

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'F': NEW DELHI)**

**BEFORE: SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER,**

**ITA No:- 9523/Del/2019
(Assessment Year: 2006-07)**

M/s Phenil Sugars Limited, (Since amalgamated with M/s Basti Sugar Mills Co. Ltd.), 207, Essel House, 10, Asaf Ali Road, New Delhi.	Vs.	ITO, Ward-16(3), New Delhi (Presently ACIT< Circle 19(2), New Delhi.
PAN No: AADCP0153H		
APPELLANT		RESPONDENT

Assessee by : Shri KVSr Krishna, CA,
Shri NK Garg, Adv. &
Shri Aman Goel, CA
Revenue by : Shri Vivek Vardhan, Sr. DR

Date of Hearing : 08.02.2024
Date of Pronouncement : 21.02.2024

ORDER

PER SAKTIJIT DEY, VP:

This appeal has been filed by the assessee against the order dated 26.09.2019 of Ld. Commissioner of Income Tax (Appeals)-2, [Ld. CIT(A)] New Delhi pertaining to Assessment Year 2006-07.

"1. a) *The Ld. CIT(A) has erred in law and on facts in confirming the disallowance of Rs. 85,86,000/- in respect of interest expenses alleging that the assessee has foregone interest by giving interest free advance to various parties. The disallowance confirmed by CIT(A), without appreciating the facts of the case, on surmises and conjectures, on notional basis and deserves to be deleted.*

(b) The appellant contends that the loans and advances are for commercial and business expediency as has been held in the earlier year by the appellant authorities. Further there is no finding of any diversion of any interest bearing funds. Hence no interest expenditure should be disallowed.

(c) The Ld. CIT(A) has failed to appreciate the fact that the issue is covered in favour of the assessee by the Hon'ble ITAT order dated 7.08.2009 in ITA No.1603/Del/09 and 1785/Del/2009 for A.Y. 2003-04 and CIT(A) in A.Y. 2005- 06 and 2007-08. Therefore following the principle of consistency, the claim should have been allowed by the CIT(A).

2. *The Ld. CIT(A) has erred in law and on facts in not adjudicating certain claims made by the appellant during the course of assessment proceedings being legally allowable to the appellant. The appellant contends that the claims of the assessee should have been admitted by the CIT(A) in view of SC decision in Goetze (India) Ltd vs. CIT and adjudicated on merits.*

3. (a) *The Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs. 1,87,63,000/- on adhoc basis being 7.33% of alleged difference in stock as per books of account and as per stock statement for hypothecation with the bank. The addition is without any evidence, on surmises and conjectures and should be deleted.*

(b) The appellant contends that as per the copy of RG-1 Register of Excise Department, there is no discrepancy in the stock recorded in the books as it is the correct position of stock which is duly verified by the Excise Authorities as the commodity sugar falls within the purview of excise law. Therefore, the addition of Rs. 1,87,63,000/- alleging sales outside books is only on surmises and conjecture without any evidence and should be rejected.

(c) Without prejudice, the appellant contends that the AO has erred in ignoring the fact that up to AY 2005-06, the assessing officer has already taxed value of stock aggregating to 1,65,442 bags as undisclosed stock allegedly not reflected in the books stating that cost of such production has been borne by payments outside the regular books of accounts. Having taxed as alleged value of stocks outside books the benefit of costs should be allowable to the assessee in this year.

4. *The above grounds are independent and without prejudice to one and other.*

5. *The appellant may be allowed to add, amend and forgo any of the ground at the time of hearing."*

2. In grounds no. 1 and 2, the assessee challenged the disallowance of interest expenses amounting to Rs. 85,86,000/-.

3. Briefly stated the facts are that the assessee is a resident corporate entity. For the Assessment Year under dispute, the assessee filed its return of income on 29.11.2006, declaring loss of Rs. 33,85,37,410/-. In course of assessment proceedings, the Assessing Officer on perusing the financial statements of the assessee, noticed that loan granted by the assessee to various entities stood at Rs. 7,25,99,615/- by the end of the year. Whereas, the opening balance of loans was Rs. 80,02,039/- . Further, he observed that around Rs. 6.4 crore were advanced as interest free loans to group entities in the current year. He observed that the assessee had borrowed funds for its business amounting to Rs. 105,83,57,482/-. Being of the view that borrowed funds were utilized for advancing interest-free loans, the assessing officer disallowed the interest expenditure corresponding to the interest-free loans advanced during the year, by applying interest rate of 12%. Thus, ultimately, he disallowed an amount of Rs. 85,68,000/- under Section 36(1)(iii) of the Act. While doing so, the Assessing Officer relied upon similar disallowance made in case of the assessee for the A.Ys. 2002-03 to 2005-06. Though, the assessee contested the aforesaid disallowance before Ld. First Appellate Authority, however, it was unsuccessful.

4. Before us, the submissions of the assessee are twofold: firstly, whatever interest-free loans given to group entities were out of surplus funds available with the assessee, and loans were given in earlier years; secondly, that the issue has been decided by the Tribunal in favour of the assessee in earlier Assessment Years. In this context, Ld.

Counsel relied upon the decision of the Coordinate Bench in case of the assessee in ITA no. 3969/Del/2010 vide order dated 30.11.2017.

5. We have considered rival submissions and perused the materials on record. On perusal of the balance sheet of the assessee for the current year, we find that the assessee had sufficient interest-free surplus funds available with it. Therefore, as per the settled legal principles, it has to be presumed that the interest-free surplus funds have been utilized for interest-free advances. In any case, it is a fact on record that the loans in respect of which interest disallowance has been made were given in earlier assessment years. Further, while disallowing interest expenditure, the Assessing officer relied upon the decisions taken in assessment year 2003-04 to 2005-06. Pertinently, while deciding identical issue in the assessee's own case for assessment year 2004-05 and 2005-06, the Tribunal's order referred to above read as under:

"7. We have carefully considered the rival contentions and also perused the orders of the lower authorities. The assessee has submitted a copy of balance sheet of the company wherein the own fund shown by the assessee are far in excess of non-interest bearing advances given. The coordinate bench has considered this issue in assessee's own case in ITA No. 1033/Del/2014 for the Assessment Year 1999-2000, in detail and deleted the interest disallowance vide para No 6 as under-

6. We have carefully considered the rival contentions and also considered the orders of the lower authorities. The Ld. CIT A has deleted the addition holding that no interest-bearing finds have been directed towards interest free advances to the sister concerns It was further found that loans were obtained by assessee for specific purposes and which dily represented in the value of the stock The Id CIT further relying on the decision of the Hon'ble Bombay High Court in case of CIT versus Reliance utilities and Power Ltd 313 ITR 340 has deleted the addition holding the assessee has enough own funds which are interest free and which are higher than the amount of advance to the sister concerns. The Ld. departmental representative could not point out any infirmity in the order of the Ld. I appellate authority. In view of this, we confirm the finding the finding of the Id CIT appeal in deleting the disallowance of Rs. 15004133/- u/s 36(1)(ii) of the Act. In the result ground no I of the appeal of the revenue is dismissed."

8. The case of the assessee further supported by the decision of the Hon'ble Bombay High Court in case of CIT Vs. Reliance Utilities and Power Ltd 313 ITR 340 wherein it has been held that if the assessee has higher noninterest bearing funds available then the non interest bearing advances, then the presumption lies in favour of the assessee that such advances are out of such interest free funds available In the present case the total interest free shareholders fund available with the assessee is Rs. 6 16 crores whereas the total interest free loans to the companies is Rs. 61.06, lacs, loan to suppliers is Rs. 93.83 lacs and in other is Rs. 1.18 lacks. Therefore, we direct the Id AO to delete the disallowance of Rs. 1420923 Therefore, ground Nos. 1 to 3 of the appeal are allowed."

6. Facts being identical, respectfully following the decision of the Coordinate Bench, we direct the assessing officer to delete the disallowance. Ground no. 1 and 2 are allowed.

7. In ground no. 3, the assessee has challenged the addition of Rs. 1,87,63,000/- made by applying GP rate of 7.33% on account of alleged difference in stock as per books of account and as per stock statement for hypothecation with the bank.

8. Briefly stated facts are, in course of assessment proceedings, the Assessing Officer noticed that the stock of sugar in the books of account as compared to the stock statement with the bank, is at variance. In other words, the stock of sugar in it books of account is as less compared to the stock balance declared before bankers. Which means, the difference in stock of Rs. 2542.4 lakhs has been sold outside the books by the assessee. Since, the initial variance has already been taxed by the department in AY 1999-2000, therefore the GP rate on the sale of differential stock shall be taxed as income in this year. Therefore, applying GP rate of 7.38% to Rs. 2542.4 lakhs, he added back Rs. 1,87,63,000/- in this year. The addition so made by the assessing Officer was upheld by Ld. First Appellate Authority.

9. We have considered rival contentions and perused the materials on record. It is observed that based on the alleged variation in stock declaration before the bank and the stock as per books of account; the Assessing Officer has made an addition in the assessment year 1999-2000. Based on such addition, the assessing officer has made the impugned addition in the current assessment year. Pertinently, while deciding the issue relating to alleged variance in stock position in assessment year 1999-2000, Ld. First Appellate Authority has deleted the addition, which was upheld by the Tribunal. While deciding revenue's appeal, the Hon'ble jurisdictional High Court in the ITA No. 895/Del/2017 vide order dated 27.10.2017 has held as under:

"6. We notice that the findings of the CIT are based upon an appraisal of not merely the Bank stock statement but also RG-I Registers and Form 3CB duly audited by the Company's auditors, and accepted by the Excise Department. The relevant extract of the CIT's order is as follows:

"In view of the above primary records maintained by the appellant which are verified by the Central Excise authorities and which have not been found to be untrue or incorrect by the Assessing Officer, there is enough substance in the arguments advanced by the appellant that the books of accounts reflecting the stock details relied the true state of affairs.

Moreover, the AO in his order has only considered the closing stock of sugar as on 31.03.1999, as per the bank statement which is at 3,98,125 Qtls. and after comparing the same with that of the closing stock as on 31st March 1999 in the audited accounts i.e. 3,10,934 Qtls. and gone on to add the difference in excess stock of 87,191 Qtls, as assessee's income for the year. In this connection it is a logical step that when the AO has placed absolute reliance to the closing stock figures as per bank statement for making the above stated addition to income then he should have necessarily taken the figures of opening stock of sugar as well from the same source, namely the statement as on 31.03.1998 as furnished to the bank. This preposition is based on the principle of consistency in approach as it would be improper to place reliance on the book stock for opening balance and in the same breadth the bank statement for closing balance.

Therefore, the opening stock of sugar (which has been duly verified by the Central Bank of India vide letter dated 2.9.2013, in response to notice u/s 133(6) of the Act) as well as the closing stock of sugar, if both are considered as per the statement given to the bank then what remains is quantitative difference of only 3 Qtls. of sugar which is practically negligible. Therefore seen from this perspective

too there is no ground for making addition to income on account of excess stock of sugar in the previous year relevant to this assessment year. These facts also lend credence to the submission of the appellant that the statement of stock pledged with the bank is only for availing financial credit."

6. This Court is of the opinion that the exercise undertaken by the CIT(A) is based upon sound principles - he did not base himself merely upon Bank stock statement furnished to the Bank but rather went into detail and examined the excise returns and the other audited documents. The appreciation of this evidence is in no way unreasonable and the findings are in accordance with law. The ITAT did not fall into any error in affirming the CIT's order."

10. As can be seen from the aforesaid facts, the very basis on which the disputed addition has been made stands obliterated by the decision of the Hon'ble jurisdictional High Court in assessment year 1999-2000. That being the case, the impugned addition has no legs to stand. Accordingly, we direct the Assessing Officer to delete the addition. This ground is allowed.

11. Ground no. 4 is general in nature, hence, does not require adjudication.

12. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 21.02.2024.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
VICE PRESIDENT

Dated: 21/02/2024

Pooja, Sr. P.S.

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)

5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

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