

आयकर अपीलिय अधिकरण
मुंबई पीठ "सी" मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य, एवं
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" BENCH
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
आ.आ.सं. ३०४४/मुंबई/२०१६ (नि.व. २०१०-११)
ITA No.3044/MUM/2016 (A.Y.2010-11)

M/s. Crest Paper Mills Ltd.
2nd Floor, Tarun Plastic Compound,
Morga Village, Andheri (E)
Mumbai-400 066
PAN No. AAACC4343D

..... अपीलार्थी/Appellant

बनाम Vs.

Deputy Commissioner of Income Tax, 8 (1),
Aayakar Bhavan
Mumbai-400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा / Appellant by : Shri Ajay Singh, Advocate
प्रतिवादी द्वारा / Respondent by : Shri V. S. Mahajan, Sr. AR

सुनवाई की तिथि / Date of hearing : 18/04/2023
घोषणा की तिथि / Date of pronouncement : 18/04/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-16, Mumbai (hereinafter referred to as "the CIT(A)") dated 04.01.2016, for the assessment year 2010-11.



2. This appeal is in second round before the Tribunal. The appeal was initially decided by the Tribunal vide order dated 19.12.2018. Thereafter, the assessee filed Miscellaneous Application No. 276/Mum/2019 for recalling the order dated 19.12.2018 as the additional ground raised in the appeal remain to be adjudicated. The Tribunal vide order dated 20.02.2023 allowed M. A. No.276/Mum/2019 by observing as under:

“8. With regard to yet another issue of non-consideration of additional ground preferred by the assessee on 10/10/2018 which is mentioned in para 9 of the Miscellaneous Application, on perusal of the file, we find that assessee had indeed filed additional ground. We find that though the assessee in the Miscellaneous Application had again relied on the same paper book 2 in support of this additional ground, it is a fact that none of the paper books were placed on record before us. However, in the interest of natural justice and fair play, since the copy of additional ground raised by the assessee on 10/10/2018 is available inside the appeal folder in ITA No.2579/Mum/2016 and also considering the fact that this additional ground has not been adjudicated by this Tribunal while disposing of the assessee’s appeal, we deem it fit and appropriate MA Nos.275 & 276/Mum/2019 M/s. Crest Paper Mills Ltd 7 to recall the order passed by this Tribunal in respect of assessee’s appeal in ITA No.3044/Mum/2016 dated 29/12/2018 only for the limited purpose of adjudication of additional ground filed on 10/10/2018. The other issues raised in the Miscellaneous Application by the assessee in Miscellaneous Application No.276/Mum/2019 are dismissed.”

3. Thus, in the present appeal, the limited issue that is to be adjudicated is the additional ground of appeal raised by assessee vide application dated 09.10.2018. The same is reproduced as under:

“Without prejudice to the prayer in Ground no. 1, as the waiver of the secured loan is only after the payment of Rs.2,05,00,000/- under the One Time Settlement (OTS) with the Institutions, the addition on account of the principal component of the working capital loan may directed to be reduced by the same i.e. Rs.2,05,00,000/-within the meaning of section 41(1) of the Act.”

4. Shri Ajay Singh appearing on behalf of the assessee submits at the outset that the additional ground raised in appeal is an alternate prayer to the ground no. 1. The Tribunal vide order dated 19.12.2018 has dismissed ground no. 1 of the appeal. The short submission of the assessee in respect of additional ground of appeal is



that in One Time Settlement (OTS), the assessee paid Rs.2,05,00,000/-. The aforesaid amount has been paid collectively to settle Term Loan and Working Capital Loan. The assessee had availed Term Loan facility to the extent of Rs.2.23 Crores and Working Capital Loan of Rs.4.83 Crores. Although, when the amount of Rs.2,05,00,000/- was paid to the bank under one time settlement. There was no allocation of the amount towards the aforesaid loan accounts. The Ld. Counsel referred to letter from the bank dated 29.09.2008 at page no. 170 of the Paper Book. The Ld. Counsel prayed that the amount paid by the assessee under OTS may be proportionately allocated to the Term Loan and Working Capital Loan in the ratio of facility availed. The Ld. Counsel furnished working sheet allocating the amount paid under OTS on proportionate basis between Term Loan and Working Capital Loan.

The Ld. AR pointed that in the books of account, the assessee has allocated the entire amount paid under OTS against the Term Loan. The Ld. AR submitted that accounting entries are not decisive for the purpose of transactions. In support of his submissions, he placed reliance on the following decisions:

- (I) Siclar Murray & Co. Ltd. vs. CIT, 97 ITR 615 (SC);
- (II) CIT vs. Sahara Inv. India Ltd, 136 Taxman 61 (All).

5. On the other hand, Shri V. S. Mahajan representing the Department submits that the alternate prayer by way of additional ground of appeal has been raised for the first time in the Tribunal. No such plea was made by the assessee either before the AO or the CIT(A). The Ld. Departmental Representative (DR) submits that no bifurcation of the amount paid under OTS was made by the lending institution. Therefore, the assessee cannot seek allocation of the amount paid under OTS to be bifurcated in the proportion of Term Loan and Working Capital Loan.



6. We have heard the submissions made by rival sides and have examined the orders of authorities below. Insofar as amount paid by assessee under OTS is not in dispute. The short prayer made by the assessee by way of additional ground of appeal is for allocation of the amount paid under OTS to be bifurcated in proportion of Term Loan facility and Working Capital facility. A perusal of the documents on record show that when the loan accounts were settled under OTS, no such allocation was made by the lending institution of the quantum of amount repaid against Term Loan or Working Capital Loan. Considering the fact that alternate prayer for allocating amount paid under OTS is raised for the first time by the assessee, without delving further on the issue, we deem it fit to restore additional ground raised by the assessee to AO to decide the same by passing a speaking order.

7. The assessee is at liberty to make submissions before the AO in respect of additional ground of appeal. The AO after considering the relevant documents and the submissions of assessee, shall decide the issue raised in additional ground.

8. In the result, additional ground no. 1 is allowed for statistical purpose.

9. With adjudication of additional ground, there would be no change in the final outcome of appeal. The appeal of assessee is partly allowed for statistical purpose.

Order pronounced in the open court on Tuesday the 18th day of April 2023.

Sd/-

(AMARJIT SINGH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/Mumbai,

दिनांक/Dated: 18/04/2023

Mahesh R. Sonavane

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER



प्रतिलिपी अग्रेषित of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/The Respondent.
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधी, आय. अपी. अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाईल/Guard file.

BY ORDER,

//True Copy//

(Dy. /Asst. Registrar)/
Sr. Private Secretary
ITAT, Mumbai