

आयकर अपीलीय अधिकरण
मुंबई पीठ " एच ", मुंबई

श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " H ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आअसं.230 /मुं/2023 (नि.व. 2010-11)
ITA NO.230/MUM/2023(A.Y.2010-11)

Kaya Ltd.
23/C/2nd Floor/Mahal Industrial Estate Marks,
Mahakali Caves Road, Near Paper Box Lane,
Andheri East, Mumbai – 400 093
PAN: AACCK-1045-L

..... अपीलार्थी/Appellant

बनाम Vs.

Commissioner of Income-tax (Appeals)
Income Tax Department,
Delhi .

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Nitesh Joshi

प्रतिवादी द्वारा/Respondent by : Smt.Ane Varghese

सुनवाई की तिथि/ Date of hearing : 19/04/2023

घोषणा की तिथि/ Date of pronouncement : 15/06/2023

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 29/11/2022, for the assessment year 2010-11.

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

“1. The Learned Commissioner of Income Tax. Appeals [‘CTT(A)’] has erred in confirming the disallowance of the provisions for expenses of Rs. 2.82 crores (inadvertently mentioned as Rs. 2.83 crores in the order) and Rs. 0.90 crores made by the appellant on account of closure of certain Kaya life and Kaya skin clinics on the ground that the liability did not crystallize in the FY 2009-10 pertaining to AY 2010-11. On the facts and circumstances of the case, the said sum of Rs. 3.73 crores ought to be allowed as expenses during the year.

2. Without prejudice to Ground 1, in the event if the expenditure is held to be of FY 2010-11 (relevant to AY 2011-12), then, same is ought to be allowed as deduction in FY 2010-11 (relevant to AY 2011-12).”

3. Shri Nitesh Joshi appearing on behalf of the assessee submits that the primary issue raised by the assessee in appeal is against disallowance of provision made towards expenditure on discontinuance of business. The Ld.Counsel for the assessee submits that the Board of Directors of the company vide Board Resolution dated 22/03/2010 decided to discontinue to seven clinics under “Kaya Skin” segment & operations under “ Kaya Life” segment . These clinics/centres were decided to be discontinued w.e.f. 30/04/2010 and 30/06/2010. The assessee created provision to meet the costs of closure of these clinics viz. Cost towards lease termination, employees termination, customers refund, etc. The Assessing Officer disallowed the said provision created by the assessee. The Ld.Counsel for the assessee submits that since in principle the assessee had decided to discontinue some of its clinics/centres, the liability towards payment of lease termination cost, customers refund, employees termination cost etc. are ascertained, therefore, the provision created to meet ascertained liability is allowable. The Ld.Counsel for the assessee referred to Accounting Standard-4 (AS-4) in this regard. To further support his contentions he placed reliance on the decision rendered in the case of Bharat Earth Movers Ltd. vs. CIT, 245 ITR 428 (SC).

4. Per contra, Smt. Anne Varghese representing the Department vehemently supported the order of CIT(A). The Id. Departmental Representative submitted that the assessee is claiming provision in respect of liability that has not crystallized yet. The Id. Departmental Representative referred to the assessment order, wherein the Assessing Officer has extracted the remarks of the Tax Auditors, she pointed that the Tax Auditors in Tax Audit Report have specifically observed that the provisions has been made on estimation basis, pending crystallization of final amount. The Id. Departmental Representative further pointed that even though the Board Resolution was passed on 22/03/2023 the lessors of the premises, the customers and the employees were communicated the decision of closure of the clinics in the next financial year. Hence, till the time the decision of Board of Directors is acted upon the liability towards expenditure on discontinuation of centres/clinics is not crystallized.

5. Rebutting the arguments made on behalf of the Department, the Id. Counsel for the assessee submits that the liability towards payment of termination of lease, termination of employees, refund to customers, etc. was crystallized as soon as the decision was taken by the Board of Directors to discontinue its clinics, however, the quantum of liability remained to be determined.

6. We have heard the submissions made by rival sides and have examined the orders of authorities below. The solitary issue raised in present appeal is regarding the provision made towards expenses on discontinuance of business. Admittedly, the Board of Directors on 22/03/2010 vide Board Resolution decided to discontinue operations under the name "Kaya Life" and

also decided to close down its seven clinics under “Kaya Skin” segment. In order to meet the expenditure towards lease termination cost, customers refund, employees termination cost, etc. the assessee had created a provision in the impugned assessment year, though the aforesaid clinics/ centres were to be discontinued w.e.f. 30/04/2010 and 30/06/2010. The claim of the assessee is that since the liability has crystallized towards the payment of lease termination cost, employees termination cost, refund to customers, etc. as soon as the Board Resolution is passed to discontinue Kaya Life Centres and some of the Kaya Skin Centres, the provision created for the said purpose is allowable. After having examined the facts, we do not concur with the arguments made on behalf of the assessee. Merely passing of the Board Resolution would not create a liability unless the Board Resolution is put into action. It is only when the notice is served on the employees and the lessor of the premises, the liability would crystallize. The liability to pay cost on termination of employees and termination of lease would arise only when notice is served on them expressing termination of services/lease agreements. The CIT(A) in the impugned order has recorded the fact that the lease termination letters were issued in April, 2010 and the termination cost were paid on 01/10/2010. Even the termination letters were issued to the employees in April, 2010. This clearly indicates that the Board Resolution dated 22/03/2010 was acted upon in the next financial year i.e. 2010-11. No details were furnished by the assessee with respect to date of intimation about closure of clinics to the customers and date of refund made to them. The liability towards payment of cost of termination of employees and termination of lease arose only in the Financial Year 2010-11, relevant to the assessment year 2011-12. Thus, we are of the considered view that the

assessee's claim of provision in respect of expenditure towards discontinuation of business in the impugned assessment year has been rightly rejected by the Assessing Officer.

7. The assessee has placed reliance on the decision rendered in the case of Bharat Earth Movers Ltd. vs. CIT (supra). The Hon'ble Apex Court in the said decision has held that if a business liability has definitely arisen in the Accounting Year, the deduction is allowable to the assessee, even if, the liability may have been quantified and discharged at a future date. In the instant case, the liability arises when the assessee communicates the decision of discontinuation of business and resultant termination of services/lease agreement. The quantification of compensation for termination of services or termination of lease agreement is a subsequent event. The liability crystallizes not at the time of passing of Board Resolution but when the Board Resolution is acted upon. In the facts of the case, we find that the decision rendered in the case of Bharat Earth Movers Ltd. vs. CIT (supra) does not support the case of assessee in the impugned assessment year.

8. Further the assessee has taken support of AS -4. In the facts of the case we find that even the provisions of AS-4 would not rescue the assessee as the liability did not arise in the financial year 2009-10. In the light of our above observation, we find no infirmity in the impugned order, hence, the same is upheld and ground No.1 of the appeal is dismissed.

9. The assessee in ground No.2, without prejudice to the submissions made in ground No.1 has prayed that the expenditure be allowed in the financial year 2010-11. It is an admitted position that the payments towards termination of lease agreement and termination of services, etc. were in the

financial year 2010-11, relevant to the assessment year 2011-12, the Assessing Officer is directed to examine the relevant documents furnished by the assessee and thereafter allow the expenditure, in accordance with law. Thus, ground No.2 of appeal is allowed for statistical purpose.

10. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on Thursday the 15th day of June, 2023.

Sd/-

(AMARJIT SINGH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 15/06/2023

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

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