

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 5441/DEL/2019 (A.Y 2013-14)

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| Nihon Parkerizing (India) Pvt. Ltd. Plot No. 127, Ist Floor, Sector-44, Gurgaon Haryana PAN No. AADCN4654R (APPELLANT) | Vs. | DCIT Circle-18(1) New Delhi (RESPONDENT) |
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|---------------------------|--|
| Assessee by : | Shri Harsh Kumar & Sh. Divesh Kalra, CA |
| Department by: | Shri Anshul, Sr. DR |

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| Date of Hearing | 27.06.2024 |
| Date of Pronouncement | 10.07.2024 |

ORDER

PER YOGESH KUMAR U.S., JM

The present appeal is filed by the assessee for Assessment Year 2013-14 against the order of the Ld. Commissioner of Income Tax (Appeals)- ('Ld. CIT(A)' for short)-6, New Delhi, dated 18/04/2019.

2. The grounds of Appeal are as under:-

“1. That the order of the Ld. Commissioner of Income Tax (Appeals)-6, New Delhi ("CIT-A"), of not allowing deduction of Rs 52,51,027/- in respect of traded goods written off on account of obsolete, damaged, expired stock and not appreciating the various facts of the case as per the details, explanation and documents provided by the assessee during the course of assessment/appellate proceedings, is against law and facts of the case.

2. That the order of the Ld. Commissioner of Income Tax (Appeals)-6, New Delhi ("CIT-A"), of not allowing deduction in respect of foreclosure charges of Rs 10,54,784 on account of non-deduction of Tax deduction at source ("TDS") under section 40(a)(ia) of the Act without appreciating the applicability of TDS based on nature of expense and by not appreciating the various facts of the case as per the details, explanation and documents provided by the assessee during the course of assessment/appellate proceedings, is against law and facts of the case.

3. That the appellant company craves leave to add, delete, modify, and amend any grounds of appeal before or at the time of hearing of appeal.

4. That above grounds of appeal is without prejudice to each other.”

3. Brief facts of the case are that, the assessee filed return declaring total income at NIL by claiming current year loss at Rs. 10,75,89,514/-. The case of the assessee was selected for scrutiny through CASS and a notice u/s 143(2) of the Income Tax Act, 1961

('Act' for short) was sent to the assessee. The Notice u/s 142(1) along with questionnaires were also sent to the assessee. The assessee participated in the assessment proceedings, through its representative. The assessment order came to be passed by disallowing the expenses claimed u/s 40a (ia) of the Act of Rs. 16,38,113/- further disallowed the provision of bad debts return of Rs. 10,00,000/- and also disallowed the provision for inventory return of income of Rs. 52,51,027/-. Aggrieved by the assessment order dated 30/12/2016, the assessee preferred an appeal before the CIT(A). The Ld. CIT(A) vide order dated 18/04/2019 upheld the disallowance of Rs. 52,51,021/- in respect of traded goods written off and also disallowed the non deduction of tax under Section 40(a)(ia) of the Act. Aggrieved by the order of Ld. CIT(A), the Assessee preferred the present Appeal on the grounds mentioned above.

4. The Ld. Counsel for the assessee submitted that the assessee does not press the Ground No. 2 of the Assessee's Appeal. Recording the submission of the Assessee's Representative, the Ground No. 2 of the assessee is dismissed as not pressed.

5. The Ground No. 1 is regarding disallowance of deduction of Rs. 52,51,027/- in respect of traded goods written off on account of obsolete, damaged, expired stock. The Ld. Counsel for the assessee submitted that the Ld. CIT(A) has not appreciated the various facts along with the documents produced by the Assessee during the course of the assessment proceedings as well as appellate proceedings, therefore, submitted that the Ld. CIT(A) has committed error in upholding the disallowance made by the A.O.

6. Per contra, the Ld. Departmental Representative relying on the Lower Authorities sought for dismissal of the Ground No. 1 of the assessee.

7. Heard the parties and perused the material available on record. From the Balance Sheet and Notes on Accounts it was noted that provision for inventory written off had been reduced from the closing value of inventory. The A.O. by referring to Note No. 13 of Balance Sheet and stated that the Assessee was taking value of traded goods at cost or NRV, whichever was lower, and from having such NRV, the valuation of closing stock was being

reduced. It was observed that once having taken stock at NRV, the Assessee is not permitted again reduce to the value of provisions for obsolete or damaged stock which would otherwise result in double benefit, accordingly, the amount of Rs. 52,51,027/- on account of provision for inventory written off was held to be not admissible and was added back to the taxable income to the Assessee.

8. During the appellate proceedings, the assessee made elaborate submissions and referred various documents. After considering the submission of the assessee, the Ld. CIT(A) rejected the same in following manners:-

4.3.3 *“I have considered the assessment order and the submissions of the appellant. I have also perused the details of the inventory given. No rationale has been given for both the quantity and value of the inventory written off. Following are some of the instances noted from details of Finished Goods as per Annexure B (Page 99 of paper book) [Annexure 1 to this order] and details of stock written off as per page 106 of the paper book [Annexure 2 to this order]:*

| S. No; | Name | Details of Finished Goods | | | Written off stock | | |
|--------|----------------------|---------------------------|----------|-------------|-------------------|------|----------|
| | | Rate | Quantity | Total | Kg | Rate | Value |
| 1. | NIPAKLINGHDT- | 32.07 | 4,600 | 184,322.00 | 50 | 43 | 2,125 |
| 2. | NIPAKLINGHDT- | 33.05 | 2,600 | 106,742.78 | 500 | 44 | 21,750 |
| 3. | NIPAKLING315-0050 | 63.00 | 1,700 | 120,700.00 | 50 | 139 | 6,950 |
| 4. | NIPAKLING360-0030 | 65.53 | 900 | 66,177.00 | 590 | 101 | 59,590 |
| 5. | NIPAKLING360-0050 | 67.23 | 6,500 | 4,89,017.11 | 3,200 | 81 | 2,58,336 |
| 6. | NIPAKLINGNN364S-0050 | 38.53 | 7,250 | 337,342.50 | 300 | 78 | 23,400 |

4.3.4 *From the above it is seen that there is a wide variation in the valuation of the stock as per the details of finished goods and written off stock. No rationale has been given regarding why only a portion of the particular item has been made obsolete. Similar trend is seen for other items also as is apparent. Further, there is no rationale for the wide variation in the cost. As noted by the AO the assessee is taking the value of traded goods at cost or NRV, whichever is lower and from the NRV, provision for inventory has been written off. Having taken the value at NRV, it is not understood how the obsolete stock can be written off. Even on the merits of it, as noted from above, no rationale for the quantity and the value of the stock written off. In absence of any explanation on merits as regards write off, lire addition made is upheld. Ground of appeal No. 3 (3.1 and 3.2) is dismissed.”*

9. The assessee Company written off the inventory of traded goods of Rs. 52, 51,027/- during the relevant Assessment Year. The said inventory has been written off after audited by the independent statutory auditor, which can be corroborated from the paper book page No. 106 to 107 wherein the details of obsolete, damaged and expired stock are placed at Page No. 105 as on 31st March, 2013. The inventory written off included in the traded goods and the Company has disclosed the written off inventories in a separate line items in the notes to the account at Note No. 13 – Inventories of the Audited Financial Statement, which has been produced at Page No. 73 of the Paper Book is extracted as under:-

| <i>Particulars</i> | <i>As at March 31, 2013</i> | <i>As at March 31, 2012</i> |
|---|-----------------------------|-----------------------------|
| <i>Raw materials and bought out components (at cost) Goods in transit (A)</i> | 33,716,428 1,390,769 | 30,796,511 5,503,691 |
| <i>Finished goods (Cost of NRV, whichever is lower) (B)</i> | | |
| <i>Packing, material (Cost or NRV, whichever is lower) (C)</i> | 35,107,197 33,409,557 | 36,300,202 13,750,372 |
| <i>Traded Goods (Cost or NRV, whichever is lower) (D)</i> | 348,407 23,861,501 | 540,207 18,467,341 |
| <i>Goods in transit</i> | 424,507 | |
| <i>Less: Provision for inventory written off</i> | 5,251,027 | |
| | 19,034,981 | 18,467,341 |
| <i>TOTAL (A+B+C+D)</i> | 87,900,142 | 69,058,122 |

10. Further, it is found that the effect of net inventories of the traded goods of Rs. 1,90,34,981/- as on 31st March, 2013, after return of the obsolete, damaged and expired stocks has been considered in the profit and loss statement in Note No. 21 of the audited financial statement which is reproduced as under:-

| <i>Particulars</i> | <i>Year Ended March 31, 2013</i> | <i>Year Ended March 31, 2012.</i> |
|--|----------------------------------|-----------------------------------|
| <i>Inventory at the beginning of the year</i> | 13,750,372 | |
| <i>Finished Goods Traded Goods</i> | 18,467,341 | |
| | 32,217,713 | |
| <i>Inventory at the end of the year</i> | | |
| <i>Finished Goods</i> | 33,409,557 | 13,750,372 |
| <i>Traded Goods (inclosing goods in transit)</i> | 19,034,981 | 18,467.341 |
| | 52,444,538 | 32,217,713 |
| <i>Total</i> | (20,226,825) | (32,217,713) |

11. The financial statement prepared by the independent statutory auditor has also stated that 'the Company has written off traded goods inventory purchased from Nipa Chemicals Ltd. of Rs. 52,51,027/- as on 31st March, 2013 being obsolete/damaged and expire stock, which can be corroborated with the Note No. 39 to the Audited Financial Statement placed at Page No. 84 of the Paper Book.

12. It is the case of the assessee that the amount of obsolete inventory written off has been debited to the Profit and Loss Account which has been audited by the auditor. Thus, the aforesaid written off of obsolete inventory has been audited and the quantum of written off also forms part of the Audited Financial Statements in accordance with the disclosure, requirements of Accounting Standard. The amount of Inventories written off, Rs. 52,51,027 is included in Traded Stock in inventory Note. 13 of the Audited Financial statements has been deducted for disclosure purposes only and has been reflected in the Profit and Loss account in Note 21 of the Audited Financial Statements.

13. The Assessing Officer while making the disallowance observed that *'once having a taken the stock at NRB, the assessee is not permitted to again reduced the value of provision for obsolete or damaged stock otherwise this will result in double benefit'*, the coordinate Bench of the Tribunal in the case of M/s BG Exploration and Production India Ltd. Vs. DCIT in ITA No. 6791/Del/2017 for Assessment Year 2012-13 vide order dated 17/07/2018 held that when the taxpayer has prepared obsolete inventory in accordance with the system of accounting regularly followed by it in compliance to section 211(3C) of the Companies (Accounting Standards) Rules, 2006 as amended and other relevant provisions of the Companies Act, 1956 and has duly got prepared audited report of an independent auditor on the basis of physical verification and in view of the maintenance of inventory, the disallowance made by the AO/DRP is not sustainable in the eyes of law. The relevant portion of the order of the Tribunal reads as under:-

“GROUND NO.17

38. AO/DRP have disallowed an amount of Rs.1,54,16,938/- claimed by the taxpayer on account of inventory written off on the ground that certain internal documents furnished by the taxpayer are not enough for allowing of these expenditure. The ld. AR for the taxpayer contended that the expenditure has been claimed as per method of write off obsolete inventory in accordance with the system of accounting regularly followed and relied upon Note-II of Financial Statements for the year under assessment wherein it is stated that the financial statements have been prepared to comply with all material aspects with accounting standard notified u/s 211(3C) of the Companies (Accounting Standards) Rules, 2006 as amended and other relevant provisions of the Companies Act, 1956. The taxpayer also relied upon the supporting documents prepared by Senior Drilling Engineer of the company certifying that such inventory was not usable in future and was produced before AO and consequently claimed deduction for the obsolete inventory written off u/s 37(1) of the Act and relied upon the decision rendered by Hon'ble Bombay High Court in case of Alfa Laval India Ltd. vs. DCIT - 266 ITR 418 (Bom.), affirmed by the Hon'ble Supreme Court by judgment reported in 295 ITR 451. The ld. AR for the taxpayer also contended that the taxpayer has submitted audit report of an independent auditor prepared on the basis of physical verification and maintenance of inventory during assessment proceedings and further relied upon the decision rendered by coordinate Bench of the Tribunal in Gillette India Ltd. vs. ACIT - 66 taxmann.com 221. Ld. DR for the Revenue to repel the arguments addressed by the ld. AR for the taxpayer relied upon the orders of AO/DRP.

39. While deciding the identical issue, the Hon'ble Bombay High Court in case cited as *Alfa Laval India Ltd. vs. DCIT (supra)* held as under :-

"Held, (i) that the duly certified auditor's report placed before the Assessing Officer clearly justified valuation of obsolete items at 10 per cent. of cost. There is no dispute that the assessee is entitled to value the closing stock at market value or at cost whichever is lower. It is also not in dispute that the value of the closing stock has been taken as the value of the opening stock in the subsequent year. Moreover, it is also not disputed that the obsolete items were in fact sold in the subsequent year at a price less than 10 per cent. of the cost. In the absence of any basis for valuing the obsolete items at 50 per cent. of the cost, the Tribunal could not have upheld the findings of the Assessing Officer."

40. Hon'ble Delhi High Court in case cited as *CIT vs. Bharat Commerce and Industries Ltd. - 240 ITR 256 (Del.)* held that, "An assessee is free to adopt a particular method of valuation of its closing stock which it has to follow regularly from year to year. At the same time it is well settled that irrespective of the basis adopted for valuation for earlier years, the assessee has an option to change the method of valuation of closing stock, provided the change is bona fide and followed regularly thereafter."

41. In view of the settlement proposition of law discussed in the preceding paras, we are of the considered view that when the taxpayer has prepared obsolete inventory in accordance with the system of accounting regularly followed by it in compliance to section 211 (3C) of the Companies (Accounting Standards) Rules,

2006 as amended and other relevant provisions of the Companies Act, 1956 and has duly got prepared audited report of an independent auditor on the basis of physical verification and in view of the maintenance of inventory, the disallowance made by the AO/DRP is not sustainable in the eyes of law.

42. Coordinate Bench of the Tribunal in Gillette India Ltd. vs. ACIT (supra) also while deciding the identical issue held in favour of the assessee that when complete details about the inventory written off has been given sufficient to identify items of inventory to be written off in the books of account, the same is required to be allowed. So, in these circumstances, we are of the considered view that the AO is directed to allow the amount of Rs.1,54,16,938/- on account of inventory written off after due verification in the light of what has been discussed in the preceding paras. Consequently, ground no.17 is determined in favour of the taxpayer.”

14. The ITAT Bench at Jaipur in the case of Gillette India Ltd. Vs. ACIT (66 Taxman.com 221) held that the assessee had given details about the inventory written off along with ledger codes whereby the identified items of inventory are written off in the books of account, and accordingly deduction for written off of obsolete inventory should be allowed to the assessee.

15. Considering the above facts and circumstances, we find merit in the Ground No. 1 of the assessee, accordingly, we delete the disallowance made by the A.O. which has been confirmed by the Ld. CIT(A), accordingly, the Appeal of the assessee is partly allowed.

Order pronounced in the open court on 10th JULY, 2024.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Dated : 10/07/2024

*R.N, Sr. PS**

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

