IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH, NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 5038/DEL/2013 [A.Y. 2004-05]
ITA No. 5039/DEL/2013 [A.Y. 2005-06]
ITA No. 5040/DEL/2013 [A.Y. 2006-07]
ITA No. 2844/DEL/2012 [A.Y. 2007-08]
ITA No. 6504/DEL/2013 [A.Y. 2008-09]

The A.C.I.T Circle - 3(1) New Delhi	Vs.	M/s Cosmo Films Ltd 1008, DLF Tower A Jasola District Centre New Delhi PAN: AAACC 1152 C
(Applicant)		(Respondent)

Assessee By : Dr. Rakesh Gupta, Adv
Shri Somil Agarwal, Adv

Department By : Shri T. James Singson, CIT- DR
Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing : 20.07.2023
Date of Pronouncement : 26.07.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This is a bunch of five appeals filed by the Revenue against separate orders of the ld. CIT(A), New Delhi pertaining to A.Ys 2004-05 to 2008-09.

2. Since all these appeals of the Revenue were heard together, they are disposed of by this common order for the sake of convenience and brevity.

3. Before embarking upon the specific grounds taken in each captioned A.Y, it would be pertinent to understand the underlying facts relating to Sales Tax subsidy, whether the same is revenue, receipt or capital receipt, and if it is capital receipt, then whether, it will reduce the written down value of the assets for allowability of depreciation.

4. In so far as whether Sales Tax subsidy is of revenue in nature or is capital receipt, this issue travelled up to the Tribunal in the first round of litigation and the Tribunal in ITA No. 2831/DEL/07 and others have given a categorical finding that Sales Tax subsidy is of capital in nature, following the Special Bench decision in the case of Reliance Industries Ltd 88 ITD 273, which was subsequently affirmed by the Hon'ble High Court of Bombay.

5. Respectfully following the decision of the Coordinate Bench, Sales Tax subsidy is treated as capital receipt.

6. This quarrel settled for A.Ys 2004-05, 2005–06 and 2006–07, but in A.Y 2007–08, the Assessing Officer recomputed the depreciation by reducing the capital subsidy from written down value of assets and made addition of Rs. 2,44,77, 836/– in A.Y 2007–08.

7. Taking a leaf out of the findings given in A.Y 2007–08, the same treatment was given in A.Ys 2004–05 to 2006–07. In all these 4 years, when the issue was agitated before the ld. CIT(A), the ld. CIT(A) held that the amount of Sales Tax subsidy could not be reduced from the block of assets for the purpose of computing depreciation.

8. While giving relief to the assessee, the ld. CIT(A) was of the opinion that Sales Tax subsidy is solely meant to encourage setting up of industries in under-developed regions and not by way of payment made specifically to meet cost of any asset.

9. The ld. CIT(A) further observed that merely because subsidy given was quantified according to investment made in fixed assets, it would not become payment for meeting cost of any or all the fixed assets.

10. The Hon'ble Supreme Court in the case of PJ chemicals 210 I TR 830 has held as under:

> "Where Government subsidy is intended as an incentive to encourage entrepreneurs to move to backward areas and establish industries, the specified percentage of the fixed capital cost, which is the basis for determining the subsidy, being only a measure adopted under the scheme to quantify the financial aid, is not a payment, directly or indirectly, to meet any portion of the "actual cost". The expression "actual cost" in section 43(1) of the Income-tax Act, 1961, needs to be interpreted liberally. Such a subsidy does not partake of the incidents which attract the conditions for its deductibility from "actual cost". The amount of subsidy is not to be deducted from the "actual Cost" under section 43(1) for the purpose of calculation of depreciation, etc"

11. Similar view was taken by the Hon'ble Madras High Court in the case of Standard Fireworks Private Limited 326 ITR 498 wherein the Hon'ble High Court held that where subsidy was given based on specified percentage of fixed capital cost, is not a payment directly or indirectly made to meet any portion of the actual cost and, therefore, such subsidy was not to be reduced from the actual cost u/s 43(1) of the Act.

12. This view was fortified by the decision of the Hon'ble Jurisdictional High Court of Delhi in the case of Eicher Tractors Ltd 164 Taxman, 526.

13. Considering the facts in totality, in light of the judicial decisions discussed hereinabove, we do not find any error or infirmity in the findings of the ld. CIT(A). This common ground in all the appeals is dismissed.

14. Remaining ground in ITA No. 2844/DEL/2012 for A.Y 2007–08.

15. Deletion of disallowance of deduction u/s 10B of the Act amounting to Rs.12,26,02,952/–.

16. Basis for the impugned disallowance by the Assessing Officer is that he was of the firm belief that the profits of EOU units are disproportionately higher than the profits of non-EOU units. The quarrel is only in respect of allocation of expenses. The Assessing Officer has computed the profits of EOU units on pro-rata basis in the ratio of sales turnover of EOU units and non-EOU units.

16. This action of the Assessing Officer was challenged before the ld. CIT(A) and it was strongly contended that the assessee is maintaining separate books of account for the DTA units and the EOU units which were audited every year and separate balance sheet and profit and loss account is prepared for EOU being also certified by auditors of the Company.

17. It was explained that the EOU unit is separately registered with Excise and Sales Tax department having separate factory building and separate production facilities. It was further pointed out that the Sales Tax return and Excise returns were filed for EOU units. Product mix of EOU and non-EOU units are different and these products are having different margin of profit and, therefore, allocation of profits of the company as a whole in the ratio of sales of EOU and non-EOU units is not justified.

18. After considering the facts and submissions, the ld. CIT(A) observed that different units have different block of assets and therefore, depreciation will be different in different units according to the written down values of the respective units. Further, interest on term loan would be different according to the block of fixed assets.

The power and fuel expenses cannot be same in all the units, as different units have different manufacturing processes and expenses were charged on actual consumption basis.

19. The ld. CIT(A) further observed that EOU units whose sales basically consist of export sales is exempt from such Sales Tax and therefore, margin in EOU and non-EOU units will be different.

20. Before us, the ld. DR strongly supported the findings of the Assessing Officer but could not point out any factual error in the findings of the ld. CIT(A).

21. Per contra, the ld. counsel for the assessee reiterated what has been stated before the ld. CIT(A).

22. We have carefully perused the orders of the authorities below. We find that profit of EOU unit before tax is Rs.26.11 crores on turnover of approximately 131.97 crores which, in percentage terms is around 19.78%. We find that in the immediately preceding A.Y 2006-07, the assessee has shown profit of Rs.14.02 crores in EOU units on turnover of Rs.73.10 crores being 19.18%.

23. Thus, when compared to the previous year's figures, there is not much material deviation and claim of deduction u/s 10B of the Act in A.Y 2006–07 was duly accepted.

24. We find that the entire quarrel revolves around the payment of Senior Management Salary, which has been allocated by the Assessing Officer in the ratio of turnover of EOU and non-EOU units as against appellant's allocation of 5% of total expenses.

25. In A.Y 2006–07, the Assessing Officer was not convinced with the allocation and in the year under consideration i.e A.Y 2007–08, the assessee itself has allocated the Senior Management Salary cost in the ratio of sales of EOU units and non-EOU units. Therefore, the adverse inference of the AO in A.Y 2006–07 has been taken care of in A.Y 2007–08.

26. Considering the facts of the case in totality, we do not find any merit in the action of the Assessing Officer in reducing the claim of deduction u/s 10B of the Act. Therefore, we do not find any reason to interfere with the findings of the ld. CIT(A). Ground No. 1 is, accordingly, dismissed.

27. Ground No. 2 relates to the deletion of addition on account of depreciation on computer accessories.

28. While scrutinizing the return of income, Assessing Officer noticed that the assessee has made addition to the computer and computer software on depreciation, @ of 60% was claimed. The Assessing Officer further noticed that the assessee has also claimed depreciation @ 60% on computer accessories and peripherals. The Assessing Officer was of the opinion that the assessee is entitled for depreciation @ 15% only and disallowed excess depreciation claimed.

29. Assessee agitated the matter before the ld. CIT(A), and strongly contended that computer accessories and peripherals are also eligible for the same rate of depreciation as that of Computer i.e @ 60%.

30. The ld. CIT(A) was of the opinion that the ratio laid down by the Hon’ble Delhi High Court in the case of BSES Rajdhani Ltd, squarely apply wherein the Hon'ble High Court has held that peripherals, such as printers, scanners, server, formed, integral part of computer, and therefore, eligible for deduction of depreciation, @ 60%.

31. Before us, the ld. DR could not bring any distinguishing decision in favour of the revenue.

32. We find that the LD. CIT(A) has followed the decision of the Hon'ble jurisdictional High Court [supra] and has also followed the decision in assessee's own case given in A.Y 2006–07. We, therefore, do not find any reason to interfere with the findings of the LD. CIT(A). Ground No. 2 is, accordingly, dismissed.

33. Grievance raised in ITA Nos. 5038, 5039 and 5040/DEL/2018 for A.Y 2004-05, 2005-06 and 2006-07 are identical to the issue raised in A.Y 2007-08 considered hereinabove. For our detailed reasons given therein, these appeals are dismissed.

34. Coming to ITA No. 6504/DEL/12, for A.Y 2008–09, the revenue has raised four substantive grounds of appeal.

35. Ground No. 1 relates to deletion of addition made on account of capital subsidy, treating the same as capital receipt.

36. As mentioned elsewhere, this issue has been settled in favour of the assessee and against the revenue by this Tribunal in A.Ys 2004–05, 2005–06 and 2006–07 in ITA No. 2831/DEL/07 and others. Respectfully following the decision given therein, Ground No. 1 is dismissed.

37. Ground No. 2 relates to the deletion of addition on account of loan processing charges amounting to Rs.20 lakhs.

38. The Assessing Officer made the addition observing that the assessee has paid a sum of Rs. 20 lakhs to SBI as loan processing charges. According to the Assessing Officer, loan processing charges are capital in nature and disallowed the same.

39. Before the ld. CIT(A), it was argued that the Assessing Officer has accepted that loan on which processing fees was paid was utilized for the purpose of business. It was strongly contended that the AO has not established as to how the said expenditure was capital in nature.

40. The ld. CIT(A) was convinced with the claim and following the decision of the Hon’ble Supreme Court in the case of India cement 60 ITR 52 deleted the addition.

41. Before us the ld. DR supported the findings of the Assessing Officer.

42. Per contra, the ld. counsel for the assessee reiterated, what has been stated before the ld. CIT(A).

43. We find that the loan was utilized for business purpose is not in dispute. Merely because it was one-time payment made by assessee for loan processing charges would not make it a capital expenditure.

44. The Hon'ble Supreme Court in the case of India cement [supra] has held as under:

> "A loan obtained can be treated as an asset or advantage for the enduring benefit of the business of the assessee. The nature of the expenditure incurred in raising a loan would depend upon the nature and purpose of the loan. A loan is a liability and has to be repaid and, in our opinion, it is erroneous to consider a liability as an asset or an advantage. A loan may be intended to be used for the purchase of raw-material when it is negotiated, but the company may after raising the loan change its mind and spend it on securing capital assets. Therefore, the purpose for which the new loan was required was irrelevant to the consideration of the

question whether the expenditure for obtaining the loan was revenue expenditure or capital expenditure.

Hence (a) the loan obtained is not an asset or advantage of an enduring nature; (b) that the expenditure was made for securing the use of money for a certain period-, and (c) that it is irrelevant to consider the object with which the loan was obtained. Consequently, in the circumstances of the case, the expenditure was revenue expenditure."

45. Respectfully following the decision of the Hon'ble Supreme Court, [supra] we decline to interfere. Ground No. 2 is dismissed.

46. Ground No. 3 relates to elements of deduction u/s 10B of the Act.

47. This issue has been considered by us in AY 2007–08 hereinabove vide Ground No. 1. For our detailed discussion therein, Ground No. 3 is dismissed.

48. Ground No. 4 relates to the claim of depreciation on computer peripherals.

49. This issue has been considered by us in A.Y 2007–08 vide Ground No. 2. For our detailed discussion therein, Ground No. 4 is also dismissed.

50. In the result, the appeal for A.Y 2008–09 is dismissed.

51. To sum up, in the result the appeals of the Revenue in ITA Nos. 5038, 5039, 5040/DEL/2013, 2844/DEL/2012 and 6504/DEL/2012 are dismissed.

The order is pronounced in the open court on 26.07.2023.

Sd/-	**Sd/-**
[ANUBHAV SHARMA]	**[N.K. BILLAIYA]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 26th JULY, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

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