

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 7581/Del/2017
(Assessment Year: 2011-12)**

Climax Overseas Pvt. Ltd, 152, Sector-3, IMT, Manesar, Gurgaon (Appellant) PAN: AABCC5665R	Vs.	DCIT, Circle-3(1), New Delhi (Respondent)
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Assessee by :	Shri Rakesh Kumar Khiwani, CA
Revenue by:	Shri Vivek Kumar Upadhyay, Sr. DR
Date of Hearing	09/04/2024
Date of pronouncement	08/07/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No. 7581/Del/2017 for AY 2011-12, arises out of the order of the Id. Commissioner of Income Tax (Appeals)-2, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 511/14-15 of CIT(A)-2 dated 20.10.2017 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.03.2014 by the Assessing Officer, Dy. CIT, Circle-3(1), New Delhi (hereinafter referred to as 'Id. AO').

2. The assessee has raised the following grounds of appeal:-

"Ground No. 1:

Whether the Id. CIT(A) was justified in law and facts of the case in confirming the disallowance made by the Id. A.O of deduction

amounting to Rs. 91,77,221/- under section 10B of the Income tax Act, 1961

Ground No. 2

Whether the Id. CIT(A) was justified in law and facts of the case in confirming the addition made by the Id. A.O amounting to Rs. 22,69,449/- (out of Rs. 27,69,449/- made by the A.O) under section 68 of the Income Tax Act, 1961.

Ground No. 3

Whether the Id. CIT(A) was justified in law and facts of the case in confirming the disallowance of medical expenses of employees, made by the Id. A.O amounting to Rs 58,038/-.

Ground No. 4

Whether the Id. CIT(A) was justified in law and facts of the case in confirming the disallowance of travelling expenses made by the Id. A.O amounting to Rs 6,00,000/-.

Ground No. 5

Whether the Id. CIT(A) was justified in law and facts of the case in confirming the disallowance of Rs. 10,00,000/- made by the Id. A.O out of Rs. 12,21,803/- incurred through AECB Credit Card.

Ground No. 6

Whether the Id. CIT(A) was justified in law and facts of the case in confirming the disallowance of deduction under sec 10B on Interest earned on FDR amounting to Rs. 2,77,233/-.

Ground No. 7

Whether the Id. CIT(A) was justified in law and facts of the case in not adjudicating upon the ground raised for the disallowance u/s 40(a) increased to Rs. 1,69,172 from an amount of Rs. 2,00,727/-disallowed by the assessee suo moto in its return of Income for the year under consideration.

Ground No. 8

Whether the Id. CIT(A) was justified in law and facts of the case in not adjudicating upon the ground raised for the disallowance u/s 43B increased to Rs. 9,04,603 from an amount of Rs. 5,20,822/-disallowed by the assessee suo moto in its return of Income for the year under consideration.

Ground No. 9

Whether the Id. CIT(A) was justified in law and facts of the case in not adjudicating upon the ground raised for the disallowance of Prior period increased to Rs. 2,32,366/- from an amount of Rs. 36,107/-disallowed by the assessee suo moto in its return of Income for the year under consideration.

Ground No. 10

That the appellant craves leave to add, to alter or to amend grounds of appeal before the appeal is heard and disposed off."

3. The ground No. 1 raised by the assessee is challenging the confirmation of disallowance of deduction u/s 10B of the act.

4. We have heard the rival submissions and perused the material available on record. The return of income for AY 2011-12 was filed by the assessee company on 30.09.2011, declaring Nil income which was revised on 26.03.2013, claiming loss of ₹10,52,529/-. The return was processed u/s 143(1) of the Act. The assessee is engaged in the business of manufacturing of rubber auto parts. The assessee has two units, one at Manesar and other at Udyog Vihar, Gurgaon. The unit of Manesar is claimed to be eligible for deduction u/s 10B of the Act (eligible unit) and the Udyog Vihar unit is non-eligible unit. The year under consideration is the 4th year of claim of deduction u/s 10B of the Act by the assessee as the initial year was assessment year 2008-09. In assessment years 2008-09, 2009-10 and 2010-11, the claim of deduction u/s 10B of the Act was disallowed by the Id AO on the ground that the assessee had used old plant and machinery in its 1st year of operation i.e. 2006-07 to the extent of 45% of value of plant and machinery and that the provisions of Section 10B(2) of the Act stood violated by the assessee. Further, Id AO observed that the assessee had not received the export proceeds in convertible foreign exchange within the specified time limit in AY 2006-07. Since, this was the recurring issue, in line with the decision taken by the Id AO in earlier 3 years, the deduction u/s 10B of the Act amounting to ₹91,77,221/- was disallowed by the Id AO in the assessment for the

year under consideration. This action of the Id AO was upheld by the Id CIT(A).

5. We find that the issue is already decided in favour of the assessee by this tribunal in the case of ITO Vs. Climax Overseas Pvt Ltd in ITA No. 185/Del/2015 for assessment year 2008–09 dated 22.12.2015 on the ground of low tax effect. The Id CIT(A) granted relief to the assessee in AY 2008-09. In AY 2009-10, this tribunal vide its order dated 02.03.2020 in ITA No. 109/Del/2015 had dismissed the appeal of the revenue as defective in view of the fact that the grounds of appeal were not provided by the revenue. In AY 2010-11, this Tribunal had dismissed appeal of the revenue in ITA No. 658/Del/2015 dated 01.12.2022 on the ground of low tax effect. There is no finding on merit given by this Tribunal for any of the three earlier years. We find that the year under consideration is the 4th year of claim. There is no dispute that the fact situation that prevailed in earlier 3 years are identical with those facts prevailing in AY 2011-12. For the earlier 3 years, the matter had attained finality through the orders of the tribunal as detailed supra. It is trite law that the eligibility of claim of deduction u/s 10B of the Act is to be looked into in the first year of its claim and AY 2011-12 being the 4th year of claim, the deduction u/s 10B of the Act would be eligible to the assessee automatically provided the export proceeds are received within the stipulated time and in convertible foreign exchange by the assessee. The assessee had furnished the chart of foreign remittances in support of its claim of deduction u/s 10B of the Act along with submission dated 14.09.2015, which fact is reflected at page 12 of the order of the Id CIT(A). The Id CIT(A) had dealt with

the issue on the basis of his predecessor's orders as well as the remand report furnished by the Id AO. Hence, no adverse inference could be drawn on the assessee with regard to the receipt of exports proceeds in convertible foreign exchange within the stipulated time. Accordingly, the assessee would be eligible to claim deduction u/s 10B of the Act for AY 2011-12 also. Accordingly, ground No. 1 raised by the assessee is allowed.

6. Ground No. 2 is challenging the confirmation of addition of ₹22,69,449/- u/s 68 of the Act.

7. We have heard the rival submissions and perused the material available on record. The Id AO observed that the assessee had received unsecured loan from following three parties during the year under consideration:-

Harjeet Kaur Sood	Rs. 16,69,449/-
Abhimanyu Gupta	Rs. 9,00,000/-
Ravinder Gupta	<u>Rs. 2,00,000/-</u>
Total	Rs. 27,69,449/-

8. It is observed that the assessee had not discharged its primary onus by filing the basic confirmation from the lenders i.e. ITR, bank statement of the lenders and hence the three ingredients of Section 68 of the Act not being proved by the assessee, the Id AO proceeded to make the addition u/s 68 of the Act. The assessee pleaded that it had discharged its primary onus by filing the confirmation, ITR, bank statement etc. before the Id AO itself and the same were not properly appreciated by the Id AO. The remand report was also called for from the Id AO in this regard. The Id CITA) granted partial relief to the tune of ₹5 lakhs in the case of loan received from Harjit Kaur

Sood and confirmed the balance unsecured loan of ₹22,69,449/- on the ground that the assessee had not established the creditworthiness of these lenders.

9. At the outset, we find that Sunita Sood name is changed to Harjeet Kaur Sood. The assessee has duly placed on record the evidence of gazette notification in this regard. Hence, we hold that both Sunita Sood and Harjeet Kaur Sood are one and the same person. It is not in dispute that the assessee had duly furnished confirmation from lenders, ITR acknowledgement and bank statement of the lenders for the relevant assessment years. The loans have been received in regular banking channel which was also duly confirmed by the lenders in the case of Harjeet Kaur Sood. Hence, we hold that the creditworthiness of the lender i.e. Harjeet Kaur Sood stands duly established by the assessee. Hence, we direct the Id AO to delete the addition of ₹11,69,449/- being the remaining loan receipt from Harjeet Kaur Sood as three ingredients of Section 68 qua this lender has been established by the assessee.

10. With regard to other two lenders, the assessee has merely furnished the confirmation, bank statement and PAN of the lenders. The income tax returns of the lenders are not furnished even in the remand proceedings. The confirmation only states that the monies were received by the assessee through regular banking channels. Though the bank statements were stated to be filed by the Id CIT(A), the copy of the said bank statements were not placed on record by the assessee in the paper book. Hence, the creditworthiness of the lenders could not be examined by us. In these circumstances, we are

forced to uphold the findings recorded by the Id CIT(A) as one of the main ingredients of section 68 of the Act , being creditworthiness of the lenders is not proved by the assessee. Accordingly, we uphold the addition to the tune of ₹11 lakhs (Rs. 9 lakhs and Rs 2 lakhs). Accordingly, the ground No. 2 raised by the assessee is partly allowed.

11. Ground No. 3 by the assessee is challenging the confirmation of disallowance of medical expenses of employees amounting to ₹58,038/-. This ground was not pressed by the Id AR at the time of hearing. The same is reckoned as a statement made from the bar and accordingly ground No. 3 is hereby dismissed as not pressed.

12. Ground No. 4 raised by the assessee is challenging the confirmation of the disallowance of travelling expenses amounting to ₹6,00,000/-

13. We have heard the rival submissions and perused the material available on record. The Id AO during the course of assessment proceedings asked the assessee to furnish the details of expenses debited to profit and loss account. No details were furnished thereon. The Id AO observed that on perusal of the financial statements of the assessee, the assessee has debited travelling expenses of ₹10,59,094/- during the year as against ₹2,19,121/- incurred in the earlier year. Since, there was no supporting documents, the Id AO made an adhoc disallowance of ₹6 lakhs as not wholly and exclusively incurred for the purpose of business. Before the Id CIT(A), the assessee filed the ledger copy of domestic travelling expenses of ₹1,40,936/- and foreign travelling expenses of

₹9,18,158/-. The Id CIT(A) observed that the assessee had not placed any invoices to this effect, details of persons who had travelled, the purpose of travelling and its business nexus thereon. Accordingly, the Id CIT(A) confirmed the disallowance. Before us, no further details were filed by the assessee to justify the allowability of deduction. This is a fit case to disallow the entire travelling expenses for want of primary details from the side of the assessee. The Id AO had magnanimously disallowed only a part of it to the tune of ₹6 lakhs, which has been confirmed by the Id CIT(A). We do not find any infirmity in the order of the Id CIT(A). Accordingly, ground No. 4 raised by the assessee is hereby dismissed.

14. Ground No. 5 is challenging the confirmation of disallowance of credit card expenses of ₹10 lakhs made by the Id AO out of ₹12,21,803/-.

15. We have heard the rival submissions and perused the material available on record. During the course of assessment proceedings, the assessee vide letter dated 11.12.2013 stated that the expenditure of ₹12,21,803/- had been incurred through AMEX Credit Card and filed the details of expenditure thereon. The Id AO observed that no proper details were filed by the assessee to prove the business nexus thereon and accordingly proceeded to disallow a sum of ₹10 lakhs as expenditure not incurred wholly and exclusively for the purpose of business of the assessee. Before the Id CIT(A), the assessee had filed copy of credit card statement showing nature of transactions. The Id CIT(A) observed that these details do not contain any nexus with the business of the assessee and no

supporting evidences thereon were filed. The Id CIT(A) confirmed the disallowance of ₹10 lakhs made by the Id AO. The Id AR before us vehemently argued that making payment of expenditure through credit card is only a means of making payment. The expenditures were already disallowed by the Id AO and again disallowing the very same expenditure through credit card statement would only result in double addition. We find that the details of credit card expenditure submitted by the assessee are enclosed at page 93 of the Paper Book, which is reproduced herein:-

Statement Showing Reconciliation of AIR Transaction Via Credit Card

Ledger: AEBC Card No 3769174454 81006
 Period: 1-Apr-2010 to 31-Mar-2011

Date	Particulars	Naration	Vch Type	Credit
12/04/2010	Membership & Subscription	BEING PAYMENT BY CREDIT CARD	JOURNAL VOUCHER	303.00
16/04/2010	Rajasthan Rajmarg Service Station	BEING PAYMENT THRU CREDIT CARD FOR SUPPLY OF OIL	JOURNAL VOUCHER	342,630.00
16/04/2010	Bank Charges	BEING BANK CHARGES ON USE OF CREDIT CARD	JOURNAL VOUCHER	9,448.00
11/06/2010	Rajasthan Rajmarg Service Station	BEING PAYMENT BY CREDIT CARD FOR SUPPLY OF OIL	JOURNAL VOUCHER	250,000.00
31/07/2010	Parmeet Singh Remuneration Payable	amt of pd th credit card dt 14-6-2010 roma gurgaon India Rs. 62530 &	JOURNAL VOUCHER	62,530.00
31/07/2010	Foreign Tour & Travels Exp.	dt. 15-6-2010 MESSE-FRANKFURT-TORHAUS-KASSE, FRANKFRURT GERMANY VISIT	JOURNAL VOUCHER	262,891.00
31/07/2010	Bank Charges	BEING BANK CHARGES ON USE OF CREDIT CARD	JOURNAL VOUCHER	6,894.00
30/09/2010	Bank Charges	BEING BANK CHARGES ON USE OF CREDIT CARD	JOURNAL VOUCHER	12,828.00
30/09/2010	Membership & Subscription	BEING PAYMENT BY CREDIT CARD	JOURNAL VOUCHER	1,285.00
30/09/2010	Membership & Subscription	BEING PAYMENT BY CREDIT CARD	JOURNAL VOUCHER	1,379.00
30/09/2010	Moti Ram & Co.	BEING PAYMENT THRU CREDIT CARD FOR SUPPLY OF HSD OIL	JOURNAL VOUCHER	146,120.00
30/09/2010	Moti Ram & Co.	BEING PAYMENT THRU CREDIT CARD FOR SUPPLY OF HSD OIL	JOURNAL VOUCHER	125,000.00
30/09/2010	Bank Charges	BEING PAYMENT THRU CREDIT CARD FOR SUPPLY OF HSD OIL	JOURNAL VOUCHER	495.00
Total Amt (Rs.)				1,221,803.00

16. We find from the perusal of the assessment order, certain other expenditures were also disallowed by the Id AO. We agree with the contention of the Id AR that majority of the expenditures were already disallowed by the Id AO and again disallowing the same through the means of making payment through credit card would

result in double addition. Hence, we deem fit to restore this issue to the file of the Id AO for de novo adjudication in accordance with law. Accordingly, ground No. 5 raised by the assessee is allowed for statistical purposes.

17. Ground No. 6 raised by the assessee is challenging the confirmation of disallowance of deduction u/s 10B of the Act on interest earned on fixed deposits receipts of Rs. 2,77,233/-.

18. We have heard the rival submissions and perused the material available on record. The assessee earned interest income of Rs. 2,77,233/- on fixed deposit receipts for which deduction u/s 10B of the Act was claimed by the assessee which was sought to be disallowed by the Id AO on the ground that the same does not constitute profit derived from industrial undertaking. This action of the Id AO was upheld by the Id CIT(A). But we find on perusal of the provisions of Section 10B(4) of the Act that deduction would be eligible for the assessee in the ratio of profits of the business of the undertaking in the same proportion of export turnover/ total turnover. In our considered opinion, the interest on fixed deposit receipts constitutes profit of the business of the undertaking. Hence, in terms of Section 10B(4) of the Act, the entire profits of the undertaking would be eligible for deduction u/s 10B of the Act. Accordingly, this ground raised by the assessee is allowed.

19. Ground Nos. 7 to 9 raised by the assessee is challenging the disallowances made u/s 40a(ia) of the Act, Section 43B of the Act and disallowance on account of prior period expenses. These grounds were not pressed by the assessee before the Id CIT(A).

Hence, there cannot be any grievance left for the assessee. Further, no arguments were advanced by the Id AR before us with regard to these grounds for justification of raising of these grounds before us. Accordingly, ground Nos. 7 to 9 are dismissed.

20. Ground No. 10 raised by the assessee is general in nature and does not require any specific adjudication.

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

Order pronounced in the open court on 08/07/2024.

-Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

-Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Dated:08/07/2024
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi