

आयकर अपीलीय अधिकरण मुंबई "ई" खंडपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI
सर्वश्री राजेन्द्र, लेखा सदस्य एवं अमरजीत सिंह, न्यायिक सदस्य
Before S/Shri Rajendra, A.M. and Amarjit Singh, J.M.
आयकर अपील सं./ITA No's. 1167 to 1169/Mum/2015
निर्धारण वर्ष /Assessment Years: 2007-08, 2008-09 & 2009-10

M/s.Balasore Alloys Ltd, (Formerly ISPAT ALLOYS LTD),Mumbai. PAN: AAACI3967 P	Vs.	ACIT ,Circle-3(2), (Earlier DCIT, 18 & 19), Mumbai.
--	-----	---

(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri Yashwant Kumar Bhaskar (DR)

Assessee by: Shri D.V.Lakhani

सुनवाई की तारीख / **Date of Hearing:** **03/10/2017**

घोषणा की तारीख / **Date of Pronouncement:** **01/01/2018**

आयकर अधिनियम ,1961 की धारा 254(1) के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act).

लेखा सदस्य, राजेन्द्र के अनुसार-Per Rajendra,AM:

Challenging the orders dtd.29.12.2014,30.12.2014 and 16.12.2014 of the CIT (A)-51,Mumbai the assessee has filed appeals for the above mentioned three Assessment Years(AY.s). Assessee,a listed public compay,is involved in the business of manufacturing of ferro alloys. Details of dates of filing of returns,returned incomes,dates of assessments and assessed incomes can be tabulated as under:

AY.	ROI filed on	Returned income	Asstt.date	Assessed income[u/s.143(3)r.w.s.153A]
07-08	31/10/2007	NIL	31.03.2013	NIL
08-09	29.09.2008	NIL	31.03.2013	27.14 crores
09-10	19.02.2011	1.02 crores	31.03.2013	25.32 crores

As the issues in all the appeals are common,so,we are adjudicating them together .

ITA/1167/Mum/2015/AY.2007-08.Brief Facts:

2.A search and seizure action,u/s.132 of the Act was initiated in the case of the assessee on 30.11.2010 in Ispat Group of cases,including the assessee.The AO issued notices to the assessee,as per the provisions of section 153A of the Act directing it to file returns of income for the above mentioned AY.The AO completed the assessment as mentioned in the above table.

3.Sole ground of appeal,raised by the assessee,is about not allowing its claim for the sum paid towards electricity charges to NESCO.During the assessment proceedings,the AO found that the appellant had raised an additional claim of an amount of Rs.3885.98 lakhs on account of electricity charges paid to NESCO.He observed that no such claim had been made in the return which had been filed u/s.139(1) of the Act,that the claim was made for the first time, in the course of proceedings initiated by issue of notice u/s.153A,that

proceedings u/s.153 -A were for the benefit of revenue,that the principles of law laid down by the Apex court in the case of Sun Engineering Works in the context of section 147 would equally apply to the provisions u/s.153A.Accordingly,he declined to allow the claim of deduction of Rs. 3885.98 lakhs.

3.1.Aggrieved by the order of the AO,the assessee filed an appeal before the First Appellate Authority(FAA)and made elaborate submissions.After considering the available material,he held that claim of payment of Rs.3885.98 lakhs to NESCO had come up for adjudication in the AY.2005-06,that while disposing off the appeal for that AY.it has been held that the claim for deduction was not at all tenable either on the basis of accrual/crystallization of the claim or based on actual payment.Accordingly,he disallowed the claim made by the assessee.

3.2.During the course of hearing before us,the Authorised Representative(AR)fairly agreed that the issue,raised by the assessee,stands decided against it,that the Tribunal,while deciding the appeals for the AY.s.2005-06 and 2006-07(ITA.s/1166 & 621 and 667/Mum/2015/ dtd. 07.04.2017)had held that in absence of incriminating material,found during the search and seizure proceeding,no assessment could be made,if the assessment for that year was already completed by the AO.The DR stated that the AO had passed assessment order,for the year under appeal,before initiation of the action u/s.132 of the Act.

Considering the above,we dismiss the effective ground of appeal raised by the assessee.

ITA/1168/Mum/2015/-AY.2008-09:

4.Following our order for the earlier year,we dismiss the appeal filed by the assessee,as the facts for both the AY.s.are similar.

ITA/1169/Mum/2015/-AY.2009-10:

5.Facts for the year under consideration are slightly different.The AR stated that on the date of search the assessment,for the year under appeal,was not completed,that the assessee could make a fresh claim for the deduction in light of the judgment of the Hon'ble Bombay High delivered in the case of Continental Warehousing Corporation (Nhava Sheva)Ltd.,(374 ITR 645),that the departmental authorities did not have the benefit of the above judgment,that matter should be restored back to the AO to consider the claim made for the year under appeal.The Departmental Representative (DR)left the issue to the discretion of the Bench.

5.1.We have heard the rival submissions and perused the material before us.We find that the assessment for the year was pending on the date of the initiation of the search u/s.132 of the Act.In the matter of Continental Warehousing Corporation (Nhava Sheva)Ltd.(supra)the Hon'ble High Court has held as under:

“Under section 153A of the Income-tax Act, 1961, which enables carrying out of search or exercise of power of requisition, assessment in furtherance thereof is contemplated. There is a mandate to issue notices under section 153(1)(a) and assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. Thus, the crucial words “search” and “requisition” appear in the substantive provision and the provisos. That would throw light on the issue of applicability of the provision. True it is that the assessment which has to be made in pursuance of the notice is in relation to the six years. An order will have to be made in that regard. While making the order, the income or the return of income filed for all these assessment years is to be taken into account. A reference will have to be made to the income disclosed therein. However, the scope of enquiry though not confined essentially revolves around the search or the requisition under section 132A, as the case may be. The provision deals with those cases where assessment or reassessment, if any, relating to the assessment years falling within the period of six assessment years referred to in sub-section (1) of section 153A were pending. If they were pending on the date of the initiation of the search under section 132 or making of requisition under section 132A, as the case may be, they abate. It is only pending proceedings that would abate and not where there are orders made of assessment or reassessment and which are in force on the date of initiation of the search or making of the requisition.”

Considering the above, we are of the opinion that the matter should be restored back to the file of the AO for fresh adjudication, who would decide the issue after affording a reasonable opportunity to the assessee. Effective ground of appeal is allowed in favour of the assessee, in part.

As a result, appeals filed by the assessee for the AY.s.2007-08 and 2008-09 stand dismissed and the appeal for the AY.2009-10 is partly allowed.

फलतः निर्धारिती द्वारा दाखिल की गई नि.व. 2007-08 तथा 2008-09 की अपीलें नामंजूर की जाती हैं और नि.व.2009-10 की अपील अंशतः मंजूर की जाती है.

Order pronounced in the open court on 1st, January, 2018.

आदेश की घोषणा खुले न्यायालय में दिनांक 1 जनवरी, 2018 को की गई।

Sd/-

(अमरजीत सिंह / Amarjit Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(राजेन्द्र / Rajendra)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक/Dated : 01.01.2018. Sd/-

Jv.Sr.PS.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

- 1.Appellant /अपीलार्थी
2. Respondent /प्रत्यर्थी
- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त,
- 4.The concerned CIT /संबद्ध आयकर आयुक्त
- 5.DR “ E ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ, आ.अ.न्याया.मुंबई
- 6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.