

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

ITA Nos.561 & 562/Ind/2018

Assessment Years: 2012-13 & 2014-15

ACIT, Circle-1(1), Ujjain	Vs.	Ms Parag Fans & Cooling System Pvt. Ltd, Plot No.1/2, A.B, 1B/3A, Industrial Estate No.1, A.B. Road, Dewas (MP)
(Revenue)		(Appellant)
PAN No.AACCP1895K		

Revenue by	Shri Harshit Bari, Sr.DR
Appellant by	Shri S.S. Deshpande, CA
Date of Hearing	07.01.2021
Date of Pronouncement	09.02.2021

ORDER

PER MANISH BORAD, AM.

The above captioned appeal filed at the instance of revenue pertaining to Assessment Years 2012-13 & 2014-15 are directed against the order of Commissioner of Income Tax (Appeals) (in short 'Ld.CIT'], Ujjain evenly dated 21.03.2018, which are arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act')

ITA Nos.561 & 562/Ind/2018
Parag Fans Cooling System Pvt. Ltd

dated 27.03.2015 and 26.12.2016 framed by DCIT-1(1) and ACIT-1(1), Ujjain respectively.

2. Revenue has raised following grounds of appeal :-

ITA No.561/Ind/2018 Assessment Year 2012-13

(i) *Whether in the facts and in the circumstances of the case, Ld. CIT(A) was justified in directing to allow the brought forward losses and unabsorbed depreciation of Rs. 26,63,698/- as the same is not claimed in the return of income.*

(ii) *Whether in the facts and in the circumstances of the case, Ld. CIT(A) was justified in deleting the disallowance of Rs. 58,24,000/- made on account of belated bad debts.*

(iii) *Whether in the facts and in the circumstances of the case, Ld. CIT(A) was justified in deleting the disallowance of Rs. 1,08,95,467/- made on account of commission expenses.*

The appellant reserves his right to add, amend or alter the grounds of appeal on or before the date; the appeal is finally heard for disposal.

ITA No.562/Ind/2018 Assessment Year 2014-15

(i) *Whether in the facts and in the circumstances of the case, Ld. CIT(A) was justified in directing the disallowance of Rs.1,03,81,727/- made on account of commission expenses.*

(ii) *Whether in the facts and in the circumstances of the case, Ld. CIT(A) was justified in deleting the disallowance of Rs. 4,17,302/- made on account of*

ITA Nos.561 & 562/Ind/2018
Parag Fans Cooling System Pvt. Ltd

belated payment of SCIC and EPF contribution of employees.

(iii) Whether in the facts and in the circumstances of the case, Ld. CIT(A) was justified in deleting the disallowance of Rs. 25,95,609/- made on account of expenses u/s 40(a)(ia).

(iv) Whether in the facts and in the circumstances of the case, Ld. CIT(A) was justified in deleting the disallowance of Rs. 58,24,000/- made on account of bad debts.

3. As the issues raised in these appeals pertains to the same assessee and the issues raised are mostly common, all these appeals are being disposed off by this common order for the sake of convenience and brevity on the request of both the parties.

4. The brief facts of the case as culled out from the records are that the assessee is engaged in manufacturing of cooling fan parts. Assessee filed its return declaring income of Rs. Nil for Assessment Year 2012-13 & 2014-15 on 01.10.2012 and 27.09.2013 respectively. The case was selected for scrutiny and notices u/s 143(2) OF THE Act was issued on 21.08.2013 for Assessment Year 2012-13 and on 28.8.2015 for Assessment Year 2014-15. The assessment for Assessment Year 2012-13 was completed on 27.03.2015 u/s 143(3) of the Act for 2012-13 at Rs.2,01,47,200/- after adding various disallowances. For Assessment Year 2014-15

ITA Nos.561 & 562/Ind/2018
Parag Fans Cooling System Pvt. Ltd

the income was assessed u/s 143(3) of the Act on 26.12.2016 at Rs.2,67,25,902/- after adding various disallowances. Aggrieved assessee preferred appeal before Ld. CIT(A) and partly succeeded. Now the Revenue is in appeal before the Tribunal.

5. At the outset Ld. Departmental Representative supported the order of Ld. A.O.

6. Per contra Ld. Counsel for the assessee with regard to the disallowance of commission expenses deleted by Ld. CIT(A) submitted that the issue is squarely covered by the decision of this Tribunal in assessee's own case for Assessment Year 2011-12 in ITA No.372/Ind/2016 dated 11.08.2017. With regard to the remaining issues reliance was placed on the finding of Ld. CIT(A).

7. We have heard rival contentions and perused the records placed before us.

8. As regards the common issue of disallowance of commission expenses at Rs.1,08,95,467/- and Rs.1,03,81,727/- raised by the revenue through Ground No.3 for Assessment Year 2012-13 and Ground No.1 for Assessment Year 2014-15, we find that the genuineness of claim of similar type of commission expenses was in

ITA Nos.561 & 562/Ind/2018
Parag Fans Cooling System Pvt. Ltd

challenge before this Tribunal in assessee's own case for Assessment Year 2011-12 wherein the Tribunal vide its order dated 11.8.2017 in ITA No.372/Ind/2016 after considering the relevant facts which are identical to the facts of the instant appeal before us deleted the disallowance of commission holding them to be wholly and exclusively for business purposes observing as follows:-

7. We have considered the facts and circumstances of the case and find that the assessee company is doing manufacturing of various kinds of industrial products such as FRP Axial Flow Fans, FRP Seal Disc, FRP Fan Stacks, FRE Fill Hangers which are being used in various power plants, steel plant, coal mines and other heavy industries. The company has started in the year 1991 however it has been incurring heavy loss during the earlier years. It is seen that the company entered into sale agreement on February, 9, 2008 with M/s B-3 Projects & Consultants, Nagpur with the condition that if the sales/turnover of the assessee company is achieved the minimum target of 5.50 crores, then the sole distributor shall be eligible for commission. Since, during the assessment year under consideration, sales have increased to Rs.7.23 crores, therefore the assessee company had paid the commission of Rs.64,16,013/- during the year to M/s B-3 Projects & Consultants, Nagpur. It is also noticed that Shri Sandeep Barjatya, Director of the distributor company M/s B-3 Projects & Consultants, Nagpur has appointed as Director from 10.12.2008 of the assessee company with, share holding of 15%. After appointment of the sole

distributor the sales of the assessee company were increased from 5.11 crores to 7.23 crores during the current year giving rise to 41% and in terms of amount of 2.12 crores. This is because of the services entered by M/s B-3 Projects & Consultants, Nagpur the turnover of the company raised to 2.12 crores as compared to preceding year. Therefore, commission of Rs.64.16 lakhs paid on total turnover which comes to 8.8% cannot be treated as excessive. The disallowance the payment of commission on the ground that no such commission was paid in earlier years, cannot be considered as valid basis, as we find from the details submitted and agreement dated 9.2.2008 that the sales target assigned to the distributor of Rs.5.5 crores was not achieved in earlier years in terms of agreement, therefore there was no payment of commission in the earlier years. The AO has over looked this aspect of the agreement , therefore the disallowance of commission made by the AO is not justified. It is also not the case of the AO that the commission payment was not genuine and there was diversion of profit. As we find from the paper book page No.42 to 43 which are the copies of the profit and loss account and income tax computation of income of M/s 83 Projects and Consultants Pvt. Ltd, according to which the agent company had shown income of Rs. 20,60,850/-. Therefore it is clear that the commission agent is assessed to tax and shown such business Income, therefore the identity of the, commission agent is also proved. In such circumstances as stated above, the increase in turnover of the assessee company and the agreement was existed from 2008, we are of the considered view that the payment of commission on account of sales promotion of business is allowable as held by the Hon'ble Rajasthan High Court in the case of ITO V/s Laxmi Engineering

*Industries 298 ITC 203 (Raj.). The Ld. Counsel also placed reliance in the case of DCIT V/s Microtex Seperators Ltd. 293 ITR 451 (Kar.) wherein the tribunal found that the sister company was the sole distributor agent for several years and had sole selling agent of the assessee company provided for payment of commission at 10% not on the net entire amount after giving deductions. Taking into consideration of these aspects of the matter allowed entire 10 of bill the appeal before Hon'ble High Court while dismissing the appeal that taking into consideration the long standing relationship and also taking into consideration the reputation of the assessee and the agent also in consideration there was no intention to evade the tax rightly allowed to taken of entire commission. Seeing to the facts of the present case, we are of the view that even though it was not a sister concern at the. time of entering in to the agreement, has paid commission for rendering services which has resulted in increase of turnover by 2.12 crores. Similarly in the case of Pure Pharma Pvt. Ltd V/s CIT (supra) Wherein the commission was paid to government and its agencies and all the payment were made to the various parties through cheques / demand draft and the expenditure was found incurred for business purposes it was held that Such expenditure were allowable and consequently the addition was deleted. Thus on the facts and circumstances and the tribunal pronouncements as cited by the assessee, we did not find any justification for disallowance of commission which was wholly and. exclusively for business purposes is allowed as deduction of Rs.59,90,620/- towards commission payment. Accordingly the ground of appeal is **allowed**.*

8. *In the result, the appeal of the assessee is **allowed**.*

9. The above finding of this Tribunal in assessee's own case for Assessment Year 2011-12 is squarely applicable on the issues raised before us in Ground No.3 for Assessment Year 2012-13 and Ground No.1 for Assessment Year 2014-15 and Ld. Departmental Representative failed to controvert this fact by bringing any contrary material on record. We therefore respectfully following the decision of this Tribunal, confirm the finding of Ld. CIT(A) deleting commission disallowance at Rs.1,08,95,467/- and Rs. 1,03,81,727/- for Assessment Years 2012-13 and 2014-15 respectively and accordingly dismiss Ground No.3 for Assessment Year 2012-13 and Ground No.1 for Assessment Year 2014-15.

10. Now we take up next common issue raised by the revenue in Ground No.2 for Assessment Year 2012-13 and Ground No.4 for Assessment Year 2014-15 challenging the finding of Ld. CIT(A) deleting the disallowance of bad debts of Rs.58,24,000/- each in both the years.

11. From perusal of the records and the orders of lower authorities we find that in the audited balance sheet as on 31.3.2012, para of the notes to accounts reads as follows:-

“Out of the total loans and advances of Rs.2,96,06,398/- appearing in the balance sheet as on the last day of the year amount of Rs.2,33,02,571/- is considered as irrecoverable and hence the management has decided to write off of the same in a period of 4 years. Accordingly Rs.58,25,000/- has been written off during the year”

12. We further observe that the assessee has debited the above stated amount of Rs.58,25,000/- as an expenses under the head “extra ordinary item” in the name of account written off. Similar amount has also been claimed during the assessment year 2014-15.

13. During the assessment proceedings Ld. A.O disallowed this claim observing that the alleged amount was a write off of outstanding balance of loans and advances and since the assessee is not engaged in the business of providing loans and advances such claim cannot be allowed as Bad Debts. When the matter travelled before Ld. CIT(A), he deleted the disallowance for both the years placing reliance on the judgment of Hon'ble Supreme Court in

the case of *T.R.F. Ltd v. CIT 190 Taxman 391(SC)* and was of the view that since the assessee has written off the amount in the books of accounts should be allowed.

14. We however on perusal of the judgment of Hon'ble Supreme Court in the case of *T.R.F. Ltd v. CIT 190 Taxman 391(SC)(supra)* find that the Hon'ble court has also made following observation:-

“ When bad debts occurs, the bad debt amount is debited and the customer's account is credited. In the case of companies, the provision is deducted from sundry debtors”

15. In the above observation of the Hon'ble Apex Court two important words are customers and sundry debtors. The bad debt which the assessee company wants to claim as an expenditure needs to be reduced from sundry debtors. As per the accounting principles when at the end of the financial year unrealised sales are shown under the head sundry debtors. In other words sales effected but consideration not received up to the end of financial year are shown as sundry debtors. From going through the finding of Ld. CIT(A) we find that no efforts have been made by Ld. CIT(A) to examine the fact that whether the alleged amount claimed to be bad

debts by the assessee are in the nature of sales made in the preceding years, or “loans and advances”. If the alleged amount are part of sales effected during the year or in the preceding year and they have become bad and doubtful, such claim may be allowed if the assessee has written off in its books of accounts crediting the customer account but in case it is a loans and advances which have become bad then the assessee will have to claim it under the head of “business loss” by showing that the same were given in the course of business. Since Ld. CIT(A) has not examined this aspect we restore the issue of disallowance of bad debt for Assessment Year 2012-13 and 2014-15 raised by the revenue in Ground No.2 & 4 respectively to the file of Ld. CIT(A) who shall carry out necessary exercise to examine the aspect as to whether the alleged debts were part of the sales effected by the assessee or were reflected in the Profit & Loss account of during the year under appeal or earlier year as “loans and advances” and should decide accordingly as per the discussions made above. Thus both these grounds are allowed for statistical purposes.

16. Now we take up Ground No.1 for Assessment Year 2012-13

through which the revenue has challenged the action of Ld. CIT(A) allowing the claim of brought forward losses and unabsorbed depreciation at Rs.26,63,698/-.

17. Brief facts relating to this issue that as claimed by the assessee before Ld. CIT(A) with some brought forward losses of unabsorbed depreciation which the assessee has mentioned in the return of income and after claiming the same against the income for the year has shown as NIL income. However Ld. A.O while computing the assessee's income has adopted the income as per returned before set off of losses. The same was challenged by the assessee before Ld. CIT(A) who allowed the ground of the assessee directing the Ld. A.O to grant the benefit of brought forward and unabsorbed depreciation and carry forward if any.

18. We on perusal of record find that computation of income for Assessment Year 2012-13 is not placed on record. The return of income of preceding years from which the business losses and unabsorbed depreciation loss are being brought forward are also not placed on record. No specific finding is given in this regard by Ld. A.O. Under these given facts and circumstances of the case we

are of the considered view that the issue needs to be set aside to the file of Ld. A.O for afresh examination. In case the assessee has legally and rightfully claimed the set off of unabsorbed business loss and unabsorbed depreciation loss and the return of income of the years in which such loss was shown have been filed on the due dates u/s 139(1) of the Act then the assessee deserves to get the benefit of set off. Ground No.1 of the revenue is thus allowed for statistical purposes.

19. Now we take up Ground No.2 of revenue's appeal for Assessment Year 2014-15 through which the revenue has challenged the finding of Ld. CIT(A) deleting the disallowance of Rs.4,17,302/- made on account of belated payment of ESIC and EPF contribution.

20. We find that there occurred some delay on the part of the assessee in depositing the ESIC and EPF contribution of employees. However this is not in dispute that the total amount of employees contribution was deposited in Treasury before the due date of filing of return of income i.e. 30.11.2014. Under these given facts and circumstances Ld. CIT(A) deleted the disallowance observing as

ITA Nos.561 & 562/Ind/2018
Parag Fans Cooling System Pvt. Ltd

follows:-

Ground No.5:- Through this ground of appeal the appellant has challenged the addition of Rs4,17,302/- on account of disallowance of EPF and ESIC late deposit. The appellant made the above payments before filing of return of income. The above expenditure is allowable expenditure in view of Hon'ble ITAT, Indore's decision in the case of Asst. CIT v .Indira Export Pvt Ltd. (201 3) 21 ITJ 372 (Trib. - Indore)- Employees contribution to provident Fund- Employees contribution to Provident Fund –Employees contribution to Provident Fund - Deletion of second proviso to section 43B- HELD-In view of CIT v Alom Extrusions Ltd. (2010) 14 ITJ 133(SC), deletion of second proviso is retrospective-Therefore, even if employees contribution is deposited before due date of filing of return, same is allowable. Therefore, the addition made by the AO amounting to Rs.4,17,302/- is deleted. Therefore, the appeal on this ground is Allowed.

21. Ld. Departmental Representative could not controvert the finding of Ld. CIT(A) by filing any other judgment in its favour. We therefore find no reason to interfere in the finding of Ld. CIT(A) which have been arrived at after placing reliance on applicable judicial pronouncements. Thus Ground No.2 of revenue for Assessment Year 2014-15 is dismissed.

ITA Nos.561 & 562/Ind/2018
Parag Fans Cooling System Pvt. Ltd

22. Now we take up Ground No.3 for Assessment Year 2014-15 wherein the Revenue has challenged the finding of Ld. CIT(A) deleting the disallowance of Rs.25,95,609/-made by the Ld. A.O applying provisions of section u/s 40a(ia) of the Act. Brief facts relating to this ground are that the company has settled loan received from Technology Information, Forecasting and Assessment Council (In short 'TIFAC'). The assessee claimed said loan be interest free. However Ld. A.O on going through the memorandum of Settlements came to the conclusion that there was an inbuilt amount of interest of Rs.21.12 lakhs proposed in the agreement itself and further while making settlement before the court an amount of Rs.4,83,609/- was added on account of interest. Since no tax was deducted at source by the assessee total amount of Rs.25,95,609/- is disallowed u/s 40a(ia) of the Act. The matter was taken up by the assessee before Ld. CIT(A) which resulted in success against which the revenue is in appeal before the Tribunal.

23. Ld. Counsel for the assessee supported the finding of Ld. CIT(A).

24. As mentioned above this disallowance was made for the alleged non deduction of tax at source on the alleged amount of interest of Rs.25,95,609/-. We find that Ld. CIT(A) deleted this addition observing as follows:-

1.

Ground No,6: *Through this ground of appeal the appellant has challenged the addition of Rs.25,95,609/~ on account of disallowance of interest payment without TDS. The AO observed that during the year, the Company settled a loan received from TIF AC (Technology Information, Forecasting and Assessment council) along with interest of Rs.25,95,609/~. The AO observed that TIFAC is a society registered under the Societies Registration Act of 1860. Therefore, any payment towards interest is subject to deduction of tax at source under section 194A of the Act. In absence of the same, the entire such expenditure is required to be disallowed in terms of provisions of section 40a(ia) of the IT Act Therefore, he added a sum of Rs.25,95,609/~ under the total income of the appellant.*

The Company has not claimed any expenditure towards payment of interest under its profit and loss account to TIFAC. The appellant claimed following expenditure towards interest under its profit and loss account as detailed under the financial accounts:

i.	Bank commission and Charges	Rs.6,09,095
ii.	Foreign Bank Charges on Realization	Rs. 17,423
iii.	Interest on Car Loan	Rs.4,19,939
iv.	Interest on CC Limit	Rs. 38,37,594
v.	Interest to NSIC	Rs.2,16,054

vi. *Interest to others* Rs. 8,808

The company has not claimed any expenditure towards payment of interest of Rs.25,95,609/- to TIFAC. The AO has made the addition without any basis because, the appellant has not debited such amount. Therefore, the addition made by the AO amounting to Rs.25,95,609/- is Deleted. Therefore, the appeal on this ground is Allowed.

25. After going through the above finding of Ld. CIT(A) and as submitted by Ld. Counsel for the assessee we find that the assessee has not shown expenditure of Rs.25,95,609/- in its Profit & Loss account. Since no such expenditure has been claimed by the assessee against the revenue for the year and this fact remains undisputed at the end of both the parties, then in such situation the disallowance made u/s 40a(ia) of the Act is uncalled for. We thus find no reason to interfere in the finding of Ld. CIT(A) who has rightly deleted the disallowance based on the facts of the case. We accordingly dismiss Ground No.3 for Assessment Year 2014-15 raised by the Revenue.

ITA Nos.561 & 562/Ind/2018
Parag Fans Cooling System Pvt. Ltd

26. In the result appeals of the Revenue in ITA Nos. 561 & 562/Ind/2018 for Assessment Years 2012-13 & 2014-15 are partly allowed for statistical purposes.

The order pronounced in the open Court on 09.02.2021.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

नांक /Dated : 09 February, 2021

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)
concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore