

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

[Before Hon’ble Shri Aby. T. Varkey, JM & Shri M.Balaganesh, AM]

I.T.A No. 1317/Kol/2015

Assessment Year : 2011-12

DCIT, Circle-11(1), Kolkata

-vs-

M/s Machino Techno Sales Pvt. Ltd.

[PAN: AACCM 2561 R]

(Appellant)

(Respondent)

C.O. No. 55/Kol/2015

(Arising out of I.T.A No. 1317/Kol/2015)

Assessment Year : 2011-12

M/s Machino Techno Sales Pvt. Ltd.

-vs-

DCIT, Circle-11(1), Kolkata

[PAN: AACCM 2561 R]

(Appellant)

(Respondent)

For the Appellant : Shri David Z. Chowngthu, Addl. CIT DR

For the Respondent : Shri S.M. Surana, Advocate

Date of Hearing : 27.09.2017

Date of Pronouncement : 18.10.2017

ORDER

Per M.Balaganesh, AM

1. This appeal by the Revenue and the Cross objection by the assessee arise out of the order of the Commissioner of Income Tax(Appeals)-4, Kolkata [in short the Ld. CIT(A)] in appeal No. 1236/CIT(A)/Circle-11/Kol/14-15 dated 04.08.2015 against the order passed by the DCIT, Circle-11(1), Kolkata [in short the Ld. AO] u/s 143(3) of the Income Tax Act, 1961 [hereinafter referred to as the ‘Act’] dated 26.03.2014 for the assessment year 2011-12.

2. The first issue to be decided in the appeal of the revenue is as to whether the Id CITA was justified in deleting the disallowance made u/s 14A of the Act read with Rule 8D(2)(ii) of the Income Tax Rules (hereinafter referred to as the 'Rules') , in the sum of Rs 28,25,249/- in the facts and circumstances of the case.

2.1. The brief facts of this issue is that the assessee company is a dealer of Maruti Vehicles, spare parts, dealing in shares and securities and also engaged in property business. The return of income for the Asst Year 2011-12 was filed by the assessee on 30.9.2011 electronically declaring total income of Rs 1,74,11,003/-. In the assessment order, the Id AO observed that the assessee submitted various details, lists and photocopies of various documents in support of assessee's claim of expenditure and on various queries raised in the course of hearing. The Tax Audit Report was furnished before the Id AO together with its annexures. The Id AO observed that the assessee had received dividend income of Rs 19,53,720/- and claimed the same as exempt income. The Tax Auditor in his Tax Audit Report had mentioned the amount inadmissible u/s 14A of the Act in respect of expenditure incurred in relation to income which does not form part of total income at Rs 5,22,194/-. However, the Id AO observed that no such expenses was disallowed by the assessee in the return of income. The assessee was show caused as to why the disallowance u/s 14A of the Act read with Rule 8D of the Rules should not be made in the facts of the instant case. The Id invoked the computation mechanism provided in Rule 8D(2) of the Rules for making disallowance u/s 14A of the Act and worked out the disallowance thereon as under:-

Under Rule 8D(2)(ii)	28,25,249/-	
Under Rule 8D(2)(iii)	5,09,555/-	
	-----	33,34,804/-

This was made after placing reliance on the decision of the Hon'ble Jurisdictional High Court in the case of Dhanuka & Sons vs CIT reported in 339 ITR 319 (Cal) that the

assessee had not proved the fact whether the investments were made out of own funds or borrowed funds in the relevant year and hence the proportionate interest thereon would be liable for disallowance under Rule 8D(2)(ii) of the Rules in the sum of Rs 28,25,249/-. The Id AO also observed that the assessee had earned taxable income as well as exempted income and maintains composite account for the same.

2.2. Before the Id CITA , the assessee stated that no part of the loan was used for acquiring shares or mutual funds from which the exempted income was earned and also stated that no such disallowance u/s 14A of the Act under the second limb of Rule 8D(2) of the Rules was made in the past in the scrutiny assessments framed for the Asst Years 2009-10 and 2010-11. It was stated that the Id AO had not recorded any satisfaction that the loans were utilized for acquisition of shares and mutual funds. It was further submitted that the own capital and reserves of the assessee company was Rs 29.55 crores , whereas the investments in shares and mutual funds were only to the tune of Rs 10.90 crores, which is apparent from the audited balance sheet . The assessee placed reliance on several decisions in support of its contentions in this regard. The Id CITA appreciated the contentions of the assessee and deleted the disallowance made under the second limb of Rule 8D(2) of the Rules at Rs 28,25,249/- and sustained the disallowance made under third limb of Rule 8D(2) of the Rules at Rs 5,09,555/-. The assessee did not prefer any appeal or even cross objection before this tribunal against this action of the Id CITA. However, the revenue, being aggrieved, had preferred an appeal before us on the following ground :-

1. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 28,25,249/- made u/s 14A of the Income Tax Act, 1961 read with Rule 8D(ii) of the I.T. Rules, 1962.

2.3. We have heard the rival submissions. We find that the only aspect to be decided in this issue is with regard to deletion of disallowance under Rule 8D(2)(ii) of the Rules.

From the perusal of the balance sheet as on 31.3.2011 of the assessee, the financials of the assessee reflect as under:-

	31.3.2011	31.3.2010
Share Capital	4,00,00,000	4,00,00,000
Reserves and Surplus	25,54,74,637	24,26,49,245
Secured Loans	2,21,08,122	77,65,348
Unsecured Loans	2,19,00,000	1,05,06,250
Investments	10,90,23,790	9,98,53,636
Interest Paid	38,33,786	44,46,763

Apparently, there is sufficient own funds available with the assessee company for making the investments. But we find that the investments were carried over from the earlier years and whether the same were made out of own funds or out of borrowed funds , the details of which are not available before us. That is precisely the requirement of the Hon'ble Jurisdictional High Court in the case of Dhanuka & Sons vs CIT reported in 339 ITR 319 (Cal), warranting the assessee to prove the sources for making the investments in the respective years as to whether the same were made out of own funds or borrowed funds of the assessee. Hence we deem it fit and appropriate , to remand this issue to the file of the Id AO, to examine the sources for making investments in the respective earlier years of making investments and decide the same in accordance with law. If the assessee is able to prove that the investments were made out of own funds in the relevant years, then no disallowance of interest under Rule 8D(2)(ii) of the Rules could be inflicted on the assessee. Accordingly, the Ground No. 1 raised by the revenue is allowed for statistical purposes.

3. The next issue to be decided in this appeal is as to whether the Id CITA was justified in deleting the disallowance made in the sum of Rs 3,74,41,906/- towards discount allowed, in the facts and circumstances of the case.

3.1. The brief facts of this issue is that the Id AO observed that the assessee claimed discount allowed of Rs 3,74,41,906/- being discount paid to customers for which details were furnished. The Id AO asked the assessee to furnish the details of schemes under which the discount were allowed and discount received from Maruti Udyog Ltd. The Id AO also called for the reconciliation of discount received and discount allowed. The assessee vide its reply letter dated 12.3.2014 submitted as under:-

The Cash discount – vehicle

It is brought to your notice that Maruti provides to the dealer various schemes, every month, to provide discounts to customers under various heads for different models. The heads are clubbed when the Bill is made through DMS (dealer management system, a software provided by MSIL through which only all maruti dealers have to draw sale bills). It is further brought to your notice that Maruti is very strict as far as discounts on sale is concerned. They have a system of conducting audits of each dealer to find out that no one has provided a discount in excess of what has been prescribed by them. And if any dealer wants to provide extra discount other than approved by MSIL it has to be vetted by them. A copy of auditor's bill is hereby provided for your ready reference and record and proof that such audits exist. We are also enclosing April month Cash Discount ledger in columnar form showing sales & various schemes that Maruti has provided to allow discounts to clients showing the portion that they would bear (i.e refund to us on one hand and that portion which we have to bear – and hence comes the question of discount which is known as 'cash discount', Special Discount, MSIL scheme discount, cash discount accessories, Discount accessories (foc) , cash discount for vehicle price difference, cash discount vehicle (After Vat).

Enclosed is the ledger of cash discount for the month of april as a sample for your kind perusal and record.

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Encl:

1. Discount break up

2. *Cash discount ledger in columnar form with discount details for April 2010*
3. *ISL Discount statement for April*
4. *Various discount scheme of Maruti*
5. *Maruti Auditor Bill*

3.1. The assessee also enclosed a detailed note on each discount allowed by it as under:-

1. Cash Discount- Vehicle

The Company has given Cash Discount- Vehicle amounting to Rs. 3,17,97,164/- during the year. The discount has been given to customers as per discount policy of M/s Maruti Suzuki India Ltd. Month wise detailed ledgers are enclosed. The discount given to the customers are reflected in the Sale Bill. Few copies of Sale Bill are also enclosed. Copies of monthly discount scheme of MSIL are enclosed.

2. Special Discount (MSIL):

The company has given Special Discount (MSIL) amounting to Rs. 1,75,815/- during the year. The discount has been given mainly through Sale Bill. Detailed ledger is enclosed. (Refer Voucher No.-VSL10000005 dated 06.04.2010 attached with Dealer Discount before VAT).

3. MSIL Scheme Discount to CSD Customers:

The company has given MSIL Scheme Discount to CSD Customers amounting to Rs. 1,50,403/- during the year. The discount has been given to customers as per CSD discount policy of M/s Maruti Suzuki India Ltd. Detailed ledger is enclosed. Copies of monthly discount scheme of MSIL are enclosed.

4. Cash Discount for Vehicle Price Difference:

The Company has given Cash Discount for Vehicle Price Difference Customers amounting to Rs. 8,15,106/- during the year. The discount has been given to Customers when price of vehicles are increased by MSIL but the vehicles were purchased by us at old price as because MSIL implements the new prices in DMS as and when price changes and sale bills are generated at new price for the vehicles of old price.

5. Dealer Discount after VAT:

The Company has given Dealer Discount after VAT amounting to Rs. 5,80,024/- during the year. Month wise detailed ledger of October, 2010 is enclosed. The discount given to the customers are reflected in the Sale Bill. Few copies of Sale Bill are also enclosed.

6. Dealer Discount before VAT:

The company has given Dealer Discount before VAT amounting to Rs. 2,05,952/- during the year. Detailed ledger is enclosed. The discount given to the customers are reflected in the Sale Bill. Few copies of Sale Bill are also enclosed.

7. Discount Allowed:

The Company has given Discount Allowed amounting to Rs. 89,573.51 during the year. Detailed ledger is enclosed.

8. Discount on Spare Parts & Others:

The company has given Discount on Spare Parts & Others amounting to Rs. 8,88,996/- during the year. Month wise detailed ledgers are enclosed. The discount given to the customers are reflected in the Sale Bill. Few copies of Sale Bill are also enclosed.

9. Discount of Insurance:

The company has given Discount on Insurance amounting to Rs. 11,89,887.63 during the year. Month wise detailed ledger of April, 2010 is enclosed. The discount given to the customers on renewal of Insurance policy due to market competition.

Machino Techno Sales Limited			
Summary of Discount Allowed during the year ended 31.03.2011			
Sl.No	Particulars		Amount (Rs.)
A	CASH DISCOUNT-VEHICLE		31,797,164.00
B	Special Discount(MSIL)		175,815.00
C	MSIL Scheme Discount to CSD Customers		150,403.00
D	Cash Discount for Vehicle Price Diff.		815,106.00
E	Cash Discount Vehicle (After Vat)		580,024.00
F	Dealer Discount before VAT		205,952.00
G	Discount Allowed		89,573.51
H	Discount for spares and others		
	-- Store	121,587.00	
	-- Work Shop	766,359.09	
	-- Others	1,049.91	888,996.00
I	Discount for Insurance		1,189,887.63
J	CASH DISCOUNT- ACCESSORIES		1,594,923.31
K	Discount-Accessories(FOC)		1,880,701.51
L	Commission on Sales		373,360.00
	TOTAL		39,741,905.96

3.2. The Id AO observed that the assessee could not furnish any supporting documents / details to substantiate its claim of discount allowed. Further it failed to reconcile the discount received from MUL with that of discount allowed to customers. The Id AO further observed that it is noticed that the assessee has allowed discount for insurance, cash discount-accessories, discount on spares and others etc which are not supported by any documentary evidences. Accordingly, he proceeded to disallow the entire discount allowed in the sum of Rs 3,74,41,906/- in the assessment.

3.3. Before the Id CITA, it was submitted that the discount is deducted direct from the value bills raised on the customers while billing for the price of car and only net payment is received after deduction of the discount and further credit on account of the initial advance or deposit paid by the customer while booking the car. It was emphasized that no discount was paid separately to customers rather the same was reduced from the bills raised on the customers and customer makes the final payment of the price of the car, accessories, insurance premium only after the credit for the aforesaid discount allowed to them. Infact VAT / Sales tax is also charged on the net value of bills after reduction of discount allowed to customers. It was stated that the monthly statement of sale invoices vis a vis the discount details provided before the Id AO clearly mentions that from the gross price of car, discount and other deductions allowed to customers were reduced and thereafter the sales tax / Vat was charged. This conclusively proved that the discount is allowed to customers from the gross value of cars in the bills itself and not paid separately. Some reimbursement is also received from principal. The details of reimbursements received from principal were also filed before the Id AO as discount received. It was submitted that if the Id AO had any doubt on the subject mentioned transaction, he could have issued summons u/s 131 of the Act to Maruti Suzuki India Ltd (MSIL) and understood the facts clearly. It was submitted that such discount is allowed to the customers of cars year to year and every year as under:-

<u>Asst Year</u>	<u>Turnover</u>	<u>Discount Amt</u>	<u>Discount %</u>
2007-08	62,62,40,994	3,31,83,043	5.29%
2008-09	64,97,29,748	3,95,43,695	6.08%
2009-10	97,37,99,348	4,18,24,064	4.29%
2010-11	112,10,69,521	3,97,41,906	3.54%

It was submitted that no disallowance was made on this account in the earlier years in scrutiny assessments and the same business was continuing for more than 35 years . It was submitted that the discount paid in this year is much more than compared to earlier year.

3.4. The ld CITA deleted the disallowance by observing as under:-

“9.2. I have considered the contention of the AR of the appellant and the assessment order in this regard. On consideration of the rival contentions on the issue, I find that the AO has disallowed the discount on the ground that the assessee failed to reconcile the discount received from MUL. However, from the submissions made by the assessee as quoted in the assessment order itself, the assessee submitted the details of the schemes under which Maruti was to bear the discount and filed details of the discount allowed to customers. Furthermore, as stated by the assessee, and from the bills raised on the customers, as examined by me, I find that the discount have been allowed in the sales bills of cars itself and the same is not separately paid whether for cars or for accessories or cash discount and discount on insurance. I also find that discount was being paid year to year on a continuous basis and the same was not disallowed in the past given the fact that the assessee was in the same business of dealership of Maruti cars for the past 35 years or so and most of the assessments were completed under scrutiny assessments. I find that the AO has not brought on record any cogent material that the discount was not paid to customers and that the same was reimbursed by MUL. In view of this, I do not find any merit in the action of the AO in disallowing the discount paid to customers. The disallowance is therefore directed to be deleted. This ground is allowed.”

3.5. Aggrieved , the revenue is in appeal before us on the following ground:-

2. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,74,41,906/- made by the AO on account of disallowance of discount allowed.

3.6. We have heard the rival submissions. The facts stated hereinabove remain undisputed and hence the same are not reiterated for the sake of brevity. We find that the assessee had filed complete details of discounts provided to the customers by way of deduction from the sale bills under and details of discounts allowed to customers under various schemes provided by Maruti. We also find that the assessee had explained the nature of each scheme of discount before the Id AO vide letter dated 12.3.2014 together with the relevant annexures including the ledger accounts, monthly statement for April 2010 (as sample basis) and sample sale invoices. We hold that the Id AO had not appreciated the evidences submitted before them and had not taken any efforts to understand the business model of the assessee and proceeded to disallow the entire discount paid to customers in the sum of Rs 3,74,41,906/-. This action of the Id AO, in our considered opinion, is not appreciated. We find that the details filed by the assessee in this regard are enclosed in Pages 24 to 42 of the paper book. We find that the Id CITA having gone through the various details that were available on record and more so that the discount allowed was reduced in the sale bills itself by the assessee and the customers had made the payment for purchase of cars after reducing the said discount amount, had categorically observed that the assessee had substantiated the claim of discount allowed to customers and hence is squarely allowable as an expenditure thereon. We do not find any justifiable reason to interfere with the said order of the Id CITA in this regard. Accordingly, the Ground No. 2 raised by the revenue is dismissed.

4. The last issue to be decided in this appeal of the revenue is as to whether the Id CITA was justified in deleting the addition made in the sum of Rs 1,06,85,656/- towards advance from customers as unexplained cash credit u/s 68 of the Act, in the facts and circumstances of the case.

4.1. The brief facts of this issue is that the Id AO called for the details of advance received from customers from the assessee which were reflected in the liability side of the balance sheet. The Id AO observed from perusal of the details filed by the assessee, that it had received advances from different persons of Rs 10,000/- each on different dates aggregating to Rs 34,14,590/- . Further, the assessee has also received such advances ranging below Rs 10,000/- aggregating to Rs 72,71,066/-. Thus the total advances received from various parties was Rs 1,06,85,656/- (34,14,590 + 72,71,066) which was sought to be examined by the Id AO. In response, the assessee furnished a statement showing refund of advances made in subsequent years and amounts adjusted against sales invoices in subsequent years. The Id AO observed that the assessee failed to furnish any further explanation as to why the sums were received and part refunded. Further he observed that the assessee could not furnish any documentary evidence to substantiate its claim, i.e scheme under which sums were received, name of the party, complete address, PAN, assessment jurisdiction etc to verify the genuineness of aforesaid deposits of Rs 1,06,85,656/-. He further observed that it is beyond the human probability that every party has advanced a sum of Rs 10,000/- only to the assessee company. He accordingly added the entire advance from customers in the sum of Rs 1,05,85,656/- as unexplained cash credit u/s 68 of the Act.

4.2. Before the Id CITA, the assessee submitted that for booking any car, customers have to deposit initial money. The Id AO has doubted the basic rule of the trade that for booking any car, an initial booking deposit has to be made along with the booking form itself when all the details of the customers including their PAN are noted. Accordingly it was stated that the deposit from the customers for booking of the vehicles which remained outstanding at the end of the year is an usual phenomenon. The customers at the time of deposit give their full address as well as the PAN. The dealer cannot book a car unless full identification of the customer along with his identity, address proof and PAN is obtained under Motor Vehicle Rules. Last year

such sundry creditors were of Rs 1,16,14,097/-. Assessment was completed for Asst Year 2009-10 u/s 143(3) of the Act wherein similar sundry creditors were Rs 93,06,370/-. Similarly assessment for Asst Year 2010-11 was completed u/s 143(3) of the Act wherein similar sundry creditors were Rs 1,16,14,097/-. It was explained that in a car dealership business, the customers advance will always be there since the cars booked can be delivered generally after 2-3 months because of colour choice, model choice and such car comes from the Gurgaon factory of Maruti Suzuki Ltd. Apart from that the other sundry creditor namely EI Dupont, advance against rent as well as Maruti taxi advance were brought forward from earlier years as was evident from the details filed but even then the Id AO without applying his mind has added back the same u/s 68 of the Act.

4.3. The Id CITA deleted the addition u/s 68 of the Act by observing as under:-

“10.2. The rival contentions on the issue have been duly considered in coming to a decision. I find that the AO has not taken into account the nature of business, the evidence which was to be submitted by the intending customers and the systems of booking the cars. The purpose of deposit and refund was obvious in car dealership business. The assessee maintained the details of customers which were submitted before the AO. The receipt and payment were all by account payee chaeques. Considering the nature of business, the usual phenomenon and the past records, the addition was not justified. The addition made without any cogent basis cannot be upheld at the appellate stage and hence the same stands deleted.”

4.4. Aggrieved , the revenue is in appeal before us on the following ground:-

3. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,06,85,656/- made by the AO as unexplained cash credit u/s 68 of the I.T. Act, 1961.

4.5. We have heard the rival submissions. We find that the assessee had shown ‘advance received from customers’ in the liability side of the balance sheet and had filed the following details regarding the same :-

- a) Statement of advance received from customers under each head as on 31.3.2011 and amounts adjusted thereon either by way of refund or adjusted with sales invoices (enclosed in page 43 of paper book) ;
- b) Break up of advance received from customers as on 31.3.2010 date wise and party wise specifying the amount received thereon (enclosed in pages 44 to 53 of paper book) ;
- c) Break up of advance received from customers as on 31.3.2011 date wise and party wise specifying the amount received thereon together with the details of amounts either refunded or adjusted with sales invoices in the subsequent period (enclosed in pages 54 to 61 of paper book).

We also find that the assessee had been showing the similar advances from customers under various heads and reflected the same under sundry creditors and no additions were made in this regard in the scrutiny assessments completed u/s 143(3) of the Act for the Asst Years 2009-10 and 2010-11 by the Id AO. We find that this addition has been made by the Id AO without appreciating the business model of the assessee. It is very usual for a car dealer such as assessee, to receive booking advance from various prospective customers at the time of booking the vehicle and the same would be reflected as advance from customers, which would get adjusted with the sale invoice in subsequent period on delivery of the vehicle. In case if the customer wishes to cancel the order, the same would be refunded as per the terms and conditions agreed upon. This is the general practice followed by every car dealer in the country. We find that the assessee had provided the names, address and PAN of all the parties from whom advances were received. The entire details were very much available on record before the Id AO regarding this issue which has not been appreciated by the Id AO. We find that the Id CITA had appreciated the very same evidences and deleted the addition made u/s 68 of the Act. We find that there is absolutely no case made out by the Id AO for framing this addition u/s 68 of the Act. Hence we do not find any infirmity in the order

of the Id CITA in this regard. Accordingly, the Ground No. 3 raised by the revenue is dismissed.

5. During the course of hearing, the Id AR submitted that the cross objections preferred by the assessee are not pressed. The same is reckoned as a statement from the Bar and accordingly the Cross Objections of the assessee are dismissed as not pressed.

6. In the result, the appeal of the revenue is partly allowed for statistical purposes and Cross Objection of the assessee is dismissed.

Order pronounced in the Court on 18.10.2017

Sd/-
[A.T. Varkey]
Judicial Member

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 18.10.2017
SB, Sr. PS

Copy of the order forwarded to:

1. DCIT, Circle-11(1), Kol, P-7, Chowringhee Square, Kolkata-700069.
2. M/s Machino Techno Sales Pvt. Ltd., 8A, Jindal House, Alipore, Kolkata-700027
3. C.I.T(A)- 4, Kolkata 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches

