year and therefore the provisions of section 68 of the Act are not applicable. The case of the assessee finds support from the decision of Hon'ble Madras High Court in the case of M/s V.R. Global Energy Pvt. Ltd. vs. ITO in 407 ITR 145 (Mad) wherein it has been held that if no cash is involved, section 68 of the Act treating as the share capital/share premium as unexplained cash credit is wrong as the transaction of allotment of shares by way of book adjustment and provisions of section 68 of the Act are not attracted. We also note that subsequent SLP was also dismissed by the Hon'ble Apex Court in ITO vs. V. R. Global Energy Pvt. Ltd. (2020) 268 Taxman 392 (SC). Accordingly following the above decision we are inclined to uphold the order of Ld. CIT(A) on this issue.

11. In the result, the appeal of the revenue is partly allowed.

Order is pronounced in the open court on 28th March, 2023

Sd/-
(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 28th March, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- ACIT, Circle-2(1), Kolkata
2. Respondent – M/s Semall Impex Pvt. Ltd. (Now amalgamated with M/s Deltamal Safety Shoes Pvt. Ltd.), 2nd Floor, Plot-Y5, Block-EP, Sector-V, Salt Lake Electronics Complex, Kolkata-700091.
3. Ld. CIT(A)-1, Kolkata (Sent through e-mail)
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata