

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “C” DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

SA No.63/Del/2024
(Arising out of ITA No.435/Del/2024
Assessment Year 2021-22

M/s. Kohler India Corporation Pvt. Ltd. 26A, Ring Road, Lajpat Nagar-IV New Delhi	Vs.	Dy. Commissioner of Income Tax Circle-13(1) New Delhi
TAN/PAN: AABCK2145E		
(Appellant)		(Respondent)

ITA No.435/Del/2024
Assessment Year 2021-22

M/s. Kohler India Corporation Pvt. Ltd. 26A, Ring Road, Lajpat Nagar-IV New Delhi	Vs.	Dy. Commissioner of Income Tax Circle-13(1) New Delhi
TAN/PAN: AABCK2145E		
(Appellant)		(Respondent)

Applicant by:	Shri Nageshwar Rao, Advocate Shri Parth, Advocate		
Respondent by:	Mr. Waseem Arshad, CIT (DR)		
Date of hearing:	16	04	2024
Date of pronouncement:		07	2024

ORDER

PER PRADIP KUMAR KEDIA - A.M.:

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-4, Kolkata ('CIT(A)' in short) dated 06.12.2023 arising from the intimation dated 22.09.2022 passed by the Assessing Officer (AO) under

Section 143(1) of the Income Tax Act, 1961 (the Act) concerning AY 2021-22.

2. The grounds of appeal raised by the assessee read as under:

“1. That impugned order passed by First Appellate Authority dated 6th December 2023 under Section 250 of the Act to the extent detrimental to the Appellant is speculative, de hors facts, bad in law & arbitrary and liable to be quashed and additions made under Section 143(1) deleted.

2. That First Appellate Authority has erred in upholding addition made order under Section 143(1) towards refund of Value Added Tax (VAT) & Goods & Service Tax (GST) on pure presumptions contrary to facts.”

2.1 That impugned order of First Appellate Authority totally failed in not deleting the arbitrary and erroneous addition made under section 143(1) on imaginary presumptions and erred in failing to appreciate valid accounting practice followed by Appellant.

2.2 That impugned order and CPC have erred in alleging that the aggregate amount of refund of VAT and GST of Rs.13,60,58,074/- is the income of the Appellant by presuming without any basis that Appellant had claimed deduction for this amount in computing taxable income of the previous years) on payment basis.

3. That without prejudice to above grounds that no adjustment should be made to the returned income, the CPC has erred in facts and in law in not allowing set-off of brought forward business losses and unabsorbed depreciation to the extent of additions made in the intimation issued, which were duly eligible for set off and impugned order erred in not giving a categorical direction to grant the same.

4. That impugned order of First Appellate Authority has erred not directing deletion of interest under section 234B of the Act of & 50,40,670/-, which is consequential in nature.

5. That impugned order of First Appellate Authority has erred in not deleting interest under section 234C of the Act amounting to Rs.14,97,377/- by disregarding that interest under section 234C of the Act is levied on the returned income of the Appellant and not on the assessed income.”

3. Briefly stated, the assessee a private limited company is

engaged in the business of manufacturing and trading in kitchen and bath fittings and other sanitary-ware products etc. For the AY 2021-22 in question, the assessee filed its return of income (ROI) on 15.03.2022 declaring 'Nil' taxable income (after claiming set off of brought forward business losses and unabsorbed depreciation etc.).

3.1 After filing ITR / ROI, the assessee received a communication dated 18-05-2022 from the Income Tax deptt. proposing to make an upward adjustment of Rs.13,60,58,070/- towards principal component of refund towards GST and VAT as disclosed by the Tax Auditor under clause 16(b) of TAR. The communication received from the I T deptt. reads as under:

<i>S. No.</i>	<i>Particulars</i>	<i>Amount in ITR</i>	<i>Amount mentioned in Form Annexure 3CD</i>	<i>Proposed adjustment to returned income</i>
1.	<i>There is consistency in amount mentioned in return at Sl. No.5(b) of Part A OI "The proforma credits, drawbacks, refund of duty of customs or excise or service tax, or refund of sales tax or value added tax, or refund of GST, where such credits, drawbacks or refunds are admitted as due by the authorities concerned" and Tax Audit Report.</i>		13,60,58,074/-	13,60,58,074/-

3.2 The assessee however stated to have submitted an online response on the Income Tax Portal against the aforesaid communication on 06.06.2022 objecting to the proposed adjustment

as under:

“Tax Auditor observed in point 29 & 30 of Form 3CA that the amount recoverable from tax authorities are shown as recoverable in Balance Sheet and refund of such amounts are directly reduced from the recoverable amount and not routed through P&L account as per the accounting policies. Therefore, refund received have been disclosed under clause 16 of TAR however, since it does not have any bearing on PL account and accordingly not required to be mentioned in Sl. No.5(b) of Part A OI of ITR.”

3.3 The assessee however received an Intimation under section 143(1) from Central Processing Center [CPC] of the Income Tax deptt. dated 29.09.2022 wherein the total taxable income of the assessee was determined at Rs.13,60,58,074/- as against ‘Nil’ taxable income declared by the assessee. The adjustment towards principal sum of refund of GST and VAT was thus carried out and such refunds were treated as chargeable income of the Assessee as proposed.

4. Aggrieved, the assessee preferred appeal before the CIT(A). Before the CIT(A), the assessee challenged the Intimation issued under Section 143(1) of the Act and pleaded that the response filed by the assessee against the communication of proposed adjustment under Section 143(1)(a) was not considered by the CPC. The assessee contended before the CIT(A) that the adjustment pertaining to VAT and GST has been made by the CPC on the basis of clause 16(b) of the Tax Audit Report (TAR) without appreciating that information provided by the Tax Auditor in the said clause was meant for disclosure purposes only and were not meant as information enabling the IT deptt. to make adjustments in the hands of a tax payer based on such disclosures.

4.1 It was pointed out that the assessee received refund of Rs.14,07,08,074/- break up of which is as follows:

“-Refund of Value Added Tax (VAT) amounting to INR 2,00,00,000.

-Refund of Goods and Services Tax (GST) amounting to INR 11,60,58,074/-

-Interest on refund of VAT/GST amounting to INR 46,50,000/-”

4.2 The total amount of such refund arising to assessee under the head ‘any tax laws other than income tax laws etc’ was reported in clause 41 of TAR as obligated. Separately, the principal portion of refund towards GST and VAT aggregating to Rs.13,60,58,074/- was reported in clause 16(b) of TAR. The interest component on refund of VAT / GST amounting to Rs.46,50,000/- received simultaneously during the previous year relevant to AY 2021-22 in question, was also duly disclosed and also offered for taxation during the year being in the nature of taxable income. The principal portion of VAT / GST refund was however not offered for taxation since such refund did not result in any additional inflow or taxable benefit to the assessee. The principal amount recd. as refund was never claimed by the assessee as deduction in computing the taxable income of the assessee in the past. The surplus amount collected under GST/VAT over and above liabilities due to the assessee and received by way of refund do not have any impact on the profits & account of the assessee as per the method of accounting employed. Neither was the Income Tax liability reduced in the year of GST/VAT payment nor the refund thereof has any impact in profits of the year.

4.3 The assessee also contended that without prejudice to the plea towards uncalled for adjustments carried out under Section 143(1) towards VAT / GST refund, the AO-CPC also committed error in not allowing set off of brought forward business losses and unabsorbed depreciation of the earlier years available for set off at the disposal of the assessee, to the extent of additions made in the intimation without assigning any reasons.

5. The CIT(A) while passing the order under Section 250 of the Act recorded the submissions made by the assessee but did not find it convincing. The CIT(A) do not find force in the plea of the assessee that a GST & VAT refund stated to be directly reduced from the balance-sheet as recoverable amount and not routed through P&L account as per accounting policies and thus did not have any impact on the taxable income declared by the assessee. The CIT(A) also observed that the assessee has failed to support such claim of non-taxability of refunds by documentary evidences. The CIT(A) further observed that assessee has failed to furnish any documentary evidences towards accounting treatment of GST / VAT claimed as non taxable refund in the present assessment year. The CIT(A) also observed that the assessee has also failed to furnish the documentary evidences towards treatment of VAT and GST paid to vendors in the relevant financial years with copy of relevant ledgers and supporting P & L account reconciliation etc.

6. The CIT(A) thus declined any relief against the challenge to the additions towards GST / VAT refunds. The CIT(A) however referred the matter back to the AO for verification towards eligibility of set off of brought forward losses and unabsorbed depreciation in accordance with law.

7. Further aggrieved, the assessee preferred appeal before the Tribunal.

8. In support of grounds raised, the Id. Counsel reiterated that the submissions made before the lower authorities and adverted to the declaration made in 'S.No.5b of Part A-OI' to ROI, disclosures made in S. No. 29 and 30 in Audit Report of Form 3CA, Clause 16(b) and 41 of Tax Audit Report in Form 3CD and submissions made before the CIT(A). The Id. Counsel submitted that on a plain

reading of the relevant portion of the ROI, Tax audit report in prescribed Form 3CA and Form 3CD, replies filed before CIT(A), it would be evident that the transactions on account of refund of principal amount of GST and VAT have been reported in the appropriate column in the TAR with the aim and object of disclosure purposes and by not offering such refund as there was no suppression of taxable income *per se*. The Id. Counsel asserted that that reporting made in clause 16(b) of TAR was done only for disclosure purposes and such disclosures in the report do not signify any understatement of taxable income. The reporting of clause 16(b) of the TAR was also correspondingly shown under the head 'Other Information' in Schedule 'Part A-OI, at S.No. 5b' which was in the nature of information towards refunds not credited to the P&L account. The ITR form does not capture additions required to be made to the total income of a tax payer based on such reporting. The Id. Counsel pointed out that regardless of the fact whether reporting is made in the ITR form or not, there is no impact on profitability owing to refund of principal component of GST and VAT on the taxable income of the assessee.

8.1 The Id. Counsel submitted that the principal sum of refund being not taxable was not offered for taxation. The refund would be taxable income only in the event where the assessee has taken any tax advantage towards such receivables in the earlier year and such taxes incurred on purchases had resulted in reduction of taxable income in any manner which in the instant case has not been so. The method of accounting employed seeks to neutralize the impact on profits *qua* the such indirect taxes incurred and hence justifies the present action of the Assessee. The Ld. Counsel next submitted that the interest component on such refund was however duly offered for taxation as required in law. In support of contention towards non

taxability of Refunds, the Id. Counsel sought to highlight that as per Indian Generally Accepted Accounting Policies (IGAAP) followed by the assessee, indirect taxes such as VAT and GST are recognized as payable / receivables as the case may be in the balance sheet and are not routed through the statement of P&L of the year under consideration. To lend support to such plea, the Id. Counsel adverted to observations / qualifications made by the TAR at S. Nos. 29 and 30 under clause 3 of TAR. In S. No.30 of TAR, Tax Auditor has observed that as per the Accounting Policy adopted by the company, the amount recoverable from various tax authorities are shown as recoverable in the balance-sheet and the refund of such amount are directly reduced from the recoverable amount and hence not routed through P&L account. The Id. Counsel thus contended that the amount of VAT and GST paid by the assessee on purchases are not debited to the statement of P&L account by the assessee but are recognized as receivables in the balance-sheet of that year as per the IGAAP followed by the assessee.

8.2 The Id. Counsel essentially submitted that where the profit was not reduced on account of GST and VAT component on purchases, the refund of surplus GST and VAT as determined by the Authorities is outside the purview of taxation. The Revenue Authorities are not permitted to charge the principal amount of balance sheet item on receipt of refund.

8.3 As repeatedly harped, as per the accounting policies, the refund of principal portion of GST and VAT does not result in any additional inflow or taxable benefit to the assessee. The assessee has not claimed any expenditure on such amounts in the respective years of its payment while computing taxable income and therefore, refund of such inflow do not give rise to any taxable event.

8.4 The Id. Counsel thus submitted that there can be no justification whatsoever in treating such refund as taxable income without appreciating the accounting policy adopted by the assessee in perspective.

8.5 The Id. Counsel thus sought for reversal of additions made on account of VAT and GST by the AO-CPC.

8.6 The Id. Counsel thereafter averted to other plea in the alternate and without prejudice to the substantive plea and submitted that the CPC has committed blatant error in not allowing set off of brought forward unabsorbed business losses and unabsorbed depreciation against the additions made on account of GST and VAT refund. No reason has been assigned for not allowing set off. This has again caused serious prejudice to the assessee. The Id. Counsel sought appropriate relief on the issue.

8.7 The Id. Counsel next submitted that the grounds in relation to charge on interest under Sections 234B and 234C are consequential in nature and therefore, may be dealt with appropriately.

9. The Id. CIT-DR for the Revenue, on the other hand, supported the first appellate order. In furtherance, with reference to additions on account of refund towards GST and VAT, the Id. CIT-DR submitted that the facts cannot be appreciated on the basis of bare hypothesis advanced on behalf of the assessee towards so called accounting method stated to be adopted by the assessee. The Id. CIT-DR submitted that the AO-CPC has based its action on the basis of information made available in the Tax Audit Report. Nowhere in the TAR, it is mentioned that the principal amount of refund is not susceptible to tax on account of accounting policy adopted by the Assessee. The TAR is stoically silent on the nature

of accounting entries made by the assessee at the time of payment and refund thereof in the present year. In the absence of any evidence to the contrary, AO-CPC was left with no option to make adjustments. The Assessee has failed to demonstrate its case with documentary evidences. The CIT(A) also has confirmed the action in the absence of any evidence led to support the non taxability. In the absence of any evidence to the contrary, no interference with the action of the Revenue Authorities are called for.

9.1 The Ld. CIT-DR next pointed out that as regards claim of set off of brought forward losses and unabsorbed depreciation, the CIT(A) has already rendered appropriate directions for verification at the level of the AO and consequential relief based on the outcome of such verifications and therefore, the assessee cannot be treated as aggrieved by such action at this juncture.

10. We have dispassionately considered the rival submissions and perused the material available on record.

11. The assessee has challenged the additions to the returned income on account of refund of GST and VAT received by the assessee during the A.Y. 2021-22 in question. As noted in the preceding paragraphs, it is the case of the assessee that the refund of principal sum of VAT and GST do not represent any taxable income *per se*. As per the accounting policy adopted by the assessee, the expenses on account of VAT and GST have not been debited in the P&L account in the respective years. The expenses towards GST and VAT payments on purchases were not claimed and thus profits were not reduced. Consequently, the refund of such GST and VAT cannot be treated as taxable income in the year of refund. As per accounting policy adopted, the GST and VAT paid / payable by the assessee were excluded from costs for the purposes of determination of

taxable income and the balances on such accounts were carried to the balance-sheet as receivable or payables as the case may be, in the respective financial years. By such accounting policy, the P&L account is not impacted at all. The surplus GST and VAT resulted is shown as receivables without claiming such excess paid as deductible expenditure at the first instance. Hence, the refund of excess GST and VAT incurred on purchases owing to utilization of input credit as available in law, cannot be treated as chargeable income in the year of refund. The assessee also contends that sole basis for treating such refund as taxable income is based on the observation of the Tax Auditor in Point No.29 and 30 of Form 3CA. In Point No.30 of the observations in Form 3CA, the Tax Auditor has clearly observed that as per the accounting policy adopted by the company, the amounts received by way of refund are liable to be directly reduced from the recoverable amount and thus not routed through P&L account.

12. On a nuanced appraisal of facts of record, we observe that the answer to the grievance lies in the fact as to whether the GST and VAT refunds in question were debited to the P&L account and claimed as deductible expenditure in the relevant year to which such refund relates.

12.1 On first principles, an amount of refund on account of GST and VAT can be treated as taxable income only when such payments / outgo made in connection with the purchases were claimed as expenses in the respective financial years. Unless the GST and VAT component was claimed as deductible expenditure in the year of incurring such expenses, the refund of such amount cannot be regarded as income in the year of refund.

12.2 It is the case of the assessee that indirect taxes by way of GST

and VAT were not claimed as deductible expenses as a matter of accounting policy. If that be so, the refund of such taxes cannot by any stretch of imagination be treated as income chargeable to tax in the year of its receipts. However, determination of such issue is a question of fact. The onus lies on the assessee to demonstrate with evidence that the taxes paid by way of GST and VAT are not claimed as expenses in the year in which such expenses were incurred but were carried to the balance-sheet directly as recoverable amount and such outgo on account of GST and VAT have not impacted the P&L account of the respective financial years.

12.3 The determination of such factual issue calls for verification of accounting records and policy adopted which may possibly cover several financial years. In the absence of factual details available, it is difficult for the Tribunal to determine the issue solely based on the abstract averments made on behalf of the assessee towards accounting policies adopted in this regard. The CIT(A), on the other hand, has categorically observed that the Assessee has not provided the requisite corroboration to such assertions.

12.4 While we find traction in the plea of the assessee on accounting aspects on first principles, the issue needs factual verifications of accounting treatment given to such expenses at the time of incurring such expenses on VAT/GST. The issue thus requires to be remitted back to the file of the AO for fresh determination of the issue after proper factual verifications.

12.5 The issue is thus set aside to the file of the AO for fresh determination in accordance with law after giving proper opportunity to the assessee. It shall be open to the assessee to adduce proper evidences towards accounting policy adopted; method

of accounting followed and such other evidences as may be considered expedient to corroborate the claim of non-taxability of refund towards GST & VAT. The assessee may also consider furnishing appropriate report from the statutory auditor in this regard. The AO shall take into consideration all such evidences and explanations and shall pass a speaking order thereon.

13. Ground No.2 raised in this regard is thus allowed for statistical purposes.

14. Ground No.3 concerns claim towards set off of brought forward business losses and unabsorbed depreciation to the extent of additions made in the Intimation under Section 143(1) under challenge.

15 By way of this Ground, the assessee has raised the alternate claim without prejudice to the other Grounds that in the event the additions on account of VAT and GST are upheld, the assessee, in any case, is eligible for set off of brought forward losses and depreciation against such additions. The CIT(A) has restored the issue back to the file of the AO for suitable verifications towards existence of carry forward business losses and unabsorbed depreciation relating to earlier years. The AO shall determine the issue in accordance with law after giving appropriate opportunity to the assessee. Thus, without expressing any opinion on merits of the claim, we endorse the action of the CIT(A) in restoring the matter back to the file of the AO for dealing with issue afresh in accordance with law.

16. Ground No.3 is thus allowed for statistical purposes.

17. Other Grounds raised are either general or consequential in

nature and thus do not call for determination independently at this stage.

18. In the result, the appeal of the assessee is allowed for statistical purposes.

19. The Stay application is dismissed as infructuous.

Order pronounced in the open Court on July , 2024.

**[SUDHIR PAREEK]
JUDICIAL MEMBER**

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: July, 2024
Prabhat