

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH “B”, KOLKATA

[Before Shri Rajesh Kumar, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 603/Kol/2023
Assessment Year : 2017-18

M/s. Khadim India Ltd. PAN: AABCK 3341 A	Vs.	ACIT, Circle-8(1), Kolkata
Appellant		Respondent

Date of Hearing	27.07.2023
Date of Pronouncement	10.08.2023
For the Assessee	Shri Siddarth Agarwal, Advocate
For the Revenue	Shri P.P. Barman, Addl. CIT, Sr. DR

ORDER

Per Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2015-16 is directed against the order dated 27.04.2023 passed by the Id. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as ‘the Id. CIT(A)’]. The assessee has raised the following grounds of appeal:

“i. For that on the facts and in the circumstances of the case, the Id. CIT(A) was not justified in confirming the disallowance of Rs. 25,09,514/- made by the AO on account of stamp and registration charges for acquiring lease-hold properties.

iii. That the appellant craves leave to add, alter or delete all or any of the grounds of appeal.”

2. Brief facts of the case are that the assessee filed its return of income for the A.Y. 2017-18 by declaring total income of Rs. 43,54,89,240/-. The case of the assessee was selected for scrutiny followed by notices u/s 143(2) and 142(1) of the Act. In response to the notices, assessee filed reply to the queries made by the AO. After considering the submission, the Id. AO made following

addition in the hands of assessee on account of stamp duty registration charge of Rs. 25,09,514/- by observing that the expenditure incurred by assessee while acquiring the fixed asset is in capital nature. Therefore, the ld. AO did not allow the claim made by the assessee. Accordingly, he disallowed sum of Rs. 25,09,514/- and added back to the income of the assessee. Similarly, the ld. AO further disallowed sum of Rs. 1,63,842/- on account of excess depreciation claimed by the assessee and added to the income of the assessee.

3. Aggrieved by the above order, assessee preferred an appeal before the ld. CIT(A) where the appeal of the assessee was partly allowed by sustaining the addition of Rs. 25,09,514/- made by the AO on account of cost of stamp duty and registration charges as claimed by the assessee by dismissing the grounds taken by the assessee.

4. Feeling aggrieved by the above order, assessee is in appeal before this Tribunal. At the time of hearing, ld. AR submitted that the instant issue is covered in favour of the assessee in assessee's own case in ITA No. 954/Kol/2012 for A.Y. 2008-09 where the Tribunal allowed similar issue by observing as follows:

"7. The issue raised in this appeal is that the ld. CIT(A) erred in deleting the addition of Rs. 36,36,661/- made by the AO on account of stamp duty and registration charges paid by the assessee on leasehold property.

8. In this case the AO observed that the assessee has claimed expenditure of Rs.36,36,611/- under the head "stamp duty and registration charges". On 8 leasehold properties, situated all over India the period for the lease extended from 13 to 20 years. The AO opined that the asset obtained by way of lease was of enduring in nature. Hence he treated the expenditure as capital expenditure. Ld.CIT(A) deleted the

addition by holding that since the ownership of the asset was not with the assessee company hence the expenditure involved was revenue in nature.

Against the above order the Revenue is in appeal before us.

9. We have heard both the counsel and perused the records. We find that the issue involved is covered in favour of the assessee by various decisions of the higher courts. In this regard we note the decision of Hon'ble Bombay High Court in the case of CIT vs Bombay Cycle & Motor Agency 118 ITR 42 (Bom) where the matter pertains to treatment of brokerage of stamp duty paid for acquisition of lease hold properties. The Hon'ble High Court held that the period of the lease was one of ten years, it does not constitute startling difference as would appeal to us to apply a different test than the one which we applied in Hoechst Pharmaceuticals Ltd's case 113 87 (Bom). It was held that in their view the expenses were rightly considered by the Tribunal as being of revenue in nature. Similarly the Hon'ble Bombay High Court in the case of CIT vs Cinceita Private Limited 137 ITR 652 considered the issue where the period of lease was 20 years. The Hon'ble Bombay High Court held that it must also be noted that the expenditure was in respect of stamp duty, registration charges and professional fee. There was no element of the premium in the amount claimed as expenditure. Moreover, this expenditure would have been the same even if the lease had been of a shorter duration provided the period of lease was more than one year.

9.1. Thus in the background of the aforesaid discussion and precedent we find no infirmity in the order of the ld. CIT(A) and accordingly we uphold the same

10. In the result the appeal of the Revenue stands dismissed.”

5. We after hearing the rival submission of the parties and on perusal of the material available on record, we find that the instant issue is covered in favour of the assessee by the decision rendered by the Tribunal in assessee's own case in ITA No. 954/Kol/2012 and after following the same, we are inclined to allow the grounds taken by the assessee and direct the ld. AO to delete such addition made in the hands of assessee on account of stamp duty and

registration charge of Rs. 25.,09,514/- while framing the assessment order. In terms of the above discussion, the appeal of the assessee is hereby allowed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 10.08.2023.

Sd/-

Sd/-

(Rajesh Kumar)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 10.08.2023
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s. Khadim India Ltd., C/o. Subash Agarwal & Association, Advocates Siddha Gibson, 1, Gibson Lane, Suite 213, 2nd Floor, Kolkata-700069.
2. Respondent – ACIT, Circle-8(1), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata