

IN THE INCOME TAX APPELLATE TRIBUNAL
"K" Bench, Mumbai
Before S/Shri B.R.Baskaran (AM) & Amarjit Singh (JM)
I.T.A. No. 1332/Mum/2017 (Assessment Year 2012-13)

Essar Power Limited Essar House 11, K.K. Marg Mahalaxmi Mumbai-400 034. PAN : AAACE0895J (Appellant)	Vs.	ACIT Range-6(2)(2) Mumbai. (Respondent)
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Assessee by	Shri Anuj Kisnadwala & Shri Vijay Mehta
Department by	Shri Jayant Kumar
Date of Hearing	10.9.2018
Date of Pronouncement	19.9.2018

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 31.1.2017 passed by Assessing Officer u/s. 143(3) read with section 144-C(13) of the Act and it relates to the assessment year 2012-13.

2. The assessee-company is engaged in the business of power generation. The assessment of the year under consideration was completed by the Assessing Officer in pursuance of direction given by learned DRP u/s. 144C(5) of the Act.

3. Ground No. 1 urged by the assessee is general in nature.

4. Ground No. 2 relates to disallowance of ₹ 8,49,228/- made out of foreign travel expenses claimed by the assessee. Facts relating to the issue are that the assessee incurred a sum of ₹ 24.66 lakhs as travel expenses of employees to foreign countries. The Learned TPO treated the same as international

transaction, since the travel was made to the places of Associated Enterprises. Accordingly the TPO made an adjustment of ₹ 50 lakhs on this issue.

5. The Learned DRP, however, accepted the contentions of the assessee that it has incurred expenses on the travel undertaken by employees of the assessee and the same cannot be considered as expenses incurred for benefit of AE and accordingly it cannot be taken as international transaction covered u/s 92 of the Act. However, learned DRP noticed that the assessee has furnished details of expenses only to the extent of ₹ 16.16 lakhs. Accordingly the AO disallowed the balance amount of foreign travel expenses amounting to ₹ 8.49 lakhs.

6. The Learned AR contended that the assessee has furnished details for entire expenses of ₹ 24.66 lakhs before the TPO. However, the learned DRP took cognizance of only ₹ 16.16 lakhs and accordingly allowed expenditure to that extent only. The Learned AR submitted that the TPO had made adjustment by treating foreign travel expenses of employee as an international transaction, which has since been reversed by learned DRP. He submitted that the Ld DRP has taken an altogether new ground for disallowing part of foreign travel expenses. The Learned AR also furnished details pertaining to ₹ 8.49 lakhs, which were already furnished to the TPO. Accordingly the Learned AR prayed that the addition sustained by learned DRP may be deleted.

7. On the contrary, the learned DR supported the order passed by the Assessing Officer/Ld DRP on this issue.

8. Having heard the rival contentions, we are of the view that there is merit in the contentions of the assessee. We noticed that the assessee has furnished full details relating to foreign travel expenses incurred by the assessee before the TPO. The Learned DRP has sustained addition to the extent of ₹ 8.49 lakhs only for the reason that the assessee did not furnish details of the same. We noticed that learned DRP has taken cognizance of details only to the extent of ₹

16.16 lakhs. During the course of hearing, assessee furnished two sets of statements, one containing full details of travel expenses (which was furnished before the TPO) and another one containing details of ₹ 8.49 lakhs (which is extracted from the above said statement). Since full details have been furnished by the assessee before the TPO and since the entire foreign travel expenses have been incurred by the employees of the assessee for the purpose of business, we are of the view that addition of ₹ 8.49 lakhs sustained by learned DRP is liable to be deleted. Accordingly, we direct the Assessing Officer to delete the addition of ₹ 8.49 lakhs referred above

9. Next ground relates to head of income under which interest income earned by the assessee is assessable. During the year under consideration, the assessee received a sum of ₹ 230.24 lakhs as interest income from margin money deposits held with bank. The assessee also received a sum of ₹ 19.60 lakhs as interest on income tax refund. The assessee offered both the above said income under the head 'income from business'. The Assessing Officer however assessed them under the head 'income from other sources'.

10. With regard to interest income earned on margin money deposits, we noticed that the Coordinate Bench of the Tribunal has decided this issue in favour of the assessee in ITA No. 1388/Mum/2016 & 2233/Mum/2015 relating to A.Ys. 2011-12 & 2010-11 dated 3.7.2018. We further noticed that the co-ordinate bench of Tribunal has taken identical view in the assessee's own case in A.Y. 2009-10 also in ITA No. 1849/Mum/2015. Consistent with the view taken in assessee's own case for earlier years, we direct the Assessing Officer to assess interest income earned on margin money deposits under the head 'income from business'.

11. With regard to interest earned on income tax refund, we are of the view that the same is required to be assessed under the head 'income from other sources', as the same does not have nexus to the day to day business carried

on by the assessee. Accordingly, we confirm the order passed by the Assessing Officer on this issue.

12. Next issue relates to assessment of income tax recoverable from Gujarat Electricity Board (GUVNL) and Essar Steel Ltd. The assessee has received sale proceeds on sale of power to GUVNL and Essar Steel Ltd. The amount of Income tax recovered from such receipts during the year was ₹ 22.69 crores. The assessee followed a method of accounting whereby it reduced the above said income tax amount of ₹ 22.69 crores from the gross collections and also from income tax provision, i.e. both "Income tax provision" (debited to Profit and Loss account) as well as "Gross collections" (credited to Profit and Loss account) was shown at net figure i.e. net of income tax recoverable. The Assessing Officer added the above said amount of ₹ 22.69 crores to the total income of the assessee, while computing total income under normal provisions of the Act and also to the net profit for the purpose of computing book profit u/s. 115JB of the Act. The Ld CIT(A) upheld the additions so made by the AO.

13. Learned AR fairly submitted that the addition of ₹ 22.69 crores made by the Assessing Officer to the total income under normal provisions of the Act has to be decided against the assessee, as an identical issue has been decided against the assessee by the Tribunal in assessee's own case for A.Y. 2009-10 in ITA No. 1849/Mum/2015 order dated 17.10.2017 and also in A.Ys. 2010-11 & 2011-12 in ITA Nos. 1388/Mum/2016 and 2233/Mum/2015 vide order dated 3.7.2018. Consistent with the view taken by the Tribunal in assessee's own case for earlier years, we uphold the order passed by the learned CIT(A) on this issue.

14. With regard to addition made while computing book profit u/s. 115JB of the Act, the learned AR submitted that the same has been decided in favour of the assessee by the Coordinate Bench of the Tribunal in A.Y. 2009-10 to 2011-12 (supra).

15. We have heard the parties on this issue. During the course of hearing, the assessee furnished copy of audited financial statement as well as computation of book profit made u/s. 115JB of the Act. We noticed that the assessee has proceeded to compute book profit by adopting figure of "Profit before tax". In that case, the adjustments, if any, made to the Income tax amount will not have effect on the Book profit, since the figure of "Profit before tax" was adopted to compute book profit u/s 115JB of the Act. In the instant case, we notice that the adjustment of ₹ 22.69 crores has been made by the assessee against the "Provision for tax", which is appearing after "Profit before tax". Accordingly, this issue has to be decided in favour of the assessee. Accordingly, we direct the Assessing Officer to delete the addition of ₹ 22.69 crores made by him to the book profit.

16. Next issue relates to disallowance made u/s. 14A of the Act under normal provisions of the Act as well as for computing book profit u/s. 115JB of the Act.

17. Learned AR submitted that the assessee has not received any exempt income during the year under consideration and hence the question of making any disallowance u/s. 14A of the Act does not arise. He submitted that identical issue was considered by the Coordinate Bench in assessee's own case in A.Y. 2009-10 (supra) and the Tribunal, by following the decision of Hon'ble Delhi High Court rendered in the case of Cheminvest Ltd. (281 CTR 447), has held that no disallowance u/s. 14A is required as the assessee did not earn any exempt income. Since the facts are identical in this year also, by following the above said decision of Hon'ble Delhi High Court, we direct the Assessing Officer to delete the disallowance u/s. 14A of the Act, while computing total income under normal provisions of the Act. Since the assessee has not earned any exempt income, the question of making any addition to the net profit while computing book profit also does not arise.

18. Next issue relates to disallowance of depreciation. At the time of hearing, learned AR did not press this ground. Accordingly, the said ground is dismissed as not pressed.

19. In the result, appeal filed by the assessee is partly allowed.

Order has been pronounced in the Court on 19.9.2018.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 19/9/2018

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Senior Private Secretary)
ITAT, Mumbai

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