

आयकर अपीलिय अधिकरण
मुंबई पीठ “के”
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री गगन गोयल, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “K”, MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
आअसं.7742/मुं/2014 (नि.व. 2010-11)
ITA NO.7742/MUM/2014(A.Y.2010-11)

Greaves Cotton Ltd.
3rd Floor, Motilal Oswal Tower,
Junction of Gokhale & Sayani Road,
Prabhadevi, Mumbai 400 025.
PAN: AAACG-2062-M

..... अपीलार्थी /Appellant

बनाम Vs.

Dy. Commissioner of Income Tax,
Circle 6(3),
Aaykar Bhavan, M.K.Road,
Mumbai 400 020.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Smt. Aarti Vissanji, Advocate

प्रतिवादी द्वारा/Respondent by : Smt. Vranda U. Matkari, Sr.A.R

सुनवाई की तिथि/ Date of hearing : 27/05/2022

घोषणा की तिथि/ Date of pronouncement : 22/08/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the assessment order dated 31/10/2014 passed u/s. 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 [in short ‘the Act’].

2. The assessee has raised multiple grounds assailing Transfer Pricing (T.P) adjustment and corporate tax additions in the impugned order. The gist of the additions/disallowances assailed in appeal are as under:

Ground A: Transfer Pricing Adjustments – Rs.27,42,175/-

Ground B: Disallowance under section 14A r.w.r. 8D- Rs,11,10,355/-

Ground C: Unutilized Cenvat Credit – Rs.9,32,524/-

Ground D: Capital Receipt treated as Long Term Capital Gains – Rs.81,10,875/-

Ground E : Book Profit – Provision for Expenses – Rs.2,06,71,770/-

Ground F : Book Profit – Disallowance u/s. 14A r.w.r. 8D

Ground G : Credit for Payment of Tax u/s. 115O

Ground H : General

3. In ground –‘A’ of appeal, the assessee has assailed TP adjustment of Rs.27,42,175/- in respect of corporate guarantee. The assessee has extended guarantee in the form of stewardship activity for its Associated Enterprise (AE) Greaves Ferymann Diesel GmbH, Germany to ABN Amro Bank. The Transfer Pricing Officer (TPO) made adjustment in respect of corporate guarantee @ 2.81% of the loan amount utilized by the AE. The Assessing Officer and DRP has upheld the same. Against the said adjustment, the assessee is in appeal before the Tribunal.

4. Smt. Aarti Vissanji appearing on behalf of the assessee stated at the outset that the issue relating to corporate guarantee has been considered by the Tribunal in assessee’s own case in ITA No.279/Mum/2013 for Assessment Year 2008-09 and ITA No.1007/Mum/2014 for Assessment Year 2009-10 vide common order dated 17/01/2020. The Tribunal has granted part relief to the

assessee by restricting corporate guarantee commission @0.5% of the amount of guarantee.

5. Smt. Vranda U. Matkari representing the Department vehemently defended the impugned order, however, she fairly admitted that identical grounds has been adjudicated in assessee's own case in Assessment Year 2008-09 and 2009-10.

6. Both sides heard. We find that identical adjustment in respect of corporate guarantee commission was made in Assessment Year 2008-09 and 2009-10. The Co-ordinate Bench after placing reliance on the decision in the case of Everest Kanto Cylinders Ltd., 378 ITR 57(Bom) restricted corporate guarantee commission to 0.5%. Respectfully following the decision of Co-ordinate Bench on this issue, ground No. 'A' raised in the appeal by assessee is partly allowed.

7. In ground 'B' of appeal, the assessee has assailed disallowance of Rs.11,10,355/- made u/s.14A r.w.r. 8D. We find that during the period relevant to assessment year under appeal, the assessee has received dividend income of Rs.1,25,35,409/- and the same has been claimed as exempt u/s. 10(54) of the Act. The assessee made suo-motu disallowance of Rs.43,56,218/- u/s. 14A of the Act. In the Audit Report, the Auditor has quantified disallowance u/s. 14A r.w.r. 8D at Rs.54,66,573/-. The Assessing Officer made addition of Rs.11,10,355/- i.e. the difference between suo motu disallowance made by the assessee and disallowance computed by the Auditor. The Id.Counsel for the assessee submitted that no disallowance is warranted u/r.8D(2)(ii) as the assessee is having sufficient own interest free funds to cover the investments made. No borrowed funds were used for

making the investment. To substantiate his submission the Id.Counsel for the assessee referred to the schedule of investments made at page – 29 of the paper book and availability of funds in Schedule-B to the Balance Sheet as on 31/03/2010 at page 26 of the paper book. The Id.Counsel for the assessee further submitted that in so far as disallowance made u/r.8D(2)(iii) only dividend yielding investment should be considered for the purpose of making disallowance. The Id.Counsel for the assessee pointed that this issue has been considered by the Tribunal in assessee's own case for Assessment Year 2009-10 in ITA No.1007/Mum/2014 (supra). In principle we are in agreement with the argument of Id.Counsel for the assessee that when own interest free funds of the assessee are more than investments made, it shall be presumed that investments are made by assessee by utilizing interest free funds. However, we deem it appropriate to restore this issue to the file of Assessing Officer for the limited purpose of ascertaining the position of assessee's own interest free funds during the period relevant to the assessment year under appeal vis-à-vis the investment made. If own interest free funds of the assessee are sufficient to cover the investment, no disallowance u/r. 8D(2)(ii) is warranted.

As regards disallowance u/r.8D(2)(iii), we find merit in the arguments of Id.Counsel for the assessee. Only dividend yielding investments should be considered for the purpose of determining the average value of investment for the purpose of Rule 8D(2)(iii) [Re: ACIT vs. Vireet Investments Pvt. Ltd., 165 ITD 27(SB)(Del)].

8. The assessee has raised additional ground in respect of disallowance u/s. 14A of the Act that the investment made in subsidiaries are on account of commercial expediency. The Id.Counsel for the assessee has not

substantiated the alleged commercial expediency, hence, the additional ground raised in the appeal is dismissed being devoid of any merit.

9.. In the result, ground 'B' is partly allowed in the terms aforesaid.

10. In ground 'C', the assessee has assailed addition on account of unutilized Cenvat credit of Rs.9,32,524/-. The Id.Counsel for the assessee submitted that the Authorities Below have failed to consider the certificate issued by Tax Auditors annexed to the Tax Audit Report certifying that the valuation method adopted by the assessee vis-à-vis valuation method as per section 145A of the Act would not have impact on the profit of the assessee . The Id.Counsel for the assessee referred to Auditor's Certificate at page- 56 of the paper book. The Id.Counsel for the assessee further pointed that for similar reasons the additions were made by the Assessing Officer in the preceding Assessment Years i.e. Assessment Year 2007-08, 2008-09 and 2009-10. The Tribunal has restored the issue to the Assessing Officer for fresh examination. The Assessing Officer while giving effect to the order of Tribunal for assessment year 2004-05 has deleted the addition on account of Cenvat Credit.

11. We find that the addition on account of unutilized Cenvat credit is a perennial issue. In the preceding Assessment Years the matter travelled upto the Tribunal. In appeal of the assessee for Assessment Years 2008-09 and 2009-10(supra) the Tribunal restored the issue back to the file of Assessing Officer for fresh adjudication in line with the directions given while restoring the issue to the Assessing Officer for Assessment Year 2007-08. In the impugned assessment year facts being similar, we deem it appropriate to restore this issue to the file of Assessing Officer for deciding the same in

accordance with directions of the Tribunal for Assessment Year 2007-08. Consequently, ground 'C' of the appeal is allowed for statistical purposes.

12. In ground 'D' of appeal, the assessee has assailed the findings of Assessing Officer and CIT(A) in treating capital receipt as long term capital gains. The Id.Counsel for the assessee submitted that during the Financial Year 2009-10 the assessee has received amount on sale of TDR. There was no cost of acquisition, therefore, there is no question of capital gains. The Id.Counsel for the assessee submitted that without prejudice to the primary contention, from the total consideration received on sale of TDR the amount paid to M/s. Fossecos and M/s. Premium Energy Transmission Ltd. may be reduced. The Id.Counsel for the assessee submitted that the Tribunal in assessee's own case in Assessment Year 2008-09 and 2009-10 has restored the issue to Assessing Officer. The Id.Counsel for the assessee further placed reliance on the decision of Hon'ble Bombay High Court in the case of CIT vs. Sambhaji Nagar Co-operative Housing Society Ltd., reported as 370 ITR 325 to support his arguments.

12.1. In the return of income the assessee has declared long term capital gain of Rs.81,10,875/- on sale of TDR. During the course of assessment proceedings the assessee raised alternate plea that sale of TDR does not give rise to capital gains as TDR has no cost. The fresh plea raised during assessment was rejected by the Assessing Officer in the light of judgment in the case of Goetz (India) Ltd. vs. CIT, 284 ITR 323(SC). We find that similar was the case in Assessment Year 2008-09. The Tribunal after admitting the additional ground/claim made in respect of income received on transfer of TDR, restored the issue back to the file of Assessing Officer to decide the issue

afresh in accordance with law. Without commenting on the merits of the issue, we deem it appropriate to restore this issue back to the file of Assessing Officer for deciding the issue afresh, in accordance with law. The Assessing Officer shall grant reasonable opportunity of hearing to the assessee / opportunity to make submissions before deciding the issue afresh. Ground 'D' of the appeal is thus, allowed for statistical purposes.

13. In ground 'E' of appeal, the assessee has assailed addition on account of Provision for Expenses while computing book profit under section 115JB of the Act. The Id.Counsel for the assessee submitted that this ground is covered by order of Tribunal in assessee's appeal for assessment year 2009-10. We find that in assessment year 2009-10, the Tribunal restored the issue back to the file of Assessing Officer with following directions:

" 43.Ground No. J relates to book profit under MAT. The Id. AR submits that provision for expenses ought not to be added. In earlier years, the provisions of expenses were not added in the book profit. Considering the submission of Id. AR of the assessee, the Assessing Officer is directed to recompute the book profit in accordance with the provision of section 115JB. In the result this appeal is partly allowed."

This ground is restored back to the Assessing Officer for fresh adjudication with similar directions. Thus, ground 'E' is allowed for statistical purpose.

14. In ground 'F', the assessee has assailed disallowance u/s. 14A r.w.r 8D while computing book profits u/s.. 115JB of the Act . We find that this issue is settled by the decision rendered by Special Bench in the case of Vireet Investments Pvt. Ltd. (supra) and the decision of Hon'ble Karnataka High Court in the case of CIT vs. Gokaldas Images Pvt. Ltd., 122 Taxmann.com 160. Hence, disallowance u/s. 14A is not to be considered while computing book profits u/s. 115JB of the Act. Consequently, ground 'F' of the appeal is allowed.

15. In ground 'G', the assessee has assailed Credit for Payment of Tax u/s. 115O of the Act . The Id.Counsel for the assessee submitted that the Assessing Officer should not have charged an amount of Rs. 21.30,393/- u/s. 115O as the assessee had received dividend from its 100% subsidiary M/s.Greaves Leasing Finance Ltd. under the provisions of section 115O(1A)(i)(a). The subsidiary of the assessee had already paid dividend distribution tax on the dividend paid to the assessee. The Id.Counsel for the assessee referred to the challan at pages 84 and 85 of the paper book to show payment of tax. The issue requires factual examination, therefore, we deem it appropriate to restore this issue back to the file of Assessing Officer to reexamine the issue in accordance with law and after considering copy of challan placed on record. Consequently, ground 'G' is allowed for statistical purposes.

16. The ground 'H' of the appeal is general in nature, hence, require no adjudication.

17. In the result, appeal by assessee is partly allowed in the terms aforesaid.

Order pronounced in the open court on Monday the 22nd day of August , 2022.

Sd/-

(GAGAN GOYAL)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 22/08/2022

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)/ Sr. Private Secretary
ITAT, Mumbai