

आयकर अपीलीय अधीकरण, न्यायपीठ – “C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
 (समक्ष) Before श्री जे. सुधाकर रेड्डी, लेखा सदस्य एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य)
 [Before Shri J. Sudhakar Reddy, AM & Shri A. T. Varkey, JM]

I.T.A. No. 1277/Kol/2017
Assessment Year: 2012-13

Duncans Industries Ltd. (PAN: AAACD9302P)	Vs.	Assistant Commissioner of Income-tax Circle-4(1), Kolkata.
Appellant		Respondent

Date of Hearing	24.01.2018
Date of Pronouncement	11.04.2018
For the Appellant	Shri Subhas Agarwal, Advocate
For the Respondent	Shri G. Mallikarjuna, CIT, DR

ORDER

Per Shri A.T.Varkey, JM

This appeal filed by the assessee is against the revision order of Pr. CIT-2, Kolkata, dated 24.03.2017 for AY 2012-13.

2. Assessee did not press ground nos. 2 to 6 of the appeal at the time of hearing. Hence, the grounds are dismissed as not pressed.
3. The only issue in this appeal of assessee is against the order of CIT revising the assessment framed u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) dated 10.02.2015 u/s. 263 of the Act.
4. Briefly stated facts are that the assessee filed its e return on 30.09.2012 declaring total income of Rs. Nil. Assessee’s case was selected for scrutiny and thereafter, AO issued notices u/s. 143(2) and 142(1) of the Act on 12.08.2013 and 15.05.2014 respectively. Thereafter assessment was completed u/s. 143(3) of the Act on 10.02.2015 determining the total loss of Rs.6,01,25,018/- u/s. 115JB of the Act. The Ld. Pr. CIT observed from the details of ‘Other Expenses’ debited in the P&L Account, that the assessee has written back a sum of Rs.1816.37 lakh (reduced from the other expenses) on account of provision for doubtful debt and advances. During the course of scrutiny proceedings, the assessee stated in a letter dated 09.01.2015 that the provisions for doubtful loans/advance aggregating to

Rs.1816.37 lacs made in respect of the loans/interest receivable were treated as disallowable in the return of income of earlier years 2002-03, 2005-06 & 2006-07 and the same were added back in the respective assessment orders of the relevant assessment years. The assessee has also stated that due to inadvertence, the amount of provision written back was not considered as not taxable in the computation of income. Accordingly, the assessee requested the AO to consider the amount not taxable in the assessment order. Based on the request of the assessee and verification of details submitted in this regard, the Assessing officer considered the sum of Rs. 18,15,37,581/- relating to provisions written back as not taxable in the assessment order and allowed it as business expense in the computation of assessed income. According to Ld. Pr. CIT the deduction allowed in the assessment, in view of the decision cited by the Ld. AR in the case of Goetze (India) Ltd. Vs. CIT (2006) 284 ITR 0323 (SC), cannot be held in order. According to Ld. Pr. CIT, this resulted in excess set off of business loss and unabsorbed depreciation of Rs.7,26,15,032 (40% Central income on Rs.18,15,37,581/-) involving potential tax effect of Rs.2,35,59,947/- (tax @ 30% + Surcharge @ 5% + Cess @ 3%). Thereafter notice u/s.263 was issued for compliance. In the written submission the assessee submitted that, it had not claimed any deduction but had only requested the AO not to treat the amount of provision for doubtful debts, advances written back during the year as eligible to tax, since the provisions made in earlier years were treated as disallowable in the respective assessment year in accordance with the provision of Section 41(1) can't be treated as profit chargeable to tax as such amounts were not allowed as an allowance or deduction in earlier assessment years in which the provisions were made by the assessee. According to Ld. Pr. CIT the said submission of assessee is not tenable in view of the judgment of Hon'ble Supreme court in the case of Goetz India Ltd. (supra) wherein it held that a claim can be made before the assessing officer only through filing a revised return which is not done in the instant case. In view of the above, after examination of the facts the Pr. CIT found that this matter has not been duly examined by AO. It is trite law that non examination/inadequate enquiry by the AO renders the assessment order erroneous in so far as it is prejudicial to the interest of Revenue. Therefore, the Pr. CIT set aside the impugned order passed u/s 143(3) of the Act with a direction to the AO to complete the assessment and pass a speaking order after giving the assessee necessary opportunity of being heard. Aggrieved, assessee came in appeal before Tribunal.

5. We have heard rival submissions and gone through facts and circumstances of the case. We note that assessee in its computation of income, by inadvertence had omitted to reduce the subject mentioned income representing provision written back, not-taxable since the assessee had already offered the same in AY 2003-04, 2006-07 and 2007-08 at the time of making the said provisions. Meaning thereby, these items were duly offered to tax by the assessee in AYs, 2003-04, 2006-07 and 2007-08. When these provisions were written back to P&L Account as no longer required, the same requires to be treated as non-taxable in order to avoid double taxation. We note that these facts were rightly brought to the notice of AO, vide letter dated 09.01.2015 during the course of assessment proceedings, who having appreciated the contention of the assessee observed as under:

“Provision for doubtful loans/advances written back:

From the Accounts it appears that the assessee has written back the provision for doubtful loans/advances aggregating to Rs.1816.37 lacs made in respect of the loans/interest receivable in earlier years, which relate to loans/interest receivable written off, as stated above. The assessee submitted as follows:

“Party-wise break-up of the provision amounts written back is indicated in the statement enclosed. These provisions were made in the financial years 2002-03, 2005-06 and 2006-07 and were treated as disallowable items in the return filed in assessment years 2003-04, 2006-07 and 2007-08 and were added back in the assessment orders passed U/s. 143(3) for the aforesaid assessment years. Due to inadvertence, this amount of provision written back was not considered as not taxable in the computation of total income. We pray that the amount may kindly be treated as not taxable while framing the-assessment order.”

After verification of the details filed by the assessee, the amounts of provision written back are considered not taxable, since the same have been disallowed in the respective assessment years in which the provisions were made in the Accounts.”

6. From the above exercise conducted by the AO, it could be seen that AO has applied his mind on the issue and after conducting proper enquiries have held it as non-taxable. We find the Ld. CIT has not adjudicated this issue on merits, rather he has merely placed reliance on the decision of the Hon’ble Supreme Court in Goetz (India) Ltd., (supra) to nullify the legitimate claim of the assessee and the reasoned action of AO. The AO is duty bound to assess the assessee on the true and chargeable income in accordance to law. It should be kept in mind that AO is discharging the duty as a quasi judicial authority, so his decision on an issue which is per-se sustainable in law cannot be tinkered with. In the instant case the AO has granted relief based on correct appreciation of facts and law. It is not the case of Ld. CIT that the AO has proceeded on incorrect assumption of fact warranting intervention of Ld. CIT’s jurisdiction u/s. 263 of the Act. We note that the time

limit for filing revised return u/s. 139(5) of the Act had expired by 31.03.2014 and hence, the assessee could not have filed revised return. So, in such a scenario, if the assessee points out the inadvertent mistake it committed in the computation of income, the only recourse available before the assessee is to bring to the notice of AO for rectifying the genuine inadvertent mistake, which has been done by assessee and the AO in this case has applied his mind and taking into consideration the fact that the income has already been taxed in the earlier years as stated above has treated the same as non-taxable. Moreover, we note the Ld. CIT has not disputed the fact that assessee has made an erroneous claim before the AO. Hence, even if the section 263 order is sustained it will amount to a futile exercise. So, we are inclined to allow the appeal of the assessee and cancel the impugned order of Ld. CIT.

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

Order is pronounced in the open court on 11th April, 2018.

Sd/-

(J. Sudhakar Reddy)
Accountant Member

Sd/-

(A. T. Varkey)
Judicial Member

Dated: 11th April, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Duncans Industries Ltd., 31, Netaji Subhas Road, Kolkata-700 001.
2. Respondent – ACIT, Circle-4(1), Kolkata.
3. The CIT(A) Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Sr. Pvt. Secretary