

आयकर अपीलिय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं /ITA No.84/Hyd/2022
(निर्धारण वर्ष/Assessment Year:2017-18)

M/s. SGB Brandsafway Private Limited, Hyderabad. PAN:AADECH3554L	Vs.	Income Tax Officer, Ward-3(1), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	C.A. K.C. Devdas, C.A. P. Kranthi & C.A. Mrudulatha	
राजस्व द्वारा/Revenue by::	Ms. M. Narmada, CIT-DR	
सुनवाई की तारीख/Date of hearing:	22/10/2024	
घोषणा की तारीख/Pronouncement:	05/11/2024	

आदेश/ORDER

PER MADHUSUDAN SAWDIA, A.M. :

This appeal is filed by M/s. SGB Brandsafway Private Limited, Hyderabad (“the assessee”), feeling aggrieved by the order of the Learned Assessing Officer, National Faceless Appeal Centre (NFAC), Delhi (“Ld. AO”), passed u/s. 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (“the Act”) as per the direction of the Learned Dispute Resolution Panel, Bangalore (“Ld. DRP”) on 25.01.2022 for the A.Y. 2017-18.

2. The facts of the case are that the assessee is a company filed its return of income (“ROI”) for A.Y. 2017-18 on 30.11.2017 declaring a total income of

Rs.19,93,72,320/-. In view of the International Transactions involved during the year under consideration, for determination of Arm's Length Price ("ALP"), the case was referred to the Learned Transfer Pricing Officer ("Ld. TPO"). The Ld. TPO vide his order dated 29.01.2021 suggested upward adjustment of Rs.63,50,009/-. Accordingly, the Ld. AO passed the draft assessment order on 30.03.2021.

3. Aggrieved with draft assessment order passed by Ld. AO, the assessee preferred objections before the Ld. DRP. In pursuant to the direction of the Ld. DRP dated 21.12.2021, the Ld. AO finalised the assessment on 25.01.2022 by making addition of Rs.2,31,12,720/- on account of upward adjustment in ALP.

4. Aggrieved with the final assessment order of the Ld. AO the assessee is in appeal before us. The Ld. AR submitted that the ground nos.1 & 2 are general in nature; ground nos.9, 10 & 11 are consequential in nature and ground no.7 is not pressed. Therefore no separate adjudication is required with regard to these grounds.

5. Now coming to ground no.3, which is with regard to adjustment of Rs.63,03,791/- on account of interest on outstanding receivable due from Associated Enterprises ("AEs"), the Ld. DR submitted that their objections are in two parts. First objection is related to adjustment of interest on outstanding receivables due from SGB Quebeis LLC ("SGB") and the other

objection is towards interest on outstanding receivables from other parties excluding the amount receivable from SGB.

5.1 With regards to the adjustment of interest on outstanding receivables of SGB is concerned, the Ld. AR submitted that, the assessee had acquired the business of Harsco India P. Ltd. ("HIPL") as a going concern on slump sales basis. The HIPL had to pay Rs.8,12,66,521/- to SGB and had to receive Rs.6,63,04,223/- from SGB. While acquiring HIPL, the balance payable / receivable to / from SGB were also acquired by the assessee and the same are forming part of the outstanding payables as well as receivables of the assessee. The Ld. AR submitted that the Ld. TPO/ DRP without considering the facts that the assessee had an outstanding payable of Rs.8,12,66,521/- towards SGB, made an adjustment on account of interest on outstanding receivables of Rs.663,04,223/- from SGB. He submitted that if the receivables is set off from the outstanding payable, there remains no amount receivable from SGB. Therefore, relying on the decision of co-ordinate bench of Mumbai ITAT in the case of WNS Global Services Pvt. Ltd. Vs. ITO 103 taxman.com 75, the Ld. AR submitted that no adjustment should be made on account of interest on outstanding receivables of SGB.

5.2 Per contra, the Ld. DR relying on the order of revenue authority, submitted that the netting off as submitted by Ld. AR, cannot be done in

absence of any permission from RBI for such netting off. Therefore the Ld. DR submitted that the adjustment of interest on outstanding receivables of SGB has been correctly done by the revenue authority without considering the outstanding payables to SGB.

5.3 We have heard the rival contentions and gone through the records along with the submissions made by either side. There is no dispute about the fact that the assessee has outstanding payables as well as outstanding receivables against SGB. With regard to the objection of the Ld. DR regarding the permission of RBI related to setting off of debit / credit balances of SGB, the Ld. AR brought to our attention to page no. 12 and 13 of the paper book and submitted that the RBI has given such approval, although at a later date, but the permission of the RBI is without any restriction and can be implemented to the balances outstanding as on 31.03.2017. Considering the permission given by RBI and the decision of co-ordinate bench of ITAT in the case of WNS Global Services Pvt. Ltd. Vs. ITO (supra), we are of the view that before making any adjustment on account of interest on outstanding receivables of SGB, the revenue authority should have considered the amount of outstanding payable to the SGB. Therefore we make a direction to the Ld. TPO/AO to work out the adjustment on account of interest on outstanding receivables from SGB after considering the amount payable to SGB.

Accordingly, we allow this ground of appeal of the assessee for statistical purposes.

5.4 Now coming to the other issue relating to the interest on outstanding receivable from the parties other than SGB, the assessee requested for levy of LIBOR. The Ld. AR also submitted that the Ld. TPO / DRP have taken credit period of 30 days for calculation of interest on receivables. However, as per inter company agreement the credit period is for 45 days. Therefore the Ld. AR prayed for considering the credit period of 45 days for calculation of interest on outstanding receivables.

5.5 Per contra, the Ld. AR relied on the order of revenue authority and requested the bench to uphold the order of revenue authority.

5.6 We have heard the rival contentions and gone through the records along with the submissions made by either side. In the case of CCIT Vs. Techni (2018) 96 taxman.com 223 (Bom) for the A.Y. 2009-10, Hon'ble Bombay High Court held that interest chargeable on delayed recovery of export receivables from the party to be taken at LIBOR rate for determining the ALP on notional interest on delayed recovery. Respectfully following the same, we are of the considered opinion that the end of the justice would be met by charging interest rate at LIBOR +200 points. Therefore, we direct the Ld. TPO / AO to adopt the same. We also direct the Ld. TPO / AO to take credit period of 45

days for making adjustment on account of interest on outstanding receivables after verifying the inter company agreement for credit period of 45 days from the record of the assessee.

6. With regards to ground no.4, the Ld. AR submitted that the rectification application u/s.154 of the Act has already been filed with the Ld. AO, for which he brought our attention to page no.1190 of the paper book. After hearing the Ld. DR, we make a direction to the Ld. AO to dispose of the rectification application of the assessee along with giving effect to this order.

7. With regards to ground no.5, the Ld. AR submitted that, the Ld. AO had made addition of Rs.1,48,42,324/- on account of Short Term Capital Gain ("STCG") on sale of property, plant and equipment (fixed assets). The Ld. AR also submitted that during the year under consideration the assessee had sold some fixed assets. He further submitted that the capital gains on sale of fixed assets are to be calculated as per the provisions of section 43(6) and section 50 of the Act. He submitted that as per the provisions of the Act, the sale proceeds of the fixed assets are to be deducted from the WDV of the block of corresponding fixed assets and the capital gain arises only if the closing WDV of the block of fixed assets ceases to exist. He brought our attention to page no.1, 661, 663 and 687 of paper book related to computation of income, fixed assets schedule, other income schedule and depreciation chart as per the Act

respectively and submitted that as the closing WDV of the block of fixed assets does not ceases to exist, there cannot be any capital gain under the Act. However, in the case of the assessee, the Ld. AO has computed the capital gain not in accordance with the provisions of the Act, but calculated as per the books of account of the assessee. Finally he prayed before the bench to delete the addition made by the Ld. AO on account of such capital gain of Rs.1,48,42,324/-.

7.1 Per contra, the Ld. DR placed reliance on the order of revenue authority. The Ld. DR also submitted that proper details were not filed by the assessee before the revenue authority to reconcile the profits on the sale of fixed assets as per books of account and the working of WDV of fixed assets as per the Act. Therefore there is no mistake on the part of the revenue authority.

7.2 We have heard the rival contentions and gone through the records along with the submissions made by either side. The Ld. AR brought to our notice to page no.1, 661, 663 and 687 of paper book related to computation of income, fixed assets schedule, other income schedule and depreciation chart as per the Act respectively and submitted that the Ld. AO has calculated the capital gain on the sale of fixed assets as per books of account of the assessee and not in accordance with the provisions contained under the Act. We find

that there is no dispute about the facts that the capital gain on the sale of fixed assets has been calculated by the Ld. AO in accordance with the books of account of the assessee and not in accordance with the provisions of the Act. Therefore we are of the considered view that the Ld. AO has not worked out the capital gain of fixed assets in accordance with the Act. It is also a fact that proper working / reconciliation was not filed before the revenue authority to reconcile the profit on sale of the fixed assets as per books of account and the working of WDV of fixed assets as per the Act. Therefore we set aside the issue to the file of Ld. AO with a direction to reverify the issue and calculate the amount of capital gains on the sale of fixed assets in accordance with the provisions of the Act. The assessee is also directed to provide all the details to reconcile the profit on the sale of fixed assets and the working of WDV fixed assets as per the provisions of the Act without seeking any adjournment. Accordingly, this ground of the assessee is allowed for statistical purposes.

8. The issue in ground no.6 of the appeal is that the Ld. AO had made an adhoc disallowance of 10% on carriage outward expenditure of Rs.18,33,453/-. However, the Ld. CIT(A) reduced the adhoc disallowance from 10% to 5%. The Ld. AR submitted that they had filed all the details along with the corresponding invoices with regard to the carriage outward expenses before the revenue authority and the revenue authority did not find any discrepancy

on their submission. Even if there was no discrepancy in the submission of the assessee, the revenue authority made the disallowance on adhoc basis, which is not permissible as per law. Therefore he prayed before the bench to delete the addition made by the revenue authority.

8.1 The Ld. DR relied on the order of revenue authority. She also submitted that the copy of all invoices with regard to carriage outward expenses were not submitted before the revenue authority. Therefore she prayed before the bench to uphold the order of revenue authority.

8.2 We have heard the rival contentions and gone through the records along with the submissions made by either side. As submitted by Ld. AR that they have already filed all the details with regard to the carriage outward expenses along with the corresponding invoices before the revenue authority and even if no discrepancy was noticed on such submission, the revenue authority made the disallowances on adhoc basis. However the Ld. DR submitted that the copy of all invoices with regard to carriage outward expenses were not submitted before the revenue authority. We are of the considered opinion that if all the necessary details along with the corresponding invoices are filed before the revenue authorities, the revenue authorities are not allowed to make any disallowances on adhoc basis in absence of any discrepancy. However, as submitted by Ld. DR some invoices were not submitted before

the revenue authority, we set aside the issue to the file of the Ld. AO to verify all the expenditure with the corresponding invoices and if no discrepancy is noticed on such verification then delete the entire addition. However, if the Ld. AO found any discrepancy on such verification, he should restrict the disallowances upto the amount as held by the Ld. CIT(A). The assessee is also directed to submit all the invoices corresponding to the carriage outward expenditure before the Ld. AO without taking any adjournment. Accordingly, this ground of the assessee is allowed for statistical purposes.

9. With regard to ground no.8, the Ld. AR submitted that, the Ld. AO has levied interest u/s.234A of the Act on the assessee. He further submitted that the interest u/s.234A of the Act is only leviable, if the assessee has not filed its ROI within the due date specified u/s.139(1) of the Act. He also submitted that the due date for filing the ROI for A.Y. 2017-18 was 30.11.2017 and the assessee also filed its ROI on 30.11.2017. Hence the assessee filed the ROI within due date prescribed u/s.139(1) of the Act. Therefore the Ld. AR submitted that as the assessee has filed its ROI within the due date prescribed u/s.139(1) of the Act, no interest u/s.234A of the Act can be levied in the case of the assessee. Therefore he prayed before the bench to delete the interest levied u/s.234A of the Act by the Ld. AO.

9.1 Per contra, the Ld. DR placed reliance on the revenue authorities and requested the bench to uphold the order of the revenue authorities.

9.2 We have heard the rival contentions and gone through the records along with the submissions made by either side. We have also gone through the provisions contained in section 234A of the Act. It is abundantly clear that the interest u/s.234A of the Act is to be leviable on the assessee, if the assessee failed to file its ROI within the specified due date prescribed u/s.139(1) of the Act. There is no dispute about the fact that the assessee has filed the ROI on 30.11.2017 i.e. within the specified due date prescribed u/s.139(1) of the Act. Therefore, we are of the considered opinion that, as the assessee has filed its ROI within the due date specified u/s.139(1) of the Act, no interest can be levied on the assessee u/s.234A of the Act. Therefore, we delete the addition made by the Ld. AO. Accordingly, this ground of appeal is allowed.

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

Order pronounced in the open Court on 5th Nov., 2024.

Sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Sd/-

(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Hyderabad.

Dated: 05.11.2024.

** Reddy gp***Copy of the Order forwarded to :**

1.	M/s. SGB Brandsafway Pvt. Ltd., Ground Floor, KVR Plaza, Plot No.1-98/5/78-79, Sy. No.67, Jubilee Enclave, Hitec City, Madhapur, Hyderabad-500081
2.	ITO, Ward 3(1), Hyderabad.
3.	Pr.CIT, Hyderabad.
4.	DR, ITAT, Hyderabad.
5.	Guard file.

BY ORDER,