

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B. R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.1704/Bang/2018
Assessment Year : 2012-13

M/s. Toyota Boshoku Automotive India Private Limited, 41, Bhimenahalli, M. N. Halli Post, Bidadi Hobli, Ramanagar District – 562 109. PAN : AAECT 1871 F	Vs.	The Deputy Commissioner of Income Tax, LTU-Bangalore (Jurisdictional AO: DCIT, C-7(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri. C.R. Krishna, CA
Respondent by	:	Shri. Priyadarshi Mishra, Addl. CIT(DR)(ITAT), Bengaluru

Date of hearing	:	22.09.2021
Date of Pronouncement	:	24.09.2021

ORDER

Per N. V. Vasudevan, Vice President:

This is an appeal by the assessee against the order dated 19.03.2018 of CIT(A)-7, Bengaluru, relating to Assessment Year 2012-13.

2. Grounds 1.1 and 1.2 raised by the assessee reads as follows:

- 1.1 On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred in not accepting the contentions of the assessee company that layout charges of Rs.74,82,268/- incurred by the assessee company is in revenue in nature and the same is allowable under section 37 of Income Tax Act, 1961.*
- 1.2 On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that expenses incurred in connection with readjustment and relocation of machineries in the existing*

building including for reasons of employees safety. Enduring benefit if any is limited and no space has been added nor the profit making apparatus increased by virtue of this expenditure. Therefore, the same being revenue expenditure is fully allowable.

3. The assessee is a company engaged in the business of manufacture of seats and other interior parts for motor vehicles. The assessee had claimed as deduction a sum of Rs.74,82,268/- while computing income from business. Before the Assessing Officer (AO), the Assessee claimed that the expenditure in question to have been incurred for the purpose of modifying the existing layout of the assessee's manufacturing facility. It was claimed that the expenditure was revenue expenditure which should be allowed as a deduction. According to the AO, the assessee was asked to clarify why this expenditure should not be capitalized as the benefits of such layout changes are enduring in nature and hence the expenditure should be regarded as a capital expenditure. According to the AO, the assessee did not file any information. The AO therefore treated the expenditure as resulting in enduring benefit to the assessee and he therefore held the expenditure to be capital expenditure. The AO however allowed depreciation at 5% treating the expenditure as part of the plant.

4. Before the CIT(A), the assessee submitted that the change of the layout was carried out keeping in mind the safety of the employees as well as for other reasons like environmental issues. It was the case of the assessee that the expenses did not increase the life of the machineries nor its usage. The assessee furnished invoice copies of the various expenses incurred to the extent of Rs.60,46,863/-. These invoices are placed at pages

8 to 45 of the assessee's Paper Book. The above invoices and details of expenses were sought to be filed as additional evidence before the CIT(A). In respect of balance expenditure of Rs.14,35,405/-, the assessee submitted that these expenses related to small value of items like electrical, water and airlines expenses and in view of the huge volume of the bills the same are not being furnished. The assessee further submitted that local authority BMICAPA has put some restrictions in its rules on area that can be built on the factory land. As per the rules the built up area for industry of our size is restricted to 35% of the total plot area. Also setbacks have to left as per the rules. Consequently, due to change in production processes and product lines, the plant & machineries were frequently required to be relocated within the built up area restrictions. It was reiterated by the Assessee that layout change expenditure was laid out wholly and exclusively for the purpose of the business with objective of improving the safety and work environment and reducing the material movement distance and that the expenses were routine operating expenses and included revamp and replacements of electrical lines, air lines, replacement of water lines, repositioning of fume suction points for removal of hot air and to provide good air flow, relocation / repositioning of Andon — Abnormality warning system consequent to the shifting of machines. The Assessee clarified that capital additions in the nature of new plant and machinery and the corresponding incidental expenses thereof have already been capitalized in the books of accounts and accordingly depreciation has been claimed and allowed on the same. The expenditure incurred in layout changes does not increase the capacity or the profit making apparatus of the company. It was also submitted that enduring benefit, if any is incidental and that test by itself does not make this expenditure capital in nature. Hence, the

disallowance of claim for revenue expenditure Rs. 74,82,268/- needs to be deleted.

5. The CIT(A) however, did not agree with the submissions made on behalf of the assessee. He found that in Assessment Year 2013-14 identical expenditure incurred by the assessee was disallowed by the AO and the assessee filed objections before the Dispute Resolution Panel (DRP)-2, Bengaluru. The DRP held that the expenses were incurred for making ready an old premises with refurbishment and renovation to make it fit for the production of new corolla cars and to increase the capacity of production of cars. Following the said findings, the CIT(A) confirmed the order of the AO.

6. Aggrieved by the order of the CIT(A), the assessee has raised the aforesaid grounds before the Tribunal. Learned Counsel for the assessee submitted that the order of the DRP for Assessment Year 2013-14 has not been accepted by the assessee and the appeal has been filed before the Hon'ble Tribunal which is pending for adjudication. Learned Counsel for the assessee brought to our notice that before the CIT(A), the assessee sought to file the details of the expenditure incurred by the assessee which is annexed as annexure to this order. He also brought to our notice that in a letter dated 07.03.2018 addressed to the CIT(A), the assessee brought to the notice of the CIT(A) that invoice copies at pages 8 to 45 of the Paper Book were also filed before the CIT(A) with a view to demonstrate that the nature of expenses incurred did not give any enduring benefit to the assessee and was only a routine revenue expenditure. In terms of Rule 46A of the Income Tax Rules, 1962. A perusal of order of the CIT(A) shows that these

submissions and additional documents were not considered by the CIT(A). The CIT(A) refused to admit additional evidence on the ground that additional evidence cannot be claimed as a matter of right and there was no sufficient cause for admitting the additional evidence. We are of the view that in terms of Rule 46A(4) of the Rules, the CIT(A) has inherent powers to admit additional evidence to enable him to dispose of the appeal or for any other substantial cause and he ought to have exercised the said powers. In these circumstances, we deem it fit and proper that the issue should be examined afresh by the CIT(A) in the light of the additional evidence filed before the CITA) including the admissibility of the additional evidence.

7. Ground No.2 raised by the Revenue reads as follows:

2 *On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeal) erred in not appreciating the contention that provision made of Rs.3,75,000/- was towards transfer pricing certificate charges out of which Rs.2,25,000/- subjected to TDS and was paid, the balance was treated as income under liabilities no longer received written back in the previous year relevant to assessment year 2013-14. Consequently disallowance is not warranted and needs to be deleted. The learned CIT(A) failed to appreciate that this disallowance in assessment year 2012-13 of genuine business expenditure has resulted in double disallowance since the same is not claimed as expenses on payment and unpaid balance has already been offered to tax in assessment year 2013-14 .*

8. The assessee debited a sum of Rs.3,75,000/- towards provision for Transfer Pricing certification payable to Price Waterhouse Coopers, Consultants/CAs. The assessee claimed that these expenses had crystalized as assessee's liability during the relevant previous year and should be allowed as a deduction. The AO however observed that the assessee has not

credited the same to the name the account of the concerned party and therefore the liability cannot be regarded as a crystalized liability. He therefore disallowed the claim of the assessee for deduction on the ground that the liability has not crystallized.

9. Before the CIT(A), the assessee submitted the sum of Rs.3,75,000/- was paid and tax has been deducted and remitted on 07.04.2012. Rejection of our claim of Rs. 375,000/- would amount to double taxation since out of the above provision, Rs. 2,25,000 was paid during PY 2012-13. The said payment was not claimed as expenditure during PY 2012-13 and Rs. 1,50,000/- was reversed in PY 2012-13 and was offered to tax in AY 2013-14. The Assessee filed before the CIT(A) copy of the bill/voucher, ledger account copies, Form16A evidencing deduction and remittance of tax at source, break up of liability written back included in other income and copy of the profit & loss accouter the year ended 31st March 2013 in support of the above claim. These were filed as additional evidence. The CIT(A) refused to admit additional evidence on the ground that additional evidence cannot be claimed as a matter of right and there was no sufficient cause for admitting the additional evidence. We are of the view that in terms of Rule 46A(4) of the Rules, the CIT(A) has inherent powers to admit additional evidence to enable him to dispose of the appeal or for any other substantial cause and he ought to have exercised the said powers. In these circumstances, we deem it fit and proper that the issue should be examined afresh by the CIT(A) in the light of the additional evidence filed before the CITA) including the admissibility of the additional evidence.

10. Ground No.3 raised by the assessee reads as follows:

“3 On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeal) erred in disallowing a sum of Rs.6,10,541/- under section 37 under the heading community development expenses. This expenditure was incurred to improve the toilet facilities in government schools wherein children of the employees of the assessee company are also studying. The expenditure is not due to corporate social responsibility. The expenditure was incurred due to commercial expediency and is allowable under section 37.”

11. The assessee paid a sum of Rs.6.10,541/- towards provision of toilet facilities in government schools. The children of employees of the assessee were studying in that school. It was the plea of the assessee that by incurring the expenses, its productivity improves and the loyalty of its employees are also ensured. The AO took the view that the expenditure had no nexus with the business of the assessee and he accordingly disallowed the claim of the assessee for deduction. Before the CIT(A), the assessee pointed out that toilets were constructed at the behest of the Block Office, Ramanagara Taluk and the request of the local panchayat office. It was reiterated that the expenditure was incurred for the purpose of business of the assessee and should be allowed as a deduction. Reliance was placed on the decision of the ITAT, Bengaluru Bench in the case of Mysuru Sugar Co. Ltd., Vs. DCIT 1433/Bang/2002 8 SOT 486. These submissions however did not find favour with the CIT(A) and he held that the expenses were in the nature of corporate social responsibility and were therefore not allowable in view of explanation 2 to section 37(1) of the Act.

12. We have heard the rival submissions. Explanation 2 to section 37(1) of the Act was inserted by the Finance Act, 2014 w.e.f. 01.04.2015 and therefore not applicable to Assessment Year 2012-13. The CIT(A) was therefore not right in concluding that the expenditure in question was in the nature of corporate social responsibility and hence not allowable as a deduction. We are of the view that going by the nature of expenses incurred by the assessee, the deduction claimed should be allowed. The decision of the ITAT, Bengaluru Bench in the case of Mysore Sugar Co. Ltd., (supra) supports the plea of the assessee. In the aforesaid decision, it was held that Contribution to Sugarcane welfare trust by an Assessee a sugar manufacturing company to be utilised for taking up various welfare measures for welfare of ryots (farmers) who were sugar cane growers, was incurred for deriving benefit for the purposes of business of assessee and was allowable as deduction. Following the same, we direct the AO to allow the claim of the assessee.

13. Ground No.4 raised by the assessee reads as follows:

“4. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeal) erred in disallowing assets written off of Rs.10,24,356/- (net of depreciation Rs.9,01,335/-). The said amount of Rs.10,24,356/- by virtue of being included in the depreciation in the financial statements stands disallowed in the computation of income and consequently further disallowance has resulted in double disallowance of the same expenditure. The addition of Rs.9,01,335/- needs to be deleted.”

14. The assessee claimed a sum of Rs.10,24,356/- as deduction under the head “assets written off in full”. The claim was disallowed by the AO on the

ground that under the Act, such deduction should be made only in the written down value and cannot be allowed as a separate deduction.

15. Before the CIT(A), the assessee pointed out that the said amount of Rs.10,24,356/- by virtue of being included in the depreciation in the financial statements stands disallowed in the computation of income and consequently further disallowance has resulted in double disallowance of the same expenditure. The Assessee enclosed audited financial statements, breakup of depreciation and amortization as per profit and loss account and the computation of income to evidence that Rs.10,24,356/- has already been disallowed. The Assessee also pointed out that as per the accounting policy attached to the financial statements assets individually costing up to Rs. 25,000/-, mobile phones, etc., and Furniture and Fixture costing less than INR. 5,000/- as prescribed under the Companies Act., 1956, were provided 100% depreciation in the books of accounts. These assets which have been depreciated 100% in the books of accounts has been reported as capital expenditure debited to profit & loss account in form 3CD. However, and consequent to depreciation as per books being disallowed the corresponding assets depreciation at 100% are considered as additions to fixed assets for the purpose of claiming depreciation u/s 32 of the Income Tax Act,1961. The details of additions to fixed assets were furnished.

16. The CIT(A) however dismissed the claim of the assessee, observing as follows:

“8.2 The submission of the appellant has been considered. The Income Tax Act provides for different rates of depreciation for different categories of assets. The depreciation chart also

provides 100% rate of depreciation for some specific assets. The nature of assets and the rate of depreciation applicable being matter of factual verification, the AO after considering the details and submission of the appellant has allowed depreciation at appropriate rate. The policy of the appellant if held contrary to the provisions of the Act, cannot be given precedence. Therefore, the decision of the AO to disallow the claim of the appellant and allow depreciation at the prescribed rate is upheld. The ground of appeal is dismissed.”

17. Aggrieved by the order of the CIT(A), the Assessee is in appeal before the Tribunal. After considering the rival submission, we are of the view that the issue requires verification by the CIT(A). The claim of the Assessee that the amounts written off were in fact not claimed as deduction as it was added back to profit as per profit and loss account and depreciation as prescribed under the Act alone has been claimed, and to disallow the sum shown under the head assets written off in full would amount to make a double disallowance, has not been examined by the AO or CIT(A). The CIT(A) will afford opportunity of being heard to the assessee before deciding the issue.

18. In the result, the appeal of the assessee is partly allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(N. V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated : 24.09.2021.
/NS/*

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.

Toyota Boshoku Automotive India Pvt Ltd,
AY 2012-13
DETAILS OF LINE LAYOUT EXPENSES

Document Date	Reference	Seller name	type of goods Purchased	Amount(Rs.)
08-04-2011	1	ANUBHAVI AUTOMATION	pull chord Switch Unit	43,200.00
15-04-2011	1112056	ARIHANT ELECTRIC ENTERPRISES	Copper Wires and cables	76,400.87
15-04-2011	1112055	ARIHANT ELECTRIC ENTERPRISES	Tube light fitter and others	55,285.26
12-05-2011	11000278	FESTO CONTROLS PVT LTD		47,618.50
19-09-2011	80	THUMBE ENGINEERING SERVICES	Seat Assy Rail	61,000.00
03-10-2011	366	PROFUSE ENGINEERING EXCELLENCE	C-channel & L-Angle	59,106.77
10-10-2011	370	PROFUSE ENGINEERING EXCELLENCE		67,212.22
10-10-2011	381	PROFUSE ENGINEERING EXCELLENCE	Cables	1,85,305.97
10-10-2011	382	PROFUSE ENGINEERING EXCELLENCE		2,78,839.31
10-10-2011	385	PROFUSE ENGINEERING EXCELLENCE	Pipes & Others	80,408.19
10-10-2011	383	PROFUSE ENGINEERING EXCELLENCE	Tube light fitter and others	1,92,898.34
10-10-2011	389	PROFUSE ENGINEERING EXCELLENCE	Festo Make & Others	1,54,484.15
13-10-2011	402	PROFUSE ENGINEERING EXCELLENCE		94,698.18
13-10-2011	401	PROFUSE ENGINEERING EXCELLENCE		2,19,541.47
11-10-2011	396	PROFUSE ENGINEERING EXCELLENCE		97,009.59
22-10-2011	410	PROFUSE ENGINEERING EXCELLENCE		4,40,577.48
22-10-2011	243	VINOOTHANA ELECTRO CONTROL SYSTEMS	Air Line utility Material	2,75,424.95
22-10-2011	463	Anagha Engineering Systems	Modification of existing fume exhaust systems	4,61,700.00
22-10-2011	416	PROFUSE ENGINEERING EXCELLENCE	C-channel & L-Angle & Others	99,450.45
10-10-2011	376	PROFUSE ENGINEERING EXCELLENCE		1,33,340.56
10-10-2011	380	PROFUSE ENGINEERING EXCELLENCE		1,24,669.34
07-11-2011	255	VINOOTHANA ELECTRO CONTROL SYSTEMS	Water line utility for Adjuster Line Layout	55,015.32
16-11-2011	471	Anagha Engineering Systems	flexible house dia 200mm with clamps	57,600.00
28-11-2011	466	Anagha Engineering Systems	Labour Charges for erection	1,17,600.00
30-11-2011	266	VINOOTHANA ELECTRO CONTROL SYSTEMS	Installation Charges for Air Line Layout	79,575.70
30-11-2011	261	VINOOTHANA ELECTRO CONTROL SYSTEMS	Door Trim Shifting	67,525.00
02-12-2011	12	PROFUSE ENGINEERING EXCELLENCE	Tube light, switch and others	1,14,723.83
13-12-2011	9	PROFUSE ENGINEERING EXCELLENCE	Fan, Connectors and others	1,30,433.76
13-12-2011	5	PROFUSE ENGINEERING EXCELLENCE	Trim and shifting charges	1,58,001.68
13-12-2011	7	PROFUSE ENGINEERING EXCELLENCE	Labour Charges for water line	75,000.00

30-12-2011	4	PROFUSE ENGINEERING EXCELLENCE	Shifting Activity	1,91,501.45
21-01-2012	494	Anagha Engineering Systems	FAB & Supply of 16SWG MS Ducting	45,000.00
14-01-2012	352	VINOOTHANA ELECTRO CONTROL SYSTEMS	Manufacture & Supply of Air and water line for tube lending layout	1,47,827.60
25-02-2012	508	Anagha Engineering Systems	FAB & Supply of 16SWG MS Ducting	1,17,000.00
24-02-2012	398	VINOOTHANA ELECTRO CONTROL SYSTEMS	Manufacture & Supply of Air and water line for tumble	72,351.00
23-02-2012	516	PROFUSE ENGINEERING EXCELLENCE	Flex Cables	2,85,771.53
23-02-2012	515	PROFUSE ENGINEERING EXCELLENCE	Copper wires and others	2,78,340.48
24-02-2012	517	PROFUSE ENGINEERING EXCELLENCE	Perforated cables	2,19,251.36
29-02-2012	22	PROFUSE ENGINEERING EXCELLENCE		2,80,372.54
29-02-2012	395	VINOOTHANA ELECTRO CONTROL SYSTEMS	Labour Charges for Air and water line utility	43,200.00
20-03-2012	525	PROFUSE ENGINEERING EXCELLENCE	Supply of bending m/c earth station work	95,400.00
28-03-2012	17	PROFUSE ENGINEERING EXCELLENCE	Labour Charges	71,250.00
28-03-2012	411	VINOOTHANA ELECTRO CONTROL SYSTEMS	Installation Charges for Air and water line	45,450.00
14-03-2012	512	Anagha Engineering Systems	Labour Charges for dismantling and erection	40,500.00
				14,35,405.15
			Total	74,82,268