

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
' B' BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखासदस्य एवं श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष  
BEFORE SHRI ABRAHAM P.GEORGE, ACCOUNTANT MEMBER AND  
SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.1361/CHNY/2015  
निर्धारण वर्ष /Assessment year : 2006-2007.

M/s. Schwing Stetter (India)  
Private Limited,  
Plot No.F-71, SIPCOT  
Industrial Park,  
Irungattukottai,  
Sriperumbudur Taluk,  
Kancheepuram Dist.  
Pin 602 105.

**Vs.** The Deputy Commissioner of  
Income Tax,  
Large Tax Payer Unit,  
Chennai 600 034.

**PAN AADCS 5069D**  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Shri.R. Vijayaraghavan, Advocate.  
: Shri. Guru Bashyam, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 02-01-2019

घोषणा की तारीख /Date of Pronouncement

: 03-01-2019

**आदेश / ORDER**

**PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER:**

Assessee in this appeal, which is directed against an order dated 09.01.2015 of Id. Commissioner of Income Tax (Appeals)-VII, Chennai has taken altogether six grounds of which ground No.1 is general needing no specific adjudication.

**2.** Ground No.2 raised by the assessee reads as under:-

*“2. Disallowance of Share Issue Expenditure- Rs.1,19,672/-*

- a. The learned CIT(A) erred in holding that the expenditure incurred in increasing the Share capital is not deductible u/s 35D of the Income Tax Act, 1961.*
- b. The Learned CIT(A) ought to have appreciated that, fees paid to Registrar of companies is for the purpose of increasing the Share capital for extension of industrial unit.*
- c. Further, the Learned CIT(A) failed to appreciate the fact that sec 35D also applies for such substantial expansion of undertaking.*
- d. The learned CIT(A) having admitted that there was an expansion of industrial undertaking erred in holding that the fees paid is not deductible u/s 35D”.*

**3.** Ld. Counsel for the assessee submitted that assessee had incurred share issue expenditure of ₹5,98,360/- of which 1/5<sup>th</sup> was claimed as deduction u/s.35D of the Income Tax Act,1961 (in short ‘the Act’). As per the Id. Authorised Representative, Id. Assessing Officer did not allow the claim, taking a view that assessee had not established any new industrial undertaking nor had expanded its existing industrial undertaking. As per the Id. Authorised Representative, the said view of the Id. Assessing Officer was confirmed by the Id. Commissioner of Income Tax (Appeals) on assessee’s appeal. Contention of the Id. Authorised Representative

was that audited financial statement of the assessee for the year ended 31<sup>st</sup> December, 2006 proved substantial expansion of the production capacity of the assessee. According to him, assessee having expanded its existing industrial undertaking, was eligible for claiming deduction u/s.35D of the Act.

**4.** Per contra, Id. Departmental Representative strongly supported the orders of the lower authorities.

**5.** We have considered the rival contentions and perused the orders of the authorities below. For its claim that there was substantial expansion of the industrial undertaking, assessee has relied on its audited accounts for the year ended 31<sup>st</sup> December, 2006. However, assessee for its accounting purpose was following calendar year as its financial year. Id. Authorised Representative was unable to clarify whether the expansion claimed by the assessee had happened before 1<sup>st</sup> April, 2006 or after the said date. Once the assessee is claiming that there was an expansion of industrial undertaking, onus lies on the assessee to prove such claim. Assessee having failed to do so, we are of the opinion that lower authorities were justified in denying the claim u/s.35D of the Act. Ground No.2 of the assessee stands dismissed.

**6.** Ground No.3 raised by the assessee reads as under:-

*"3. Disallowance of excise duty element on warranty - Rs.18,10,764/-*

- a. The learned CIT(A) erred in wrongly understanding that the debit in respect of excise duty for materials issued on warranty constitutes provision and not actual expenditure.*
- b. The learned CIT(A) ought to have appreciated that the details and written submissions made by the appellant establish that the excise duty relates to materials issued on warranty, which are removed from the factory and the claim relates to expenditure actually incurred".*

**7.** Ld. Counsel for the assessee submitted that assessee had manufactured goods required under warranty provision and had paid excise duty thereon. According to him, by virtue of Section 43B of the Act, assessee could claim such excise duty payment as an allowable expenditure. As per the Id. Authorised Representative, lower authorities had taken a view that warranty goods would not attract excise duty till the customer invoked the warranty. As per the Id. Authorised Representative, this view taken by the lower authorities was incorrect. According to him, goods having been manufactured and moved out to stock, assessee could claim excise duty payment u/s.43B of the Act.

**8.** Per contra, Id. Departmental Representative strongly supported the orders of the lower authorities.

**9.** We have considered the rival contentions and perused the orders of the authorities below. It might be true that warranty goods manufactured by the assessee, on which it had claimed excise duty as allowable u/s.43B of the Act, remained with the assessee till the warranties were invoked by the customers. However, it is not disputed that warranty goods stood manufactured by the assessee. Assessee had also paid the excise duty thereon to the exchequer. Once the assessee had effected payment of the excise tax, in our opinion assessee could not have been denied the claim u/s.43B of the Act. We therefore set aside the orders of the lower authorities and allow the claim of ₹18,10,764/-, being excise tax paid on warranty goods. Ground No.3 of the assessee stands allowed.

**10.** When ground No.4 is taken, Id. Counsel for the assessee submitted that he was not pressing this ground. Accordingly, ground No.4 is dismissed as not pressed.

**11.** Ground No.5 raised by the assessee reads as under:-

*"5. Disallowance of Prior period Items -Rs.3,92,473/-*

- a. The Prior period items consists of the sales tax payment of Rs.2,23,903/- and Rs.1,68,570/- pertains to prior period expenses accounted during the year.*
- b. The learned CIT(A) ought to have appreciated that, out of the prior period items, an amount of Rs.2,23,903/- relate to sales tax*

*assessment and represents sales tax actually paid during the year.*

- c. The learned CIT(A) failed to appreciate the fact that section 43B provides for deduction of expenses on tax or duties on actual payment basis”.*

**12.** Ld. Counsel for the assessee submitted that prior period expenditure claimed by the assessee included sales tax payment of ₹2,23,903/-. According to him, the said sales tax dues arose out of a sales tax assessment completed during the relevant previous year. According to him, sales tax of ₹2,23,903/- paid by the assessee ought have been allowed under Section 43B of the Act.

**13.** Per contra, Id. Departmental Representative strongly supported the orders of the lower authorities.

**14.** We have considered the rival contentions and perused the orders of the authorities below. Ld. Assessing Officer had disallowed the claim of prior period expenditure noting that assessee had not given any details thereon except for stating as under:-

*“Prior year expenses shown in Form 3CD consist of expenses related to prior years debited to various expenses accounts. These amounts were not transferred from concerned ledger accounts to prior year expenses account. Prior year expenses account comprises of amount paid to Sales tax department on completion of assessment”.*

Even before the Id. Commissioner of Income Tax (Appeals), it seems, assessee did not provide any details. Now the claim before us is that part of the expenditure was sales tax dues actually paid during the previous year relevant to the impugned assessment year. Considering the facts and circumstances, we are of the opinion that the issue can be verified afresh by the Id. Assessing Officer. We set aside the orders of the authorities on the issue of allowability of the claim of prior period expenditure of ₹3,92,473/- and remit it back to the file of the Id. Assessing Officer for consideration afresh in accordance with law. Ground No.5 of the assessee is allowed for statistical purposes.

**15.** Ground No.6 of the assessee reads as under:-

*“6. Disallowance of expenditure towards gift- Rs.11,20,515/-*

- a. The learned CIT(A) ought to have appreciated that the expenditure towards gifts pertains to marriage gift, Diwali gifts and farewell gifts.*
- b. While dismissing the issue, the learned CIT(A) erred in not considering the decision given in the case of 'CIT(A) vs Avery cycle Industries Limited (2006) 206 CTR P H 347, 2008 296 ITR 393 PH' (copy enclosed), relied upon by the appellant.*
- c. The learned CIT(A) erred in not noting that the appellant has also paid Fringe Benefit Tax on the expenditure”.*

**16.** Ld. Counsel for the assessee submitted that gifts were given to various customers and assessee had furnished all details of such

gifts. According to him, these gifts were given for commercial expediency and the expenditure was incurred solely for the business of the assessee. Reliance was placed on the break up of expenditure placed at paper book pages 52 to 54. According to him, individual expenditure were all small except for one item of ₹1,87,380/-, which was incurred in relation to sales promotion. Thus, as per the Id. Authorised Representative, the claim ought not have been disallowed.

**17.** Per contra, Id. Departmental Representative strongly supported the orders of the lower authorities.

**18.** We have considered the rival contentions and perused the orders of the authorities below. Reason why Id. Commissioner of Income Tax (Appeals) confirmed the disallowance for expenditure towards gift is reproduced hereunder:-

*"I perused the list of ledger break-up of gift expenses provided by the appellant during the appeal proceedings in the paper book. The entries show wide range of debits varying from Rs.150/- to Rs.1,00,000/- without any details, except 'TRFR TO GIFT', 'GIFT FOR CUSTOMER', 'DIWALI GIFT', "TRFR FROM MISC. EXP", TRFR FROM ENTERT, GIFT EXP. DBTD TO SALES PRO-TSFRD', 'WEDDING GIFT', MARRIAGE GIFT', 'GIFT FOR VENDOR', etc. On 31.03.2006 alone amongst so many other debit entries pertaining to Gift, amounts of Rs.1,89,380/-, Rs.3,51,093/-, Rs1,00,000/-, Rs.75,000/- and Rs.50,000/- have also*

*been shown as Gift expenses. The appellant had not produced any other details and documents either before me or the AO, to elicit confidence in the veracity of the claim. Except the list of debit entries said to be pertaining to Gift expenses, nothing was produced during the course of appeal proceedings to establish that the amounts were spent wholly and exclusively for the purposes of business or profession. Similarly the details and nature of the gift expenses and their relation and relevance with the business have not been' proved by the appellant. A cursory look at the information available in the list of gift amount debit entries shall not fail to evoke doubts and cast aspersions on the bonafides of the claim of the appellant. Therefore, the AO is right in treating the expenditure toward's gifts as not incurred wholly and exclusively for the purpose of business and in treating the same as expenditure of personal in nature. Thus the gift expenditure of Rs.11,20,515/- does not qualify to be allowed u/s 37 of the Act in computing the income chargeable under the head "Profits and Gains of business of profession".*

Ld. Commissioner of Income Tax (Appeals) has specifically noted that except for the list of the debit entries, assessee did not produce any evidence to show that the expenditure was incurred wholly and exclusively for the purpose of business. In other words assessee could not show the business expediency of the gifts, nor could identify the recipients. In such circumstances, the claim was rightly disallowed by the Id. Assessing Officer. We do not find any reason to interfere with the orders of the authorities below. Ground No.6 of the assessee is dismissed.

**19.** In the result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced on Thursday, the 3rd day of January, 2019, at Chennai.

**Sd/-**

(जॉर्ज माथन)

**(GEORGE MATHAN)**

न्यायिक सदस्य/JUDICIAL MEMBER

**Sd/-**

(अब्राहम पी. जॉर्ज)

**(ABRAHAM P. GEORGE)**

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 03 January, 2019.

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |