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

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

ITA No. 4589/DEL/2018 [A.Y. 2007-08]

The Dy. C.I.T Central Circle Ghaziabad	Vs.	M/s Amrit Banaspati Company Limited 18-19, first Floor, Sector 8C Chandigarh PAN: AABCA 6485 H
(Applicant)		(Respondent)

Assessee By : Shri Shri Rohit Jain, Adv
Ms. Soumya Jain, CA

Department By : Ms. Sugam Thomas Josh, CIT- DR

Date of Hearing : 05.09.2023
Date of Pronouncement : 11.09.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the ld. CIT(A), Meerut dated 22.03.2018 pertaining to Assessment Year 2007-08.

2. Grievances of the revenue read as under:

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"I. Because the Ld. CIT(A) has erred in law and facts for deleting the addition of Rs. 1.81.24.500/- made on account of disallowance of depreciation on Edible Oil Brand despite that the demerger process is not according with the provisions of section 2(19AA) of the Income Tax Act, 1961.

II. Because the Ld. CIT(A) has erred in law and facts for deleting the addition of Rs. 1,81,24.500/- made on account of disallowance of depreciation on Edible Oil Brand despite that the written down value of the block asset of the resulting assessment company shall be the written down value of the transferred asset of demerged company.

III Because the Ld. CIT(A) has erred in law and facts for deleting the addition of Rs. 1.81.24.500/- made on account of disallowance of depreciation on "Edible Oil Brand despite that as per provisions of Explanation of Section 43(1) of the Income tax Act, 1961, the actual cost of acquisition of the Edible Oil Brand is NIL as such no depreciation is available to the assessee company on the same.

IV Because the Ld. CIT(A) has erred in law and facts for deleting the addition of Rs. 1,81,24,500/- made on account of disallowance of depreciation on Edible Oil Brand despite that the entire scheme of the demerger arrangement should have been taxed neutral but in this case, the assessee company has claimed huge depreciation and reduce its tax liability and other expenses. M/s Amrit Corp. Limited has

because of the business loss not paid taxes in the entire amount of capital gain.

V Because the Ld. CIT(A) has erred in facts for deleting the addition of Rs. 1.81.24.500/- made on account of disallowance of depreciation on Edible Oil Brand despite that on the demerger proceedings, the assessee company M/s ABCL as well as M/s ACL has reduced its tax liability and given arrangement a 'coularble device' as shown capital gain.

VI Because the Ld. CIT(A) has erred in law and facts for deleting the addition of Rs. 10.27,867/- made on account of disallowance of Royalty paid on brand "Gagan despite that the demerger process is not according with the provisions of section 2(19AA) of the Income Tax Act, 1961.

VII Because the Ld. CIT(A) has erred in law and facts for deleting the addition of Rs. 10.27.867/- made on account of disallowance of Royalty paid on brand "Gagan despite that as per provisions of Explanation of Section 43(1) of the Income tax Act, 1961, the actual cost of acquisition of the Edible Oil Brand is NIL as such no depreciation is available to the assessee company on the same.

VIII. Because of the Ld. CIT(A) has erred in law and facts for deleting the addition of Rs. 20.16,369/- made on account of Gross profit rate without appreciating the facts. that the assessee company has failed to furnish quantitative details as well as physical stock register during the assessment proceedings."

3. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

4. The first grievance relates to the allowance of depreciation on Edible Oil Brand.

5. The quarrel revolves around the following observations of the Special Auditors in its report dated 31.05.2010:

> "4.2 Consequently, as such transfer of "Edible Oil Brands" have been by virtue of the demerger scheme of arrangement and the same should have been transferred at NIL value to the resulting company, so the depreciation of Rs. 1,81,24,500/- @ 25% claimed by the resulting company is not admissible. As such, depreciation in the subsequent years i.e. Asstt. Year 2008- 09 and onwards is also not admissible."

6. The assessee was asked to justify its claim, and the assessee replied as under:

> "As regards your honour's query regarding allowability of depreciation of Rs.1,81,24,500 on acquisition of brand, it is respectfully submitted as under:

The aforesaid query, it appears, has been raised on the basis of the comments of the Special Auditor in para 4-4.2 on page 44 of the Special Audit Report. In the said para, the Special Auditors have mentioned that the edible oil brands were acquired by the assessee-company as part of demerger and vesting of the edible oil business into the assessee-company under the scheme of reorganization of Amrit Corp Limited (ACL) [formerly known as M/s. Amrit Banaspati Company Limited (ABCL)]. It is further observed that since the edible oil brands were self generated and existing at nil value in the books of the demerged company, the assessee-company (as a resulting company) ought to have recorded the acquisition of brand at nil value as per Explanation 7A to section 43(1) of the Act. The assessee- company had accordingly, it is further observed by the auditors, wrongly claimed depreciation of Rs.1,81,24,500 on the edible oil brands.

In response to the aforesaid, it is respectfully submitted that the Special Auditors have failed to correctly appreciate the scheme of reorganization and acquisition of edible oil brands by the assessee-company, as elaborated hereunder:

Your honour's kind attention in this regard is invited to Para- IV of the Scheme of Arrangement. On perusal of the same, your honour will kindly notice that that the Scheme of Arrangement involved two separate and independent transactions involving reorganization of ACL as under:

(a) Transfer of edible oil brand by ACL to the assessee- company for a total consideration of Rs.7.24 crores. As per para 14.4 of the Scheme, the said consideration was required to be discharged by the assessee-company in the form of issuance of shares;

(b) Vesting of edible oil business as an independent undertaking as part of the demerger of ACL (formerly ABCL).

The Special Auditors have, it is respectfully submitted, treated the aforesaid two separate and independent transactions as one transaction and failed to appreciate that transfer of edible oil brands was a separate and independent transaction and were not acquired by the assessee as part of demerger of edible oil business.

Since the assessee-company acquired edible oil brands for consideration of Rs.7.24 crores, such cost of acquisition was accordingly recorded as cost of brands in the books of account of the company and depreciation thereon was rightly claimed as per section 32(1)(ii) of the Act.

It may also be pertinent to mention here that M/s. ACL (formerly ABCL) also paid capital gains tax on transfer of edible oil brands.

In view of the aforesaid, it is respectfully submitted that the assessee has rightly claimed depreciation on edible oil brands acquired from ACL under the Scheme of Arrangement."

7. After considering the above stated reply of the assessee, the Assessing Officer observed that no edible oil brands were shown in the books of accounts of the demerged company. The Assessing Officer found that the value of edible oil brands just before the merger was NIL. Therefore, there is no block of intangible assets in the balance sheet of the demerged company. Referring to the provisions of section 2(19)AA of the Act, r.w. explanations thereon, the Assessing Officer came to the conclusion that the claim of depreciation by the assessee is not as per the provisions of the law. Depreciation claimed amounting to Rs. 1,81,24,500 /- was disallowed.

8. The assessee challenged the disallowance before the ld. CIT(A) and explained that the transfer of 'edible oil brands' and the demerger of 'edible oil undertaking' were two separate and independent transactions duly approved by the Hon'ble High Court. The ld. CIT(A) was convinced that the merger, as defined in section 2(19AA) of the Act also included transfer of part of an undertaking, as long as the same constitutes functioning business, the edible oil undertaking could function de hors 'the edible oil brand', and since the transfer of edible oil brand took place in exchange of consideration discharged by way of

issuance of shares, the assessee was eligible to claim depreciation and deleted the disallowance.

9. We have given thoughtful consideration to the orders of the authorities below. Before proceeding further, let us examine the provisions of section 2(19AA) of the Act alongwith Explanations and the same read as under:

> "2 (19AA) "demerger", in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956 (1 of 1956), by a demerged company of its one or more undertakings to any resulting company in such a manner that-
>
> (i) all the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of the demerger; (ii) all the liabilities relatable to the undertaking, being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger;
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> (ii) the property and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger;

(iv) the resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis;

(v) the shareholders holding not less than three-fourths in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company or companies by virtue of the demerger,

otherwise than as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company;

(vi) the transfer of the undertaking is on a going concern basis;

(vii) the demerger is in accordance with the conditions, if any, notified under sub-section (5) of section 724 by the Central Government in this behalf.

Explanation --For the purposes of this clause, "undertaking" shall include any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

Explanation 2-For the purposes of this clause, the liabilities referred to in sub-clause (ii), shall include- (a) the liabilities which arise out of the activities or operations of the undertaking:

(b) the specific loans or borrowings (including debentures) raised, incurred and utilised solely for the activities or operations of the undertaking; and

(c) in cases, other than those referred to in clause (a) or clause (b), so much of the amounts of general or multipurpose borrowings, if any, of the demerged company as stand in the same proportion which the value of the assets transferred in a demerger bears to the total value of the assets of such demerged company immediately before the demerger.

Explanation 3-For determining the value of the property referred to in sub-clause (iii), any change in the value of assets consequent to their revaluation shall be ignored.

Explanation 4.--For the purposes of this clause, the splitting up or the reconstruction of any authority or a body constituted or established under a Central, State or Provincial Act, or a local authority or a public sector company, into separate authorities or bodies or local authorities or companies, as the case may be, shall be deemed to be a demerger if such split up or reconstruction fulfils such conditions as may be notified in the Official Gazette, by the Central Government."

10. After giving thoughtful consideration to the aforementioned relevant section, we have to say that the meaning of the term 'demerger' is not to be construed as per the scheme of arrangement worked out by the assessee company. It is true that as per Explanation 1, undertaking can be a part of an undertaking or a unit or division of an undertaking or even a business activity. Therefore, the contention of the assessee that transfer of edible oil brands is independent to the transfer of edible oil undertaking is accepted.

11. It is true that the brand was transferred prior to the transfer of undertakings and it is equally true that separate considerations have been determined and paid in respect of transfer of brands and transfer of undertaking we find that on the date of transfer of brand, its value in the books of transferor company was NIL The assessee has determined the brand value at Rs.7.24 crores to be paid to the transferor company.

12. This consideration was discharged by the assessee by way of issue of 1640037 equity shares of Rs. 10/- each fully paid up at a premium of 34.20 totaling to Rs. 7,24,98,000/-. This value has been put subsequent to the demerger of edible oil brand. Explanation 3 to section 2(19AA) clearly says that for determining the value of property,

any change in the value of assets, consequent to their revaluation shall be ignored. Therefore, since the value of edible oil brand in the books of transferor company was NIL, any change in its value subsequently, has to be ignored.

13. For the sake of repetition, the assessee can transfer a unit or a division of an undertaking or a business activity and has rightly transferred the edible oil brand independently to the transfer of edible oil undertaking. But since the book value of edible oil brand on the date of the merger was NIL, therefore, any subsequent change in its value has to be ignored. Therefore, the claim of depreciation of Rs.1,81,24,500/- is not justified on the facts of the case r.w. relevant provisions of the Act.

14. Findings of the ld. CIT(A) are erroneous and deserve to be set aside and that of the Assessing Officer are restored. Ground Nos 1 to 5 taken together or allowed.

15. Before parting, strong contention of the assessee that the transferor company has paid capital gains tax is not relevant. Moreover, a perusal of the assessment order of the transferor company

exhibited at pages 96 to 104 of the paper book shows that the transferor company has declared long-term capital gain on the sale of brand at Rs. 7,24,98,000/– but nowhere in the assessment order, there is any mention of cost of acquisition. It appears that the entire sale consideration of Rs. 7,24,98, 000/– has been returned as long-term capital gain. This also proves that in the books of transferor company, value of edible oil brand was NIL. The assessee has also relied upon various judicial decisions which we find to be not relevant on the facts of the case in hand and hence not considered.

16. Ground No. 6 relates to deletion of addition of Rs. 10,27,867/- made on account of disallowance of royalty paid on brand “Gagan”.

17. The root cause for disallowance of the royalty amount of Rs.10,27,867/- is that since there was a total merger of Amrit Corp Ltd, brand ‘Gagan’ also stood transferred to the assessee and, therefore, there is no question of paying royalty to itself.

18. A perusal of the scheme of arrangement shows that while edible oil brands and edible oil undertaking were transfered on the merger, ‘Gagan’ brand was retained by Amrit Corp Ltd and this retention of brand by the transferor company was part of scheme of the merger.

We find that the Assessing Officer has not disputed the fact that Gagan brand was used by the assessee. Therefore, considering the facts we do not find any error in payment of royalty by the assessee for use of Gagan brand. We decline to interfere with the findings of the ld. CIT(A). Ground Nos. 6 and 7 stand dismissed.

19. Ground No. 8 relates to the deletion of addition of Rs. 20,16,369/- made on account of G.P. rate.

20. The main reason for the impugned addition is the fall in GP rate for the year under consideration by below 0.44% as compared to the immediately preceding A.Y. We find that the Assessing Officer has applied adhoc 0.15% on the total of manufacturing and trading turnover declared by the assessee by rejecting the books of accounts and alleged that the assessee had undervalued the closing stock of salt and rice.

21. When the matter was agitated before the ld. CIT(A), the ld. CIT(A) was convinced that the assessee has maintained an exhaustive accounting system of SAP software, duly supported by Wilson vouchers

and therefore the assessing officer was not justified in rejecting the books of account.

22. The ld. CIT(A) was also convinced with the explanation relating to the fall in GP and deleted the addition.

23. A careful perusal of the assessment order shows that taking a leaf out of the Special Auditor's Report, the Assessing Officer directed the assessee to justify the fall in GP rate from 5.11% to 5.5% as compared with the immediately preceding year. We find that when the assessee has pointed out error in the Special Auditor's Report, there was only a marginal fall of 0.27% as against 0.44% indicated by the Special Auditors. On perusal of the details we find that, it is incorrect to say that the assessee did not maintain proper books of account. Month-wise details of purchases and sales were provided along with valuation of closing stock. The Assessing Officer has rejected the books of accounts on the basis of allegations alleged by the Special Auditor.

24. The assessee has explained each and every step / stage from bargaining/receipt of material till the dispatch of finished goods is fully recorded in the books of account. The assessee has also

successfully explained the basis on which manufacturing data is fed into the SAP accounting system of the assessee. Actual quantity manufactured is fed in SAP. Thus, monitoring of production and consumption is inbuilt into the accounting system being followed.

25. Complete details of valuation of closing stock were furnished and such data was also prepared from exhaustive accounting of the assessee. The observations of the Assessing Officer were very general in nature and are purely based on assumptions and surmises without bringing any comparable case on record. We, therefore, do not find any reason to interfere with the findings of the ld. CIT(A). Ground No. 8 is accordingly dismissed.

26. In the result the appeal of the Revenue in ITA No. 4589/DEL/2018 is partly allowed.

The order is pronounced in the open court on 11.09.2023.

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

Dated: SEPTEMBER, 2023.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi