

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH : KOLKATA

[Before Hon’ble Sri M.Balaganesh, AM & Shri Partha Sarathi Chaudhury, JM]

I.T.A No. 588/Kol/2012 & 408/Kol/2013

Assessment Year : 2008-09 & 2009-10

J.C.I.T.(OSD), Circle-4,
Kolkata

-vs.-

M/s. Tide water Oil Co.(India)Ltd.
Kolkata
[PAN : AABCT1122C]

(Appellant)

(Respondent)

For the Appellant : None
For the Respondent : Shri Arup Sinha, Advocate

Date of Hearing : 02.02.2017.

Date of Pronouncement : 28.02.2017.

ORDER

Per Shri Partha Sarathi Chaudhury, JM

These separate appeals have been preferred by the Revenue emanating from separate orders of Id. CIT(A)-IV, Kolkata for A.Y.2008-09 dated 16.01.2012 and for A.Y.2009-10 dated 29.11.2012.

2. The grounds of appeal for A.Y.2009-10 are as follows :-

“1. That on the facts and circumstances of the case the Ld. CIT(A) has erred in law in directing the A.O. to delete the addition of Rs. 79,03,108/- without appreciating the fact that mere defect in Books of Account or not making any adverse report by the Tax Auditor cannot be the parameter to delete any addition.

2. That on the facts and circumstances of the case the Ld. CIT (A) has erred in law in deleting the addition of Rs. 14,41,000/- on account of provision for leave encashment based on the primary view taken by the Supreme Court at the time of admission of SLP against the decision of Calcutta High Court in the case of Exide Industries.

3. That on the facts and circumstances of the case the Ld. CIT (A) has erred in law in deleting the addition of Rs. 13,54,419/- on account of provision for doubtful debts written back based on facts and submission not produced before the A.O. during the course of assessment.

4. That the appellant craves for leave to add, delete or modify any of the grounds of appeal before or at the time of hearing. ’

3. The grounds of appeal for A.Y.2008-09 are as follows :-

1. That on the facts and circumstances of the case, Ld. CIT(A) has erred in law in directing the A.O. to delete the addition of Rs.14,22,257/- without appreciating the fact that mere defect in Books of Account or not making any adverse report by the Tax Auditor cannot be the parameter to delete any addition.

2 That on the facts and circumstances of the case, Ld. CIT(A) has erred in law in deleting the addition of Rs.59,38,672/- on account of provision for leave encashment based on the primary view taken by the Supreme Court at the time of admission of SLP against the decision of Calcutta High Court in the case of Exide Industries.

3. That on the facts and circumstances of the case, Ld. CIT(A) has erred in law in deleting the addition of Rs.11,35,554/- on account of provision for doubtful debts written back based on facts and submission not produced before the A.O. during the course of assessment.

4. That the appellant craves for leave to add, delete or modify any of the grounds of appeal before or at the time of hearing.”

4. The crux of the grounds of appeal are similar. Therefore for the sake of convenience we adjudicate all the grounds of appeal in this single order.

5. First we take up A.Y.2009-10. The first ground relates the deletion of addition of Rs.79,03,108/-. The AO in the Tax Audit Report Annexure-XIV noticed certain shortages pertaining to oil and grease. According to the AO the assessee failed to give any proper explanation and since there is no instance of wastage nor pilferage shortages cannot occur in the normal business purposes. Therefore the AO went on to make addition of Rs.79,03,108/-. The assessee at the appellate stage filed written submission explaining that shortages occur in the normal course of business since the products are liquid and semi-liquid in nature and they are susceptible to storage loss which can be suffered both at the time of manufacture of finished products as well as at the time of transferring the products to the retail containers. That as on record these have been explained to the AO by the assessee during the assessment proceedings vide the assessee's submission dated 26.12.2001. The said letter stated that the company's primary business was that of planting lubricating oil and automotive greases. In such line of business shortage upto 0.5% is supposed to be a normal loss and thereby within a condonable limit. This limit of 0.5% has been endorsed even by the Jt. Secretary, Govt. of India in respect of assessee's own excise case. The Id. CIT(A) in his order

observed that even for A.Y.2008-09 in assessee's own case this issue was adjudicated by the predecessor of the Id. CIT(A) in favour of the assessee and the relevant portion that particular order finds place even in the order of Id. CIT(A) for A.Y.2009-10. That the reasons are on record hence it is not necessary to reiterate the same herein. The Id. CIT(A) further states in his order that for A.Y.2009-10 similar facts are there and the extracts of Annexure-XII of audit report is also provided herein :

B. Quantitative Details of principal items of finished products			
		Oil (Ltrs.)	Greases(Kgs)
(i)	Opening stock as on 01.04.2008	5573911	841487
(ii)	Quantity manufactured during the previous year	47885613	6324315
(iii)	Sales during the previous year	47708502	6280767
(iv)	Closing stock as on 31.03.2009	5751022	885035
(v)	Shortage/(Excess)[adjusted against consumption)	142114 (0.2967%)	627 (.0099%)

6. From the above chart it is clear that even during A.Y.2009-10 the shortages in oil and grease were purely acceptable normal loss of 0.5% even otherwise it is established beyond doubt by various authorities of the Government _that shortages do arise in view of the nature of the business of oil and grease. Packing in smaller containers for retail sale also results in shortages. That considering all these factual aspects and practicalities the Id. CIT(A) held that shortages arise in a normal course of business of the assessee company and incidental to the very nature of the business. Therefore unexplained shortage of closing stock of Rs.79,03,108 does not arise and there should be no addition made on this account. The Id. CIT(A) further opined that the finished products of the assessee company is an excisable product which has to be duly entered in the appropriate excise register before removal from the factory premise. No such illegal removal of excisable product of the company has been mentioned by the AO. Therefore there was not even a case of suppression of production and removal of goods from the factory premises for sale. Thus relief of Rs.79,03,108/- was granted to the assessee.

7. We have perused the case records, the facts and circumstances and heard the rival submissions of the parties herein. The Id. DR relied on the order of AO. The Id. AR reiterated the submissions made before the subordinating authorities as well as the First Appellate Authority and relied on the order of the Id. CIT(A). The Id. AR at the time of hearing further filed in the paper book a copy of order of the Excise department in assessee's own case thereby it is absolutely clear that shortages had arose in view of the nature of the business of oil and grease while taking into the small containers for retain sale or in the normal course of business which is much incidental. Copy of the order of the Excise department is also on record as filed in the paper book. That further more the First Appellate Authority has to be a reasoned order regarding the issue and we do not find any infirmity with the same. Therefore the relief granted to the assessee is hereby sustained. This ground of appeal by the revenue is dismissed.

8. The next ground of appeal relates to the deletion of Rs.14,41,000/- on account of provision for leave encashment.

“In this connection the Assessing Officer disallowed the claim of the appellant by observing in his order u/s 143(3) of the I T Act, 1961 dated 28.12.2011 as under :-

“In the Annexure VIII corresponding to Col.21 of the tax Audit report, it is seen that the assessee has written back expenditure of Rs.14,41,000 towards leave encashment and claimed the same as deduction. Since 43B only allows actual payment. On being asked to explain, the A/R submitted that in view of Hon'ble Calcutta High Court order in the case of Exide Industries provision for leave encashments is outside the scope of 43B. Hence being a firm liability based on actuarial valuation it is claimed as deduction. However it is seen from the website of the Supreme Court that the Hon'ble Supreme Court has restrained the impugned order of the Hon'ble Calcutta High Court on departmental appeal after admitting the SLP. In view of the above, to maintain the equity provision for leave encashment written back of Rs.14,41,000/- is disallowed.”

9. The assessee stated that the company has not claimed provision for leave encashment as deduction during the relevant previous year as alleged by the AO in his order u/s 143(3) of the Act. Further it was also stated before the First Appellate Authority that the assessee vide order dated 26th December, 2011 filed before the AO clarified during the assessment proceedings that provision for leave encashment written back was claimed as deduction as the assessee previously by following the provisions of section 43B(f) of the Act added back the entire provision for leave encashment while computing the total income of the assessee. Accordingly it was prayed before the Id. CIT(A) that the provision for leave encashment written back which was claimed as deduction by the assessee during the relevant previous year otherwise the same would tantamount to double taxation. The Id. CIT(A) in his order observed that the company duly added back the entire provision for leave encashment from A.Y.2002-03 to 2007-08 by following the provision of section 43B(f) of the Act. It was requested by the assessee to substantiate the same by filing the same by filing relevant documents. The assessee filed a letter dated 20th November, 2012 along with the relevant portions of assessment order, Tax audit report, computation of income and acknowledgement of return for A.Y.2002-03 to 2007-08. These documents prove that the assessee had actually added back the provision of leave encashment for all the years starting from A.Y.2002-03 to 2007-08. The Id. CIT(A) further observed that the records of the assessee shows that it had not claimed any provision for leave encashment written back as deduction in any of the previous year starting from A.Y.2002-03 and onwards. As the total addition made by the assessee under the head provision for leave encashment for A.Y.2002-03 to 2007-08 exceeds the claim of the assessee made on account of reversal of provision for leave encashment in the year under consideration the claim of the assessee therefore found to be genuine. In view of the above more particularly that the total addition made by the assessee during A.Y.2002-03 to 2007-08 under the provision of section 43B(f) of the Act exceeds the claim made by the assessee on account of reversal thereof. The Id. CIT(A) held that the claim of the assessee is to be

allowed and accordingly the AO was directed to delete the disallowance on account of reversal of leave encashment provision amounting to Rs.14,41,000/-.

10. We have perused the case records and we arrive at the considered view that in this issue the Id. CIT(A) while adjudicating the rights and liabilities have examined the relevant portions of the assessment order, Tax audit report, computation of income and acknowledgement of return for A.Y.2002-03 to 2007-08. The issue that the appellant has actually added back the provision of leave encashment for all the years 2002-03 to 2007-08 is verified from these documents. The Id. CIT(A) has put forth a speaking order wherein the records itself being verified by the First Appellate Authority and it also finds mention in the order itself that the assessee has not claimed any provision for leave encashment written back as deduction in any of the previous year starting from A.Y.2002-03 and onwards. There is also that the total addition made by the assessee during A.Y.2002-03 to 2007-08 under the provision of section 43B(f) of the Act exceeds the claim made by the assessee on account of the reversal and therefore the claim of the assessee is to be allowed. That on these observations we find acceptance with the order of the Id. CIT(A) and the relief granted to the assessee is hereby sustained. This ground of appeal by the revenue is dismissed.

11. The next ground of appeal relates to deletion of Rs.13,54,419/- on account of provision of doubtful debts. The AO disallowed the claim of the assessee by stating that in his order u/s 143(3) of the Act that the assessee has taken the write off provision of doubtful debts in the profit and loss account but in the computation of income has taken it out of income which is not permissible as per the accounting policy since it is not an ascertained liability and as well as Sec.36(2)(i) of the Act is not applicable. Since the assessee is not carrying on money lending business in the ordinary course of business the amount of Rs.13,54,419/- has to be disallowed for computation. That before the Id. CIT(A) the assessee stated that the company has not claimed the provision for doubtful

debt as deduction during the relevant previous year as alleged by the AO in his order u/s 143(3) of the Act. It was also stated by the AR that the assessee vide letter dated 26.12.2011 filed during the course of assessment proceedings before the AO duly clarified that the provision for doubtful debt which was not offered to tax previously was claimed as deduction when the said provision has been written back and further stated before the AO that disallowance of the claim in regard to written back of doubtful debts would tantamount to double taxation. It was stated before CIT(A) that the assessee inter alia made the provision for doubtful debts in the previous relevant to A.Y.2007-08 and 2008-09 and offered the said sum in the aforesaid provision for doubtful debt for these assessment years. However recovery is being made in the previous year relevant to A.Y.2009-10 in respect of some of the debts provided in the books of account of the previous year relevant to A.Y. 2007-08 and 2008-09. The said provision was reversed in the previous year relevant to A.Y.2009-10 and as such the said amounts have been reduced to arrive at the taxable income for the relevant assessment year. Accordingly the assessee prayed before the Id. CIT(A) to allow the provision for doubtful debts written back which was claimed as deduction by the assessee during the relevant previous year and otherwise it will be taken to double taxation. The Id. CIT(A) before arriving at any decision requested the AR to file relevant documents to prove that the assessee had actually added back the provision of doubtful debts for A.Y.2009-10 to arrive at the total taxable income for the respective year. The Id. CIT(A) however also verified from the records that the assessee has not claimed any provision for doubtful debts as deduction in any of the previous year. That with these observations the Id. CIT(A) held that in assessee's own case for A.Y.2008-09 on this issue more particularly when the assessee is adding back on a consistent basis the provision for doubtful debt to arrive at the total taxable income. The Id. CIT(A) held that deduction claimed by the assessee in regard to the provision for doubtful debts written back is to be allowed and therefore the AO was directed to delete the disallowance of Rs.13,54,419/- on this account.

12. We have perused the case records, facts and circumstances in the case and we find that the Id. CIT(A) has verified the relevant documents and records of the assessee and then taken a decision which therefore is based on facts. The decision based on the facts on record cannot be denied or negated. Therefore we find acceptance in the order of Id. CIT(A) on this issue and relief granted to the assessee is sustained. This ground of appeal by the revenue is dismissed.

13. Ground No.4 in the A.Y. is general in nature and therefore needs no adjudication.

14. Now we take up A.Y.2008-09. The first ground relates to the deletion of addition of Rs.14,22,257/- on account of shortage of closing stock. This issue for A.Y.2009-10 is already adjudicated in favour of the assessee and the same shall follow. This ground of appeal by the revenue is dismissed.

15. The second ground of appeal relates to the addition of Rs.59,38,672/- on account for provision for leave encashment. At the very outset the Id. AR at the time of hearing rectified that the figure is Rs.14179276 on this account. The Id. AR further submitted that there is an appeal pending before the Hon'ble Supreme Court on this issue and this is yet to be decided. That on the basis of the submission of the AR regarding this issue when the matter is pending before the Hon'ble Apex Court we accordingly direct the AO to wait for finalization of the order by the Hon'ble Apex Court and accordingly the rights and liabilities may be decided on this issue. We order accordingly.

16. The next ground relates to addition of Rs.13,54,419/- on account of provision of doubtful debts. At the very outset the Id. AR at the time of hearing submitted that the amount on this account is Rs.830709/-. We have already decided this issue for A.Y.2009-10 in favour of the assessee and the same shall hold good herein also. This ground of appeal by the revenue is dismissed.

17. Ground no.4 is general in nature and hence no adjudication is required.

18. In the result the appeal filed by the revenue for A.Y.2009-10 is dismissed and in the appeal of the revenue for A.Y.2008-09 ground no. 1 and 3 are dismissed and ground no.2 is allowed for statistical purposes.

Order pronounced in the Court on 28 .02.2017.

Sd/-
[M.Balaganesh]
Accountant Member

Sd/-
[Partha Sarathi .Chaudhury]
Judicial Member

Dated : 28 .02.2017.
[RG PS]

Copy of the order forwarded to:

1. M/s. Tide water Oil Co. (India)Ltd., 8, Dr.Rajendra Pd. Sarani, Yule House, Kolkata-700001.
2. D.C.I.T., Circle-4, Kolkata.
3. CIT(A)-IV, Kolkata. 4. CIT-II, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Asstt.Registrar, ITAT, Kolkata Benches

ITA No.588/Kol/2012 & 408/Kol/2013
M/s.Tide Water Oil Co. (India) Ltd.
A.Yr.2008-09 & 2009-10