

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH : KOLKATA

[Before Hon'ble Shri A.T.Varkey, JM & Shri M.Balaganesh, AM]

I.T.A No. 2024/Kol/2016

Assessment Year : 1993-94

Teesta Agro Industries Ltd
Kolkata
[PAN: AABCT 1252 D]
(Appellant)

-vs-

D.C.I.T., Circle-12 (2)
Kolkata.

(Respondent)

For the Appellant : Shri B.K.Poddar, FCA

For the Respondent : Shri Saurabh Kumar, Addl. CIT, Sr.DR

Date of Hearing : 09.05.2018.

Date of Pronouncement : 15.05.2018

ORDER

Per M.Balaganesh, AM

1. This appeal by the assessee arises out of the order of the Learned Commi543/CIT(A)-4/Circle-12/Kol/14-15 dated 16.05.2016 against the order passed by the A.C.I.T., Inv.Circle-3(2), Kolkata [in short the Id AO] under section 143(3) of the Income Tax Act, 1961 (in short "the Act") dated 15.03.1996 for the Assessment Year 1993-94.

2. The first issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in confirming the disallowance of Rs.39,29,928/- u/s 43B of the Act on account of unpaid sales tax in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee M/s Teesta Agro Industries Ltd which was earlier known as Sunderban Fertilisers Ltd was in receipt of Rs.39,29,928/- under sales tax deferment scheme sanctioned by the Government of West Bengal, meaning thereby the sales tax collected by the assessee need not be remitted to the sales tax authorities for a certain period of time. Accordingly the assessee did not make any remittance of this sales tax collection of Rs. 39,29,928/- to the sales tax authorities. The assessee produced copy of the eligibility certificate issued in Form No.XIX by Assistant Commissioner , Commercial Taxes, West Bengal vide Certificate No.6295 dated 25.06.1993 wherein the assessee dealer was given eligibility for deferment of payment of sales tax for a period of 7 years commencing from 21.05.1992. The Id. AO applied the provision of section 43B of the Act and held that since the assessee had not made the remittance of sales tax collected and the assessee had not produced any evidence to show that the unpaid sales tax which has been converted into loan by the state Government, the requirement of CBDT Circular No.496 dated 25.09.1987 was not fulfilled by the assessee and accordingly proceeded to make disallowance u/s 43B of the Act.

4. The Id. CIT(A) noted in his order that Commercial Taxes Department, West Bengal had granted deferment of payment of tax to the extent of 90% of gross value of fixed assets or Rs 35 crores whichever is less and that deferment was for a period of 7 years commencing from 21.05.1992 based on the eligibility certificate issued to the assessee. The Id. CIT(A) categorically stated that the assessee had furnished evidence in support of the claim that the sales tax liability was converted into loan. The assessee placed reliance on the CBDT Circular No.496 dated 25.09.1987. The Id. CIT(A) however, observed from a perusal of the said circular in para-5 it was clearly stated that the CBDT had decided where amendments were made in the sales tax laws on the lines mentioned in the circular, the statutory liability shall be treated as discharged for the purposes of section 43B of the Act. He observed that the assessee in the instant case

has not furnished any evidence to prove that whether any amendment was carried out in sales tax laws and accordingly the circular would not come to the rescue of the assessee and upheld the disallowance made by the AO. Aggrieved assessee is in appeal before us on the following ground :

“1) For that in the facts & Circumstances of the case the Ld. CIT(A) was unjustifiable confirm the disallowance a sum of Rs. 39,29,928/- U/s. 43B of I T Act on account of unpaid Sales Tax.”

5. We have heard the rival submissions. We find that the assessee had duly placed on record the relevant provision of West Bengal Sales Tax Act 1954 vide section 8H “ deferment payment of tax “ which is reproduced hereunder:

“1 [8H. Deferment of payment of tax. - (1) Notwithstanding anything contained in sub-section (1) or sub-section (2) 2[••] of section 8 or sub-section (1) of section 10, the tax payable by a registered dealer under this Act according to his 3[••] returns referred to in section 8 or the tax due from him according to a notice issued under sub-section (1) of section 10 shall, subject to the other provisions of this section or the rules made thereunder, be deferred.

(a) in the case of a newly set up industrial unit in [West Bengal.] from the prescribed date on which such tax becomes payable in a year during the period referred to in sub-section (2) under this Act in respect of notified commodity other than such notified commodity as may be prescribed,] manufactured in such unit or goods purchased for use directly in the manufacture of such notified commodity, or

(b) In the case of. an existing industrial unit in 1 [West Bengal.] which has been expanded on approval of the State Government, from the prescribed date on which such tax becomes payable in a year during the period referred to in sub-section (2) under this Act in respect of notified commodity 2[, other than such notified commodity as may be prescribed.] manufactured in the expanded portion of such unit on utilisation of the added capacity of the plant and machinery installed therein or goods purchased for use directly in the manufacture of such notified commodity,

for such period, not exceeding 3[nine years,] as may be prescribed, and different periods may be prescribed for different such new7, set up or existing industrial units having regard to the location of such units [in different areas as may be prescribed :]

5[Provided that deferment of payment of tax payable by a dealer in respect of sales of notified commodities manufactured by him in any of the prescribed areas may be restricted to sales of such class or classes of notified commodities as may be prescribed :

Provided further that the period prescribed under this sub-section and sub-section (2) may, subject to such restrictions and conditions as may be prescribed, be extended by two years in the cases of such industrial units as may be prescribed, where investment in fixed capital assets exceeds one hundred crore rupees.]

It is not in dispute that the assessee is entitled/eligible for sales tax deferment, meaning thereby, the sales tax collected by the assessee need not be remitted to the sales tax department for a period of 7 years commencing from 21.05.1992 as is evident from the eligibility certificate issued by the sales tax department (supra). This eligibility certificate admittedly has been issued in accordance with the provision of West Bengal Sales Tax Act 1954. Hence it can be safely concluded that the assessee had sought for this eligibility certificate on sales tax deferral loan based on the provisions of the State Act i.e. West Bengal Sales Tax Act. Hence the assessee would squarely fall under the benefit provided in the circular No 496 dated 25.09.1987 which reads as under :-

Circular No. 496. dated 25-09-1987

“Whether amount of sales tax liability converted into loans may be allowed as deduction in assessment for previous year in which such conversion has been permitted by or under Government orders

1. Several State Governments have introduced sales tax deferred schemes as a part of the incentives offered to entrepreneurs setting up industries in backward areas. Under these schemes, eligible units are permitted to collect sales tax and retain such tax for a prescribed period. After this period, the sales tax is to be paid to the Government either in lump sum or in instalments.

2. Section 43B of the Income-tax Act, 1961, introduced by the Finance Act, 1983, with effect from 1-4-1984 provides, inter alia, that a deduction in respect of any sum payable by the assessee by way of tax or duty under any law for the time being in force shall be allowed from the income of the previous year in which such sum is actually paid irrespective of the previous year in which the liability to pay such sum was incurred. Since the introduction of this provision, the assessee who collect sales tax, but do not pay the amounts to the Government during the

previous year, under the deferral schemes provided by the State Governments are not entitled to the benefit of deduction from their income.

3. Representations have been received from various State Governments and others that cases of deferred sales tax payments should be excluded from the purview of section 43B as the operation of this provision has the effect of diluting the incentive offered by the deferral schemes.

4. The matter has been examined in consultation with the Ministry of Law and the various State Governments. The Ministry of Law has opined that if the State Governments make an amendment in the Sales Tax Act to the effect the sales tax deferred under the scheme shall be treated as actually paid, such a deeming provision will meet the requirements of section 43B.

5. The Government of Maharashtra have by the Bombay Sales Tax (Amendment) Act, 1987, made the amendment accordingly. The Board have decided that where amendments are made in the sales tax laws on these lines, the statutory liability shall be treated to have been discharged for the purposes of section 43B.

Circular: No. 496 [F. No. 20J/34/86-/T(A-II)] dated 25-9-/987

5.1. We also find that CBDT had also come out with Circular no.674 dated 29.12.1993 on the impugned issue which reads as under :-

“Whether amount of sales tax liability converted into loans may be allowed as deduction in assessment for previous year in which such conversion has been permitted by or under Government orders

1.The scope of application of the provisions of section 43B to the sales tax collected but not actually paid under deferral schemes of the State Governments was considered in Board's Circular No. 496, dated 25-9-1987 [Clarification 2], and it was decided that, where the State Governments make an amendment in the Sales-tax Act to the effect that the sales tax deferred under the scheme shall be treated as actually paid, the statutory liability shall be treated as discharged for the purposes of section 43B.

2. It has since been brought to the notice of the Board that some State Governments, instead of amending the Sales-tax Act. have issued Government Orders notifying schemes under which sales tax is deemed to have been actually collected and disbursed as loans. Such Government Orders also provide that entries shall be made in the Government accounts giving effect to deemed

collections by crediting the appropriate receipt-heads relating to sales-tax collections and debiting the heads relating to disbursal of loans. It has, therefore, been represented that, as such conversion of the sales tax liability into loans have similar statutory effect as can be achieved through amendments of the Sales-tax Act, the amounts covered under the scheme should be allowed as deduction for the previous year in which the conversion has been permitted by the State Governments.

3. The Board have considered the matter and are of the opinion that such deferral schemes notified by the State Governments through Government Orders meet the requirements of the Boards Circular No. 496, dated 25-9-1987 in effect though in a different form. Accordingly, the Board have decided that the amount of sales tax liability converted into loans may be allowed as deduction in the assessment for the previous year in which such conversion has been permitted by or under Government Orders.

Circular No. 674, dated 29-12-1993.

In view of the above circulars of the CBDT which are binding on the revenue authorities and in view of the evidence submitted by the assessee that the sales tax had been converted into loan pursuant to provisions of the State Act i.e. West Bengal Sales Tax Act, the assessee is deemed to have complied with the provisions of section 43B of the Act and accordingly entitled for deduction of the same. Hence we have no hesitation to consider grant of deduction of Rs.39,29,928/- u/s 43B of the Act on account of unpaid sales tax. Accordingly ground no.1 raised by the assessee is allowed.

6. The next ground to be decided is as to whether the Id. CIT(A) was justified in confirming the disallowance of Rs.1,51,26,826/- u/s 43B of the Act on account of unpaid interest to IDBI in the facts and circumstances of the case.

7. The brief facts of this issue is that the assessee explained that the company had suffered huge loss and became a sick company under Sick industrial Companies (Special Provisions) Act, 1985 and stood under the purview of Board of Industrial and Financial Reconstruction (BIFR). The company in order to revive its business,

borrowed funds on interest and due to adverse business situation, it was unable to pay interest on such loans immediately and accordingly approached the lending institution (IDBI) with a proposal for rescheduling the loan and for converting the unpaid interest into a loan which will be repaid over a period of time. The said proposal was accepted by IDBI. Accordingly the unpaid interest for the year under appeal got converted into loan. The assessee pleaded that since there was no outstanding interest to be paid on the last date of the financial year, it amounted to constructive payment of interest by the assessee thereby making it eligible for deduction u/s 43B of the Act. The Id. AO observed that interest has been converted into loan and as such the liability to pay the interest had not arisen and accordingly the assessee is not eligible for deduction u/s 43B of the Act. This action of the Id. AO was upheld by the Id. CIT(A).

Aggrieved the assessee is in appeal before us on the following ground :

“2) For that in the facts & Circumstances of the case unjustified in confirming the disallowance a sum of U/s. 43B of IT Act being unpaid interest to IDBI Bank.”

8. We have heard the rival submissions. It is not in dispute that the unpaid interest has been converted/rescheduled into fresh loan. The assessee had only made a claim u/s 43B of the Act as deduction passed on constructive payment of interest to the bank and constructive receipt thereon from the bank as loan. But we find that the provisions of Explanation 3C to section 43B of the Act are against the assessee which reads as under :-

“[Explanation 3C- For the removal of doubts, it is hereby declared that a deduction of any sum, being interest payable under clause (d) of this section, shall be allowed if such interest has been actually paid and any interest referred to in that clause which has been converted into a loan or borrowing shall not be deemed to have been actually paid.”

From a perusal of the aforesaid provision it is very clear that the unpaid interest which got converted into loan cannot be claimed as deduction u/s 43B of the Act. Hence we

hold that the Id. CIT(A) had rightly confirmed the disallowance of unpaid interest in the sum of Rs.1,51,26,826/- payable to IDBI. Accordingly ground no.2 raised by the assessee is dismissed.

9. During the course of hearing grounds no.3 and 4 were stated to be not pressed in view of smallness of the amount. Accordingly grounds no. 3 and 4 are dismissed as not pressed.

10. Ground No.5 raised by the assessee is general in nature and does not require any specific adjudication.

11. In the result the appeal of the assessee is partly allowed.

Order pronounced in the Court on 15.05.2018.

Sd/-

[A.T.Varkey]
Judicial Member

Sd/-

[M.Balaganesh]
Accountant Member

Dated : 15.05.2018
SB, Sr. PS

Copy of the order forwarded to:

1. Teesta Agro Industries Ltd., 5A, Valmikee Street (1st Floor), Kolkata-700026.
2. D.C.I.T., Circle-12 (2), Kolkata.
- 3..C.I.T.-(A)-4, Kolkata.
4. C.I.T.- 4, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

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

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