

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI PAVAN KUMAR GADALE, JM

ITA No.716/Mum/2011

(Assessment Year: 2005-06)

Gold Plus Toughened Glass Ltd.
206 Kamdhenu CHS, Bldg, No.4
Lokhandwala complex,
Andheri (W),
Mumbai-400 053

Vs.

DCIT 8(1)
Mumbai

(Appellant)

(Respondent)

PAN No. AABCG0389C

Assessee by : None

Revenue by : Ms. Bhumika Patel, DR

Date of hearing: 16.01.2024

Date of pronouncement : 22.01.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the assessee/ appellant for A.Y. 2005-06 against the appellate order passed by the Commissioner of Income-tax (Appeals)-16, Mumbai [the learned CIT (A)] dated 22nd November, 2010, wherein the appeal filed by the assessee against the assessment order passed under Section 143(3) of the Income-tax Act, 1961 (the Act) dated 14th December, 2007, passed by the learned DCIT, 8(1), Mumbai, was partly allowed. Therefore, assessee is aggrieved and is in appeal before us, as per following grounds:-

"1. a) That on the facts & circumstances of the case, Learned Commissioner of Income-tax (Appeals) [Ld CIT (A)], has grossly erred in confirming addition of ₹5,60,668/- made by Learned Assessing Officer (Ld AO') by invoking provisions of section 145A of the Income Tax Act, 1961 ('the Act'). Addition confirmed by the learned CIT (A) is illegal and bad in law.

b) That on the facts & circumstances of the case, Learned CIT (A) has not appreciated that as per Section 145A of the Act, value of purchase, sale, opening stock & closing stock are to be further adjusted to include amount of any tax, duty, cess or fee actually paid or incurred by the assessee in order to determine income chargeable under the head profit & gains of business and profession. Learned CIT (A) has grossly erred in confirming addition by only increasing value of closing stock as made by the learned AO.

2. That on the facts & circumstances of the case, Learned Assessing Officer, has grossly erred in making addition of ₹77,329/- on account of loss on sale of assets. Addition made is illegal and bad in law."

02. The brief facts of the case shows that assessee is a company engaged in the business of processing of glasses filed its return of income on 28th October, 2005 at a total income of ₹1,23,49,240/-. The return of income was selected for scrutiny under Section 143(2) of the Act. Notice was issued on 26th October, 2006.



03. In the assessment proceedings found that as per tax audit report assessee has unutilized CENVAT credit available to the tune of ₹5,60,686/-. The learned Assessing Officer issued show cause notice that it should not be allowed.
04. Assessee submitted that above CENVAT credit is pertaining to capital asset, which could be utilized for the purpose of fixed assets only. The assessee submitted that assessee is entitled for this refund from custom officers. It is also claimed that it is the current assets of the assessee.
05. The learned Assessing Officer noted that the amount of ₹5,60,000/- is on account of balance of unutilized MODVAT credit for which assessee has not produced any evidence to show that same is on account of additional duty paid to the custom authorities. The learned Assessing Officer further held that unutilized CENVAT credit is also required to be included in the value of the closing stock. Accordingly, he made an addition to the value of the closing stock and such addition resulted into increase in the income of ₹5,60,668/-.
06. The assessee has also debited an amount of ₹77,329/- to the profit and loss account on account of loss on sale of assets but did not make any addition to the total income. The assessee stated that assessee has sold the obsolete assets but has not explained that how this is allowable. Therefore, the learned Assessing Officer made the addition of disallowance of ₹77,329/-. The assessment order under Section 143(3) of the Act was passed on 14th December,

2007, at the total income of ₹1,38,24,060/-, against the return income of ₹1,23,49,241/-.

07. The assessee aggrieved with the assessment order preferred the appeal before the learned CIT (A). He confirmed both the disallowance and therefore, the assessee is in appeal on these two disallowances.
08. Despite notice, none appeared on behalf of the assessee; therefore, the issue is decided on the merits of the case. This is also so because of the reason that assessee is frequently writing letters to transfer these appeals to New Delhi, despite the fact that assessment is made by Assessing Officer at Mumbai.
09. By order of the Hon'ble Delhi High Court in company petition no. 308/10 dated 23rd March, 2011, the assessee company has merged with Gold Plus Glass India Limited and therefore, this appellate order is passed in the name of Gold Plus Glass Limited.
010. The Hon'ble president vide order dated 18th December, 2023, on the transfer request of the assessee, has rejected the application of the assessee.
011. The learned Departmental Representative vehemently supported the orders of the lower authorities.
012. The first ground of appeal is with respect to the addition of ₹560,668/-. As per tax audit report the learned Assessing Officer observed that assessee has unrealized CENVAT credit of ₹5,60,686/-. The assessee stated that this

amount was pertaining to the capital asset and unrealized revenue credit is only ₹17,247/-. As the assessee could not substantiate the same, the learned Assessing Officer included the same in the closing stock and made the addition. However, before the learned CIT (A) the assessee gave completely different version. The version of the assessee is that the CENVAT credit as on 1st April, 2004, was ₹7,90,156/-, CENVAT credit earned during the year is ₹205,75,864/-. From that the CENVAT duty availed of ₹1,98,03,196/-. Further, it is to be reduced from duty reversed of ₹10,04,859/-. Therefore, as on 31st March, 2005, this unutilized CENVAT credit was ₹5,57,965/-.

013. According to the Provision of Section 145 of the Act, the above sum should have been included in the closing stock. Accordingly, we do not find any infirmity in the order of the learned lower authorities in including the above sum in the closing stock of the assessee and thereby increasing the total income. Accordingly, ground no.1 of the appeal is dismissed.
014. Ground no.2 of the appeal is with respect to the addition on account of ₹77,329/- on account of loss on sale of the assets.
015. We find that the assessee has debited the above sum to the profit and loss account but not added the same while computing the total income of the assessee. Therefore, the learned Assessing Officer held that as the sale of the assets should be reduced from block of assets on which depreciation is claimed, this loss is not allowable. The



assessee did not challenge the same before the learned CIT (A) but has raised the above ground before us. Therefore, it is not arising from impugned order and further there is no infirmity in the order of the Id AO. Hence, it is dismissed. Accordingly, the appeal of the assessee is dismissed.

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

Order pronounced in the open court on 22.01.2024.

Sd/-
(PAVAN KUMAR GADALE)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 22.01. 2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai