

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'F' : NEW DELHI)
BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 7126/Del/2017, A.Y. 2012-13

ACIT, Circle, Karnal	Vs.	M/s. Liberty Shoes Ltd., 13 th Mile Stone, Liberty Puram G.T.Road, Bastara, Kutail, Distt. Karnal. PAN : AAACL3146K
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Satish Gioel, Adv.
Respondent by	Sh. Sanjay Tripathi, Sr. DR

Date of hearing:	10.05.2023
Date of Pronouncement:	19.07.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been preferred by the Revenue against the order dated 07.09.2017 of CIT(A), Karnal (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No. IT/15/KN/2015-16 New Delhi arising out of an appeal before it against the order dated 31.03.2015 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, Circle, Karnal (hereinafter referred as the Ld. AO).

2. The facts in brief are that assessee filed return declaring income of 14,77,580/- which was processed u/s 143(1). Subsequently, the case was selected under CASS and notice u/s 143(2) was issued on 12.03.2018. During assessment proceedings books of account were produced and test checked with reference to bills / vouchers produced for verification. The assessee is a public listed company and engaged in the business of manufacturing & trading leather and non-leather footwear it has manufacturing units in Karnal, Kutil, Gharunda, Rourkela and Dehradun.

2.1 Ld. AO had considered the fact that assessee has incurred interest liability to the tune of Rs. 11,16,86,938/- on interest bearing loans while has earned dividend from investment in the companies where investments in shares was made and taking into consideration the circular dated 11.02.2014 made the addition. Ld. CIT(A) had deleted the same.

2.2 Further an addition of Rs. 3,19,45,898/- was made by the Ld. AO denying the claim of this amount on account of payment to YES bank on behalf of the corporate guarantee of joint venture company namely M/s. Footmart Retail India Ltd. During the assessment proceedings the Ld. AO has asked to assessee to justify the said expense as per provisions of Section 37 of the Act to which the assessee had claimed as under :

“4. Details and supporting documents in respect of Exceptional items of Rs. 3,19,45,898/-: In this regard please note that during the year under consideration, the company has paid a sum of Rs. 3,19,45,898/- to YES BANK due to invocation of the Corporate Guarantee given by company for securing the credit facilities extended by the YES BANK to M/s Foot-Mart Retail India Ltd. (FMRIL), a Joint Venture Company, jointly and severely with Pantaloon Retail India Limited (PRIL).

Please note that to strengthen its presence in the organized retailing, the said joint venture company was got incorporated in the year 2005 by the Company, jointly with PRIL, having 49% share in the same. To meet its financial requirements for its business operations the company, being a promoter of the said JV Company extended its corporate guarantee jointly with PPJL to Yes Bank for the credit facilities granted.

Since due to higher operational cost and low volume of business in comparison to envisaged plans, FMPJL went into losses and ultimately expressed its inability in payment of its dues towards Yes Bank vide letter dated January 16, 2012 (copy enclosed). On receipt of the same Yes Bank initiated its recovery proceeding with the guarantee by giving notice for invocation of the Corporate Guarantee to both the guarantors vide letter dated January, 17, 2012 (copy enclosed).

The company initially challenged such invocation vide its letter dated January 24, 2012 but latter on discharging of the said, liability by the PRIL, the other promoter & guarantor, initiation of the legal proceedings for compulsory winding up of the Company by Yes Bank and taking up the matter with Company's bankers for said recovery as well as requiring them to put company's name in the list of "Wilful Defaulters", to protect its image and reputation as well as credit worthiness with the financial institutions, the Company preferred to settle the matter amicably by paying off its share and finally discharged its liability by paying Rs. 3,19,45,898/- in full and final settlement of the dues (copy of the No dues certificate enclosed).

Considering the non-recoverability of the same from FMRIL, it was written off in the books of accounts and debited to the profit & loss account for the year under consideration. Since, the said payment was made wholly and exclusively for the purpose of business, so the same is an allowable

expenditure under the provisions of section 37(1) of the Income Tax Act, 1961. The above submission finds due support from the judgement of Hon'ble Supreme Court in the case of CIT v. Delhisafe Deposit Co. Ltd.[1982] 133 ITR 756 (SC) (Copy enclosed at Page No. 808 to 810.)”

2.3 The Ld. AO had however disallowed the same first considering expenditure / loss to be capital in nature. Secondly, considering that assessee is not in the business of giving guarantees to others so there was no business exigency as the expense has not been incurred wholly and exclusively for the business purposes for purpose section 37 of the Act. It was also held that M/s. Foodmart Retail India Pvt. Ltd. is an independent entity and there was no compulsion upon the assessee to fulfill liability of a separate entity. Ld. AO also concluded that there is no reason from which it can be ascertained that the liability of an entity should be adjusted against the assets of the other entity. Ld. AO made observation that the amount written off on account of payment to YES bank is a contingent liability and relying the judgment of Hon'ble Supreme Court in **Indian Molasses Company Pvt. Ltd. vs. CIT 1959 (37) ITR 66** held that being contingent liability same is not allowable.

3. Ld. CIT(A) has however deleted the addition and the Revenue is in appeal raising following grounds :-

“1. Whether on the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs.70,56,529/- on account of expenses related to exempt income u/s 14A read with Rule 8D of the Income Tax Rules, clearly overlooking the spirit of section 14A according to which the tax exempt income need not be necessarily included in the income of the year under consideration for the disallowance to be triggered in respect of expenses that shall eventually result in exempt income in future years.

2. Whether on the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs.3,19,45,898/- made by the A.O. in respect of the payment made by assessee company to YES Bank on account of a corporate guarantee, without even specifying the section / relevant provisions of the Income Tax Act under which the said deduction was allowed.

3. *Whether on the facts and in the circumstances of the case, the CIT(A) has erred in ignoring the fact that the assessee in its Profit & Loss Account had recorded the entry as Debts Written Off, and thus the same had to be tested on the touchstone of only the provisions of section 36(l)(vii) of the I.T. Act.*

4. *Without prejudice to above, whether on the facts and in the circumstances of the case, the CIT(A) has erred in ignoring the fact that payment of Rs.3,19,45,896/- to YES Bank by the assessee company for being a corporate guarantor of FMRIL is not supported by any clause in the JV Agreement made between the assessee company, PRIL and FMRIL.*

5. *Without prejudice to above, whether on the facts and in the circumstances of the case, the CIT(A) has erred in ignoring the that that section 37 of the I.T. Act is not applicable to the payment of Rs.3,19,49,856/- claimed as 'Debt Written off' in the Profit & Loss Account, as the said payment made by the assessee due to its 49% Shareholding in the JV was a payment on capital account, and not on revenue account, and also as the said expenditure was not laid out or expended wholly and exclusively for the purposes of the business of the assessee.*

6. *Whether on the facts and in the circumstances of the case, the CIT(A) has erred in merely giving a bald and unsubstantiated finding that payment of Rs.3,19,45,898/- was a business expenditure of the assessee company by completely ignoring the fact that M/s Foot Mart Retail India Ltd. was an independent entity having its own PAN and filing its separate return of income, and that any such liability of a separate entity cannot be deducted from the income of the assessee company.*

7. *Whether on the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 12,48,860/- made on account of written off bad debts claimed as expenses u/s 37 of the I.T. Act, 1961 without considering the provisions of section 36(l)(vii) and without following the judgement of the Hon'ble Supreme Court in the case of TRF Ltd Vs CIT 313ITR 397 SC.*

8. *The appellant craves leave to add or amend the grounds of appeal before the appeal is heard or disposed off."*

4. Heard and perused the record. The ground wise findings are as follows.

5. **Ground no. 1** : In regard to this ground it can be observed that there is no dispute to the fact that during the relevant previous year no exempt income was earned. Ld. CIT(A) has followed the judicial pronouncements wherein it held as settled proposition of law that where no exempt income is earned no disallowance u/s 14A r.w.r 8D can be made. In fact Ld. CIT(A) relied the

determination of issue in favour of assessee in assessee's own case. Ld. AR has also drawn support from orders in assessee's own case in similar circumstances in ITA no. 1979/Del/2018 for A.Y. 2014-15 where by judgment dated 08.02.2023 the Revenue's appeal on that ground was disallowed and order of Id. CIT(A) was upheld. Thus, the Bench is inclined to not interfere in the findings of Ld. CIT(A). **Consequently, ground is determined against the Revenue.**

6. **Ground nos. 2 to 8;** These grounds arise out of common questions of facts and law therefore are taken up together for determination. Ld. AR has heavily relied Joint Venture tri-partite agreement available at page no. 58 to 84, minutes of the meeting resolution with regard to Corporate Bank Guarantee available at page no. 85 to 86, Copy of letter dated 16 Jan, 2012 by FMRIL expressing of inability in payments of its dues towards the YES Bank available at page no. 36 to 37, Copy of Notice dated January 17, 2012 issued by the YES Bank, on receipt of the letter dtd. January 16, 2012 mentioned in Point No.2, for invocation of the Corporate Guarantee to both the Corporate Guarantors at Page No. 38 to 40, copy of letters of Yes Bank dated January 30, 2012 & January 31, 2012 to company to pay the outstanding amount at Page No. 41 to 46, Copy of letter dated February 14, 2012 by PRIL regarding discharging it's share of liability (51%) at Page No. 47 to 48. Copy of letter of Yes Bank dated February 16, 2012 to the bankers of the Company as regards to invocation of its Corporate Guarantee at Page No. 49 to 50. No Dues Certificate and Full & Final payment letter of YES Bank dated March 3, 2012 & March 6, 2012 at Page No. 51 to 52. Balance sheet of Footmart Retail India Ltd. for the year ended 31.03.2019 with reference to accumulated losses of this company at Page No. 99 to 118. wherein all facts and circumstances along with business expediency

with reference to formation and operation of Footmart Retail India Ltd. are explained. It was contended that there being a legal liability under corporate guarantee the assessee was under obligation to make the payment of bank dues of the joint venture company.

7. Ld. DR however supported the findings of ld. AO submitting that Ld. AO was right in inferring that there was no business expediency element in repayment of loan liability of separate legal entity.

8. After taking into consideration the documents and the various clauses of same as cited by Ld. AR it can be observed that the Joint Venture had a backing of the assessee and its partners. Ld. CIT(A) has relied the judgment in *CIT vs. Delhi Safe Deposit Company Ltd. (1982) 133 ITR 756 (SC)* and ACIT, Circle 3 Chennai vs. WS Industries India Ltd. ITAT, Chennai, 2011, 128 ITD 98 which was distinguished by ld. AO.

9. The case of assessee is that in order to create dominant position in the retail market the joint venture was incorporated and being promoters the corporate guarantees were extended for the credit facilities received for the joint venture company. It appears that Ld. AO had fallen in error in not appreciating the fact that although, the joint venture was a separate entity it was promoted by the assessee along with his partners and they had direct interest in the sustenance and existence of that company. There is no allegation that the Joint Venture was any paper or sham transaction but the matter on record show it was a functional unit which ended into loss making. The credibility of assessee was directly on stake with the default of the joint venture company FMRIL. The dues of joint venture were paid on full settlement of the dues standing against the assessee on account of corporate guarantee. The same was certainly a business expenditure as the operations of joint venture was to expand the

market of assessee with his partner of joint venture. In the instant case the expenditure was rightly held to be deductible under s. 37 of the Act. The assessee incurred the expenditure to avoid any adverse effect on its reputation and avoid costs of litigation and in *CIT vs. Delhi Safe Deposit Company Ltd.(supra)* Hon'ble Supreme Court has held such payments to be a valid business exigency. There is no error in the findings of Id. CIT(A) requiring interference. The grounds are decided against the Revenue. **The appeal of Revenue is dismissed.**

Order pronounced in the open court on 19th July, 2023.

Sd/-

(SHAMIM YAHYA)

ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)

JUDICIAL MEMBER

Date:- 19.07.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI