

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No. 2604/Del/2018
(Assessment Year: 2013-14)**

G-Tekt India Pvt. Ltd, 317. 3 rd Floor, Rectangle One, D-4, Saket District Centre, Saket, New Delhi (Appellant)	Vs.	DCIT, Circle-10(2), New Delhi (Respondent)
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PAN:AAECG5244P

Assessee by :	Shri Vishal Kalra, Adv Mr. Kashish Gupta, Ca
Revenue by:	Shri Sandip Kumar Mishra, Sr. DR
Date of Hearing	18/01/2024
Date of pronouncement	16/04/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.2604/Del/2018 for AY 2013-14, arises out of the order of the Commissioner of Income Tax (Appeals)-4, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 695/2016-17/CIT(A)-4 dated 01.02.2018 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 26.12.2016 by the Assessing Officer, DCIT, Circle-10 (2), New Delhi (hereinafter referred to as 'Id. AO').
2. The only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the disallowance of Rs 89,55,542/- on account of CENVAT Credit Written Off in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the materials available on record.

4. The assessee is a company engaged in the business of manufacturing automobile parts and components. The return of income for the Asst Year 2013-14 was filed by the assessee company on 31.8.2013 declaring total income of Rs 3,27,47,550/-. During the year under consideration, the assessee purchased an undertaking namely Global Auto Parts Alliance India Private Limited (GAPAIL in short) through the process of Slump Sale. All the assets and liabilities of the undertaking were acquired by the assessee through a Business Transfer Agreement (BTA in short) with effect from 1.4.2012 in lieu of consideration. The valuation report dated 24.7.2012 valuing the business of GAPAIL at Rs 26,63,51,200/- is enclosed in Pages 51 to 57 of the Paper Book. The list of assets and liabilities taken over by the assessee from GAPAIL under slump sale are as under:-

**“SCHEDULE 1
LIST OF ASSETS AND LIABILITIES
Summary of Assets and Liabilities**

	<i>Detail</i>	<i>Amount as of 31/03/2012</i>
	<i>Cash</i>	<i>16,876</i>
	<i>Bank Account</i>	<i>28,060,599</i>
	<i>Account Receivable</i>	<i>104,411,904</i>
	<i>Inventory</i>	<i>121,349,141</i>
	<i>Buildings (Net)</i>	<i>190,598,290</i>
	<i>Plant & Machinery</i>	<i>406,647,045</i>
<i>Assets</i>	<i>Motor Vehicles (Net)</i>	<i>1,135,065</i>
	<i>Tools, Equipment, Furniture & Fixtures (Net)</i>	<i>4,180,592</i>
	<i>Short Term Loan & Advances</i>	<i>206,470,506</i>
	<i>Long Term Loans & Advances</i>	<i>5,750,400</i>
	<i>Land Lease Holding (Net)</i>	<i>77,444,046</i>
	<i>Total</i>	<i>1,146,064,464</i>
	<i>Short Term Loan (BTM)</i>	<i>206,000,000</i>
	<i>Short Term Provisions</i>	<i>39,961</i>
	<i>Account Payable</i>	<i>57,381,274</i>
<i>Liabilities</i>	<i>Other Current Liability</i>	<i>230,285,847</i>
	<i>Long Term Loan (TM)</i>	<i>385,235,552</i>
	<i>Long Term Provisions</i>	<i>770,634</i>
	<i>Total</i>	<i>879,713,268</i>

5. It is pertinent to note that the assets transferred included 'short term loans and advances' amounting to Rs 20,64,70,506/- which admittedly included 'Balance with Excise and Custom authorities' in the sum of Rs 20,02,85,959/-, out of which, an amount of Rs 89,55,542/- representing CENVAT Credit was written off by the assessee during the year under consideration. Hence this goes to prove that the CENVAT Credit of Rs 89,55,542/- was part of the total assets acquired by the assessee from GAPAIL under Slump Sale. Pursuant to the acquisition, the assessee noted that there were certain discrepancies in the documentation of CENVAT Credit acquired and accordingly could not claim the same as a credit and hence became ineligible for adjustment towards CENVAT Payable by the assessee. Hence the assessee had no other choice but to write off the same as irrecoverable from Custom and Excise authorities and wrote off the same by debiting to profit and loss account and crediting the 'Balance with Excise and Custom authorities' account. This write off in books was claimed as deduction by the assessee as a regular business loss.

6. 5. The Id. AO disallowed the CENVAT Credit written off on the following grounds:-

a) Expenses on account of CENVAT Credit written off did not pertain to the current year and is a prior period item since it originated in prior years.

b) CENVAT Credit written off by the assessee accrued to GAPAIL and was booked by them.

c) CENVAT Credit written off represents diminution in the value of assets acquired on slump sale and therefore is capital in nature.

7. This action of the Id. AO was upheld by the Id. CIT(A).

8. At the outset, we find that there is absolutely no dispute that the said sum of Rs 89,55,542/- represent CENVAT Credit written off by the

assessee out of assets acquired from GAPAIL through slump sale. Under the slump sale, the assessee acquired all the assets and liabilities of GAPAIL on as is where is basis and the same were utilized by the assessee for the purpose of business of the assessee. Hence those assets become business assets to the assessee. Eventhough there might be some deficiencies in due diligence carried out by the assessee at the time of acquisition of assets and liabilities of GAPAIL, the asset legitimately acquired by the assessee through slump sale and later found to be an irrecoverable asset (i.e. the said sum of Rs 89,55,542/- representing amounts recoverable from Custom and Excise Authorities is no longer found recoverable due to some deficiencies in documentation of missing original bills), the assessee would be left with no other option to write off the same in its books and claim the same as a deduction in the return of income. The reconciliation carried out with the Excise and Custom Authorities with regard to the balance available with them was duly placed on record by the assessee before the Id. AO which is enclosed in pages 97 to 101 of the Paper Book. The assessee had given the complete break up of CENVAT Credit written off as under:-

Service tax recoverable	- 35,77,293.38	
Education Cess recoverable	- 1,06,817.63	
	-----	36,84,111.01
Additional duty	- 9,25,393.00	
Cenvat received Inputs	- 30,47,637.54	
Service Tax –Inputs	- 11,67,633.00	
Education Cess on Service Tax	- 1,30,767.00	
	-----	52,71,430.54
Total CENVAT Credit Written Off		----- 89,55,541.55 -----

9. The Id. DR vehemently argued that the assessee had not offered any income qua the Cenvat Credit written off in earlier years and hence the assessee is not entitled for deduction u/s 36(1)(vii) of the Act. We are unable to accept to this argument of the Id. DR before us in as much as the write off claim made by the assessee is not on account of bad debts at all. Hence it could be safely concluded that the claim of deduction is not made by the assessee u/s 36(1)(vii) of the Act. Once there is no claim of deduction u/s 36(1)(vii) of the Act, there is no requirement of compliance to conditions prescribed in section 36(2) of the Act. Hence the argument of the Id. DR in this regard is rejected.

10. The next argument advanced by the Id. DR is that the CENVAT Credit arose to the assessee in the instant case pursuant to acquisition of assets and liabilities of GAPAIL under slump sale and hence it is a loss on capital account not allowable as deduction. We are unable to comprehend ourselves to accept to this argument of the Id. DR in view of the fact that the assessee had taken over CENVAT Credit / Balance with Customs and Excise Authorities to the tune of Rs 20,02,85,959/-. Obviously this sum of Rs 20,02,85,959/- is eligible for the assessee to be either adjusted against the CENVAT and service tax dues payable by the assessee to the Government or eligible for refund from the Government authorities to the assessee. Out of this sum of Rs 20,02,85,959/-, only a sum of Rs 89,55,542/- was found to be irrecoverable pursuant to reconciliation carried out with the Excise and Customs authorities by the assessee. The assessee after the acquisition of assets of GAPAIL, found that it could not produce original invoices wherein the disputed CENVAT Credit originally arose, before the competent authorities. The assessee on reconciliation found that this sum of Rs 89,55,542/- would never be recoverable from Excise and Custom Authorities as assessee could not produce the documents to the

satisfaction of the regulatory authorities. Hence a conscious call was taken by the assessee to treat the same as irrecoverable and write off the same in the books of accounts and consequentially claim the same as an allowable deduction.

11. Yet another argument advanced by the Id. DR that the predecessor company went under liquidation and that the slump sale transaction was done not to acquire the business of the predecessor company as a going concern, rather to purchase CENVAT Credits and keep them usable. In our considered opinion, this argument of the Id. DR is completely absurd and not even the case of the lower authorities and that the Id. CIT DR is trying to make out a new case before this Tribunal as he was completely ignorant of the fact that the Special Bench of Mumbai Tribunal in the case of Mahindra & Mahindra Ltd reported in 30 SOT 374 (Mum)(SB) had already held this aspect against the revenue. Even on merits, the argument of the Id. DR is factually incorrect in as much as Note No. 38 to the financial statements of GAPAIL as on 31.3.2012 clearly specifies that GAPAIL vide an Extra-ordinary General Meeting (EGM) in March 2012 assigned rights to Board of Directors to transfer and sell the business as an inseparable whole on slump sale basis and as a going concern to the assessee. Hence the argument of the Id. DR in this regard is rejected.

12. One more argument advanced by the Id. DR is that Business Transfer Agreement (BTA) could not have been made retrospectively effective from 1.4.2012 when the financial statements itself were approved only on 29.6.2012. In this regard, the following facts require consideration:-

- a) GAPAIL conducted EGM in March 2012;
- b) MOU between GAPAIL and assessee entered in March 2012;
- c) Financials of GAPAIL as on 31.3.2012 signed on 29.6.2012;
- d) Valuation report by valuer signed on 24.7.2012;

- e) BTA entered on 31.7.2012 with effect from 1.4.2012;
- f) Financials of assessee for the year ended 31.3.2013 signed on 20.4.2013.

The aforesaid list of dates and events go to prove that all the events had taken place sequentially and there cannot be any doubt on the genuineness of the transaction of slump sale, which in any case, is not even the allegation of the lower authorities below. Hence this argument of the Id. DR also richly deserves to be rejected.

13. We find that similar issue arose for consideration of the Co-ordinate Bench of this Tribunal in the case of NEC Technologies India P Ltd vs Additional CIT in ITA No. 6982/Del/2019 for Asst Year 2015-16 dated 16.6.2023 wherein it was held as under:-

"8. In the facts of the instant case, During AY 2015-16 Assessee Company has written off advances amounting to Rs 9,081,394/-. The amounts were earlier parked in Input service tax receivable account pertaining to revenue expenditure in the nature of rental, clearing and forwarding charges, security expenses etc. however, on service tax audit, such amounts were reversed due to technical points i.e. held as common inputs and not direct cost and therefore reversed under a formulae prescribed under the service tax law. However, there is no questioning on the nature and bonafide of these payments. As is evident, the input cost is revenue in nature and accordingly service tax paid on such revenue costs is also eligible to be claimed as revenue expenditure. Further, the matter is covered as the Assessee Company has been given relief by Hon'ble DRP panel where adjustment of "Advances written off is reversed. The Id. CIT(DR) have not controverted above factual position. Therefore we are inclined to hold that the input cost is revenue in nature and accordingly service tax paid on such revenue cost is also eligible to claim as revenue expenditure u/s. 37(1) of the Act. Our conclusion further gets support from the order of co-ordinate bench of ITAT Chandigarh in the case Mohan Spg. Mills vs. ACIT (supra). It is also relevant to mention that the co-ordinate bench of ITAT Hyderabad in the case of NCS Distilleries P. Ltd. vs. ITO held that the amount of advance in the course of business which become irrecoverable is deductible or allowable as business expenditure/loss. Accordingly, ground no. 3 of assessee is allowed."

14. In view of the aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, we hold that the assessee would be entitled for deduction of CENVAT Credit written off in the sum of Rs 89,55,542/- during the year under consideration. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 16/04/2024.

-Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 16/04/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi