IN THE INCOME TAX APPELLATE TRIBUNAL

KOLKATA BENCH 'A', KOLKATA

(Before Shri P. M. Jagtap, A.M. & Shri S.S. Viswanethra Ravi, J.M.)

ITA No.1191/Kol/2016 : Assessment Year: 2011-12

M/s. New Tea Co. Ltd. 2nd Floor, Hindusthan Buildings, 4, C.R. Avenue, Kolkata - 700072 **PAN: AABCN0928N**	Vs	P.C.I.T – 2, Kolkata P-7, Chowringhee Square Kolkata - 700069
(APPELLANT)		**(RESPONDENT)**

Assessee by : Shri R.K. Duggar, FCA

Revenue by : Shri R.S. Biswas, CIT

Date of Hearing : 06.06.2017		**Date of Pronouncement : 12 .07.2017**

ORDER

Shri P.M.Jagtap, A.M.

This appeal filed by the assessee is directed against the order of ld. Principal CIT - 2, Kolkata dated 11.03.2016 passed under section 263 of the Income Tax Act, 1961.

2. The assessee in the present case is a company which is engaged in the business of growing, manufacturing, trading and export of tea. The return of income for the year under consideration was filed by it on 29.09.2011 declaring a total income of Rs. 2,17,03,120/-. In the assessment completed

under section 143(3) vide an order dated 03.03.2014, the total income of the assessee was determined by the AO at Rs. 2,30,34,189/-. The record of the said assessment came to be examined by the Ld. CIT and on such examination he was of the view that the order passed by the AO under section 143(3) suffered from the following errors.

1. On perusal of records, it is noted, inter alia, that the Company had earned Rs. 3,51,30,045/- as export incentives which had no relation with growing and manufacturing of tea, hence it should not have been subjected to Rule 8.

2. Besides, in the computation of income you had declared Rs. 58,02,379/- as profit from export sales and Rs. 1,14,78,352/- as income from bought leaf and Tea Trading Account, without any internal calculation.

3. Further, during the year, you have shown to have purchased finished tea products of 75,81,431/- kg., (for both export and domestic sale), whereas quantity of tea manufactured was 49,50,651 kgs. Total tea manufactured & purchased was thus 125,31,992 kgs. [vide point 28(b)(ii) & (iii) of TAR]. Therefore, the profit on trading of tea should be as below:

$$\frac{\text{Composite Income}}{\text{Quantity of Tea manufactured + purchased}} \times \text{Quantity of tea purchased}$$

It is also seen that during the year, you had purchased green leaf of 1,36,09,342/- kgs., where you had plucked from your own garden 91,25,971 kg. Thus, Green leaf purchased & plucked was a total of 2,27,35,313 kgs. [vide point 28(a)(A)(ii) & (iii) of TAR]. Therefore, the profit on tea earned out of green leaf purchase and sale should have been correctly computed at below:

$$\frac{\text{Quantity of Green Leaf purchased}}{\text{Quantity of Green leaf purchased + plucked}} \times \text{Composite income}$$

The Ld. CIT, therefore, issued a notice under section 263 to the assessee pointing out the above errors and requiring

the assessee to show cause as to why the order passed by the AO under section 143(3) should not be revised under section 263 by holding the same to be erroneous as well as prejudicial to the interest of the revenue.

3. In reply to the notice issued by the Ld. CIT under section 263, written submissions were filed by the assessee vide letter dated 07.03.2016 and 09.03.2016. The Ld. CIT(A) however, did not find merit in the said submission and rejected the same by recording the following observations / findings in his impugned order:

> "8. But the A.R. has actually given false information as above and it was based on misleading contention. I find that the computation for arriving at a figure to be subjected to Rule 8 starts with Rs. 3,87,04,912/-. The same appears at page 15 of the TAR and it is computed there as below:
>
> "Income:
>
Sales	:	1,69,15,48,629/-
Other Income (M)	:	7,80,74,841/-
Increase/Decreased in stock(N)	:	(2,72,36,794/-)
		1,74,23,86,676/-
>
> Expenditure:
>
Purchase	:	98,76,09,155/-
Expenses (O)	:	64,00,75,199/-
Interest (net) (P)	:	6,41,58,890/-
Depreciation	:	1,18,38,520/-
	:	1,70,36,81,764/-
Profit before Taxation	:	3,87,04,912/-

Now, the Schedule-M of Rs. 7,80,74,841/- contains Rs. 3,51,30,045/- of export incentive amongst others. This only shows that the figure, of Rs. 3,87,04,912/- which the assessee company has started with and now the A.R. wants to defend is arrived at after taking an income of the said export incentive. What would have happened if there was no export incentive? Obviously, the starting figure would have been lesser by that amount. That figure would have been only Rs. 35,74,867/-. Thus, it is evident that by not taking out the export incentive which admittedly is not related to Rule 8 computation and by separately not offering for taxation the assessee company has in a way offered merely 40% of it for taxation. The AR I have already said also admits of the same that the same was not to be subjected to the Rule 8 computation.

9. The assessee company's concealment of the above kind borders on fraudulence and the AR's one-liner defence that it has been so offered is in my opinion ill-conceived and mischievous.

10. Similarly, the company had computed its profits from export sales and bought leaf and Tea Trading Account arbitrarily. There was no audited internal computation as to how the company had arrived at Rs. 58,02,379/- as profit from export sales nor for Rs. 1,14,78,352/- shown as income from the other trading account.

11. The AO, as I have already said, had not called for these internal computations. Thus, he had wishfully no occasion to doubt or to find fault with, much less to examine anything whatsoever regarding these two accounts. Now after my notice was sent challenging the said calculations without internal computations, the AR has offered two computations evidently not certified by any auditor. There is no seal, no signature on the calculation sheets signed most illegibly without any name and date. The export division's profit is arrived at Rs. 58,02,379/-. This is again after taking into account Rs. 3,95,90,277/- of misc. receipts on the income side and Rs. 43,13,071/- of misc. expenses of exchange loss (net). Thus, the figure of Rs. 58,02,379/- is again arrived at after taking these two unverified figures too. One has no name, the other is said to be net. Thus, the credit & debit figures have been whimsically obscured and obtained.

> 12. The other son-called internal calculation sheet is very strangely prepared. I have called it "so-called" and "strange", because it is patently self-serving and naturally unsubstantiated. Except for the purchase of tea, green leaf consumed and H.O. misc. Expenses, there are 14 other items of expenses which have been debited on a peculiar percentage basis. 11 out of the said 14 have been shown at 59.8725% of some uncertified original figures and 3 at a percentage of 64.7600%.
>
> 13. The AR conceded that he had no answer to the logic and legality of such percentages arbitrarily adopted. Thus, it is patently clear that the figures to arrive at the profit on bought leaf production and bought tea amount at Rs. 1,14,78,352/- is un-evidenced, arbitrary and whimsically computed.
>
> 14. I am further, perplexed by the figures of sale proceeds. On this trading account, the same is shown at Rs. 42,56,07,426/- and on the export division, the figures of tea export are Rs. 96,50,56,718/-. The total sales thus comes to Rs. 139,06,64,144/-. But what does the TAR says as salaes? It is Rs. 169,15,48,62/. The TAR does not have a schedule for this. Is it, therefore, a figure now, which can be reconciled? The variation is as high Rs. 30,08,84,485/-.

On the basis of about observations / findings recorded by him, Ld. CIT held the order passed by the AO under section 143(3) as erroneous and prejudicial to the interest of the revenue and setting aside the same vide his order passed under section 263, he directed the AO to make the assessment afresh after giving the opportunity to the assessee. Aggrieved by the order of the Ld. CIT passed under section 263, the assessee has filed this appeal before the Tribunal.

4. The learned counsel for the assessee submitted that there are mainly three errors which the CIT has allegedly pointed out in the order of the AO passed under section 143(3). As regards the mistake allegedly pointed out by the

Ld. CIT in the order of the AO in including the export incentive of Rs. 3,51,30,045/- in the profit of growing and manufacturing of tea for applying Rule 8 of the Income Tax Rules 1962, he invited our attention to the computation of profit apportionable under Rule 8 as given on Page No. 104 of the 'Paper Book' and pointed out that the profit from export sales of Rs. 58,02,379/- was excluded by the assessee while computing the profit apportionable under Rule 8. He then invited our attention to the profit and loss account of the export division placed at Page No. 108 of the 'Paper Book' to show that the export incentive of Rs. 3,51,30,045/- was duly credited therein and the same thereby was considered while computing the profit from export sales at Rs. 58,02,379/-. He contended that by excluding the profits from export of Rs. 58,02,379/- from the computation of profit under Rule 8, the amount of export incentive of Rs. 3,51,30,045/- was also reduced by the assessee and the same was not taken into consideration in the profit from the business of growing and manufacturing of tea for the purpose of application of Rule 8 as alleged by Ld. CIT.

5. As regards the second error allegedly pointed out by the Ld. CIT in computing the profit from own production and bought leaf production arbitrarily without any basis, the learned counsel for the assessee invited our attention to the statement showing calculation of profit from sale of purchased tea and tea manufactured from bought leaf placed at Page No. 109 of his 'Paper Book' to show that bought leaf

production was 59.8725% of the total production and accordingly the direct overheads were allocated in the ratio of production to work out the profit of bought leaf production. He also pointed out that the quantum of bought leaf production and tea purchased from domestic market was 64.7600% and accordingly the indirect overheads were apportioned in that ratio while computing the profit on bought leaf production and bought tea account. He contended that the said computation of profit thus was not made arbitrarily by the assessee as alleged by the Ld. CIT and in fact the same was made as per the same formula as suggested by the Ld. CIT himself in the notice issued under section 263.

6. As regards the difference in turnover of Rs. 30,08,84,485/- pointed out by the Ld. CIT as unreconciled, the learned counsel for the assessee once again invited our attention to the statement of calculation of profit from sale of purchased tea and tea manufactured from bought leaf given at page 109 of the paper book to show that the total turnover of the assessee was Rs. 16,91,54,862/- out of which export turnover was 96,50,56,718/- while domestic turnover was Rs. 72,64,91,911/-. He pointed out that out of the total domestic turnover of Rs. 72,64,91,911/-, turnover of Rs. 42,56,07,426/- was on account of sale of purchase tea and tea manufactured from bought leaf as shown in the computation given on the Page No. 109 while the remaining domestic turnover amounting to Rs. 30,08,84,485/- was on account of sale of tea manufactured from green leaf which was eligible for

application of Rule 8. He contended that there was thus no reconciled difference in the turnover of the assessee as alleged by the Ld. CIT. He contended that there were thus no errors in the order of the AO passed under section 143(3) as alleged by the Ld. CIT calling for revision under section 263 and the order passed by the Ld. CIT under section 263 revising the order passed by the AO under section 143(3) deserves to be set aside.

7. The learned DR on the other hand submitted that no enquiry was apparently made by the AO on the issues pointed out by the Ld. CIT in his impugned order passed under section 263 and such lack of arguing on the part of the AO made his order passed under section 143(3) erroneous as prejudicial to the interest of the revenue calling for revision under section 263.

8. We have considered the rival submissions and also perused the relevant material on record. It is observed that there were three factual errors pointed out by the Ld. CIT in the computation of income of the assessee from the business of growing, manufacture, treading and export of tea as made by the AO in the assessment completed under section 143(3) and since the said errors, according to the Ld. CIT, were prejudicial to the interest of the revenue, he revised the assessment made by the AO under section 143(3) by exercising the power conferred upon him under section 263. At the time of hearing before us, the learned counsel for the assessee has made a detailed submissions by referring to the

relevant details and documents already placed on record to explain that there were no errors in the order of the AO passed under section 143(3) as alleged by the Ld. CIT in his impugned order passed under section 263. As pointed out by him, the profit of export division calculated at Rs. 58,02,379/- was reduced by the assessee while computing the profit apportionable under Rule 8 and since such profit of export division was calculated after taking into consideration the export incentive of Rs. 3,51,30,045/-, it follows that the said amount of export incentive was also reduced or excluded by the assessee while computing the profit apportionable under Rule 8. There was thus no error in the order of the AO in including the export incentive while computing the profit of the assessee apportionable under Rule 8 as alleged by the Ld. CIT.

9. Similarly a perusal of the computation of profit from sale of purchased tea and tea manufactured from bought leaf as given on Page No. 109 clearly shows that the said profit was worked out by the assessee by apportioning the direct as well as indirect expenses in the ratio of actual production and it, therefore, cannot be said that such computation was made by the assessee arbitrarily as alleged by the Ld. CIT. On the other hand, as rightly pointed out by the learned counsel for the assessee, such production was made by the assessee as per the formula suggested by the Ld. CIT himself in the notice issued under section 263 and it therefore, cannot be said that there was any error in the order of the AO in accepting the

computation of profit from sale of purchased tea and tea manufactured from bought leaf as made by the assessee.

10. It is also observed that even the difference in turnover of Rs. 30,08,84,485/- alleged by the Ld. CIT as unreconciled represented assessee's domestic turnover from manufacturing of tea and the same along with sale of purchased tea and tea manufactured from bought leaf amounting to Rs. 42,56,70,426/- constituted total domestic turnover of Rs. 72,64,91,911/- of the assessee. There was thus no difference of Rs. 30,08,84,485/- in the turnover of the assessee as alleged by the Ld. CIT and there was no error in the order of the AO on this count. As such, considering all the facts and circumstances of the case, we are of the view that there were no errors in the order of the AO passed under section 143(3) as alleged by the Ld. CIT calling for revision under section 263. In that view of the matter, we set aside the impugned order passed by the Ld. CIT under section 263 and restore that of the AO passed under section 143(3).

11. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 12th July, 2017

Sd/-	Sd/-
(S.S. Viswanethra Ravi)	(P.M.Jagtap)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated: 12/07/2017
Biswajit

Copy of order forwarded to:

1 M/s. New Tea Co. Ltd.

2 P.C.I.T. - 2 Kolkata

3 The CIT(A),

4 The CIT

5 DR

True Copy, By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata