

IN THE INCOME TAX APPELLATE TRIBUNAL, "G" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 3889/MUM/2024
(A.Y.2016-17)

GandharOilRefinery(India)Ltd., 18 th Floor, DLH Park, SV Road, Goregaon (West), Mumbai-400062..	Vs.	ACIT, CC-5(1), Air India Building Mumbai-400021.
PAN/GIR No. AAACG3996J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Ms. Kavita Nabeda.AR
Revenue by	Shri. P.Suresh.Sr.DR

सुनवाई की तारीख/Date of Hearing	17.09.2024
घोषणा की तारीख/Date of Pronouncement	19.09.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals) CIT(A)-53, Mumbai passed u/sec 143(3) and u/sec 250 of the Act. The assessee has raised the following grounds of appeal:

1. *On the facts and circumstances of the appellant's case and in law, Ld. CIT (A) erred in confirming the action of Ld. AO of disallowing the deduction claimed u/s 35(2AB) of the Act to the extent of Rs. 19,21,303/- for the reasons stated in the impugned order or otherwise.*

2. *On the facts and circumstances of the appellant's case and in law, the ld. CIT(A) erred in confirming the action of Ld. AO of*

disallowing the deduction claimed amounting to Rs. 17,278/- on account of delay in payment of contribution to ESI by invoking provisions of section 2(24)(x) r.w.s. 36(1)(va) of the Act.

3. On the facts and circumstances of the appellant's case and in law, the ld. CIT(A) erred in confirming the action of Ld. AO of disallowing the claim of advances written-off of Rs. 4,88,070/- by arbitrarily holding that provisions of section 36(2) of the Act have not been complied with for the reasons mentioned in the impugned order or otherwise..

2. The brief facts of the case are that, the assessee company is engaged in the business and has filed the return of income for the A.Y 2016-17 on 29.11.2016 disclosing a total income of Rs.12,27,87,970/- and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for complete scrutiny under CASS and notice u/sec 143(2) and u/sec 142(1) of the Act are issued. Since the assessee has specific domestic transactions and the international transactions with its Associate Enterprises as per Form.No.3CEB, the Assessing Officer (AO) has referred the matter to Transfer Pricing Officer (TPO) for determination of arm's length price (ALP). Whereas the DCIT(TP) has accepted the ALP of the assessee and no adjustments are made for specific domestic transactions and the international transactions. The AO on perusal of financial statements, found that the assessee has claimed deduction u/sec 35(2AB) of the Act, and called for details of capital and revenue expenditure and the assessee has submitted the information, but the AO considering the facts and information find that the R&D Expenses of Rs.19,21,303/- is not approved by the

DSIR in the 3CL report and was disallowed. The second disputed issue with respect to ESI, the AO found that the assessee has not paid/deposited the employees contribution of ESI within the due date prescribed under the Act and made disallowance of Rs.17,278/- and the last disputed issue is with respect to advances written off by the assessee in the profit and loss account, the AO found that the assessee has written off advances but there is no clarity on the facts and details of such persons and same was treated as bad debts, whereas the A.O was not satisfied with the explanations and made disallowance of Rs.4,88,070/-. Finally the A.O has assessed the total income of Rs.12,52,14,621/- and passed the order u/sec 143(3) of the Act dated 24.12.2019.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no compliance by the assessee to notices.. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld.AR submitted that the CIT(A) has erred in confirming the action of the Assessing officer overlooking the information of the assessment proceedings. Further the assessee has a good case on

merits and shall substantiate with the material evidences and prayed for an opportunity to explain before the lower authorities. Per Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no compliance nor appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The CIT(A) has issued the notices of hearing on 08.09.2021, 24.11.2021, 14.02.2023, 28.02.2023, 14.03.2023, 13.02.2024, 15.03.2024 and 24.04.2024 referred at Page 2 of the order but there was no proper response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the additions made by the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the facts and principles of natural justice, we shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information subject to payment of cost of Rs.5000/- to the Income Tax Department within one month from the date of receipt of

the order and produce the proof of payment. Accordingly, we set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of the appeal. And we allow the grounds of appeal of the assessee for statistical purposes.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 19.09.2024.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER
Mumbai, Dated: 09/09/2024

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

KRK

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,
Mumbai.