आयकर अपीलीय अधिकरण, कोलकाता पीठ ''सी'', कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा, न्यायिक सदस्य के समक्ष

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. Nos. 450 to 453/Kol/2022

Assessment Years: 2013-14, 2016-17, 2018-19 & 2019-20

M/s Castron Technologies Ltd. (PAN: AABCC 0646 G)	Vs.	DCIT, Circle-3(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	15.03.2023
Date of Pronouncement /आदेश उद्घोषणा की तिथि	28.03.2023
For the Appellant / निर्धारिती की ओर से	Shri S. Jhajharia, A.R
For the Respondent /राजस्व की ओर से	Shri Vijay Kumar, Addl. CIT

ORDER / आदेश

Per Rajesh Kumar, AM:

These are the appeals preferred by the assessee against the separate orders of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)"] even dated 18.07.2022 for the AY 2013-14, 2016-17, 2018-19 & 2019-20 respectively.

2. First of all, we shall adjudicate in ITA No. 450/Kol/2022 for AY 2013-14. Issue raised in ground nos. 1 and 2 is against the confirmation of addition of Rs. 12,65,358/- by Ld. CIT(A) thereby upholding the action of AO whereby the AO has

disallowed the claim of deduction on account of VAT loss which was debited under head expenses.

3. Facts in brief are that the AO during the course of assessment proceedings observed that the assessee has charged VAT of Rs. 12,65,358/- to the profit and loss account whereas the VAT credit is a balance sheet item and in case of VAT disallowance from VAT , the vat account will be reduced correspondingly. The AO rejected the claim of the assessee on the ground that the VAT loss cannot be allowed as an expenditure.

4. The Ld. CIT(A) simply dismissed the appeal of the assessee on this issue that unpaid VAT liability cannot be allowed and thus affirmed the order of AO by mis-appreciating the facts completely

5. After hearing the rival contentions and perusing the material on record, we note that the assessee has effected sales on which total VAT as per sales tax returns comes to Rs. 18,54,937.16/- out of which the eligible input as per sales tax return is 597,539.26/- and VAT Loss on consignment sale was Rs. 12,57,397/-. For the ready reference the details/computation of VAT loss and eligible input for AY FY 2012-13 is extracted below:

Details of Sale tax retrun about VAT Loss and Eligible Input for the F.Y. 2012-13

Month	As per Return					
	Input VAT		Total Input As per Sale Tax Return	Eligible Input As per Sale Tax Return	VAT Loss (Disallow for Consignment Sale)	VAT Loss As per Tally
	VAT 5%	VAT 14%				
April. 12	213,969.00	4,825.00	218,794.00	81,015.00	137,779.00	144,716.00
May. 12	217,156.00	700.00	217,856.00	57,979.00	159,877.00	159,877.00
June.12	221,825.00	7,535.00	229,360.00	68,345.00	161,015.00	161,015.00
July.12	2,043.00	869.00	2,912.00	1,996.00	916.00	916.00
August.12	19,839.00	807.50	20,646.50	8,457.00	12,189.50	12,700.00
September.12	61,805.00	4,232.00	66,037.00	22,275.00	43,762.00	43,762.00
October.12	200,774.00	646.50	201,420.50	46,304.50	155,116.00	155,629.00
November.12	130,522.00	5,404.00	135,926.00	38,116.00	97,810.00	97,810.00
December.12	215,379.00	3,232.40	218,611.40	78,721.00	139,890.40	139,890.00
January.13	148,278.03	1,246.60	149,524.63	42,096.63	107,428.00	107,428.00
February.13	177,568.38	3,306.75	180,875.13	75,744.13	105,131.00	105,131.00
March.13	211,157.00	1,817.00	212,974.00	76,490.00	136,484.00	136,484.00
	1,820,315.41	**34,621.75**	**1,854,937.16**	**597,539.26**	**1,257,397.90**	**1,265,358.00**

Consignment Sale is a stock transfer from Jharkhand to other State and for this Jharkhand VAT Act disallow proporsonate input VAT .

We observe from the above that the assessee has recovered VAT as per sales tax return to the tune of Rs. 597,539.26/- whereas VAT loss on account of consignment sales on which there was no VAT credit available was amounting to Rs. 12,65,358/-. We have also perused the Jharkhand VAT Act which provides that no input tax credit under sub-section (1) shall be claimed or to be allowed to a registered dealer in respect of goods consumed for manufacture of goods for Inter-State transfer of stock or for sale outside the State and thus it is only in accordance with the provisions of the Act the assessee has suffered VAT loss and claimed it in the profit and loss account. In our opinion the action of AO in rejecting the claim of the assessee is not correct as this is a business loss which has to be allowed to the assessee. The case of the assessee squarely covered by the Decision of Co-ordinate Bench of Chennai in the case of FIH India (P) Ltd. vs DCIT in [2021] 126 taxmann.com 111 (Chennai-Trib) wherein the Co-ordinate Bench has taken a view that input service tax as per the return of assessee is a business loss and has to be allowed u/s 37(1) of the act. The operative part is reproduced as under:

> *"**8.** We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the assessee has written off input Service Tax during the impugned financial year relevant to assessment year 2010-11. But, the dispute is with regard to deductibility of input service tax. The AO has disputed deduction claimed by the assessee on three grounds. The first and foremost objection of the AO was that input service tax written off was not an item of expenditure deductible u/s. 37(1) of the Act, because the assessee has not rooted said expenditure through profit & loss account. The second observation of the ld.AO is even it is to be treated as profit & loss account item, it was never treated as income at any point in time. The third observation of the AO was that said expenditure relatable to previous financial year and hence, partakes the nature of prior period item which is not eligible to be claimed as an expenditure for the current financial year. We have gone through the reasons given by the AO for denying the deduction claimed towards Service Tax written off account and find that none of the reasons given by the AO is in accordance with law, because service tax paid on input services is an item of expenditure deductible u/s. 37(1) of the Act. But, if assessee claims input tax credit on said Service Tax, then the same cannot be claimed as deduction in the profit & loss account once again. In this case, the AO has not disputed the fact that the assessee has not debited Service Tax component paid on input services into the profit & loss account. Therefore, we are of the considered view that there is no merit in the observation of the AO that it is not an item of profit & loss account. In so far as second observation of the AO that the assessee has never treated said service tax as an item of income, we find that the assessee has paid service tax on input services and hence the question of treating said service taxes as an item of income does not arise because any taxes paid on purchase of goods or services is part of cost of goods or services which can be either debited to profit & loss account when the assessee has not availed input tax credit or if assessee avails input tax credit then the Service*

Tax component is taken out from the profit & loss account and treated as current assets pending adjustment against output taxes payable on goods or services. In this case, the assessee has accounted input services exclusive of service tax and treated service tax component as input tax credit pending adjustment. Further, when the application filed by the assessee for refund was rejected by the Department, the assessee has written off said input tax credit and debited in to profit & loss account. Therefore, the second observation of the AO would also fails. Coming to the third observation of the AO, the AO observed that even if it is deductible as expenditure but said expenditure is relatable to earlier financial year and partakes the nature of prior period item which cannot be allowed as deduction. We do not find any merit in the observation of the AO for the reason that although part of input tax credit pertains to earlier financial year but the same has been carried forward to subsequent financial year as per the provisions of law. Further, the same has been claimed as refund with respective department during the current financial year. Therefore, when the input service tax credit is carried forward from earlier financial year to the current financial year, it partakes the nature of taxes paid for the current financial year and hence deductible as and when the assessee has debited into the profit & loss account. Therefore, on this count also the observation made by the AO fails. Further, it is well settled principle of law by the decision of various courts and Tribunals that input tax credit/CENVAT is deductible u/s. 37(1) of the Act, when such input tax credit is reversed or written off in the books of account. The Hon'ble Gujarat High Court in the case of CIT v. Kaypee Mechanical India (P.) Ltd. [2014] 45 taxmann.com 363/223 Taxman 346 has held that Service Tax paid out of pocket is an item of expenses deductible u/s. 37(1) of the Act. The ITAT, Ahmedabad in the case of Girdhar Fibres (P.) Ltd. v. Asstt. CIT [IT Appeal No. 2027 (Ahd.) of 2009, dated 12-10-2012] has held that input CENVAT incurred but not adjusted against output CENVAT is deductible as item of expenditure when such input credit is written off in the books of account."

Accordingly following the above decision of the coordinate bench ,we set aside the order of Ld. CIT(A) and direct the AO to delete the disallowance. The ground nos 1 and 2 are allowed.

6. Issue raised in ground no. 3 & 4 is against the order of Ld. CIT(A) confirming the action of AO in disallowing the excise duty liability of Rs. 16,90,998/- relating to FY 2010-11 which was paid during the year and debited in the profit and loss account in terms of section 43B of the Act whereas the issue raised in Ground no. 5 & 6 is against the confirmation of action of AO in rejecting the claim of deduction of Sales Tax liability of Rs. 5,89,723/- for AY 2008-09 and 2009-10 which was paid during the year and claimed accordingly in terms of provision of Section 43B of the act.

7. Facts in brief are that the assessee has charged in the profit and loss account a sums of Rs. 16,90,998/- on account of excise duty and Rs. 5,89,723/- on account of sales tax which related to earlier years. According to assessee these were unpaid liability of earlier assessment years which were deposited during the year and were

claimed as deduction in consonance of provisions of Section 43B of the Act. However according to AO excise duty and sales tax are not part of profit and loss account and are in fact balance sheet items, so by these payments/ the amount credited in this respect, would be reduced the Excise/Sales A/C and thus these were disallowed and added to the income of the assessee.

8. The Ld. CIT(A) again dismissed the appeal of the assessee upon wrong appreciation of facts that this were unpaid liabilities and thus affirmed the order of AO on this issue.

9. After hearing the rival submissions and perusing the material on record, we find that the assessee has discharged certain liabilities of excise and sales tax which were pertaining to earlier years. We note that the assessee has been claimed the payments made accordingly which are also inconformity with the provisions of Section 43B of the Act which provide that any unpaid tax liability on account of excise duty/sales tax would be allowed as deduction in the year of payment irrespective of the previous year in which the liability to pay such sum was incurred. We are not in agreement with the conclusion drawn by the authorities below for the above reasons. The case of the assessee finds support from the decision of Co-ordinate Bench of Kolkata in the case of BDG Metal and Power Limited vs. DCIT in ITA No. 1049/Kol/2015 for AY 2010-11 dated 19.08.2016 wherein it has been held as under:

> *"3. I have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that a similar issue had come up for consideration before this Bench in assessee's own case for A.Y. 2009-10 and the same was decided in favour of the assessee vide an order dated March 09, 2016 passed in ITA No. 1047/KOL/2015 for the following reasons given in paragraph no. 6:-*
>
> > *"6. I have considered the rival submissions and also perused the relevant material available on record. As rightly contended by the ld. counsel for the assessee, it appears that the exact nature of amount in dispute paid by the assessee on account of reversal of VAT inputs has not been appreciated either by the Assessing Officer or by the ld. CIT(Appeals) in the right perspective. The input tax credit on account of VAT paid on purchases was actually claimed by the assessee in the F.Ys. 2006-07 and 2007-08 and since the relevant materials purchased by the assessee I . T. A . N o. 1 0 4 9 / KO L . / 2 0 1 5 Assessment year: 2010-2011 were used for manufacture of goods, which were transferred to its consignment agent without charging sales tax, the assessee was not entitled for the input tax credit. Such credits, however, were*

> *wrongly claimed by the assessee against CST/VAT payable for the relevant years and only as a result of show-cause notice issued by the Assistant Commissioner, Commercial Taxes, the credit wrongly claimed was reversed by the assessee and the amount in question was paid against such reversal. The said payment made by the assessee thus was on account of CST/VAT actually payable for the F.Ys. 2006-07 and 2007- 08 and the same having been paid in the year under consideration. I agree with the contention of the ld. counsel for the assessee that the assessee was entitled for deduction of the same in the year under consideration as per section 43B of the Act. The method of accounting followed by the assessee to maintain a separate VAT account to make all credit and debit entries relating to VAT therein is not relevant to decide the allowability of the amount in question paid by the assessee on account of reversal of Input VAT Credit, inasmuch as the wrong claim of credit for inputs in the earlier years had resulted in short payment of CST/VAT payable by the assessee and the same having been paid during the year under consideration, the assessee, in my opinion, was entitled for deduction of such tax on payment basis under section 43B. I, therefore, delete the addition made by the Assessing Officer and confirmed by the ld. CIT(Appeals) on this issue and allow this appeal of the assessee".*
>
> *As the issue involved in the year under consideration as well as all the material facts relevant thereto are similar to A.Y. 2009-10, I respectfully follow the decision dated 09.03.2016 rendered by the Tribunal in A.Y. 2009-10 and delete the addition made by the Assessing Officer and confirmed by the ld. CIT(Appeals) by way of disallowance of assessee's claim for deduction on account of "Input VAT Reverse".*

We have also examined the proofs of payments and accordingly we set aside the order of Ld. CIT(A) by following the above decision and direct the AO to delete the disallowance. The ground nos. 3 to 6 are allowed.

10. Issue raised in ground nos. 7,8 & 9 is against the confirmation of Rs. 4,18,382/- by Ld. CIT(A) as made by the AO u/s 14A read with Rule 8D(2)(ii) & 8D(2)(iii) of I.T. Rules, 1962.

11. Facts in brief are that the AO during the course of assessment proceedings observed that the assessee has received dividend income of Rs. 6,94,625/- which was claimed as exempt u/s 10(34)/(38) of the Act. The assessee has added back suo-moto a sum of Rs. 52,987/- as expenditure relating to the said income being ½% of the average investments under Rule 8D(2)(iii). The AO was not satisfied with respect to the said disallowance and invoked the provisions of Section 14A read with Rule 8D and computed the disallowance at Rs. 4,71,369/- comprising of Rs. 4,19,923/- under Rule 8D(2)(ii) and Rs. 51,446/- under Rule 8D(2)(iii) of the Rules and added the same

to the income of the assessee after allowing the deduction in respect of suo motto disallowance.

12. The Ld. CIT(A) simply affirmed the order of AO without giving any reasoning.

13. After hearing the rival contentions and perusing the material on record, we find that the investments in the share and securities were Rs. 1,17,36,435/- at the year end (corresponding figure of Rs. 88,41,809/-in the preceding year) whereas assessee's own funds available were Rs. 5,85,28,835/- (corresponding figure of Rs. 5,53,01,089/-) meaning thereby the assessee's own funds were far more than the investments in share and securities. Therefore in our opinion disallowance made by the AO as confirmed the order of Ld. CIT(A) under rule 8D(2)(ii) amounting to Rs. 4,19,920/- is wrong and against the decisions of various judicial forums. Accordingly we set aside the order of Ld. CIT(A) and direct the AO to delete this disallowance. Accordingly the appeal of the assessee is allowed.

ITA No. 451/Kol/2022 for AY 2016-17

14. Issue raised in ground no. 1 to 4 in ITA No. 451/Kol/2022 is covered by our decision in ground no. 7, 8 & 9 in ITA No. 450/Kol/2022. Accordingly the addition made by the AO under Rule 8D(2)(ii) is deleted by setting aside the order of Ld. CIT(A) on this issue. Accordingly grounds raised by the assessee are allowed.

15. Issue raised in ground no. 5 & 6 is against the disallowance of VAT loss of Rs. 6,60,996/- which is covered by our decision in ground no. 1 & 2 in ITA No. 450/Kol/2022 which has been decided by us as business loss. Our finding would mutatis mutandis apply to this issue as well. Consequently ground nos. 5 & 6 are allowed.

ITA No. 452/Kol/2022 for AY 2018-19

16. The only issue raised by the assessee is against the confirmation of action of AO by Ld. CIT(A) in disallowing of Rs. 4,22,508/- and Rs. 53,169/- being employees'

contribution towards PF /ESI u/s 2(24)(x) read with Section 36(1)(va) which was paid before the due date u/s 139(1) of the Act but after the due date mentioned in respective Act. The issue is covered against the assessee by the decision of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs. CIT in [2022] 143 taxmann.com 178 (SC) dated 12.10.2022. Accordingly ground raised by the assessee is dismissed.

ITA No. 453/Kol/2022 for AY 2019-20

17. Issue raised in ground no. 1 to 3 in ITA NO. 453/Kol/2022 is covered by our decision in ITA NO. 452/KOl/2022. Accordingly our finding would mutatis mutandis apply to this issue as well and consequently the ground raised by the assessee is dismissed.

18. Issue raised in ground no. 4 & 5 in ITA No. 453/Kol/2022 are not pressed by the Ld. Counsel for the assessee as the Ld. CIT(A) has already allowed this issue in favour of the assessee and was stated to be wrongly raised in the memorandum of appeal. Accordingly the assessee has withdrawn this ground. So the ground raised by the assessee is dismissed as withdrawn.

19. In the result, all the appeals of the assessee are partly allowed.

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

Sd/-	Sd/-
(Sonjoy Sarma / संजय शर्मा)	(Rajesh Kumar/राजेश कुमार)
Judicial Member/न्यायिक सदस्य	Accountant Member/लेखा सदस्य

Dated: 28th March, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Castron Technologies Ltd., C/o, M/s Salarpuria Jajodia & Co, 7, C.R. Avenue, 3rd Floor, Kolkata-700072.
2. Respondent – DCIT, Circle-3(1), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata