

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH : KOLKATA

[Before Hon’ble Shri S.S.Godara, JM & Hon’ble Shri M.Balaganesh, AM]

I.T.A No. 954/Kol/2017

Assessment Year : 2012-13

M/s Beekay Steel Industries Ltd.
[PAN: AABCB 3205 A]
(Appellant)

-vs-

Pr. CIT-1, Kolkata
(Respondent)

For the Appellant : Shri Subash Agarwal, Advocate

For the Respondent : Shri P.K. Srihari, CIT DR

Date of Hearing : 13.11.2018

Date of Pronouncement : 20.11.2018

ORDER

Per M.Balaganesh, AM

1. This appeal by the Assessee arises out of the order of the Learned Principal Commissioner of Income Tax-1, Kolkata [in short the ld CIT] in Memo No. Pr. CIT-1/Kol/Revision u/s 263/ 2016-17/13877-80 dated 22.02.2017 against the order passed by JCIT, Range-3, Kolkata [in short the ld AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 30.03.2015 for the Assessment Year 2012-13.

2. The only effective issue in this appeal is as to whether the Ld. Administrative CIT was justified in invoking revisional jurisdiction u/s 263 of the Act, in the facts and circumstances of the case.

3. The brief facts of this appeal are that the assessee is a public limited company engaged in the business of manufacturing and trading of iron and steel products and also deriving income from renting activities. The return of income for assessment year 2012-13 was filed declaring total income of Rs. 24,49,87,560/-. The assessment was completed u/s 143(3) of the Act on 30.03.2015 determining total income of the assessee at Rs. 41,52,13,220/- after making certain additions and disallowances. This assessment was sought to be revised by the Ld. CIT by invoking revisional jurisdiction u/s 263 of the Act on the ground that the assessee had made provision for excise duty on closing stock of finished goods to the tune of Rs. 5,74,21,924/- and that as per the tax audit report of the assessee, a sum of Rs. 30,45,000/- only was paid before the due date of filing of return of income u/s 139(1) of the Act and accordingly, the remaining sum of Rs. 5,43,76,924/- ought to have been disallowed u/s 43B of the Act by the ld. AO. The Ld. CIT observed that no enquiry was made by the Ld. AO in this regard and hence treated the order of the ld. AO as erroneous and prejudicial to the interest of revenue. Aggrieved, the assessee is in appeal before us.

4. We have heard the rival submissions. We find that the assessee had made provision for excise duty or closing stock of finished goods in respect of its various divisions as under:

Jamshedpur Division	Rs. 6,35,878/-
Structural Division	Rs. 2,84,03,950/-
Special Division	Rs. 57,47,452/-
Chengalpet Division	Rs. 1,54,35,922/-
Radice Division	Rs. 29,64,356/-
Venkatesh Division	Rs. 42,34,366/-
Total	Rs. 5,74,21,924/-

This provision for excise duty on closing stock of finished goods was debited in the profit and loss account and claimed as deduction and correspondingly the same was also included by the assessee company in the valuation of closing stock of finished goods in accordance with the provisions of Section 145A of the Act, on which fact there is no dispute. The tax auditor in the tax audit report had observed that a sum of Rs. 30,45,000/- was paid as excise duty on sales before the due date of filing of return of income u/s 139(1) of the Act. In this regard, the Id. AR placed on record the Central Excise Returns wherein, it is evident that Jamshedpur Unit was engaged only in job work activities and accordingly deprived of enjoying of the benefit of input credit on purchases for adjustment towards excise duty payable on sale of finished goods. It is not in dispute that the assessee maintains division wise details of input credit and division wise details of excise duty payable on sales. From the said excise returns, we find that the total excise duty payable on closing stock of finished goods in the sum of Rs. 5,74,21,924/- minus sums paid to the extent of Rs. 30,45,000/- i.e. Rs. 5,43,76,924/- got adjusted with available input credit in the respective divisions which effectively tantamount to constructive payment made by the assessee in the next financial year but before the due date of filing return of income u/s 139(1) of the Act. The details of the input credits adjusted with excise duty payable on sales in the subsequent financial year which is well before the due date of filing of return of income u/s 139(1) of the Act, thereby eligible for deduction u/s 43B of the Act are as under:

Division	Date	Amount
i) Structural Division	30.04.2012	Rs. 1,29,66,452/-
	31.05.2012	Rs. 99,04,498/-
	30.06.2012	Rs. 1,01,53,156/-
Total		Rs. 3,30,24,106/-
ii) Special Division	30.04.2012	Rs. 46,46,054/-
	31.05.2012	Rs. 53,71,506/-
Total		Rs. 1,00,17,560/-

iii) Chengalpet Division	30.04.2012	Rs. 59,43,360/-
	31.05.2012	Rs. 63,30,807/-
	30.06.2012	Rs. 68,35,032/-
Total		Rs. 1,91,09,199/-
iv) Radice Division	30.04.2012	Rs. 35,79,703/-
v) Venkatesh Division	30.04.2012	Rs. 29,85,577/-
	31.05.2012	Rs. 29,43,525/-
Total		Rs. 51,29,102/-
Grand Total		Rs. 7,08,59,670/-

4.1. The assessee explained before the Ld. CIT that the excise duty liability arises only on removal of finished goods from the factory or ware house of the assessee. However, as per the provisions of section 145A of the Income Tax Act, 1961, the excise duty component on closing stock of finished goods is required to be provided for inclusion in the valuation of closing stock of finished goods thereby making it revenue neutral. The assessee sought to explain that this excise duty provision on closing stock of finished goods gets effectively adjusted with the available input credit in the subsequent year before us due date of filing of return of income under 139(1) of the Act. We find that these facts are not properly appreciated by the Ld. CIT and we hold that the Ld. CIT had erroneously invoked revisionary jurisdiction in the instant case as there is absolutely no error in the order of the ld. AO or any prejudice that is caused to the interest of the revenue in the instant case. From the facts and evidences available on record, we hold that the assessee is entitled for deduction u/s 43B of the Act in respect of provision for excise duty on closing stock of finished goods.

4.2. We also find that the Ld. CIT erred in concluding that no enquiry was made with regard to this excise duty component on valuation of closing stock by the ld. AO. We find from pages 95 to 98 of the Paper Book filed by the assessee before us contains questionnaire dated 11.11.2014 issued together with the notice u/s 142(1) of the Act

wherein, the Id. AO had sought for calculation of valuation of closing stock during the course of assessment proceedings. This has been duly replied by the assessee vide letter dated 13.02.2015 wherein it was subsequently brought to the notice of the Id. AO that the finished goods are inclusive of excise duty. The entire calculation of closing stock of finished goods together with other closing stock details were also furnished as annexure III of the said letter dated 13.02.2015. The Id. AO was convinced on the said workings and the calculations given by the assessee and accordingly deemed it fit not to make any addition or disallowance u/s 43B on the impugned issue. This, in our considered opinion, cannot be termed as erroneous action on the part of the Id. AO. Since adequate enquiries were duly made by the Id. AO in the assessment proceedings thus, there is no question of invoking revisionary jurisdiction u/s 263 of the Act by the Ld. CIT.

5. In view of the aforesaid findings in the facts and circumstances of the case, we have no hesitation in quashing the revision proceedings u/s 263 of the Act of the Ld. CIT. Accordingly , grounds raised by the assessee are allowed.

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

Order pronounced in the Court on 20.11.2018

Sd/-

[S.S. Godara]
Judicial Member

Sd/-

[M.Balaganesh]
Accountant Member

Dated : 20.11.2018

SB, Sr. PS

Copy of the order forwarded to:

1. M/s Beekay Steel Industries Ltd., 4th Floor, Landsdowne Tower, 2/1A, Sarat Bose Road, Kolkata-700020.
2. Pr. CIT-1, Kolkata, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700069
- 3..C.I.T.(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches