

| आयकर अपीलिय अधिकरण न्यग्रपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

I.T.A. No. 810/Mum/2024
Assessment Year: 2017-18

Tokyo Plast International Ltd., Mumbai Gala Quest, 4 th Floor Office, 1, Paranjape Scheme Road Vile Parle (East) Maharashtra - 400057 [PAN: AAAC1985E]	Vs	Dy. Commissioner of Income Tax, Circle-3(3)(1), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Prakash Jhunjhunwala, A/R	
Revenue by :	Shri Suhas Dabade, Sr. D/R	

सुनवाई की तारीख/Date of Hearing : 22/10/2024
घोषणा की तारीख /Date of Pronouncement: 25/10/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 28/12/2023 passed by NFAC, Delhi pertaining to AY 2017-18.

2. The grievance of the assessee reads as under:-

"The appellant company prefers an appeal against an order passed u/s.250 dated 28/12/2023 by Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi on the following amongst other grounds each of which are without prejudice to any other :-

Additional Grounds of appeal -

1.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in making the addition u/s.41(1) in respect of alleged remission or cessation of trade payable to M/s. Trishala Enterprises of Rs.6,20,000/-, though such liability has not been written back during the year;

Other Grounds -

2.0 On facts and circumstance of the case and in law, Ld. CIT(A) erred in confirming the disallowance of exemption u/s.10AA of Rs.28,38,292 - (4,03,06,592 -

3,74,68,300) on re-allocating the expenses incurred for non-eligible unit (Daman) into eligible SEZ unit situated at Kandla;

3.0 The Ld. CIT(A), before confirming the disallowance of exemption u/s. 10AA of Rs.28,38,292/-, ought to have considered the understated vital facts being;

a) The appellant had maintained separate books of accounts for the eligible Special Economic Zone unit situated at Khandle, Gujarat;

b) The appellant had not rejected the books of accounts of Khandle SEZ unit and Form No. 56F filed by Chartered Accountant, certifying the eligible profit of SEZ unit of Rs.4,03,06,592/-;

c) The Ld. AO expenses incurred towards non-SEZ, Daman unit of Rs.59,25,881/- had incorrectly been allocated towards Khandle SEZ unit in equal proportion, thereby resulting into the proportional disallowance u/s. 10AA of Rs.28,38,292/-;

d) The appellant had allocated common expenses in proportion to the turn of the SEZ and non-SEZ unit, however Ld. AO erred in re-allocating the expenses in equal proportion.

The appellant craves leave to add, amend, alter, and/or withdraw any of the grounds of appeal at the time of hearing."

3. Vide the additional ground the assessee has challenged the addition made u/s 41(1) of the Act being alleged remission/cessation of trade payable.

4. A perusal of the assessment order shows that this issue was raised by the AO and strongly contested by the assessee at the assessment stage, though inadvertently the same could not be questioned before the Id. First Appellate Authority. Therefore, technically this ground is not emanating from the order of the Id. First Appellate Authority and, therefore, the assessee has raised this additional ground which requires no verification on any new facts and hence in light of the ratio laid down by the Hon'ble Supreme Court in the case of *National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC)*.

5. During the course of scrutiny assessment proceedings, the AO found that a sum of Rs. 6,20,000/- is still due to M/s. Trishala Enterprises. The assessee was asked to explain why this should not be added to the income. It was explained that trade payable to M/s. Trishala Enterprises, is due on account of payment kept on hold due to dispute over quality and material supplied by M/s. Trishala Enterprises but the trade payable is very much there. This contention of the assessee was dismissed by the AO, who proceeded by making additions u/s 41(1) of the Act.

6. Before us, the Id. Counsel for the assessee reiterated that it is a liability towards purchase and still exists and, therefore, the provisions of Section 41(1) of the Act do not apply.

The Id. D/R stated that this issue was not decided before the Id. First Appellate Authority and, therefore, the same should not be admitted.

7. We have carefully perused the assessment order. As mentioned elsewhere, this issue was considered by the AO and the facts need no further verification. The only dispute is whether the provisions of Section 41(1) of the Act apply on the facts of the case. It is an undisputed fact that the impugned liability is a trade liability payable to M/s. Trishala Enterprises on account of purchases made. We have been informed that the assessee has written back this liability in AY 2018-19. In that view of the matter, it will amount to double addition, therefore, the AO is directed to verify whether this liability has been added back in AY 2018-19 and if found correct, the same should be deleted from

here. With the above directions, the additional ground raised by the assessee is allowed.

8. The other grounds relate to the disallowance of exemption u/s 10AA of the Act on re-allocating the expenses incurred for non-eligible unit into eligible SEZ unit.

9. The underlying facts in the impugned issue are that the assessee has shown revenue from operations from its two units at Kandla and Daman. Daman unit is a non-SEZ unit and Kandla unit is a SEZ Unit. The assessee is claiming exemption u/s 10AA of the Act in respect of Kandla SEZ and this is the ninth year of the claim which means that in the preceding AY, the claim was allowed.

10. The assessee has shown revenue from operations from Kandla Unit at Rs. 36,41,07,605/- whereas in case of Daman Unit shown at Rs.35,77,34,493/-. While scrutinising the return, the AO noticed that the assessee has claimed other expenses for Kandla Unit at Rs.4,90,34,377/- and at Daman Unit at Rs.10,31,75,715/-.

10.1. The assessee was asked to explain as to why more expenses have been claimed in Daman Unit than in Kandla Unit and further was asked to provide the basis of allocation of expenses in both the units. In its reply, the assessee explained that Kandla Unit was setup and started production in 2007. Both the units manufacture range different products and use different raw materials and other consumables and as a result of this, there is no inter unit sale or purchase or transfer of raw materials or products. The Daman Unit exports its products through JNPT Port in Mumbai and Kandla Unit makes its export from Mundra Port. It was further explained that the assessee is maintaining separate set of books

of accounts for both these units and operates independently of each other. All common expenses like foreign exhibition and fairs, foreign travel, statutory audit fees and other miscellaneous expenses have been allocated in turnover ratio of each unit and other expenses are re-allocated on actual basis which include legal and professional fees, motor vehicle expenses, travelling & conveyance and miscellaneous expenses.

10.2. The AO did not accept the contention of allocation in turnover ratio of each unit and went on to re-allocate the expenses and re-compute the expenses u/s 10AA of the Act at Rs. 3,74,68,300/-.

11. The assessee carried the matter before the Id. CIT(A) but without any success.

12. Before us, the Id. Counsel for the assessee vehemently stated that the assessee is maintaining separate books of accounts which have been audited and have been submitted before the AO during the course of assessment proceedings. It is the say of the Id. Counsel that no defect has been pointed out in the allocation made by the assessee except not accepting on frivolous grounds. The Id. Counsel for the assessee further stated that the assessee is claiming the allocation for the past nine years and in none of the previous years the allocation was disturbed.

Per Contra, the Id. D/R strongly supported the findings of the AO.

13. We have carefully considered the orders of the lower authorities. The undisputed fact is that, this is the ninth year of claim of exemption u/s 10AA of the Act and in none of the previous years, the revenue has questioned the basis of allocation of expenses. It is also not in dispute

that the assessee is maintaining separate books of accounts for both the units and there is no inter-unit sale or purchase or transfer of raw materials or products between the two units. Common expenses have been allocated on the basis of turnover which is a very prudent way of allocation and all other expenses have been claimed on actual basis. Therefore, there is no question of any allocation/re-allocation when the actual expenses of each unit are charged to profit of that unit. The AO has not given any logical justification in allocating the expenses equally when he himself has examined the books of account of both the units and could not point out any specific defect therein. Further he also did not point out any error in the previous acceptance of the allocation of expenses as this is the ninth year of the claim of exemption u/s 10AA of the Act.

14. Considering the facts in totality, we do not find any merit in the re-allocation of expenses and re-computation of exemption u/s 10AA of the Act. The AO is directed to delete the same.

15. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 25th October, 2024 at Mumbai.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 25/10/2024

Sd/-

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai