

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G' : NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.3816/Del/2013
Assessment Year : 2006-07

M/s SAAR Industries Limited,
R-52, Vikas Marg,
3rd Floor, Shakarpur,
Delhi – 110 092.
PAN : AABCS8871K.
(Appellant)

Vs. Income Tax Officer,
Ward-7(1),
C.R. Building, I.P. Estate,
New Delhi – 110 001.
(Respondent)

Appellant by : Shri Pratap Gupta, CA.
Respondent by : Smt. Rashmita Jha, Senior DR.

Date of hearing : 15.02.2016
Date of pronouncement : 24.02.2016

ORDER

PER G.D. AGRAWAL, VP :-

This appeal by the assessee for the assessment year 2006-07 is directed against the order of learned CIT(A)-X, New Delhi dated 28th March, 2013.

2. Following grounds of appeal have been raised by the assessee :-

"1. That the learned CIT(A)-X has grossly erred both on facts and in law in making a disallowance of Rs.200000/-to the total income of the appellant company on account of unsatisfactory and unverifiable bills and vouchers without properly appreciating the facts and circumstances of the case that the expenditure so incurred was necessary required to be incurred seeing the peculiar nature of the business undertaken by the appellant company and therefore no such disallowance was exigible in the eyes of law.

2. *That while making a disallowance of Rs.200000/- to the total income of the appellant company on account of unsatisfactory and unverifiable bills and vouchers, the learned CIT(A)-X was wholly unjustified in the facts and circumstances of the case and in law in partly sustaining the rejection of books of account ignoring the bare fact that neither any specific finding with regard to the rejection of books of account was given nor the provisions of section 145(3) of the Act were invoked by the AO in the order passed by him.*

3. *That the authorities below have grossly erred and were wholly unjustified in the facts and circumstances of the case in treating the short term capital gain earned by the appellant company in shares as business income of the appellant company.*

4. *That the authorities below have grossly erred and were wholly unjustified in the facts and circumstances of the case and in law in not allowing the set off of brought forward loss and unabsorbed depreciation out of the income earned by the appellant company and while doing so they have miserably failed in considering and examining the case records of the appellant company for earlier years and position of the law as well.*

5. *That in any case and without prejudice, the orders passed by the authorities below are misconceived, unjustified and unwarranted in the facts and circumstances of the case.*

6. *That the appellant craves leave to add, amend, alter, modify or delete any or all of the grounds of appeal before or at the time of hearing."*

3. The facts relating to ground Nos.1 & 2 are that the assessee derives income from developing residential and commercial complexes. For the year under consideration, the assessee disclosed the income of ₹6,03,107/- from real estate business. The Assessing Officer rejected the books of account and applied gross profit rate of 20% on the receipt of ₹1,80,93,200/- which resulted in the addition of

₹30,15,533/-. Learned CIT(A) was of the opinion that complete rejection of books of account and application of gross profit rate was not proper on the facts of the case but, at the same time, some disallowance out of expenses was required because the assessee did not produce the bills and vouchers which could have been verified by the Assessing Officer. Certain vouchers produced by the assessee did not contain the name and address of the persons from whom the purchases of material were made. The Revenue seems to have accepted the order of learned CIT(A). However, the assessee is in appeal.

4. At the time of hearing before us, learned counsel for the assessee stated that the Assessing Officer was wrong in mentioning that the books of account and supporting bills and vouchers were not produced. He stated that the assessee maintained regular books of account which are duly audited and all expenses incurred by the assessee are duly verifiable. He also stated that some of the building construction material like bricks, sand, stones are being sold by unorganized sector which does not maintain proper bill books. They just issue the cash bills. However, when the purchase of material and its utilization in the construction work is not in dispute, learned CIT(A) was not justified in sustaining the disallowance of ₹2 lakhs out of expenses. He further submitted that the purchases which are claimed to be unverifiable, such bills were attached along with the assessment order and the total of such bill is less than ₹1 lakh. Therefore, considering these facts, the disallowance sustained is uncalled for.

5. With regard to ground No.3, learned counsel stated that the Assessing Officer has treated the income from short term capital gain earned by the assessee as business income. He stated that the assessee made investment in the shares and realized those

investments. The Assessing Officer, without allowing any opportunity of being heard, treated such income as business income merely on the basis of wrong reporting in the audit report. He, therefore, submitted that this issue may be sent back to the file of the Assessing Officer for allowing opportunity of being heard to the assessee.

6. With regard to ground No.4, learned counsel stated that the Assessing Officer did not allow set off of brought forward loss and unabsorbed depreciation. He stated that this issue can also go back to the file of the Assessing Officer for verification with the direction to allow the set off of unabsorbed loss/depreciation as available on record.

7. Learned DR, on the other hand, stated that the entire matter may be send back to the file of the Assessing Officer because the Assessing Officer has recorded a finding that the assessee did not produce all the bills and vouchers and some of the vouchers produced by the assessee were not verifiable. The Assessing Officer has attached only a few samples of such vouchers and not all such vouchers which are not verifiable. Learned counsel for the assessee also has no objection in setting aside all the issues raised in the assessee's appeal to the file of the Assessing Officer.

8. In view of the above, we set aside the orders of authorities below on all the points raised in this appeal before us and restore all the issues to the file of the Assessing Officer. We direct the Assessing Officer to re-examine the books of account of the assessee and thereafter determine the assessee's income in accordance with law. We also direct the assessee to produce the books of account and all the vouchers before the Assessing Officer. We also direct the Assessing Officer to allow adequate opportunity of being heard to the

assessee before readjudicating the issue of head of income under which profit from sale of shares is assessable. Similarly, he is also directed to verify from record whether any unabsorbed brought forward loss/unabsorbed depreciation is available. If the same is available, then set off of the same should be allowed in accordance with law.

9. In the result, the appeal of the assessee is deemed to be allowed for statistical purposes.

Decision pronounced in the open Court on 24.02.2016.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT

VK.

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1. Appellant : **M/s SAAR Industries Limited,**
R-52, Vikas Marg, 3rd Floor, Shakarpur,
Delhi – 110 092.
2. Respondent : **Income Tax Officer,**
Ward-7(1), C.R. Building, I.P. Estate,
New Delhi – 110 001.
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar