

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.545/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2010-11)

M/s. TANFAC Industries Ltd. 66, (Old No.62 & 63), Oxford Centre Sir CP Ramasamy Iyer Road, Chennai-600 018.	बनाम / Vs.	ACIT, Corporate Circle-3(1), Chennai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAACT-2591-A		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri R.Vijayaraghavan (Advocate)-Ld.AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri D.Hema Bhupal (JCIT)- Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	22-06-2023
घोषणा की तारीख / Date of Pronouncement	:	27-06-2023

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. The grievance of the assessee in the captioned appeal is two folds i.e., (i) disallowance of customs duty for Rs.9.53 Lacs; (ii) disallowance of deferred revenue expenditure. The impugned order has been passed by learned Commissioner of Income Tax (Appeals)-3, Chennai [CIT(A)] on 07-01-2019 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 05-03-2013. The grounds taken by the assessee read as under: -

"1. The order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and in the circumstances of the case.

2. The Commissioner of Income-tax (Appeals) erred in confirming the disallowance of Rs.9,53,573/- being customs duty paid as prior period expenses.

2.1. The Commissioner of Income tax (Appeals) ought to have appreciated that the liability to make the payment of the duty had crystalized during the year under consideration and therefore the same is to be allowed in this year.

2.2. The Appellant submits that being a statutory due, it was allowable in the year of payment in terms of section 43B of the Act, irrespective of the method of accounting followed by the assessee.

2.3 The Commissioner of Income tax (Appeals) ought to have appreciated that liability in respect of such expenditure accrues in the year in which the demand is raised and such expenditure is not in the nature of prior period expenses, even if, it pertains to an earlier year due to the applicability of provisions of Section 43B of the Act.

2.4 The Commissioner of Income-tax (Appeals) erred in holding that as no provision for such customs duty had been made in the books and disallowed in the earlier years, the payment for customs duty made during this year was not allowable.

2.5 The Commissioner of Income tax (Appeals) ought to have appreciated that it is not necessary that a provision should be made in the accounts so as to entitle the assessee to the deduction of an amount which is paid during the year under section 43B of the Act.

2.6 The Commissioner of Income tax (Appeals) should have followed the decision in Associated Pigments Ltd Vs CIT (1998) 234 ITR 589 (Cal.), wherein the Hon'ble Calcutta High Court observed as under:-

"There is no part of section 43B or the Income Tax Act, itself which requires that when deduction is claimed on the basis of section 43B, assessee must satisfy the twin test of both providing actual payment of the due tax or cess in the previous year in question, as well as satisfying the Department that due provision had been made in the books in regard to such duty or tax for which payment was made later on. To introduce this double test would be writing words into the Section which neither the Tribunal nor the Court is entitled to do."

3. The Commissioner of Income Tax (Appeals) erred in confirming the disallowance of miscellaneous expenditure amounting to Rs.4,94,32,000/-.

3.1 The Appellant submits that as it is expenditure in the nature of revenue, and the entire expenditure is laid out and expended wholly and exclusively for the purpose of the-business of the appellant, the entire expenditure is allowable u/s.37 of the Act, irrespective of the accounting treatment given in the books of accounts as deferred revenue expenditure.

3.2 The Commissioner of Income tax (Appeals) ought to have appreciated that the Appellant's books of accounts are subject to audit and such large expenditure cannot form part of the particular expenditure unless supported by proper document.

3.3 The appellant relies on the Supreme Court's judgment in Taparia Tools Limited 372 ITR 605 wherein the Court held that "when this course of action was permissible in law to the assessee as it was in consonance with the provisions of the Act which permit the assessee to claim the expenditure in the year in which it was incurred, merely because a different treatment was given in the books of account cannot be a factor which would deprive the assessee from claiming the entire expenditure as a deduction". "The ordinary rule to be applied is that revenue expenditure incurred in

particular year is to be allowed in that year. Thus, if assessee claims that expenditure in that year, IT Department cannot deny the same".

Having heard rival submissions, the impugned issues are adjudicated as under. The assessee being resident corporate assessee is stated to be engaged in manufacturing of chemicals.

2. Disallowance of Customs Duty

2.1 The assessee is eligible to import raw material without payment of customs duty if the said material is used in manufacturing process and the goods are ultimately exported. Such savings in customs duty is accounted for as income in the year when the raw material is imported. In this year, the assessee could not export the finished goods and consequently, asked to pay impugned customs duty for Rs.9.53 Lacs. The assessee could not perform the obligation of export and accordingly, claimed the sum so paid as prior period items. The Ld. AO disallowed the same on the ground that the expenditure was not related to previous year. The Ld. CIT(A) upheld the disallowance against which the assessee is in further appeal before us.

2.2 From the facts itself, it emerges that the expenditure has been crystallized only during this year. The incentive received in earlier year as been considered as income in earlier years. In this year, the assessee could not perform export obligation and accordingly, held liable to pay the said amount. Therefore, the deduction of the same is allowable to the assessee. We order so. The corresponding grounds stands allowed.

3. Disallowance of Deferred Revenue Expenditure.

3.1 The assessee commenced commercial production of a product known as “3phynoxy” in January, 2009. Due to severe technical issues, the expenditure incurred for Rs.547.30 Lacs on raw material, power and consumable etc. during the intervening period between the date the project was ready to commence commercial production and the date on which commercial production actually began was treated as deferred revenue expenditure in the books of account. The same was written-off over a period of 5 years. However, in the computation of income, the assessee chose to claim the same in full in the first year itself. The amount debited in subsequent year was accordingly added back and not claimed as deduction in the computation of income. The Ld. AO disallowed the same to the extent of Rs.282.45 Lacs on the ground that the nature of expenditure was not furnished. From the balance, only 1/5th was allowed. In other words, deduction only to the extent of Rs.52.97 Lacs was allowed as against Rs.547.30 Lacs as claimed by the assessee. The Ld. CIT(A) upheld the disallowance against which the assessee is in further appeal before us.

3.2 The undisputed facts that emerges are that the expenditure is revenue in nature. However, the expenditure incurred during intervening period when the project was ready to commence commercial production and the date on which commercial production actually began was treated as ‘deferred revenue expenditure’ in the books of account. The same has been

written-off over a period of 5 years in the books of account. However, in the computation of income, the assessee has chosen to claim the same in the first year itself. From the computation of income of subsequent years as placed on record, it could be seen that the expenditure in those years has been reversed in the computation of income and the deduction of the same has not been claimed by the assessee. The action of the assessee is in accordance with the decision of Hon'ble Supreme Court in the case of **Taparia Tools Ltd. (372 ITR 605)** which held that when a particular course of action was permissible in law to the assessee as it was in consonance with the provisions of the Act which permits the assessee to claim the expenditure in the year in which it was incurred, merely because a different treatment was given in the books of account cannot be a factor which would deprive the assessee from claiming the entire expenditure as a deduction. The entries in the books of account are not determinative or conclusive and the matter is to be examined on the touchstone of provisions contained in the Act. Respectfully following the same, we would hold that the deduction of the expenditure, in full, could have been claimed by the assessee in the first year itself.

3.3 Since the assessee has not furnished complete details of the expenditure, we restore the matter back to the file of Ld. AO with a direction to the assessee to furnish the details of the expenditure. If the same is found to be revenue in nature, the

deduction of the same would be available in full. The corresponding ground stand allowed for statistical purposes.

Conclusion

4. The appeal stands partly allowed for statistical purposes.

Order pronounced on 27th June, 2023.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 27-06-2023
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF