

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G" DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.7722/DEL/2019  
Assessment Year 2015-16

Samtel Glass Ltd., 1212, 43 Chiranjiv Tower, Nehru Place, New Delhi.	Vs.	DCIT, Circle-22(1), New Delhi.
TAN/PAN: AAACS2730C		
(Appellant)		(Respondent)

Appellant by:	Shri D.C. Garg, CA		
Respondent by:	Shri Jitender Chand, Sr.DR		
Date of hearing:	10	02	2023
Date of pronouncement:	10	05	2023

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals)-XXV, New Delhi ('CIT(A)' in short) dated 30.07.2019 arising from the assessment order dated 13.12.2017 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2015-16.

2. Briefly stated, the assessee is a public limited company engaged in the business of manufacture and sale of glass shells and a funnel used in colour television picture tubes and also claims to be engaged in manufacturing of specialized glass for avionic purposes.

3. The assessee filed its return of income for Assessment Year 2015-16 in question declaring total loss at Rs.(-)12,69,55,607/-. The return so filed by the assessee was subjected to scrutiny assessment under Section 143(3) of the Act by

issuance of notice under Sections 143(2) and 142(1) of the Act. In the course of the assessment proceedings, the Assessing Officer observed that the assessee-company has *inter alia* claimed deduction of Rs.8,55,17,103/- on account of impairment loss as per note 26 of the balance sheet. The Assessing Officer issued show cause notice for substantiation of aforesaid claim of deduction along with original agreement towards payment of security deposit to M/s. Samtel Avionics Ltd. (SAL) which is stated to be associate company of the assessee on appraisal of facts and attendant circumstances, the Assessing Officer alleged that the payment made towards security deposit to Samtel Avionics Ltd. is not a genuine transaction but a sham transaction with an aim to inflate losses and also to siphon of funds of the assessee-company. The impairment loss of Rs.8,55,17,103/- comprising of (i) forfeiture of security deposit placed by the assessee with Samtel Avionics at Rs.6,95,81,595/- and (ii) inventory of glass written off of Rs.1,59,36,508/- was found to be untenable and unsubstantiated. The Assessing Officer thus held that the loss claimed arises out of sham transactions between two Associated Enterprises (AE) in collusion with each other under guise of an agreement with a view squeeze the funds out of the assessee company and inflate the losses. The losses claimed by the assessee in the return of income was accordingly modified and reduced by the impairment loss of Rs.8,55,17,103/- claimed by the assessee.

4. Aggrieved by the disallowances of losses on account of forfeiture of security deposit and inventory write off aggregating to Rs.8,55,17,103/-, the assessee preferred appeal before the CIT(A).

4.1 The CIT(A) took note of the statement of facts and the submissions made on behalf of the assessee but however did not find any merit in the propriety of the claim so made. The CIT(A) accordingly declined to interfere with the action of the Assessing Officer and denied any relief. The relevant operative paragraph of the order of the CIT(A) reads as under:

“Findings

*I have considered the facts of the case, the basis of addition made by the Assessing Officer and the arguments of the AR during assessment as well as appellate proceedings. The decision is as below-*

*i. The Appellant Company is engaged in the business of manufacturing of specialized avionic glass. Appellant Company entered into an agreement dated 23.01.2020 with M/s. Samtel Display Systems Limited (Now known as Samtel Avionics Limited) an AE for supply of avionic glass over a period of five years. The appellant deposited a sum of Rs.6,95,80,595/- as security against performance of the contract. Appellant could not manufacture and supply agreed quality of glass and accordingly, in terms of the agreement dated 23-01-2010. Therefore, M/s. Samtel Avionics Limited forfeited the security deposit amounting to Rs.6,95,80,595/- M/s Samtel Avionics Limited also charged cost of material amounting to Rs.1,59,36,509/- purchased for consumption in the final products along with the glass which was supposed to be supplied by the Appellant company. The AO did not accept contention of the Appellant and disallowed both the items.*

*ii. I have considered the material on record including the copy of the Agreement dated 23-01-2010, copy of ledger, details of material purchased by M/s Samtel Avionics and charged to the company, copy of audited financial statements of M/s Samtel Avionics Limited were furnished. Though it is contended that the copy of the Agreement dated 23-01-2017 mandates that the security deposit will be forfeited in case of non-supply of agreed quality/quantity of glass. Relevant portion of the cause is being reproduced as under:*

*"(vii) In case SGI is not able to supply the quantities proposed year-wise as mentioned above, the entire security deposit provided by SGL under the said agreement will be forfeited by SDS at the end of the 5<sup>th</sup> year of the agreement."*

*iii. It was also submitted by the Ld. counsel that vide submission dated 27-09-2018, it was clearly stated that forfeiture of security deposit has been taken in to income by M/s. Samtel Avionics Limited and paid tax thereon. The AO has also concluded "Even the inventory of glass to M/s Samtel Glass Ltd. which has been written off vide Note 26 of the Balance Sheet, is substantiated by the details of inventory accounted for in the books of accounts - Note 22 (para 4 point Dc) supra of the assessee company nor in the books of Samtel Avionics Ltd."*

*iv. I have considered the facts of the case. It is pertinent to note that both the entities are closely interlinked and have common ownership. The associated enterprises of the same group splitting the agreement and creating the device of such an agreement about some security deposit to be forfeited for some non performance is a clear case of exercise to evade lawful taxes/ obligations. This is a case of some evolving glass technology for which the group was not very sure though it was available commercially outside in the open market. Creating a structure of this sort which could entail forfeiture of a substantial sum kept as commercial security defies common commercial practices. Clearly it is a case of sham transaction in which these As have colluded to avoid lawful tax liabilities. The argument advanced by the appellant AR is that this being a company with huge accumulated losses and on the verge of closure would like to raise its losses. In this scenario it is pertinent to note as to why such an enterprise will enter into such a destructive agreement whereby paying security for a technological competence not in its domain. The appellant entity could've procured the technology from market for supplies, instead of blocking significant sum as security and ultimately losing it. The argument that the AB has paid taxes on the forfeited amount is also specious as this is clearly an exercise to create the entity with losses - which could be later used in some kind of*

*corporate restructuring etc to curtail tax obligations. The entire exercise does not make commercial sense and seems to be part of an elaborate exercise to avoid taxes over a period of time. The case laws relied upon are clearly distinguishable on the facts. Accordingly based on discussions above, I don't find any infirmity in the action of the AO."*

5. Further aggrieved by the denial of relief by the CIT(A), the assessee preferred appeal before the Tribunal.

6. When the matter was called for hearing, the Id. counsel for the assessee reiterated its stance for allowability of business losses claimed on account of forfeiture of security deposit placed with SAL in ordinary course of business and also the loss arising to the assessee on account of inventory write off by the AE, i.e., SAL. It was reiterated that the assessee-company entered into an agreement dated 23.01.2010 with SAL to supply specialized glass for avionic purpose. A security deposit an amount of Rs.6,95,80,595/- was placed with SAL towards performance guarantee and the assessee was confident of manufacturing avionic glass which was agreed to be supplied. An investment of Rs.1.02 crore was made in the Financial Year 2009-10 for this purpose alongside the existing manufacturing facility and an agreement was entered with SAL for supply of avionic funnel and panel etc. The company however could not produce the avionic funnel and panel etc of desired quality. The materials supplied were found to be defective by SAL. Owing the failure of the assessee to meet the contractual commitment, the SAL has forfeited the security deposit amounting to Rs.6,95,80,594/- and also charged cost of material amounting to Rs.1,59,36,509/- purchased by SAL, on the assessee. The SAL has claimed that inventory worth Rs.1,59,36,509/- has turned obsolete due to the non supply of specialized glass to SAL by the assessee and thus shifted this loss on the assessee. In this factual backdrop, the Id. counsel contended that the loss has been incurred by the assessee in the ordinary course of business arising from business commitment for which agreement was also executed. The Id. counsel submitted that the Revenue Authorities were not justified in denying the loss incurred by the assessee in the ordinary course of business. The Id. counsel further narrated the observation of

the Assessing Officer and CIT(A) that SAL is not Associated Enterprises of the assessee and therefore, no *mala fide* can be attributed on the assessee. On enquiry from the Bench, the Id. counsel also admitted that no tax has been actually paid by the corresponding AE on such forfeiture etc. due to availability of carry forward losses.

7. The Id. DR, on the other hand, strongly supported the action of the Assessing Officer and CIT(A). The Id. DR submitted that the directors of both the companies are from the same family and Mr. Satish Kaura, the Director of the assessee-company is father of Mr. Puneet Kaura, Director of SAL. The SAL is also a shareholder of the assessee-company with 10.98% shareholdings. The Id. DR thereafter referred to the assessment order and submitted that the assessee has failed to prove the propriety of the transaction in the light of the wide ranging observations made by the Assessing Officer such as:

- (i) The agreement dated 23.01.2010 claimed to have been executed is not verifiable as original agreement was never produced despite reminders.
- (ii) The transactions are between associated enterprises.
- (iii) The record does not show production of glass meant for supply to SAL.
- (iv) The amount towards security deposit is an odd amount without showing the logic for such odd payment.
- (v) No details such as bills / invoices / matching specifications etc. are available on record.
- (vi) SAL is a major shareholder in the assessee-company and was fully aware of the state of affairs of the assessee-company as an insider.

- (vii) The assessee suspended its operation w.e.f. 07.11.2012 after siphoning of the available funds to SAL and created a smoke screen of the agreement to justify such transfer.
- (viii) It is not known that any prudent person will enter into such agreement where the supplier has to deal with such large amount without any visible corresponding profits.

The Id. DR submitted that both the Authorities have made a detailed factual analysis to come to a conclusion that the loss claimed is fabricated and is essentially created by preparing an unsubstantiated agreement to transfer the funds. The Id. DR thus submitted that all the reasons given in the assessment order and the CIT(A) order squarely supports the case of the Revenue and no interference therewith is called for.

8. We have carefully considered the rival submissions and perused the case records with their assistance.

8.1 The propriety of business loss of Rs. (-)8,55,17,103/- claimed towards forfeiture of security deposit and write off of inventory by the proposed recipient of the supply from the assessee in question. We have perused the assessment order and the first appellate order. The Assessing Officer has observed that the funds of an odd amount of Rs. 6,95,80,594/- has been transferred without providing any justifiable reason. There are no records of any actual supply of glasses by the assessee. The agreement has not been produced in original. The loss claimed is not backed by any substantive evidence.

8.2 We concur with the view taken by the Assessing Officer and endorsed by the CIT(A) in this regard. The CIT(A) has given cogent reasons for non acceptance of the claim of the assessee. The Assessing Officer had earlier given detailed reason which goes to show that the claim remains unsubstantiated. The onus in the instant case is very heavy on the assessee which the assessee has

failed to discharge. The basis of calculation of security deposit, the proof of production of specialized glass, cost involved thereon is not available on record. The agreement with the AE is also not available in original. Except for the transfer of fund to SAL, no other substantive evidence is available to enable us to appreciate the facts in its perspective. Without repeating various reasons provided in the assessment order and the first appellate order, we are of the view that the assessee has failed to discharge the onus towards *bona fides* of the claim.

8.3 Besides, it is not known as to how the payment made in pursuance of so called agreement entered in 2010 can be seen as loss accrued to the assessee in Assessment Year 2015-16 in question when the business operations were itself suspended in November, 2012. Both the assessee and the SAL are family controlled with common shareholding and therefore are privy to the exact affairs. It is not a case where a third party has been caught unaware resulting in unintended losses. We are not convinced at all by the defense raised by the assessee in justification. We thus decline to interfere with the findings rendered by the lower authorities.

9. In the result, the appeal of the assessee is dismissed.

**Order pronounced in the open Court on 10/05/2023.**

Sd/-

**[CHANDRA MOHAN GARG]**  
**JUDICIAL MEMBER**

DATED: /05/2023

*Prabhat*

Sd/-

**[PRADIP KUMAR KEDIA]**  
**ACCOUNTANT MEMBER**