

Income Tax Appellate Tribunal - Mumbai

Amforge Industries Ltd, Mumbai vs Dcit Cir 3(1), Mumbai on 18 June, 2017

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ITA 3666/Mum/2014

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

Before Shri Mahavir Singh (JUDICIAL MEMBER)
AND
Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A.No.3666/Mum/2014
(Assessment year : 2007-08)

M/s Amforge Industries Ltd vs DCIT, Cir.3(1),Mumbai
1104A, Raheja Chambers
Nariman Point, Mumbai-21
PAN : AAACA8756A

APPELLANT

RESPONDENT

Appellant by Shri B.V. Jhaveri
Respondent by Shri Rajat Mittal

Date of hearing 27 -07-2017
Date of pronouncement 16- 08-2017

ORDER

Per G Manjunatha, AM :

This appeal filed by the assessee is directed against the order of the CIT(A)-5, Mumbai dated 20-03-2014 and it pertains to AY 2007-08.

2. The brief facts of the case are that the assessee company, engaged in the business of manufacturing of automobile forgings, filed its return of income for AY 2007-08 on 31-10-2007 declaring net loss of Rs.1,41,01,036. The case was selected for scrutiny and statutory notices u/s 143(2) and 142(1) of the Act were issued. In response to notices, authorized representative of the assessee appeared and filed necessary details, as called for. The assessment was completed u/s 143(3) on 30-12-2009 determining total income at ITA 3666/Mum/2014 Rs.2,87,52,890 inter alia making certain additions towards disallowance of expenditure incurred in relation to exempt income u/s 14A, penalty paid on interest on delayed payment of EPF and write off of sundry balances and creditors, etc. Aggrieved by the assessment order, the assessee preferred appeal before CIT(A).

3. Before CIT(A), assessee filed elaborate written submissions challenging additions made by the AO towards disallowance of expenditure u/s 14A, disallowance of penalty and interest on delayed payment of provident fund dues, and other additions made by the AO including disallowance of set off of brought forward business loss and unabsorbed depreciation against long term and short term capital gains. The CIT(A), after considering relevant submissions of the assessee partly allowed

appeal, wherein he has confirmed additions made towards interest paid on late payment of EPF. However, he has not adjudicated grounds 9 & 10 raised by the assessee challenging the action of AO of not setting off brought forward losses and unabsorbed depreciation of earlier years against assessed income. Aggrieved by the order of CIT(A), the assessee is in appeal before us.

4. The first issue that came up for our consideration is disallowance of Rs.9,36,676 being interest paid under the PF Act. The AO disallowed interest paid for delayed remittance of EPF on the ground that interest payable u/s 7Q ITA 3666/Mum/2014 of the Employee's Provident Fund Act, 1952 is penal in nature, therefore, it cannot be allowed as expenditure which is incurred wholly and exclusively for the purpose of business of the assessee. The assessee claims that interest paid on delayed remittance of EPF is not penal in nature, but it is compensatory in nature and, therefore, it is allowable u/s 37(1) of the Act.

5. Having heard both the parties and considered material on record, we find that the Hon'ble Karnataka High Court in the case of CIT vs Mysore Electrical Industries Ltd (1992) 196 ITR 885 (Kar) has considered similar issue and after analyzing the provisions of section 7Q of Employees Provident Fund & Miscellaneous Provisions Act, 1952 held that interest paid under the EPF Act is compensatory in nature and not a penalty; hence, it was deductible. Therefore, we are of the view that the interest paid u/s 7Q of the EPF Act, 1952 is an expenditure which is incurred wholly and exclusively for the purpose of business of the assessee and is allowable u/s 37(1) of the Income-tax Act, 1961. The CIT(A), without appreciating the facts, confirmed additions made by the AO. Hence, we reverse the findings of the CIT(A) and direct the AO to allow interest paid under the Provident Fund Act as deductible u/s 37(1) of the Income-tax Act, 1961.

6. The next issue that came up for our consideration is disallowance of set off of brought forward business loss and unabsorbed depreciation against long ITA 3666/Mum/2014 term and short term capital gain. The Ld.AR of the assessee at the time of hearing submitted that the CIT(A) did not adjudicate grounds 9 & 10 raised challenging the AOs action of not allowing set off of brought forward business loss and unabsorbed depreciation of earlier years against assessed income. We find that the CIT(A) dismissed grounds 9 & 10 raised by the assessee without giving any finding as to the allowability of brought forward business loss and unabsorbed depreciation of earlier years against assessed income by holding that the relief granted on various grounds exceeded assessed income and after giving appeal effect the income would finally be a loss and as such, the ground raised would become redundant.

7. We do not find any merits in the findings of the CIT(A) for the reason that the question of allowability of brought forward business loss and unabsorbed depreciation of earlier years has to be adjudicated in the light of the provisions of section 72A of the Income-tax Act, 1961 without going into the fact that whether the assessed income has resulted in loss or income. The CIT(A) without assigning any reasons, simply dismissed ground raised by the assessee. Therefore, we are of the view that the issue needs to be examined by the CIT(A) in the light of the grounds raised by the assessee in grounds 9 & 10 before CIT(A). Therefore, we set aside the issue to the file of the CIT(A) and direct him to adjudicate the same, as per law after giving opportunity of ITA 3666/Mum/2014 hearing to the assessee.

8. In the result, appeal filed by the assessee is allowed, for statistical purpose.

Order pronounced in the open court on 16th August, 2017.

Sd/-
(Mahavir Singh)
JUDICIAL MEMBER

sd/-
(G Manjunatha)
ACCOUNTANT MEMBER

Mumbai, Dt : 16th August, 2017

PK/-

Copy to :

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

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai