

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C", MUMBAI  
BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND  
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA NO.3560/MUM/2023  
Assessment Year : 2017-18**

Owens-Corning (India) Private Limited,  
Alpha Building, 7<sup>th</sup> Floor,  
Hiranandani Complex,  
Powai, Mumbai – 400 076.  
PAN: AAACO-1739-M - Appellant

Vs.

Deputy Commissioner of Income-tax 7(3)(1),  
Aaykar Bhavan, MK Road,  
Mumbai – 400 020 - Respondent

**ITA NO.3996/MUM/2023  
Assessment Year : 2017-18**

Asst. Commissioner of Income-tax 8(2)(1),  
Room No.481, 4<sup>th</sup> Floor,  
Aaykar Bhavan, MK Road  
Mumbai – 400 020 - Appellant

Vs.

Owens-Corning (India) Private Limited,  
Alpha Building, 7<sup>th</sup> Floor,  
Hiranandani Complex,  
Powai, Mumbai – 400 076.  
PAN: AAACO-1739-M - Respondent

Assessee by : Shri Sandeep Bhalla  
Revenue by : Shri H.M.Bhatt  
Date of Hearing : 19/06/2024  
Date of Pronouncement : 25/06/2024

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER :**

These cross appeals are directed against the order dated 04-09-2023 passed by Ld CIT(A), NFAC, Delhi and they relate to the assessment year 2017-18.

2. The assessee did not press ground no.3 raised before the Tribunal. Accordingly, the said ground is dismissed as not pressed. The remaining grounds relate to the following issues:-

(a) Disallowance of claim of amortization of premium paid for leasehold land.

(b) Disallowance of depreciation on additions to Fixed assets made during the period relevant to AY 2006-07.

3. The revenue is aggrieved by the decision of Ld CIT(A) in deleting the addition of Rs.1,71,19,824/- made by the AO u/s 68 of the Act.

4. The assessee is engaged in the business of manufacture and trading of Glass fibre reinforcement materials.

5. We shall first take up the appeal filed by the assessee. The first issue relates to the disallowance of claim of amortization of premium paid for lease hold land.

5.1 The assessee had taken land on lease from Maharashtra Industrial Development Corporation for 95 years and has paid lease hold premium. The said premium was amortized over the period of lease by the assessee and the said claim was disallowed by the AO in the earlier years as well as during the current year.

5.2 The ld A.R submitted that this issue has been decided against the assessee in AY 2004-05 by the Tribunal and hence the assessee has filed appeal before Hon'ble Bombay High Court challenging the decision so rendered by the Tribunal. Since this issue is a recurring issue, the assessee has furnished Form No.8 in terms of sec.158(1) of the Act. Accordingly, the Ld A.R submitted that the assessee would be agreeing with the decision that will be rendered by Hon'ble Bombay High Court in AY 2004-05 and the said decision may be applied in this year also.

5.3 We have heard Ld D.R on this issue. We notice that the assessee has made similar claim by filing Form No.8 in AY 2009-10 before the Tribunal and the Tribunal, vide its order dated 15.02.2023 passed in ITA

No.1259/Mum/2014 dated 15-02-2023, has restored this issue to the file of AO with the direction to follow the decision that may be rendered by Hon'ble Bombay High Court on an identical issue in AY 2004-05. Similar direction has been given by the co-ordinate bench in AY 2011-12 & 2012-13 in the assessee's own case in ITA No.2955 & 2966/Mum/2023 dated 21-02-2023. Accordingly, following the decision rendered by the co-ordinate benches and having regard to Form No.8 filed by the assessee in this year, we restore this issue to the file of the AO with the direction to follow the decision that may be rendered by Hon'ble Bombay High Court on an identical issue in AY 2004-05.

6. The next issue urged by the assessee relates to the disallowance of depreciation claim. Identical issue has been decided as under by the co-ordinate bench in AY 2009-10 as under:-

*"6. The next issue urged by the assessee relates to disallowance of depreciation. The Ld A.R submitted that the AO had initially disallowed part of depreciation claim in AY 2006-07 for want of evidences in support of purchase of assets. Consequent thereto, the AO has disallowed part of depreciation in this year also. The Ld A.R submitted that the issue of disallowance of depreciation made in AY 2006-07 was examined by the Tribunal in its order dated 08-05-2019 passed in ITA No.4988/Mum/2011 and the matter was restored back to the file of AO for examining it afresh duly considering the additional evidences furnished by the assessee. Accordingly, he prayed that the decision taken by the AO in the set aside proceedings relating to AY 2006-07 shall have consequential effect on the disallowance of depreciation made in this year. Accordingly, he submitted that this issue may be restored to the file of AO.*

*6.1 We heard Ld D.R and perused the record. We find merit in the submissions made by Ld A.R. We notice that the AO had disallowed depreciation claim initially in AY 2006-07 and the disallowance made in this year is consequential to the same. Since the Tribunal has restored the matter relating to disallowance of depreciation made in AY 2006-07 to the file of AO for re-examination, it would be proper for us to restore this issue to the file of the assessing officer for examining it afresh in the light of decision taken by him in AY 2006-07 in the set aside proceedings. Accordingly, we restore this issue to the file of AO."*

6.1 Since the decision taken by the tax authorities in AY 2006-07 with regard to the claim of depreciation made in AY 2006-07 on the basis of

additional evidences will have cascading effect in the succeeding years, we restore this issue to the file of the AO for examining this issue afresh in the light of decision taken by him in AY 2006-07 in the set aside proceedings.

7. We shall now take up the appeal filed by the revenue. The AO has carried out assessment of the preceding year, i.e., AY 2016-17 simultaneously with the current year of AY 2017-18. In the proceedings relating to Asst. Year 2016-17, the AO had issued notices u/s 133(6) of the Act to certain trade creditors, but they did not respond. The AO asked the assessee to produce them on or before 18-12-2019, but the assessee did not produce the parties. Based on the above discussed facts relating to the preceding year, the AO came to the conclusion that the following trade payables outstanding during the year under consideration also remain unexplained:-

M/s Divya Shree Packaging Industry	-	33,68,915
M/s Hind Roadways Corporation	-	37,74,975
M/s Flyjac Logistics P Ltd	-	21,38,175
M/s Sunshield Chemicals Ltd	-	78,37,759
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		1,71,19,824
		=====

Accordingly, the AO assessed the above said amount of Rs.1,71,19,824/- as unexplained income u/s 68 of the Act.

7.1 The Ld CIT(A) noticed that the assessee has furnished documents like PAN, bank statements, ITR copy etc before the AO during the course of assessment proceedings. Further, the Ld CIT(A) expressed the view that the AO could not have made the addition without issuing notice u/s 133(6) of the Act in this year, i.e., the AO could not have placed reliance on the notices issued in the preceding year. Accordingly, the Ld CIT(A) deleted the addition.

7.2 The Ld A.R submitted that all the above said parties are regular suppliers of the assessee and they maintain running account. Further, the

assessee has furnished relevant documents to the AO, but the AO has made this addition only for the reason that these parties were not produced in the preceding year. However, the fact would remain that the assessing officer did not issue any notices to them in this year not did he ask the assessee to produce the trade creditors in this year. Further, he submitted that the trade creditors could not be assessed u/s 68 of the Act, since the assessing officer has accepted the purchases. The Ld D.R, however, supported the order of the AO.

7.3 Having hearing rival submissions, we are of the view that there are merits in the submissions made by Ld A.R. The fact that the assessee has furnished details relating to trade payables is not disputed. It is also an undisputed fact that the AO did not issue notices to the trade creditors during this year and also did not ask the assessee to produce them. Further, the AO has accepted the purchases made from these creditors. Having accepted one leg of transaction, the AO could not have disbelieved the other leg. In any case, these creditors have running accounts and it is not a case that the outstanding balances represent balances remaining unpaid for a long period. Even in that case, the balances so remaining unpaid could not have been assessed u/s 68 of the Act. Under these set of facts, we are of the view that the AO was not justified in assessing the trade creditors as unexplained cash credit u/s 68 of the Act. Accordingly, we are of the view that the Ld CIT(A) was justified in deleting this addition.

8. In the result, the appeal filed by the assessee is treated as allowed and the appeal of the revenue is dismissed.

Order pronounced in the open court on 25<sup>th</sup> June, 2024.

Sd/-

(SUNIL KUMAR SINGH)  
JUDICIAL MEMBER

Mumbai, Date : 25<sup>th</sup> June, 2024

Sd/-

(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Vm

Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, "C" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai