

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'जी', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL "G", BENCH MUMBAI

सर्वश्री राजेन्द्र, लेखा सदस्य, एवं , राम लाल नेगी न्यायिक सदस्य के समक्ष

BEFORE SHRI RAJENDRA, AM AND SHRI RAM LAL NEGI, JM

आयकर अपील सं./ITA No.375 to 377/Mum/2015

(निर्धारण वर्ष / Assessment Year: 2008-09 to 2010-11)

The ACIT, Central Circle- 3(3), Room No. 401, 4 th Floor, Aayakar Bhavan, Mumbai- 400 020.	Vs.	M/s. Welspun Syntex Ltd., B- Wing, Trade World, 9 th Floor, Kamala Mill Compound, S.B.Marg, Lower Parel, Mumbai- 400 013.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACW0489L		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से / Revenue by : Shri. A.G.Bhatkar

निर्धारिती की ओर से / Assessee by : Shri. Mitesh Shah

सुनवाई की तारीख / **Date of Hearing** : **24/08/2016**

घोषणा की तारीख/**Date of Pronouncement** : **24/08/2016**

आदेश / O R D E R

PER RAM LAL NEGI, JM

These appeals have been preferred by the revenue against common order dated 10/10/2014 passed by the Ld. CIT(Appeals)-39, Mumbai, for the Asst. years 2008-09 to 2010-11. Since all these appeals pertain to the same assessee for the different assessment years and the issues involved are common, the same were clubbed and heard together and are being disposed of by this common order for the sake of convenience.

ITA 375/Mum/15 A.Y. 2008-09

Since the grounds urged in these appeals are identical, we take the appeal for the assessment year 2009-10 as lead case and discuss the facts therein. The appellant/assessee company engaged in the business of manufacturing, processing and trading in polyester yarn, filed its return of income for the assessment year under consideration on 30.9.2008 declaring the total income of Rs. (-)2,32,96,876/-. A search and seizure action was carried out at the business/residential premises of the Welspun group including the assessee company on 13.10,2010. Accordingly, the AO initiated proceedings under section 153A. The assessee again filed the same return. However, the AO completed the assessment order u/s 143(3) of the Income Tax Act, 1961(in short 'the Act') determining the total income at Rs. 1,74,74,430/-. The assessee challenged the assessment order before Ld. CIT(A). The Ld. CIT(A) partly allowed the appeal of the assessee. Against the said order, the revenue is in appeal before the Tribunal.

2. The revenue has raised the following effective grounds of appeal:-

1. *“ Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in directing the A.O that Discounting & Banking Charges of Rs. 294.83 lakhs cannot be considered as part of interest paid whereas the assessee has not given break up of these charges and majority of these charges relates to overdraft charges on the Current Account.”*

2. *“Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in partly deleting the addition of Rs. 1,33,64,268/- to book Profit by disallowance u/s 14A r.w. Rule 8D”.*

3. At the outset, the Ld. Authorised Representative (AR) submitted that the assessee and the revenue had filed cross appeals before the ITAT against impugned order passed by the Ld. CIT(A) for the assessment years 2007-08 to 2010-2011. The Tribunal heard the assessee’s appeals and following its earlier decision rendered in ITA No 7630/Mum/2011 dated 18.12.15, remanded the issue pertaining to disallowance u/s 14A to the file of AO for fresh adjudication. In the present appeals one of the common issues is disallowance under section 14A. In the light of the aforesaid facts the Ld. AR submitted that these appeals are required to be remanded back to the AO for adjudicating the issues in accordance with the directions issued by the Tribunal in assessee’s appeals. The Ld. Departmental Representative (DR) did not controvert the submissions of the Ld. AR.

4. We have heard the parties and perused the documents on record. We find that the assessee’s appeals including the appeals pertaining to the assessment years under consideration have been remanded back to the AO for fresh adjudication in the light of the view taken by the co-ordinate Bench of the Tribunal, in assessee’s own case ITA No 7630/mum/2011(supra). Since the disallowance under section 14A is in dispute in the revenue’s appeals under consideration, we are of the considered view that these appeals should be remanded back to the AO to decide the cross appeals as directed by the coordinate Bench.

5. Accordingly, we remand these appeals back to the AO for fresh adjudication and decision in the matter. AO shall grant a reasonable

opportunity of being heard to the assessee as per the principles of natural justice.

ITA 376/Mum/15 A.Y. 2009-10

and

ITA 377/Mum/15 A.Y. 2010-11

Since the facts and circumstances of the appeals and the issues involved in the appeal for the assessment years 2009-10 and 2010-11 are similar to the facts and circumstances of the appeal for the assessment year 2008-09 aforesaid, except the amount involved and since we have remanded back the appeal for the assessment year 2008-09 to the AO for fresh adjudication, we send these appeals also back to the AO for fresh adjudication in terms of order passed in appeal pertaining to the assessment year 2008-09.

In the result, all the three appeals filed by the revenue are allowed for the statistical purposes.

Order pronounced in the open court on 24th August, 2016

Sd/-
(RAJENDRA)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 24/08/2016

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**

Pramila