Commissioner Of Income Tax vs Benetton India Pvt. Ltd on 4 April, 2024

Author: Yashwant Varma

Bench: Yashwant Varma, Purushaindra Kumar Kaurav

$~6 to 8
* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ ITA 472/2018
   COMMISSIONER OF INCOME TAX ..... Appellant
   Through: Mr. Shlok Chandra, Sr. SC
   alongwith Ms. Madhavi Shukla
   and Ms. Priya Sarkar,
   Advocates

Versus

BENETTON INDIA PVT. LTD.
Through:

7
+ ITA 1318/2018
   COMMISSIONER OF INCOME TAX ..... Appe
   Through: Mr. Shlok Chandra, Sr. SC
   alongwith Ms. Madhavi Shuk
   and Ms. Priya Sarkar,
   Advocates

Versus

BENETTON INDIA PVT.LTD.
Through:

8
+ ITA 1319/2018
   COMMISSIONER OF INCOME TAX ..... Appe
   Through: Mr. Shlok Chandra, Sr. SC
   alongwith Ms. Madhavi Shuk
   and Ms. Priya Sarkar,
   Advocates

Versus

BENETTON INDIA PVT.LTD

Through:

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% 04.04.2024

1. The Principal Commissioner impugns the order dated 10 July 2017 [ITA 1318/2018 and ITA 1319/2018] and order dated 27 October 2017 [ITA 472/2018] passed by the Income Tax Appellate Tribunal ["ITAT"] and has framed the following questions for our consideration:-

> "i. WHETHER on the facts and circumstances of the case, the Ld. ITAT perversely and unlawfully deleted the addition made for purported "reimbursement of expenses" towards software costs to AE despite proven failure of the respondent to prove the actual receipt of such software and use thereof by the respondent in India in the subject AY for its business purposes?
>
> ii. WHETHER the Ld. ITAT was legally and factually justified in deleting the additions made by the Ld. Assessing Officer (AO) with respect to "reimbursement of expenses" towards purported "software costs", despite the prima facie falsity of claim found by the Ld. TPO and disproven "incurring of software costs"?
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> iii. WHETHER on the facts and in the circumstances of the case, the Ld. ITAT perversely and unlawfully deleted the additions made for purported reimbursement of expatriate salaries and payment for royalty, by failing to make an independent finding and determination on the "double deduction" nature of the claim for such purported expenses along with "reimbursement of software expenses" with near identical details, use, functions and purposes purportedly served?
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> iv. WHETHER the Ld. ITAT has erred in law and on facts in deleting the addition made on account of lease Registration charges This is a digitally signed order.
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> The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 10/04/2024 at 20:50:07 by ignoring the fact that balance expenses of lease registration charges belong to other years?

v. WHETHER the Ld. ITAT was correct in law in deleting all the additions made by the concerned Ld. Assessing Officer by merely relying on the perverse and erroneous findings of the Ld. CIT(A), contrary to applicable law as mandated by the Income Tax Act 1961 and the ratio of the Hon ble Jurisdictional High Court in the case of CIT vs. Jansampark Advertising & Marketing (P) Ltd. (2015) 56 taxmann.com 285 (Delhi)?

vi. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal."

2. Having heard Mr. Chandra, learned counsel who appears in support of the appeals, we find that insofar as proposed questions (i) and (ii) are concerned, it would clearly merit being answered against the Revenue bearing in mind the judgment rendered by the Supreme Court in Engineering Analysis Centre of Excellence (P) Ltd. v. CIT [(2022) 3 SCC 321].

3. Insofar as the reimbursement of salaries of expatriate employees who had been seconded are concerned, we note the following salient observations as they appear in the order of Transfer Pricing Officer ["TPO"]:-

"4.4.2 Functions performed 4.4.2.1 Product development Based on the requirements of Benina S.P.A. Benetton India analyzes the products that can be sourced front India and communicates the same to Benind S.P.A. In case Benind S.P.A decides to procure such products from India. Benind S.P.A provides the product designs for the upcoming collection to be launched in near future, which would be manufactured by the independent manufacturers in India.

4.4.2.2 Purchasing activities/ supplier identification Benetton India assists Benind S.P.A in identifying potential suppliers of apparels in India. This involves identifying and evaluating a vendor s manufacturing facility and practices using standard policies and procedures of Benetton Group.

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 10/04/2024 at 20:50:07 BenindS.RAalso provides the vendor with die standard specifications of garments including detailing, stitching coordinates and designs.

4.4.2.3 Contracting with suppliers All decisions regarding purchase and issuance of purchase orders are made by Benind S.P.A. Further, Benind S.P.A enters into contracts directly with the suppliers. Benetton India merely acts as an interface between Benind S.P.A and the suppliers by obtaining price quotes from the suppliers, communicating the purchase prices to the suppliers etc. Benetton India does not obtain title to the goods exported from India. Such goods are exported by the vendors directly to Benetton Group entities located outside India 4.4.2.4 Quality control Benetton India ensures that the products manufactured by the vendors are according to the specifications and global quality standards prescribed by the Benetton Group.

4.4.2.5 Logistics Benetton India is responsible for ensuring timely shipments of goods front India. The function becomes all the more critical in view of the fact that the AEs have pre decided schedules for launch of such products in the upcoming collection of Benetton Group.

The functions performed by Benetton India and its AEs are summarised in the table given below:

Name of associated enterprise
Product development
Purchasing activities/ supplier identification
Contracting with suppliers
Quality control
Logistics

On the basis of above it can be seen that the vendor identification is the function performed by the AE. If the Sourcing Head is performing this function, than he is clearly performing this function for the AE and not for the assessee. In such a situation the remuneration of the Expat is to be paid by the AE and not by the assessee. Moreover in the list of functions there is no function assigned to the assessee to train the local employees.

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 10/04/2024 at 20:50:07 In view of these facts and discussions, I am not inclined to agree with the reply of the assessee. I am of the considered opinion that the Expat has performed functions for the AE and not for the assessee. Hence the assessee has paid the remuneration of the Expats for the functions that the Expat has performed for the AE."

4. While dealing with the various functions performed, the TPO found that the major beneficiary of the services rendered by the seconded employees was liable to be attributed to the activities of Associated Enterprises. It was in the aforesaid backdrop that the Assessing Officer proceeded to take the view that the expatriate employees salaries would merit adjustment at NIL.

5. While dealing with the aforesaid question, the Commissioner of Income Tax (Appeals) had held as under:-

> "5.6. I have considered the submission of the appellant as well as the order of the TPO. It is important to analyze the onus of proof in the facts and circumstances of this case. Appellant is a company engaged in the business of high fashion garment manufacturing 8s sales and sourcing material from India. It markets internationally

known branded garment of "United Colours of Benetton". It caters to the high end customers - those who have deep pockets to satisfy their whims and fancies. It has seconded employees on its rolls - 3 employees in AY 2006-07 and 5 employees in AY 2007-08. They were paid by the parent company. TPO did not introduce any evidence to state that these employees did not work in India. Appellant produced the evidence that they were in India during the relevant period. Tax was deducted at source on the salary paid to these employees. The evidence of their presence in India was produced in the form of Passport - Visa copies and TDS details. In the documentation present before the TPO, the appellant has stated that they have used cost plus method as the most appropriate method. No mark up was charged by the AE as this was a reimbursement of cost of the employees seconded to the appellant. On the other hand, in the sourcing segment the appellant has received arm s length compensation from its AE which was held to be as such by the TPO. Some of the employees were working in this segment. Therefore, the TP documentation stated that the transaction is at AIP since it is only a cost-to-cost transaction with respect to the employee s salaries by doing this, I am of the opinion that the appellant had discharged the onus of establishing ALP of the transaction.

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 10/04/2024 at 20:50:07 In order to dislodge the claim of the appellant, TPO has to bring on record evidence. The only thing which the TPO has brought out is that the "vendor identification" was the function of the AE and therefore, if anybody else - to be more specific if appellant - does this function with the help of seconded employees, then those employees were working not for the appellant but for AE. This was the argument for the denial of the claim of the „appellant with respect to EttoreCadamore who worked in India for AY 2006-07. It is not clear how TPO came to this conclusion that vendor identification is the function of the AE. Appellant had employed him for sourcing the materials.

xxxxx xxxxx xxxxx I have no hesitation to state that the appellant has fully discharged its onus by providing the documentation with regard to the fact that these employees worked in the relevant period m India and also by giving the description of their functions. TDS was deducted at source for their salaries. The case laws cited by the appellant in the earlier paragraph i.e., the case of the Me Cann Friction and Dresser Rand are applicable in this case. It is the expected benefit and not the real benefit which is contemplated in the OECD guidelines. In any case it is not the case of the TPO that these employees did not work for the appellant. Further, it is a move point whether the TPO should have brought any „CUP data in such a situation. The fact that various softwares are used by the appellant is not denied by the TPO. In view of this, I hold that the addition made in this regard is not sustainable since they are not based on any facts or evidences. TPO/AO is directed to delete the addition made in

this regard".

6. The ITAT has in our considered opinion without assigning sufficient reasons upheld the aforesaid view that had been expressed. We would thus hold that question (iii) as proposed would merit further consideration.

7. That leaves us to only deal with the issue pertaining to registration charges and which forms the subject matter of question

(iv). Dealing with the asserted argument of the appellant that registration charges incurred in the course of execution of an instrument which is presented for registration under the Stamp Act, 1899 and the said charges being liable to be amortized over the entire This is a digitally signed order.

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8. Having noticed the principles enunciated in the aforesaid judgments, we are inclined to agree since undisputedly the payment of registration charges is a one time expenditure which is incurred at the time of execution of the instrument and when it is presented for registration. Even the Schedule to the Stamp Act, 1899 does not correlate the computation of stamp duty and registration charges to the period of the lease.

9. In view of the aforesaid, we find no ground to disagree with the view as expressed by the ITAT in this respect. The ITAT while dealing with the aforesaid question has observed as follows:-

> "4.1. The brief facts of the case are as follows:
>
> During the subject year, the appellant has taken some showrooms on rents and for that purpose it had entered into various lease agreements with the owners of such properties. Most of such leases are for 5-10 years. The appellant had paid stamp duly for lease registration amounting to Rs. 35,16,757 which was claimed as a revenue expense.
>
> 4.2. However, out of the total claim of lease registration charges amounting to Rs.35,16,757, the AO disallowed a sum of Rs.30,31,188 as he was of the opinion that the same needs to be spread over the total period of lease.

The AO allowed the lease registration charges to the extent of Rs. 485,569 only and disallowed the balance charges amounting to Rs. 30,31,188 on the ground that the latter have not been incurred for the subject year.

The relevant extract of the AO s order has been reproduced as under:

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> The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 10/04/2024 at 20:50:07 "On further examination, it has been noted that these charges related to mainly 9 years rental lease registration charges of retail showrooms and accordingly 1/9th(or as per specific case) of these expenses accrued during the year."
>
> 4.3. The appellant has stated that it paid stamp duty for registration of the lease premises taken for the purpose of its business of selling of its products like Garments, Leather products etc. The appellant is also paying regular lease rentals for use of the premises. As the expenditure is incurred for the purpose of its business and is revenue in nature not resulting into creation of any capital assets/benefit of enduring nature, thus, as per the provisions of section 37 of the Act, the expenses relating to lease registration should be allowed in its entirety in the year in which they are incurred.

Further, the appellant has contended that there is no concept of „deferred revenue expenditure unless otherwise specifically provided under the Act. The Income Tax Act provides for deferred revenue expenditure allowable over the years in very specific cases like in section 35A, 35AB, 35ABB, 35D, 35DD,35DDA etc. Thus, where the Act does not provide for deferment of any revenue expenditure, the same should be allowed in the year of incurrence. Accordingly, the entire expenditure incurred on lease registration should be allowed as revenue deduction in the year of incurrence irrespective of the fact that the lease period is for more than one year. It was further stated that the expense relating to lease registration does not result in any enduring benefit to an assessee. In this regard, following precedents has been relied upon:

> • CIT vs Cinceita Private Ltd. (Bombay High Court) 137 ITR 652 • CIT vs Gopal Associates (HP High Court) 326 ITR 413 • CIT Jai Parabolic Spring Ltd [2008] 6 DTR 233 (Del HC) • Hindustan Commercial Bank Ltd., In Re (21 ITR 353) (All HC); • CIT vs Bongaigaon Refinery and Petro-chemicals Ltd (222 ITR
>
> 208) (Gauhati H C);

• ACIT v Medicamen Biotech Ltd [2006] 99 TTJ 873 (Del ITAT); • JCIT v Modi Olivetti Ltd [2004] 84 TTJ 1038 (Del ITAT); • Bangalore Tool Works (P) Ltd v ITO (47 ITD 604) (Bang ITAT) In view of the principles laid down in the aforesaid judgments, the assessee submitted that lease registration charges represent revenue expenditure which cannot be deferred for amortization over the period of the lease deed and should be allowed in its entirety in the year in which they are incurred. Further, the same does not allow This is a digitally signed order.

 appellant any enduring benefit over the lease period. Hence, addition made by AO amounting to Rs. 30,31,188 should be deleted.

Reasons for decision:

> 4.4. This case of the appellant is squarely covered by the decision of the Hon ble High Court of HP in the case of CIT vs Gopal Associates (supra). The relevant part of the decision is reproduced below:
>
> "1. Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law holding that the expenditure incurred, on stamp duty and registration charges at the time of execution of lease agreement for taking on lease of the fruit processing plant for seven years, was allowable as revenue expenditure."

The brief facts necessary for decision of the case are that during the assessment year 1994-95 the assessee took on lease of a fruit processing plant from the HPMC. The lease deed was executed on December 27, 1993, for a period of seven years. It is not disputed that in fact the lease deed was terminated with effect from March 17, 1994. The assessee had spent a sum of Rs. 3,44,251 as stamp duty and registration charges on the lease deed. The Assessing Officer treated this expenditure as capital expenditure by relying upon the judgment of the Karnataka High Court reported, in the case of Hotel Rajmahal v. CIT [1985] 152 ITR 218. On the other hand, the assessee relying upon the judgments of the Madras, Kerala and Gujarat High Courts reported in Sri Krishna Tiles and Potteries Madras (P.) Ltd. v. CIT [1988] 173 ITR 311, Plantation Corporation of Kerala Ltd. v. Commr. ofAgrl. I. T. [1994] 205 ITR 364 and Gujarat Machinery Mfg. Ltd. v. CIT [1995] 211 ITR 1010 contends that the amount spent as stamp duty and registration charges should be treated as revenue expenditure. The Commissioner of Income-tax (Appeals) and the Tribunal accepted the plea of the assessee. The Revenue has filed the present appeal challenging the order of the learned Tribunal.

The Karnataka High Court in Hotel Rajmahal's case [1985] 152 ITR 218 did not really discuss the matter in detail but held that when for the first time the assessee enters into a lease deed securing lease holding rights for a long period, the expenditure incurred on stamp duty, registration and legal fees, etc., should be treated as expenditure of capital nature.

However, the Madras High Court in Sri Krishna Tiles and Potteries Madras (P.) Ltd. v. CIT [1988] 173 ITR 311 followed the law laid down by the Bombay High Court in CIT v. Cinceita Private Ltd. [1982] 137 ITR 652 and disagreed with the decision of the Karnataka High Court. It was held that irrespective of whether the

incidental expenditure is incurred in or in connection with or related to capital expenditure the same has to be treated as revenue expenditure.

The Kerala High Court also took this view in Plantation Corporation's case [1994]205 ITR 364 (Ker). The Gujarat High Court in Gujarat Machinery's case [1995] 211 ITR 1010 dealt with the same question and held that the amount spent on registration and stamp charges is revenue expenditure.

No other judgment has been pointed out to us.

We follow the reasoning given by the Bombay, Madras, Kerala and Gujarat High Courts and respectfully disagree with the judgment of the Karnataka High Court.

In view of the above discussion, the substantial question is answered against the Revenue and the appeal is dismissed. No order as to costs."

In view of the decision of the High Court, as the facts of the case of the appellant are exactly same, I hold that the expenditure should be treated as revenue expenditure and allowed as deduction in this year itself. AO is directed to delete the addition made in this regard."

10. Mr. Chandra, learned counsel for the appellant submits that Question (v) as framed is not being pressed before us.

11. In view of the above, we admit the appeals on the following question of law:-

> Whether on the facts and in the circumstances of the case, the ITAT perversely and unlawfully deleted the additions made for purported reimbursement of expatriate salaries and payment for royalty, by failing to make an independent finding and determination on the "double deduction" nature of the claim for such purported expenses along with "reimbursement of software expenses" with near identical details, use, functions and purposes purportedly served?
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12. Let these appeals be called again on 13.08.2024.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 4, 2024 p'ma This is a digitally signed order.