

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'A': NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA Nos.1430 to 1433/DEL/2023
[Assessment Years: 2011-12 to 2013-14 & 2016-17]**

Deputy Commissioner of Income Tax, Central Circle-29, Room No.322, E-2, ARA Centre, Jhandewalan Extn. New Delhi-110055	vs	M/s Avichal Buildcon Pvt. Ltd. 98, Okhla Industrial Estate, Phase-III, New Delhi-110020
		PAN-AAFCA6846A
Revenue		Assessee

Assessee by	Sh. R.S. Singhvi, Adv. & Sh. Satyajeet Goel, Adv.
Revenue by	Sh. Kanav Bali, Sr. DR

Date of Hearing	04.01.2024
Date of Pronouncement	22.01.2024

ORDER

PER SAKTIJIT DEY, VP,

The captioned appeals by the Revenue arise out of separate orders of Learned Commissioner of Income Tax (Appeals)-30, New Delhi, pertaining to Assessment Years 2011-12, 2012-13, 2013-14 and 2016-17.

2. The only common issue arising in all these appeals relates to deletion of disallowance of claim of depreciation.

3. Since, the facts are identical in all appeals, we are referring to the facts of ITA No.1430/Del/2023 pertaining to Assessment Year 2011-12. Briefly the facts are, the assessee is a resident corporate entity. As stated by the Assessing Officer, the main objects of the assessee are manufacture and distribution of flexible laminates. The Assessing Officer has further stated that the assessee came into existence as a result of demerger of the rubber thread unit of M/s Dharmpal Satyapal Ltd. in a scheme of demerger approved by the Hon'ble Delhi High Court vide order dated 11.09.2007. In course of assessment proceedings, the Assessing Officer, while verifying the return of income filed by the assessee as well as the audited financial statements, noticed that the assessee has claimed depreciation amounting to Rs.3,96,19,664/-. From the audit report, the Assessing Officer noticed that depreciation has been claimed in respect of various blocks of assets comprising of building, factory, furniture & fixture and plant and machinery. He observed that in course of assessment proceeding, under section 153A of the Act in case of M/s Dharampal Satyapal Ltd. erstwhile company, a special audit of all the books of accounts were conducted u/s 142(2A) of the Act . From the said audit report, he found that, at the time of demerger, units of the company were at construction/erection

stage. However, as on the date of demerger effective from 01st April, 2006, the assets of demerged unit included assets acquired out of amount of Excise Duty Exemption (accounted as Deferred Government Grant in the books of the assessee) as per scheme of investment. From the special audit report, he also noticed that in terms of scheme of arrangement, all incentives, subsidies, rehabilitation schemes, special status and other benefits or privileges enjoyed, excise and income tax concessions and exemptions, state incentive granted by any Body, Central Government, or State Government, local authority or by another person, or availed by/available to respective units shall vest with and be available to the wholly owned subsidiary demerged companies on same terms and conditions.

4. Thus, from the aforesaid observations of the special auditor, the Assessing Officer concluded that the blocks of assets acquired by the assessee from M/s Dharampal Satyapal Ltd. as a result of the scheme of demerger, since, were acquired out of amount of excise duty exemption accounted as deferred government grants in the books of M/s Dharampal Satyapal Ltd., in terms of explanation 10 to section 43(1) of the Act, the actual cost of such assets to the resulting company i.e. the

assessee shall be nil as the entire cost of the assets has been met by the Central Government through Central Excise Exemption. On the aforesaid premises, the Assessing Officer disallowed assessee's claim of depreciation.

5. Contesting the aforesaid disallowance, the assessee preferred appeal before Learned First Appellate Authority. After considering the submission of the assessee and the facts and material available on record, learned First Appellate Authority having found that the issue has been decided in favour of the assessee in past Assessment Years, followed the same and decided the appeals.

6. Before us, learned Departmental Representative submitted that in terms of explanation 10 to section 43(1) of the Act, the actual cost of such assets has to be determined after reducing the cost met by the Central Government through Central Excise Exemption. He submitted that this issue is squarely covered by the decision of the Hon'ble Supreme Court in the case of CIT v. Shree Balaji Alloys (2017) (80 taxmann 239)(SC).

7. Per Contra, learned counsel for the assessee, submitted that the assessee has claimed depreciation on the written down value of assets as standing in the books of the erstwhile

company i.e. M/s Dharampal Satyapal Ltd. on the date of demerger and acquisition by the assessee. Thus, he submitted, there is no scope left with the Department to reduce the Central Government Excise Duty Exemption from the written down value to arrive at determined the actual cost of the assets at nil. Further, he submitted that the issue is squarely settled in favour of the assessee by the decision of the Tribunal in past assessment years not only in case of assessee but in case of the other resulting company M/s Abhisar Buildwell Pvt. Ltd. He placed on record the orders passed by the Tribunal in this regard. He further submitted that the decision of the Tribunal in case of M/s Abhisar Buildwell Pvt. Ltd., AY 2011-12 has been confirmed by the Hon'ble jurisdictional High Court vide order dated 24.07.2019 in ITA No.240/2019. Thus, he submitted, in view of the binding precedent laid down by the Co-ordinate Bench/Hon'ble jurisdictional High Court, the issue has to be decided in favour of the assessee.

8. We have considered rival submissions and perused the materials available on record. We have also applied our mind to the decisions of the Co-ordinate Bench and the Hon'ble jurisdictional High Court in case of M/s. Abhisar Buildwell Pvt.

Ltd. on identical issue. Undisputedly, the assessee came into existence as a result of demerger of M/s Dharmopal Satyopal Ltd. in a scheme of demerger approved by the Hon'ble Delhi High Court vide order dated 11.09.2007, effective from 01st April, 2006. As per the scheme of demerger, the building, plant and machinery and other assets of the flexible packaging unit came to the assessee company. The issue which is arising for consideration is whether the Central Excise Duty Exemption granted to M/s Dharmopal Satyopal Ltd. can be reduced from the cost of assets to determine the actual cost for the purpose of depreciation. While it is the case of the assessee that excise duty exemption granted is revenue in nature as it is not intended for meeting the cost of particular assets, as per the Revenue, it is a capital receipt attached to the investment made in assets, hence would reduce the cost of assets.

9. While dealing with an identical issue in case of DCIT vs M/s Abhisar Buildwell Pvt. Ltd. in ITA No.1394/Del/2023, dated 17.01.2024, the Co-ordinate Bench has held as under:-

“9. We have considered rival submissions and perused the material available on record. We have also applied our mind to the decision of the Tribunal and the decision of the Hon'ble jurisdictional High Court in assessee's own case in assessment years 2011-12 to 2015-16. Undisputedly, the assessee came into existence as a result of demerger of M/s

Dharmopal Satyapal Ltd. in a scheme of demerger approved by the Hon'ble Delhi High Court vide order dated 11.09.2007, effective from 01st April, 2006. As per the scheme of demerger, the building, plant and machinery and other assets of the rubber thread unit came to the assessee. Whereas, the assets of flexible packaging unit came to another resulting company M/s Avichal Buildcon Pvt. Ltd.. It is the case of the Revenue that the central excise duty exemption availed by M/s Dharampal Satyapal Ltd. in respect of the rubber thread unit and flexible packaging unit will go to reduce the cost of the assets. Hence, the actual cost of the assets to the assessee would be after deduction of the amount of Central Excise duty exemption given by the Central Government.

10. In the backdrop of Revenue's aforesaid contentions, the issue has to be examined. It is to be noted that the Central Excise Exemption was availed by M/s Dharampal Satyapal Ltd.. The impugned assessment order is completely silent on the aspect as to whether the Central Excise Duty Exemption availed by M/s Dharampal Satyapal Ltd. was reduced from the actual cost of the assets in the books of M/s Dharampal Satyapal Ltd. Admittedly, on the effective date of demerger i.e. 01st April, 2006, the assessee had acquired the assets of M/s Dharampal Satyapal Ltd. at the written down value as per the books of the erstwhile company on the date of demerger. If at all there should have been reduction of central excise exemption from the cost of asset, it should have been at the hands of M/s Dharampal Satyapal Ltd. prior to demerger and not at the hands of the present assessee after demerger. This is so because, the assessee has claimed depreciation on the written down value of assets as acquired on the date of demerger.

11. It is observed, while considering similar disallowance of depreciation at the hands of the assessee made on identical reasonings in Assessment Year 2011-12, the Tribunal in ITA No.823/Del/2015 dated 17.09.2018 has held that since excise refund is in the nature of revenue receipt forming part of profits and gains arising from the business, it cannot be reduced from the cost of plant & machinery. Of course, the Bench had given a further finding that since disallowance of depreciation enhances the profit, which is otherwise allowable as deduction u/s 80IC of the Act, the effect would be revenue neutral. It is a fact on record that Revenue's appeal against the aforesaid decision of the Tribunal has been dismissed by the Hon'ble jurisdiction High Court. Thereafter, the Tribunal has consistently expressed similar view, while deciding the appeals for Assessment Years 2012-13 and 2013-14, vide order dated 09.08.2019 in ITA No.5129 and 5130/Del/2016, for Assessment Year 2014-15 in ITA No.5825/Del/2017,

order dated 10.09.2021 and for Assessment Year 2015-16, in ITA No.2419/Del/2018 dated 15.09.2021. Having carefully examined the facts and materials on record, we do not find any factual difference between appeal relating to impugned assessment year and the appeals for past assessment years decided by the Tribunal in the orders referred to above. Thus, respectfully following the consistent view of the Tribunal in assessee's own case up to Assessment Year 2015-16, we uphold the decision of learned First Appellate Authority by dismissing the ground raised by the Revenue.”

10. In our view, the factual position in these appeals are identical to the facts involved in the case of Abhisar Buildwell Pvt. Ltd. (Supra). Therefore, we are of the considered opinion that assessee's claim of depreciation is allowable. Even, otherwise also, the disallowance of depreciation would only enhance the profit of the assessee, which is otherwise eligible for claim of deduction u/s 80IC of the Act. In fact, in case of Abhisar Buildwell Pvt. Ltd. (Supra), Hon'ble jurisdictional High Court has expressed the aforesaid view. In any case of the matter, learned First Appellate Authority has directed the Assessing Officer to allow assessee's claim of depreciation after verifying, if the assets have been brought in the books of the assessee on the closing WDV from the demerged company as on the effective date of demerger and depreciation has been claimed on such WDV year after year as per law. If it is found to be so, claim should be allowed. In our view, the Revenue should not have any grievance against such direction of learned First

Appellate Authority as it is in consonance with the directions of the Tribunal, while deciding the earlier year's appeals of the present assessee.

11. Thus, considering the totality of facts and circumstances of the case, we uphold the decision of learned First Appellate Authority in all these assessment years. Grounds raised by the Revenue are dismissed.

12. In the result, appeals of the Revenue are dismissed.

Order was pronounced in the open court on 22/01/2024.

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER
Delhi; Dated: 22/01/2024.**

Shekhar,

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

**[SAKTIJIT DEY]
VICE PRESIDENT**

Asst. Registrar,
ITAT, New Delhi