



IN THE INCOME TAX APPELLATE TRIBUNAL "E", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

&

SHRI AMARJIT SINGH, JM

ITA No.2809/Mum/2017

(Assessment Year :2007-08)

M/s. Salasar Balaji Ship Breakers Pvt. Ltd., 34, Quay Street New Darukhana Mumbai – 400 010	Vs.	PR. CIT-8, Mumbai
PAN/GIR No. AAEC5872M		
Appellant)	..	Respondent)

Assessee by	Shri C.V. Jain
Revenue by	Shri Manjunatha Swami
Date of Hearing	22/06/2018
Date of Pronouncement	28/06/2018

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A)-8, Mumbai dated 30/03/2017 for A.Y.2007-08 in the matter of order passed u/s.263 of the IT Act.

2. Following grounds have been taken by the assessee in its appeal:-

1. *On the facts, in the circumstances of the case and in law, the learned Principal Commissioner of Income Tax (Pr. CIT) has erred in making a revision order u/s 263, setting aside the assessment order passed by the learned. Assessing Officer (A.O.) u/s 143(3) r.w.s. 147 and directing the A.O. to recompute the income of the appellant company without considering the fact that the business expenses claimed by the appellant*

were duly allowable, though there was a temporary lull in the business of the appellant company.

2. *On the facts, in the circumstances of the case and in law, the learned Pr. CIT has failed to appreciate the fact that the assessment order passed by the Ld. AO u/s 143(3) r.w.s. 147 was neither erroneous nor prejudicial to the interest of the revenue as under similar circumstances such business expenses were allowed in the subsequent assessment year, where the order was passed u/s 143(3) by the then A.O. after considering the facts and circumstances of the case.*
3. *The appellant craves leave to add, amend, alter, delete, change or modify all or any of the above grounds of appeal which are independent & without prejudice to each other.*

3. Rival contentions have been heard and record perused. In this case, return of income was e-filed for A.Y.2007-08 on 05/11/2007 declaring total income of Rs.7,51,200/-. Assessment u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 was completed on 24/03/2015 determining the total income of Rs.1,12,51,200/-.

4. In its order u/s.263, CIT observed that the Assessment Order u/s.143(3) passed by ITO – 8(1)(3), Mumbai dated 24/03/2015 is erroneous as no inquiry, prima facie warranted on facts and circumstances of the case was made in respect of the following issue:-

"During the year under consideration your company was not primarily conducting any business activity and the funds of the company were deployed on interest & major income of the assessee company consisted of interest income. Your company has earned interest income amounting to Rs.24,46,377/- and claimed expenses under various head of Rs.17,61,576/-against such income. Section 57(111) of the I.T.Act 1961 defines that the income chargeable under the head "Income From Other Sources" shall be computed after making any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such "Income from Other Sources". Since no business activity are recorded in the books the expenditure claimed of Rs. 17,67,576/- is not in accordance to provisions laid down under section 57(iii) of the I.T.Act."

5. CIT observed that the aforesaid aspect which, prima facie warranted inquiry on the facts and circumstances of the case have not been inquired into and the claim of the assessee has been allowed by the Assessing Officer without inquiry. It is clear that in respect of the aforesaid aspect, the order of the Assessing Officer suffers from error within the meaning of Section 263 of the Income Tax Act, 1961. This error has resulted in prejudice to the interest of Revenue within the meaning of Section 263 in as much as the claim of the assessee is allowed in excess and/or income of the assessee has been under assessed. Accordingly, in respect of the aforesaid aspect enumerated in paragraph No. 2 as above, provisions of Section 263 of the Income Tax Act, 1961 are clearly attracted to the facts of the case.

6. It was contention of learned AR that there was a temporary lull in the business and which was subsequently revived after one year. Our attention was also invited to the purchase and sales made in the F.Y. 2008-09 and subsequent years to indicate that business was not closed and assessee was incurring expenditure as well as running its business at full swing. Our attention was also invited to the Audited accounts for the subsequent years also wherein business was in full swing. Under these facts and circumstances, it was argued that merely because there was a temporary lull in the business, business was not closed and the expenditure incurred to run the business is required to be allowed as business expenditure. He further contended that interest income so

earned during the year even if taxed under the head 'income from other sources' loss incurred during the same year on account of various business expenditure is liable to be set off against the interest income.

7. On the other hand, learned DR relied on the order of CIT passed u/s.263.

8. We have considered rival contentions and carefully gone through the orders of the authorities below and found from record that basic grievance of CIT was that there was no business activity during the year and secondly the interest income earned by the assessee was shown under the head 'income from business' and the expenditure so incurred in the business was claimed as expenses against such interest income. From the record, we found that there was a temporary lull in the business and the business was again revived and in support of the same, assessee has filed audited accounts for the year ending on 31/03/2009 to 31/03/2015. All this indicates that there is only temporary lull in the business and the business of assessee was continuing, merely temporary lull in the business cannot be considered as a closer of business. Therefore, assessee is required to incur the minimum expenditure to maintain the business and maintain its status. Accordingly, these expenditure are required to be set off against the interest income as per provisions of Section 71 of the IT Act. So far as interest income is concerned, we are in agreement with the CIT that same is to be assessed under the head 'income from other sources'. Accordingly, we modify the order of CIT and

direct the AO to examine the expenditure which is required to be incurred to maintain its status even though business is not running in full swing. We had also carefully gone through the nature of expenditure incurred during the year and find that these are required to be incurred for maintaining the status of the business as running. Accordingly, we direct the AO to examine the expenditure and its allowability under the head business and profession u/s.28 and also to consider the claim of its set off against interest income as per the provisions of Section 71 of the IT Act. We direct accordingly.

9. In the result, appeal of the assessee is allowed in part.

Order pronounced in the open court on this 28/06/2018

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 28/06/2018

Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai