

आयकर अपीलीय अधिकरण “एच” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI
BEFORE SHRI JASON P. BOAZ, AM AND SHRI RAM LAL NEGI, JM

आयकर अपील सं./I.T.A. Nos. 2769/Mum/2014 & 877/Mum/2015
(निर्धारण वर्ष / Assessment Years: 2009-10 & 2010-11)

Hunter Douglas India Private Limited C-102, Mangalya Building, Marol maronshi Road, Opp. Fire Brigade, Andheri (E), Mumbai-400 059	बनाम/ Vs.	Dy. CIT-8(2), Aaykar Bhavan, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACH 2712 F		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Reepal Tralshawala
प्रत्यर्थी की ओर से/Respondent by	:	Ms. Kusum Bansal,
सुनवाई की तारीख / Date of Hearing	:	18.11.2015
घोषणा की तारीख / Date of Pronouncement	:	27.11.2015

आदेश / ORDER

Per Jason P. Boaz, A. M.:

These appeals by the assessee are directed against the orders of the Id. Commissioner of Income Tax (Appeals)-17, Mumbai ('CIT(A)' for short) dated 07.02.2014 and 16.12.2014 for the assessment year (A.Ys.) 2009-10 and 2010-11 respectively. These two appeals having common issues were heard together and are being disposed off by way of this common order.

2. The facts of the case, briefly, are as under:

2.1 The assessee company, engaged in the business of manufacturing and trading of architectural products and window covering products, filed its return of income for A.Y. 2009-10 on 30.9.2009 declaring total income of Rs.3,45,49,020/- under the normal provisions and book profits of Rs.5,39,89,213/- u/s.115JB of the Income Tax Act, 1961 (in short 'the Act'). For A.Y. 2010-11, the assessee filed its return of income on 25.09.2010 declaring income of Rs.20,08,36,210/- under normal provisions and 'book profits' of Rs.24,99,57,968/- u/s.115JB of the Act. The returns of income for both these assessment years were processed u/s.143(1) of the Act and the case was taken up for scrutiny. The assessments for both A.Ys. 2009-10 and 2010-11 were completed u/s.143(3) of the Act vide orders dated 14.3.2013 and 5.2.2014 respectively. In both the concerned assessment years, the Assessing Officer (A.O.) disallowed the assessee's claim of expenditure in the profit and loss account as provision for slow moving stock amounting to Rs.32,17,000/- and Rs.20,22,772/- respectively. The AO also added back/disallowed the same item of provision for slow moving stock while computing the 'book profits' u/s. 115JB of the Act.

2.2 Aggrieved by the orders of the assessment for A.Ys. 2009-10 and 2010-11 dated 14.3.2013, and 5.2.2014 respectively, the assessee preferred appeals before the Id. CIT(A). The Id. CIT(A) dismissed the assessee's appeals vide orders dated 7.2.2014 and 16.12.2014 upholding the orders of the A.O.

3.1 Aggrieved by the aforesaid orders of the Id. CIT(A) for A.Ys. 2009-10 and 2010-11 the assessee has preferred these appeals raising the following similar grounds. The grounds raised for A.Y. 2009-10 are extracted hereunder:

'The Honourable Commissioner of Income Tax (Appeals) has erred in confirming the addition made by the learned assessing officer of in respect of Provision for Slow moving Stock of Rs. 32,17,000/- as debited in Profit and Loss Account on identical basis after becoming

obsolete and non-sellable, without considering the fact and merits of the case.

The Hon'ble CIT (Appeals) has erred in not appreciating the order passed by hi predecessor in our own case for the same issue already decided that was raised in the Assessment Year 2008-09, without considering the fact and merits of the case.

The Hon'ble CIT (Appeals) has erred in confirming the addition made by the learned assessing officer in respect of Provision for Slow Moving Stock of Rs.32,17,000/- under normal provision of income tax as claimed in the return by way of debiting in the Profit and Loss Account on becoming non-sellable I obsolete, without considering the facts and merits of the case.

The Honourable CIT (Appeals) has also erred in confirming the addition made by the learned assessing officer in respect of Provision for Slow Moving Stock of Rs.32,17,000/- for the purpose of calculating Book Profit under section 115JB of the Income Tax Act, without considering the facts and merits of the case.

The Appellant craves leave to submit at the time of hearing such further facts, information, clarification, documents etc. as may be necessary for the purpose of deciding the issues in the appeal.

The appellant craves leave to add, alter, amend or modify the aforesaid grounds of appeal.'

The only issue raised in the grounds (supra) is the issue of allowability or otherwise of the claim of expenditure for provision of slow moving stock.

3.2.1 Before us, the Id. AR for the assessee re-iterated the submissions put forth before the Id. CIT(A). The Id. AR submitted that the assessee was a manufacturer of aluminum false ceilings and window blinds products of a wide range of colour and products. It is submitted that due to changes in customer preferences, some of the raw material and components become slow moving over a period of time and are not usable in other contracts. The Id. AR submits that as per the assessee's business

strategy and in order to maintain the patent, brand and reputation of the products, these items are not sold in the local market as they may fall in the hands of competitors, and are therefore destroyed and consequently the assessee written off 100% of the said obsolete stock by debiting it to the profit and loss account. It is submitted that in these circumstances, the assessee's claim for write off of the said slow moving/obsolete stock to the extent of 100% is allowable.

3.2.2 The Id. AR submitted that the observations of AO that the assessee did not have the exact quantification of such slow moving stock/inventory is not correct, as it does maintain a stock register while depicts the movement of inventory. It is further submitted that the A.O.'s observation that the assessee's claim of write off of obsolete stock is bereft of documentary proof to show any realization by disposing off the inventory is due to the fact that the slow moving/obsolete stock has been destroyed due to the assessee company's business policy/strategy. It is further contended that the A.O. has failed to assign any reason why the slow moving stock debited to the profit and loss account should be added back to the book profits u/s.115JB of the Act, as the assessee has debited the same to the profit and loss account in accordance with AS-2 in accordance with the regularly followed accounting policies of the assessee.

3.2.3 The Id. AR of the assessee submitted that the facts being the same, the Id. CIT(A) ought to have followed his predecessors order for A.Y. 2008-09 wherein the Id. CIT(A) had deleted the addition made by the AO on account of the provision for slow moving stock. The Id. AR further contended that the observation of the Id. CIT(A) in the impugned order, that the assessee had termed stock purchased in the year under consideration as obsolete stock, to be factually incorrect since the items categorized as slow moving/obsolete stock was purchased more than a year before it was categorized as such. It was prayed that the assessee's claim for expenditure on account of provision for slow moving and obsolete stock for both A.Ys. 2009-10 and

2010-11, being less than 1% of turnover, be allowed as a deduction and in this context placed reliance on the following judicial pronouncement:

- (i) Avaya Global Connect Ltd. 122 TTJ (Mum) 300
- (ii) Atlas Copco (India) Ltd. – ITA No. 448/PN/2010 dated 30.1.2012
- (iii) CIT vs. Becton Dickinson India (P) Ltd. (2013) 214 Taxman 636 (Delhi HC)
- (iv) Chainrup Sampatram vs. CIT (1953) 24 ITR 481 (SC)

3.3 Per contra, the ld. DR strongly supported the orders of the authorities below. It was submitted that the assessee has not established that the said slow moving/obsolete stock had in fact been destroyed as claimed by the assessee in accordance with its stated policy. If stocks of such value as Rs.32.17 lacs and Rs.20.22 lacs were in fact destroyed, as claimed, then the assessee would have certainly incurred some expenditure in this regard like labour charges, fuel charges, etc. to evidence the same. It is submitted that no such evidence has been furnished by the assessee, on whom the onus rests for establishing its claim of expenditure. The ld. DR contends that in these circumstances, the orders of the authorities below have factually established that the assessee has failed to prove that the expenditure claimed on provision for slow moving/obsolete items is allowable, as the assessee has failed to adduce evidence to support its claim of disposal of the same. The ld. DR further submitted that the judicial pronouncements cited by the assessee (supra) would not come to the rescue of the assessee in the case on Land since they are factually distinguishable. It was submitted that while in the cited cases, the assessee's therein were able to establish that the slow moving/written off stock was disposed off and its scrap/realizable value was offered to tax, whereas in the case on land, the assessee has not been able to establish its claim that the slow moving stock was destroyed and therefore its realizable value was Nil. The ld. DR contends that in view of the above, the decision of the authorities below in disallowing the assessee's claim and consequently treating

the same to be an unascertained liability u/s.115JB of the Act and including it in the 'book profits' is in order.

3.4.1 We have heard the rival contentions and perused and carefully considered the material on record, including the judicial pronouncements cited. The only issue for examination and adjudication before us for the A.Ys. 2009-10 and 2010-11 is with respect to the allowability or otherwise of the assessee's claim of the expenditure on account of provision for slow moving/obsolete stock claimed in its profit and loss account at Rs.32.17 lacs and Rs.20.22 lacs respectively. Admittedly, the assessee is in the business of manufacture and sale of aluminium false ceilings and window blinds of a wide variety of colours and products. According to the assessee, due to changes in customer performances, some of the raw material and components become slow moving and obsolete over a period of time and are considered as not usable in other contracts. It is submitted that as per the assessee's business strategy, the same are not sold in the market but are destroyed in order to protect its patent, brand and reputation and to ensure they do not come into the possession of its competitors in business and therefore the assessee writes off 100% of the value of obsolete stock. On an appreciation of the facts of the case in the context of the assessee's claim, we find that as observed by the authorities below, the assessee has failed to establish with any documentary proof that the said slow moving/obsolete stock was in fact destroyed. Apart from claiming that it destroyed the entire slowing moving/obsolete stock rendering its value at nil, we observe that the assessee has not been able to adduce any proof of having incurred any expenditure whatsoever for destroying the said showing moving/obsolete stock, which, in fact, should have been incurred had the same been destroyed. In this factual matrix of the case, we do not find merit in the claim of the assessee that the expenditure claimed by it in its profit and loss account of account of provision for slow moving/obsolete stock is allowable since the assessee has failed to

factually establish that the said stock was actually destroyed and therefore reject the said claim for both A.Ys. 2009-10 and 2010-11.

Before parting, we mention that we have perused the judicial pronouncements cited by the assessee (supra) and find that the findings therein would not come to the rescue of the assessee since these cases are factually distinguishable from those of the assessee in the case on hand. In the cited cases, the assessee's were able to establish the fact of write off/disposal of the slow moving stock by offering to tax the scrap/realized value on sale thereof. In the case on hand, however, the assessee has failed to establish the fact of destruction of the said obsolete stock for claiming 100% write off thereof.

3.4.2 Consequently, we also uphold the orders of the authorities below in holding that since the claim of provision for slow moving/obsolete stock has not been established, the same would be liable to be added to the assessee's net profit in accordance with the provision of clause c to *Explanaiton* of section 115JB(2) of the Act for the purposes of computing the 'book profits' of the assessee for both the assessment years involved. In these circumstances, the grounds of appeal raised by the assessee are dismissed.

4. In the result, the assessee's appeals for both the A.Ys. 2009-10 and 2010-11 are dismissed.

Order pronounced in the open court on November 27, 2015

Sd/-
(Ram Lal Negi)

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 27.11.2015

व.नि.स./Roshani, Sr. PS

Sd/-
(Jason P. Boaz)

लेखा सदस्य / Accountant Member

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai