



\$~7

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of Decision: 14.11.2024

+ ITA 463/2024

THE PR. COMMISSIONER OF INCOME
TAX -4 NEW DELHI

.....Appellant

Through: Mr Shlok Chandra, SSC with Ms
Nancy Jain and Ms Madhavi Shukla,
Advocates.

versus

M/S G-TEKT INDIA PVT. LTD.

.....Respondent

Through: Mr Vishal Kalra, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

VIBHU BAKHRU, J. (Oral)

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 [hereafter **the Act**] impugning an order dated 19.07.2023 passed by the learned Income Tax Appellate Tribunal [hereafter **the ITAT**] in ITA No.5922/Del/2018 captioned **G-Tekt India Pvt. Ltd. v. DCIT**. The said appeal was preferred by the respondent (Assessee) assailing an order dated 18.06.2018 passed by the learned Commissioner of Income Tax (Appeals)-35, New Delhi [**CIT(A)**] in Appeal No.534/2016-17, which in turn was filed by the Assessee assailing an assessment order dated 26.12.2016 passed under Section 143(3) of the Act.

2. The Assessee is engaged in the business of manufacturing and sale of automotive parts and components. The Assessee had filed its return in



respect of AY 2014-15 declaring a loss of ₹28,09,72,605/-. It is also material to note that the Assessee was incorporated on 23.11.2011 and thus, the financial year (FY) 2013-14 was effectively the second year of its operations.

3. The Assessing Officer [AO] had found that the loss as declared had arisen on account of transactions of purchase and sale of tools and dies, which were used for cars manufactured by Honda Car India Ltd. [hereafter **HCIL**]. The assessee company was an OEM (original equipment manufacturer) supplier to HCIL and there is no dispute that the Assessee required the dies for manufacturing the automotive parts, which were to be supplied to HCIL. The Assessee had procured tools and dies for automotive parts from two entities – an Indian company, named, Honda Trading India Pvt. Ltd. [hereafter **HTIPL**] and a company in Thailand named Tri Inter Thailand Company Ltd. [hereafter **TITC**].

4. There is no cavil as to the transactions relating to the purchase of dies from the said two entities. However, the AO had doubted the transactions of sale of the said dies to HCIL at a price lower than the purchase consideration paid by the Assessee. Admittedly, the Assessee had sold the said dies to HCIL, which were thereafter handed over to the Assessee for manufacturing the automotive parts. According to the Assessee, bulk of the loss was related to the dies procured from TITC, which the Assessee quantified at ₹14.51 crores (out of a total loss of ₹22.99 crores).

5. It is the Assessee's case that it was necessary for the Assessee to



procure the dies at its own cost for carrying on its business. In terms of the business arrangement, the Assessee was required to transfer the ownership of the dies in question to HCIL, which it had done. HCIL had purchased the dies at a negotiated price.

6. The learned AO had found that the said transaction was a sham transaction and the Assessee's loss from the said transaction was, thus, an artificial loss. The said conclusion was founded on the basis that HTIPL was a "sister concern" of HCIL and there was no necessity for the Assessee to have first sold the tools and dies to HCIL and then receive it back for manufacture of the parts. Paragraph 6.3 of the assessment order, which sets out the reasoning of the AO is set out below:

"6.3 In respect of the said loss, the assessee company was show caused as to why the said loss must not be disallowed being sham transaction on the following grounds;

- a. Majority of the traded goods (tools and dies) were purchased from M/s Honda Trading Corporation India Pvt. Ltd. i.e. a sister concern of HCIL to whom these products were ultimately sold at a loss. The supplier to assessee and the purchaser both belonged to the same business group and in ordinary course should have been aware of the commercial caveats including the price of traded goods. The submission of the assessee that HCIL had lower quotes remains unsubstantiated and untenable.
- b. There could have been no necessity to have first sold the tools and dies to HCIL and then to have received them back for manufacture of parts. The whole transaction thus seemed to be a colorable device."

7. The Assessee had responded to the said allegation. The Assessee had



explained that it had requested HCIL to provide the dies as that was found to be commercially expedient and would also mitigate its risks. However, HCIL had asked the Assessee to provide quotation for the dies and also get the dies manufactured. The Assessee submitted that HCIL had also obtained quotation for manufacture of dies from other parties and had restricted the sale consideration payable to the Assessee based on the quotations received by it from other parties. The Assessee had accepted the same as the prospect of manufacturing the parts as an OEM for HCIL was considered as profitable, notwithstanding the initial loss that the Assessee may suffer on account of sale of dies.

8. However, the AO did not accept the said contention, which is evident from paragraph 6.5 of the assessment order, which reads as under:

“6.5 The submission of the assessee has been considered but has been found unacceptable on the following grounds-

- a. That in ordinary course, it would have been HCIL who would have purchased tools and dies. However, only for this transaction, assessee was compelled to deviate from this ordinary course of business practice. No reasons have been given for this one time exception made by the assessee.
- b. That assessee's assertion that HCIL had lower quotes is yet unsubstantiated as no business correspondence to this effect has been submitted before the undersigned. In ordinary course, particularly when the subject products had to be purchased from a sister concern of HCIL and HCIL would have been aware of the prevailing prices of the goods, it seems highly unlikely for HCIL to have made such an assertion. Further, the assessee chose to undertake substantial



loss of 22.99 crores only on the basis of a hoax assertion by HCIL seems unlikely/untenable.”

9. The Assessee appealed the assessment order dated 26.12.2016 before the CIT(A) [Appeal no.534/2016-17] on various issues including the issue regarding disallowance of loss of ₹22,99,07,558/- on account of transaction of sale and purchase of dies.

10. It is material to note that the Assessee had declared a total loss of 28,09,72,605/- and part of the said loss had been disallowed by the AO including the loss on account of the transaction of sale and purchase of the dies. Thus the assessed loss was reduced to ₹3,88,91,980/-.

11. The learned CIT(A) upheld the order of the learned AO and did not disturb the addition on account of disallowance of loss of ₹28,09,72,605/- claimed by the Assessee on account of sale and purchase of dies in question.

12. It is material to note that it was the Assessee’s case that the decision to supply the dies to secure an order for supply of parts was a business decision and its turnover had increased by 51%, that is, from 74.13 crores to ₹112.12 crores. And, this decision could not be question to determine the transaction as a sham transaction. Paragraph 4.4.3.2 of the appellate order, which reflects the Assessee’s contention in support of its claim that the loss suffered was a genuine business loss is set out below:

“4.4.3.2. The Appellant has submitted that with reference to Note 34 of the Notes forming part of financial statements, the Company manufactures the parts for Honda Cars India Limited as per specification and design submitted by them. The company requires the dies to manufacture such parts and in



industry. Hence, either the Company who manufactures the parts purchases the dies as required to manufacture those parts and capitalize such Dies and charge the depreciation on the same. Hence, the appellant Company requests the customer to provide the Dies to manufacture the specific parts as required by them to minimize the risk/cost as mentioned above. In this case, the appellant has stated that the company requested the Honda Cars India Limited to provide the Dies to manufacture the parts, but were told to provide the quotation of Dies and get the Dies manufactured by the appellant company and sell the same to them and they would pay for the same. Further, it was decided that they had taken the quotation for manufacture of Dies from different parties and they gave the order for supply of the parts to that vendor, who will give the lowest quotation for the cost of Die. Accordingly, after negotiation and discussion, appellant Company has sold the Dies to them and those dies were provided by Honda Cars Indian Limited for manufacture of parts using the said items. The appellant has argued that it was a business decision to get the order for supply of parts, the Company has sold the Dies and in current year also, the turnover from supply of parts has increased to Rs. 112.12 Crores from Rs. 74.13 Crores i.e. by 51%. In ordinary course, tools and dies would be provided by the customer for manufacture of parts. However, in a special case with respect to the transaction under consideration, HCIL had requested appellant to procure the dies and tools on its own accord after providing the quotation to HCIL, sell them to HCIL at the pre-agreed quote and then re-obtain these for manufacturing auto parts; HCIL had lower quotes from other vendors and the appellant had to lower its quote for the subject tools and dies. The appellant submitted that this compelled the appellant to enter into a loss making transaction.”

13. Notwithstanding the aforesaid explanation, the CIT(A) did not delete the addition of the loss as claimed by the Assessee.

14. However, the learned ITAT had accepted that the loss incurred by the assessee company was a genuine loss. It had allowed the Assessee’s appeal



in this regard. Paragraphs 9 to 13 of the said order are set out below:

“9. The Bench is of considered opinion that Ld. Tax Authorities below have not appreciated the fact that the company was incorporated on 23.11.2011 and its existence and sustenance primarily was dependent upon the contract to manufacture certain parts to be used in the cars manufactured by HCIL. The case of assessee is that as there were competitor who had quoted lower rates of the dies thus, it decided to purchase the dies and sell the same at loss. Ld. Tax Authorities have failed to appreciate the substantial business of assessee in terms of sales was outcome of the contract with HCIL. It failed to appreciate that except for the present assessment year 2014-15, the assessee company has in the year 2013-14 and thereafter from 2015-16 onwards till 2022-23, has reported profit from the business it had transacted with HCIL. The Ld. Tax Authorities have tagged the transaction to be sham without pointing out anything suspicious in the purchase documents.

10. Ld. AO had fallen in error in drawing an adverse inference on the basis of failure of assessee to produce the correspondences between HCIL and the other parties who had quoted the lower rates. Ld. AO was supposed to examine the evidence available and the business prudence as coming from the assessee instead of washing out everything from the assessee for failure to produce one particular evidence which was not in the hands of assessee as it was with a third party record and HCIL may have its reservation to not provide third party information to the assessee.

11. The Bench is of considered opinion that Ld. CIT(A) has failed to appreciate the aforesaid and sustained the addition made by Ld. AO. It appears that the primary consideration in the mind of Ld. CIT(A) was that product was purchased from the sister concern of HCIL so that tainted the transaction of loss. However, as appreciated by the Bench the Tax Authorities had failed to take into consideration the business prudence of the assessee for incurring certain losses in initial year for a sustainable and longer partnership with HCIL and which has given rise to generation of profits in subsequent years and



which have been tendered for taxation.

12. There is substance in the contention of Ld. Counsel that the major purchase of dies were from Tri Inter Thailand and not from Honda Trading Corporation India Pvt. Ltd. thus, alleging that the transaction was to benefit Honda Trading Corporation India Pvt. Ltd., which is subsidiary of HCIL is based on mere conjectures.

13. Consequent to aforesaid discussion the ground raised are sustained and the appeal of assessee is allowed.”

15. We find no infirmity with the decision of the learned ITAT. It is settled law that the AO cannot supplant its view as to the commercial expediency of transactions in place of that of the Assessee. In the present case, the AO’s decision to disallow the loss is based on surmises and assumptions. The fact that the Assessee had purchased some of the dies from HTIPL, which may be an affiliate of HCIL, did not in any manner indicate that the loss suffered by it was not genuine.

16. It is material to note that neither HTIPL nor TITC are affiliate entities of the Assessee. There is also no allegation that the Assessee is affiliated to HCIL. It is, thus, apparent that the transaction for sale and purchase of dies was a pure commercial transaction entered into by the Assessee in its commercial wisdom. The fact that the Assessee had incurred a loss in the said transaction is also not disputed. There is no allegation that the Assessee was paid any undisclosed consideration from the parties in a clandestine secret transaction to reverse the loss. We find that the AO had made the additions solely on the basis of what the AO thought was commercially expedient – an area which the AO was not required to tread.



17. In the present case, the Assessee has also justified its commercial decision by reflecting the enhanced turnover and the profits earned by it from its business from HCIL. However, it would be apposite to add that even if the Assessee had not been able to earn profits in later years, the same would make no difference. It is not necessary that every business decision made by an assessee yields profit. The area of examination is only confined to whether the transactions entered into by the assessee are genuine and not whether they are commercially expedient.

18. In the present case, there is no material other than just a sense of suspicion that has persuaded the AO and the CIT(A) to make the addition in question.

19. We find no substantial questions of law arise in the present appeal. The appeal is unmerited and accordingly, dismissed.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 14, 2024

RK

Click here to check corrigendum, if any