

आयकर अपीलीय अधिकरण "G" न्यायपीठ मुंबई में।

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

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.1959 to 1962/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2007-08, 2009-10, 2008-09 & 2011-12)

Walchandnagar Industries Ltd., 3, Walchand Terraces, Tardeo Road, Mumbai-400034	बनाम/ v.	DCIT CEN CIR 8(3) R.No. 545, Aayakar Bhavan, M.K. Road, Mumbai-400020
स्थायी लेखा सं./ PAN : AAACW0541M		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:		Ms. Vasanti B. Patel
Revenue by :		Shri Abhijit Patankar

सुनवाई की तारीख / **Date of Hearing** : **24.07.2018**

घोषणा की तारीख / **Date of Pronouncement** : **24.07.2018**

आदेश / ORDER

PER BENCH

These four appeals, filed by the assessee, being ITA No. 1959 to 1962/Mum/2017 for assessment years 2007-08, 2009-10, 2008-09 and 2011-12 respectively , are directed against separate appellate orders all dated 02.11.2016 passed by learned Commissioner of Income Tax (Appeals)-50, Mumbai (hereinafter called "the CIT(A)"), for the aforesaid four assessment years respectively , the appellate proceedings had arisen before learned CIT(A) from four different orders all dated 29.05.2015 passed by learned Assessing Officer (hereinafter called "the AO") being income tax

computation form and notice of demand u/s 156 issued in pursuance to and give effect to order passed by settlement commission u/s 245D(4) of the Income-tax Act, 1961 (hereinafter called "the Act") for the aforesaid four assessment years respectively.

2. First we shall take up appeal of the assessee for the assessment year 2007-08 in ITA no. 1959/Mum/2017. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") for AY 2007-08 , reads as under:-

1. The Ld. CIT(A) has erred in passing ex-parte order without giving Appellant an adequate opportunity to represent its case.

2. The Ld. CIT(A) has erred in stating that nobody appeared on 2/11/2016 (which in fact was very first date fixed for the hearing). The Appellant submits that Mr. Prakash Jajotar, Dy. Manager (Taxation) of the Appellant company had personally appeared before CIT(A) and asked for the short adjournment which was granted to him orally. However, no further/new notice was issued for hearing date. CIT(A) has passed the order mentioning the said date (i.e. 2/11/2016) as date of order and it was received by the Appellant on 21/1/2017.

3. Without prejudice to the above the CIT(A) has erred in holding that appeal was not maintainable under the provision of the Income Tax Act, 1961.

4. The CIT(A) has failed to appreciate that Appellant is denying its liability to the levy of Interest which is wrongly calculated by AO under section 234B and 234C of the Income Tax Act, 1961 and the same is appealable under the provision of the Income Tax Act, 1961.

5. Without prejudice to the above the CIT(A) has erred in upholding additions on account of wrongly calculated interest of Rs.3,48,78,810/- under section 234B and Rs.28,44,524/- under section 234C of the Income Tax Act, 1961.

6. The appellant craves leave to add, to amend, to modify, to alter all or any of the aforesaid grounds of appeal at or before the hearing."

3. The appeal has been filed by the assessee against the appellate order dated 02.11.2016 passed by learned CIT(A) for AY 2007-08 wherein he has dismissed the appeal of the assessee ex-parte by holding that the appeal filed against an order passed by settlement commission u/s 245D(4) is not maintainable. It is observed by learned CIT(A) that the order dated 29.05.2015 passed by the AO being notice of demand u/s 156 and income

tax computation form are in pursuant to order dated 23.04.2015 passed by Settlement Commission which is not an appealable order before learned CIT(A) within the provisions of Section 246 of the 1961 Act . The facts of the case as are recorded in appellate order dated 02.11.2016 passed by learned CIT(A) are enumerated below:-

“ 4.1 The appellant, M/s Walchandnagar Industries Ltd, filed return of income u/s 153A on 28.06.2013. Subsequently, it filed a settlement application for settling its case for the A.Y. 2007-08 to A.Y. 2013-14. Subsequently, an order u/s 245D(4) was passed on 23.04.2015 determining total income of the appellant for the A.Y. 2007-08 at Rs. 43,70, 56,858/-. In Annexure-1 of the order u/s 245D(4), the Additional Director of Investigation-1, Income Tax Settlement Commission Bench, Mumbai stated as under:

"Since the details of tax payable are available with the Assessing Officer, the AO may compute the tax payable including surcharge and interest, if any, after giving credit of taxes paid by the applicant and issued Demand Notice as per provisions of Section 245D(6) of the Act,"

4.2 Accordingly, the AO computed tax liability of the appellant for the A.Y. 2007-08. This computation forms part of the order of 245D(4) of the Act. Aggrieved by the quantum of tax liability determined by the AO, the appellant has filed this appeal.

5. Decision:

5.1 The impugned order was passed u/s 245D(4) of the Act, Section 246A contains an exhaustive list of the orders against which appeals can be filed before the CIT(A). I find from that section that there is no provision for filing an appeal before the CIT(A) against an order passed u/s 245D(4) of the Act, Therefore, this appeal cannot be entertained. In view of the above, the appeal is dismissed.”

It is the contention of the assessee's counsel who has stated before the Bench that learned CIT(A) has wrongly stated that none appeared on behalf of the assessee when the appeal was called for hearing for the first time before learned CIT(A) on 2-11-2016, while the fact of the matter is that Mr. Prakash Jajotar, Dy. Manager (Taxation) of the assessee company duly appeared before learned CIT(A) on 2-11-2016 which was the very first date of hearing of the appeal before learned CIT(A) and he sought short adjournment before learned CIT(A) which was granted to the assessee by learned CIT(A). It was submitted that despite short adjournment granted by learned CIT(A) on 2-11-2016 which was the first date of hearing of the appeal , the Ld. CIT(A) proceeded to decide the appeal filed by the assessee ex-parte and the appeal

was dismissed by learned CIT(A) as not maintainable keeping in view provisions of Section 246 of the 1961 Act as in the opinion of learned CIT(A), the appeal has arisen from the order passed by Settlement Commission u/s 245D(4) of the 1961 Act. It was submitted by Ld. Counsel for the assessee that if the matter is restored to the file of learned CIT(A) for fresh adjudication of all the matter/issues, the assessee will make all necessary contentions/submissions both on facts and on law before learned CIT(A) who can re-adjudicate the same on merits and /or on legal grounds. It is submitted that the issue involved is with respect to the date from which interest is to be levied u/s. 234A and 234C of the Act, with respect to the order passed by the AO in consequence of the order passed by settlement commission u/s 245D(4) of the 1961 Act. It was submitted that the issue of determination of the income by Settlement Commission is not under challenge which stood accepted by the assessee but rather it is the date from which the interest u/s 234A and 234C will be leviable on the income computed by Settlement Commission which is disputed/agitated by the assessee and this is purely a legal matter and the appeal is maintainable before learned CIT(A) u/s 246 of the 1961 Act. The learned CIT(A) erred in dismissing appeal of the assessee as non maintainable u/s 246 of the 1961 Act ex-parte without hearing the assessee. It is prayed that the issue may be set aside /restored to the file of learned CIT(A) for fresh adjudication of the issues including maintainability of the appeal before learned CIT(A). It was submitted by learned counsel for the assessee that Ld. CIT(A) can re-adjudicate all issues including jurisdictional issue as to maintainability of the appeal but only after hearing the contentions of the assessee.

4. The Ld. CIT-DR on the other hand submitted that Revenue has no objection if the matter is restored to the file of Ld. CIT(A) with all issues/contentions left open to be decided by Ld. CIT(A) including jurisdictional issue as to the maintainability of the appeal before learned CIT(A) within the provisions of section 246 of the 1961 Act.

5. We have considered rival contentions and have perused the material on record. We have observed that in the case of the assessee Settlement Commission has passed an order dated 23.04.2015 u/s 245D(4) with the following directions:-

“Since the details of tax payable are available with the Assessing Officer, the AO may compute the tax payable including surcharge and interest, if any, after giving credit of taxes paid by the applicant and issued Demand Notice as per provisions of Section 245D(6) of the Act,”

The AO in pursuance to said order dated 23-04-2015 passed by Settlement Commission u/s 245D(4) issued notice of demand u/s 156 of the 1961 Act as also income tax computation form , both dated 29.05.2015 raising an demand Rs. 1,61,53,230/-. The assessee has filed an appeal against the order dated 29.05.2015 passed by the AO before the learned CIT(A). It is the claim of the assessee that Mr. Prakash Jajotar, Dy. Manager (Taxation) appeared before learned CIT(A) on 2-11-2016 which was the first date of hearing of the appeal before learned CIT(A) and sought short adjournment which was granted by learned CIT(A) but however learned CIT(A) passed an ex-parte appellate order dated 02-11-2016 dismissing appeal of the assessee as not been maintainable as arising out of an order passed by Settlement Commission u/s 245D(4) of the 1961 Act without hearing the assessee. The assessee has stated before the Bench that the appeal raises several legal issues as to the date effective from which interest u/s 234A and 234C shall be chargeable as also it involves jurisdictional issue as to maintainability of the appeal before learned CIT(A) u/s 246 as the issues arise out of order passed by Settlement Commission u/s 245D(4). We are of the considered view keeping in view principles of natural justice that the matter/issues connected need to be restored back to the file of learned CIT(A) as assessee has been condemned unheard leading to violation of doctrine of audi alteram partem and the interest of justice in this case will be best served if all the issues arising including jurisdictional issue as to maintainability of appeal before learned CIT(A) is set aside and restored back to the file of learned CIT(A) for de-novo adjudication of all the issues arising in this appeal including jurisdictional issues. Both the parties have also fairly agreed/ consented for set aside of all the issues/contentions back to the file of the learned CIT(A) for denovo determination of all the issues which arises or may arise including jurisdictional issues which are all kept open . We clarify that we have not commented on the merits of the issue(s) in this appeal including jurisdictional issues as to maintainability of appeal before learned CIT(A) u/s 246 of the 1961 Act and Ld. CIT(A) shall be free to decide all issues which arises or may arise, including maintainability of the appeal

before learned CIT(A). Needless to say proper and adequate opportunity of being heard shall be provided by Ld. CIT(A) to the assessee before disposing of the appeal in accordance with principles of natural justice in accordance with law. The evidences/contentions of the assessee shall be admitted by learned CIT(A) in accordance with law. Thus , appeal of the assessee is allowed for statistical purpose. We order accordingly.

6.In the result appeal of the assessee in ITA no. 1959/Mum/2017 for AY 2007-08 is allowed for statistical purposes.

7. Our decision in ITA No. 1959/M/2017 for assessment year 2007-08 shall apply mutatis mutandis to rest of the three appeals of the assessee in ITA no. 1960/M/2017 to 1962/M/17 for AY 2009-10, 2008-09 and 2011-12 respectively as same issues arises in these three appeals also. Thus , all the three appeals of the assessee in ITA no. 1960 to 1962/Mum/2017 for AY 2009-10, 2008-09 and 2011-12 are allowed for statistical purpose We order accordingly.

8. In the result all the four appeals filed by the assessee in ITA no. 1959 to 1962/Mum/2017 for AY 2007-08, 2009-10,2008-09 and 2011-12 are allowed for statistical purposes.

Order pronounced in the open court on 24.07.2018

आदेश की घोषणा खुले न्यायालय में दिनांक: 24.07.2018 को की गई ।

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Mumbai, dated: 24 .07.2018

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

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BY ORDER

**DY/ASSTT. REGISTRAR
ITAT, MUMBAI**