

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ "D", अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" D " BENCH, AHMEDABAD

BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTNAT MEMBER

ITA No.1035/Ahd/2023  
Assessment Year : 2015-16

The Asstt.Commissioner of Income Tax Circle-2(1)(1) Vadodara	Vs	Gujarat Insecticides Limited Plot No.805/806, GIDC Estate Ankleshwar Bharuch - 393 002 <b>PAN: AAACG 8436 D</b>
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<b>अपीलार्थी/ (Appellant)</b>	...	<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee by :	Ms. Arti Shah, AR
Revenue by :	Shri Atul Pandey, Sr.DR

सुनवाई की तारीख/Date of Hearing : 25/06/2024  
घोषणा की तारीख /Date of Pronouncement: 04/07/2024

**आदेश/ORDER**

**PER SHRI MAKARAND V. MAHADEOKAR, AM:**

This appeal filed by the Revenue is against the order of the Ld.Commissioner of Income Tax (Appeals) - National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as "the Ld.CIT(A)") dated 19/10/2023, arising out of an appeal filed by assessee against the order of Assessing Officer (hereinafter referred to as "AO") passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the Assessment Year (AY) 2015-16.

**Facts of the case:**

2. The assessee is a limited company engaged in the business of manufacturing and selling of various insecticides. The return of income was filed on 30/11/2015, showing income of Rs.14,54,16,340/-. During the course of assessment proceedings, the AO called for various details and information for the purpose of finalization of assessment. The AO passed the order u/s.143(3) of the Act making additions as detailed below:

- Addition on account of Interest and Fin. Charges paid to Bank - Rs.86,40,000/-.
- Out of Miscellaneous & Staff Welfare Expenses - Rs.10,93,430/-.
- Addition out of Expenses of Repairs & Maintenance to Plant & Machineries after Depreciation - Rs.74,55,570/-.
- Additional Depreciation Excess claimed - Rs.37,38,754/-.

2.1. The assessee filed an appeal against the order of the AO. The Ld. CIT(A), who partly allowed the appeal by deleting additions made by AO on account of interest, repairs & maintenance and additional depreciation.

3. Aggrieved by the order of the Ld.CIT(A), the Revenue is in appeal before us with following grounds of appeal:

*"1. Whether Ld. CIT(A) is correct in law and on facts of the case, in deleting the disallowance of interest of Rs.80,46,000/- for the diversion of interest bearing funds to holding company by treating the same as result of commercial expediency/business relation which the assessee was having with the holding company, that goes against the fact that the assessee is paying huge interest on borrowings which could have easily been set off by realization dues from the holding company?"*

2. Whether the Ld. CIT(A) is correct in law and on facts of the case, in deleting the disallowance out of Repair & Maintenance to Plant and Machineries expenses of Rs. 74,55,570/-, without appreciating the fact that the so-called replacement of parts/ items had resulted in enduring benefit and capital expenditure in nature and were not in the nature of current repairs within the meaning of section 31?

3. Whether the Ld. CIT(A) is correct in law and on facts of the case, in deleting the disallowance of Rs.37,38,754/- being assessee's claim of balance depreciation by way of additional depreciation in respect of machinery acquired and installed in the last year without appreciating the fact that relevant proviso to section 32(1)(ia) of the Act was brought by Finance Act, 2015 and applicable for A.Y 2016-17 onwards?

4. The appellant craves leaves to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal.

It is prayed that the order of the CIT(A) on the above issues be set aside and that of the Assessing Officer be restored."

### **Ground No.1**

4. This ground relates with a disallowance of Rs. 80,46,000/- on account of interest and finance charges. The brief facts are such that the assessee has a working capital finance facility and paid interest and finance charges to the tune of Rs.80.46 Lacs out of total finance cost of Rs.96.18 Lacs. The AO during the course of assessment proceedings observed that the company is having trade receivables from its holding company Charda Chemicals Ltd. (GCL) as detailed below:

	<u>(Figures in Lacs)</u>		
	<u>GCL</u>	<u>Others</u>	<u>Total</u>
Over Six Months	Rs. NIL	Rs. 261.69	Rs. 261.69
Less than six months	<u>Rs. 1201.22</u>	<u>Rs.5036.42</u>	<u>Rs. 6237.64</u>
<b>Total</b>	<b>Rs. 1201.22</b>	<b>Rs.5298.11</b>	<b>Rs. 6499.32</b>

4.1. The AO also observed that the assessee has trade payables to the tune of Rs.3059.40 Lacs. The further observed that the assessee has not charged

any interest GCL on debit balances. The AO required the assessee to justify the payment to related party u/s 40A(2)(b) of the Act and disallowance on account of notional interest. The reply of assessee is reproduced for the sake of clarity:

*"In this regard, it is submitted that as per the provisions of Section 36(1) (iii), interest on money borrowed for business purpose is an allowable deduction on fulfillment of the following conditions: -*

- The money must have been borrowed by the assessee.*
- It must have been borrowed for purpose of business.*
- The interest must have been paid on the borrowed amount.*

*In our case, all the above conditions are duly fulfilled and therefore, no disallowance required to be made.*

*We further state that in the Agro / Pesticides business credit period to the customers, exceeds 180 days or more*

- (a) It is submitted that amount outstanding from GCL. is only on account of business transactions and by no stretch of imagination it can be considered as parking of Fund to GCL. Therefore, the question of charging notional income / disallowance out of interest payments to the bank does not arise at all, as the transaction has been incurred wholly and exclusively for the business purpose.*
- (b) It is further submitted that we are having regular business transaction of purchases and sales with GCL and they are our major customer and purchasing the major quantity of our product. Similarly, we are also purchasing materials from them, which are monopoly products and we are also not from GCL. paying any interest on delayed payment for such purchases*
- (c) We also submit that the normal sales realization from other customers is also ranging from 4 to 12 months or more on which we are not charging any interest.*

- (d) *It is also submitted that our business of manufacturing pesticides is related to agricultural industry and in such business, normal credit facility of 180 days on book debt is prevailing. The bank while granting the Working Capital facility also considers 180 days credit on book debt.*
- (e) *You will also observe that the business transactions have continued throughout the year and the balance has kept on fluctuating due to sales / purchase transactions. Hence, no addition is to be made on account of outstanding remaining with the parent company i.e. GCL.*
- (f) *We further state and submit that:*
- (a) *We are not regularly charging any interest to other regular customers for the delayed payments.*
- (b) *All our Technical Products which we are manufacturing, are based on the Technology / Recipe of GCL.*
- (c) *GCL is providing us their valuable and specialized services in the field of manufacturing Technical and Bulk and marketing of our Toll Pack products.*

*We further submit that the normal sales realization from other customers is also ranging from 4 to 12 months or more, on which we are not charging any interest. The statement showing break-up of outstanding from Debtors along with the overdue more than 180 days thereof, at the year-end on 31 March 2015. The statement is attached for your perusal. Refer Page No. 408 to 463 Please find attached herewith the Statement showing amount of Rs. 1111.65 Lakhs net receivable from Gharda Chemicals Ltd. (GCL) [Rs.1201.22 receivables for Sales and Less Rs.89.57 Lakhs Payable for Purchases] at the end of current Financial Year 2014-2015, along with the details of due date and payment received subsequently from GCL against respective bills and statement of summary of Transactions with GCL during the year. Refer Page No. 464 to 465*

*From the attached statement, you will observe that GCL has made the payments on or before due dates in most of the cases or normal delay. We also draw your attention that all these transactions are business transactions.*

- 4.2. The assessee also placed reliance on some judicial pronouncements.
- 4.3. Not satisfied with the reply of the assessee and as the bank loan was higher than the balance due from GCL, the AO disallowed the interest and finance charges for Rs.80.46 Lacs.
- 4.4. The Ld.CIT(A) while accepting that the facts in the present case are identical with that of earlier years where the ITAT in ITA Nos. 556 & 675/Ahd/2013 for A.Y. 2009-10 decided in favour of assessee, deleted the addition.
5. During the course of hearing, the Ld.Departmental Representative relied on the order of the AO.
6. The Ld.Counsel for the assessee relied on the order of the Ld.CIT(A) and pointed out that the assessee has not charged interest to any other party from whom amounts are receivable beyond 180 days.
7. At this juncture, for the sake of clarity, we reproduce the relevant part of the decision of Co-ordinate Bench in assessee's own case (ITA Nos.556 & 675/Ahd/2013) dated 19/07/2013:

*"18. The Hon. Tribunal vide order dated 27.03.2012 decided the issue against the Revenue by holding as under:*

*"3.4 We have carefully considered the rival submissions and also perused the materials available on record and the paper book submitted by the Ld. A.R. At the outset, it is observed that this issue*

*is covered in favour of the Assessee in assessee's own case by the order of the ITAT, B Bench, Ahmedabad dated 31.05.2011 in ITA NO. 460/Ahd/2008 for the assessment year 2001-02 as submitted by the ld. A.R., wherein the Tribunal held as under:*

*"5. We have heard both the sides at some length. We have also carefully perused several evidences placed on record. It is not in dispute that the sales made to GCL remained outstanding and on the other hand, the assessee had a bank liability. The fundamental objection of the Assessing Officer was that had the assessee recovered the outstanding dues from GCL, then there would not be the liability of that extent of interest of the bank as it was debited to Profit & Loss account under the head interest and financial charges. That objection was dealt with in the following manner. That as far as the liability towards bank was concerned, the ld. A.R. has placed on record certain figures to demonstrate that the said bank liability 10 ITA No 556 & 675/Ahd/2013 . A.Y. 2009-10 had gone down in comparison to the last year. That it has also been argued before us that even the notional interest @ 15% was incorrect because the prevailing rate charged by the Bank was only 11.25% during the year. That the assessee was otherwise having a regular business transactions of purchase and sales with GCL. That the said GCL was the major customer during that year. That it has also been placed on record that the assessee was purchasing certain raw material from GCL which was its monopoly product. That the vehement contention was that in the like manner the assessee was also enjoying credit facility against purchases made from GCL. That it was not a case of mere purchase and sale as it has happened with other debtors or customers but the business relationship with GCL was on different terms being a holding company and in that capacity GCL has provided specialized services to assessee in the field of manufacturing and marketing. All these facts were narrated to ld. CIT(A) through written submissions which were placed before us on page Nos. 138 to 190 of paper-book. From this discussion, it is evident that the assessee-company had a regular business transaction and it was not for any extraneous consideration. In the regular course of business purchases and sales have been made with the said concern and not with the intention to siphon out the borrowed funds. The factum of the case thus demonstrated that the assessee has taken a commercial decision keeping in mind the interest of its business and the other surrounding circumstances under which the assessee was getting facilities. Once it was a proper for the revenue authorities to step in to the shoes of a business man to decide whether such a commercial decision was advantageous or not. Rather, we are of the view that the Assessing Officer has proceeded merely on this presumption that the borrowed funds of Bank of Baroda have been siphoned to GCL, but no specific instance or transaction was demonstrated. As far as*

*the ld. CIT(A)'s view was concerned, the grant of four months credit facility also appeared to be on presumption because that facility must not be applied in uniform manner to all the parties. In general, as per the business trend, each customer has its own terms and condition and, therefore, the terms of payment differ from one party to another party. A businessman's view point must be seen and for that, the test of commercial expediency to be adjudged from business benefit. Therefore by one single yard-stick all the transactions having different nature of character or modalities must not be measured. We are of the view that this is not the case where some undue advantage was passed on to the said holding company. In the light of the above discussion, we therefore conclude that the disallowance was made merely on certain presumptions which could not be substantiated through some cogent evidence therefore the view taken by the Assessing Officer deserves to be reversed. Likewise, we are also of the view that the part relief granted by the ld. CIT(A) was also on a presumption that the credit facility to all the customers against sales was uniform, so the assessee should have given the credit facility of four months to GCL as well. This 11 ITA No 556 & 675/Ahd/2013 . A.Y. 2009-10 presumption had no substance, therefore, considering the totality of the circumstances of the case, we hereby reverse the said view of the ld. CIT(A) as well. This ground of the Assessee is therefore, allowed. "*

*19. It is an undisputed fact that the facts in the present appeal are identical to that of A.Y. 2001-02 and earlier years. We for reasons given by the Co-ordinate Bench and following order of Co-ordinate Bench of Tribunal for A.Y. 2001-02, find no reason to interfere with the order of CIT(A). Thus this ground of Revenue is dismissed."*

7.1. Upon review of the facts and circumstances of the case, along with the relevant judicial pronouncements and consistent treatment in prior years, we conclude that the disallowance of Rs. 80,46,000/- by the AO on account of interest and finance charges is not justified. The assessee has demonstrated that the borrowed funds were used for business purposes, and the conditions laid out in Section 36(1)(iii) were met. The outstanding amounts with GCL and other customers were part of normal business transactions, with no interest charged in alignment with industry practices. Given the regular business transactions and fluctuating balances, the



question of notional interest does not arise. The Ld.CIT(A)'s decision to follow the precedent set by the ITAT in previous years is appropriate. Therefore, this ground of the Revenue is dismissed, and the order of the Ld.CIT(A) deleting the disallowance of Rs.80,46,000/- is upheld.

### **Ground No. 2**

8. This ground relates to the disallowance of Rs.74,55,570/- made by AO on account of disallowance of repairs & maintenance to plant and machinery. The AO treated total amount of Rs.98,70,863/- as a capital expenditure and disallowed Rs.74,55,570/-, after allowing depreciation of Rs.24,15,293/- on the same.

8.1. During the course of assessment proceedings, the assessee contented that that these were repairs and maintenance necessary due to continuous usage of equipment for many years on account of highly corrosive plant. The assessee-company also placed reliance on the various judgements in support of its contentions. However, the AO concluded that the so-called replacement of parts/items has resulted into enduring nature of benefit and are not in the nature of current repairs within the meaning of Section 31 and, therefore, cannot be said that these items were only replacements. The AO treated these repairs as additions to the Plant & Machinery and allowed depreciation on the same as per applicable rates.

8.2. The Ld.CIT(A) deleted this addition relying on the decisions of Co-ordinate Bench and the Ld.CIT(A) in assessee's own cases of earlier years.

The conclusion was that the AO failed to establish as to how the assets so identified by him are capable of being used independently.

9. We have noted the submission of assessee at the time of assessment and appellate proceedings. The assessee stated that these additions are not independent items of machine but spare parts of certain machines, which are replaced, and therefore, the same has been claimed as revenue expenditure. The assessee further submitted that replacement of machineries/equipments is integral part of the plant and not an independent plant. These equipments in unison can never complete manufacturing process. Machineries/Equipments which are replaced cannot produce any of assessee's products independently without the help of other sets of machineries and equipment.

9.1. It is also noted that the assessee is an ISO 14001 Company i.e. the Certificate for Environmental Protection. Under this Certification, it is the duty of the assessee to keep the environment clean and pollution free. For that the assessee has to maintain its plants in good condition so that it will not create the pollution and spoil the environment. Due to replacement of these equipments/machineries, there is no increase in production capacity of the plant.

9.2. Along with other decisions of Co-ordinate Bench and the Ld.CIT(A), the assessee placed reliance on its own case for A.Y. 2012-13, where the addition was deleted following the principle of consistency. We reproduce the relevant para of the said decision:

*“44. We have considered the rival submissions of the parties and considered the orders of the lower authorities. We find that the assessing officer while treating the expenses as capital in nature has not given any basis of his observation if his observation is based on any material or evidence and is basically general in nature. We find that the Id. CIT(A) while deleting the addition clearly held that the assessing officer has not brought any material on record to prove that some of those items are independent machine or apparatus, which can be used independently for manufacturing activities. Further, the assessing officer has not explained the technical aspect of the items to prove that the replaced items are independent machine which could be used independently. The Ld CIT(A) concluded that finding of the assessing officer is not based on any material or evidence and are general in nature, thus he is not correct in treating such expenditure as capital in place of revenue. No contrary fact or law is brought to our notice to take other view to the finding of the Id CIT(A). Hence, we affirm the order of Id CIT(A). in the result, this ground of appeal is dismissed.”*

10. The Ld.Counsel for the assessee relied on the order of the Ld.CIT(A) and, on the other hand, the Ld.DR relied on the order of AO.

11. We observe that the assessee maintained that the expenditures were for spare parts integral to the machines and not independent items. The assessee explained that the replaced machineries/equipments were part of the plant and not separate entities capable of independent functioning. It was noted that the assessee, an ISO 14001 certified company, had to maintain its plant in good condition to comply with environmental standards, which necessitated these repairs. The replacements did not result in an increase in production capacity. We also refer to the principle of consistency, highlighting a similar decision in the assessee's favour for the Assessment Year 2012-13.

11.1. In light of the submissions and evidence provided, and consistent with the findings in the assessee's previous cases, we concur with the decision of the Ld.CIT(A). The AO did not furnish adequate evidence or technical details to justify treating the expenditures as capital rather than revenue. The AO's conclusions were found to be general and not based on substantive material. The expenditure of Rs.74,55,570/- is to be treated as revenue expenditure, and the addition made by the AO is deleted. Therefore, we uphold the order of the Ld.CIT(A) and dismiss this ground of Revenue's appeal.

### **Ground No.3**

12. This ground relates with deleting the disallowance of Rs.37,38,754/- being assessee's claim of balance depreciation by way of additional depreciation in respect of machinery acquired and installed in the last year. The facts are such that during the year under consideration, assessee claimed additional depreciation amounting to Rs 1,21,89,792/- on new plant and machinery installed and commissioned in last year as detailed below:

<u>Amount (Rs.)</u>	<u>Particulars</u>
84,51,038/-	10% additional depreciation claimed on Rs.8,45,10,380/- for new plant & machinery commissioned less than 180 days in current financial year 2014-15 relevant to Assessment Year ('AY') 2015-16.
37,38,754/-	10% additional depreciation claimed on Rs.3,73,87,541/- for new plant & machinery commissioned less than 180 days in last financial year 2013-14 relevant to Assessment Year 2014-15 claimed during the year.
<b><u>1,21,89,792/-</u></b>	<b>Total</b>

12.1. The assessee claimed this additional depreciation being balance depreciation as per the provisions of section 32 of the Act. During the course of assessment proceedings, the assessee submitted that the Finance Act, 2015 made clarification amendment by providing 2<sup>nd</sup> proviso to section 32(1)(ia) of the Act.

12.2. The AO, not being satisfied with the claim of assessee, disallowed the claim of additional depreciation stating that the relevant proviso comes into effect from 01/04/2016 and thus the relevant assessment year will be A.Y.2017-18.

12.3. The Ld.CIT(A) deleted the addition relying on some judicial pronouncements specifically referring the **decision of Hon'ble Madras High Court in case of Hinduja Foundries Ltd. reported in [2021] 129 taxmann.com 139 (Mad.)**. The relevant paras are reproduced as under:

*"2.1 The assessee is a limited company engaged in the business of Foundries. The Assessing Officer found that the assessee had claimed additional depreciation under section 32(1)(ia) of the Income-tax Act for the Assessment Years 2007-2008, 2009-2010 and 2010-2011 on the opening Written Down Value [WDV] of the plant and machinery purchased in the earlier years. The Assessing Officer further observed that the assessee had claimed the additional depreciation on the second half of the financial years 2005-06, 2007-08 and 2008-09 @ 10% on these plant and machineries and the remaining 10% in the subsequent financial years relevant to the assessment years in question. As the additional depreciation is allowable only in the year of purchasing the new plant and machinery, the Assessing Officer rejected the assessee's claim of additional depreciation on the brought forward opening WDV and added the same to the total income of the assessee.*

.....

.....

*"6. in view of the submissions made by the learned counsel no either side, following the Judgment made in Comstar Automative Technologies (P.) Ltd. (supra) and the Judgment made in Caterpillar India (P.) Ltd. (supra) the questions of law are decided against the revenue and in favour of the assessee. Accordingly, the Tax Case Appeals are dismissed. No costs."*

12.4. CIT(A) further concluded that:

*"In view of the above judicial precedents, it is clear that in the present A.Y.(AY 2015- 16) the appellant was eligible to claim the balance additional depreciation of Rs. 37,38,754/- no assets acquired and put to use for less than 180 days in A.Y. 2014- 15. The disallowance of Rs. 37,38,754/- is hereby deleted. Grounds no. 4 and 4.1 are hereby allowed."*

13. The Ld.Counsel for the assessee relied on the order of the Ld.CIT(A) and, on the other hand, the Ld.DR relied on the order of AO.

14. In the case of **Hinduja Foundries Ltd.** case, the Hon'ble Madras High Court held that the assessee is entitled to claim the balance additional depreciation in the subsequent year if the new plant and machinery were put to use for less than 180 days in the previous year. This precedent supports the position that additional depreciation can be claimed in the subsequent year for assets that were partially depreciated in the year of acquisition.

14.1. Based on the above facts and the judicial precedent set by the Hon'ble Madras High Court in **Hinduja Foundries Ltd.**(supra), we arrive at the conclusion that the assessee is eligible to claim the balance additional depreciation of Rs.37,38,754/- for the new plant and machinery commissioned for less than 180 days in the financial year 2013-14 and claimed in AY 2015-16. Although the AO contended that the amendment by

the Finance Act, 2015, would take effect from 01/04/2016, the judicial precedent indicates that the assessee's claim is valid under the existing provisions of section 32(1)(iia) for the relevant assessment year. The Ld.CIT(A)'s decision to delete the disallowance of Rs.37,38,754/- is upheld, as it aligns with the judicial precedent and the correct interpretation of section 32(1)(iia) of the Income Tax Act. Thus, this ground of Revenue's appeal is dismissed.

15. In the combine result, the appeal of Revenue is dismissed.

**Order pronounced in the Open Court on 4<sup>th</sup> July, 2024 at Ahmedabad.**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(MAKARAND V. MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

Ahmedabad, Dated 04/07/2024

*टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A) - (NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad