

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA**

**BEFORE SHRI S. S. GODARA, JM & DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA No.2319/Kol/2017**

**(निर्धारणवर्ष / Assessment Year: 2006-07)**

<b>M/s. Girish Rolled Products &amp; Alloys Ltd.</b> City Centre, 4 <sup>th</sup> Floor, 63/2, The Mall, Kanpur- 208001 (U.P)	<b>Vs.</b>	<b>DCIT, Circle-3, Kolkata – 69.</b> Aayakar Bhavan, P-7, Chowringhee Square, Kolkata – 69.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCG 0137 G</b>		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

Appellant by : None  
Respondent by : Shri K. Mondal, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 27/09/2018

घोषणाकीतारीख/Date of Pronouncement : 30/11/2018

**आदेश / ORDER**

**Per Dr. A. L. Saini:**

The captioned appeal filed by the Assessee, pertaining to Assessment Year 2006-07, is directed against an order passed by the Ld. Commissioner of Income Tax (Appeals)-22, Kolkata in appeal No.129/CIT(A)-22/06-07/15-16/Kol, dated 30.08.2017, which in turn arises out of an assessment order passed by the Assessing Officer u/s 147/143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 10.02.2014.

2. The grievances raised by the assessee are as follows:

*"a. Because Ld. CIT(A) erred in not considering that it is settled proposition of law that proceedings u/s 147/148 of the Act cannot initiated on the question of law raised by audit party as such the entire reassessment proceedings are illegal and liable to be quashed.*

*b. Because in case in hand the Ld. CIT(A) has erred in not considering there is no case of income having escaped assessment by allowance of unabsorbed depreciation for the A.Y. 1998-99 to the extent of Rs.7,68,058/- since unabsorbed depreciation for the A.Y. 1998-99 was alive on the date of amendment w.e.f. 01.04.2002 since the time limit of 8 years specified by pre-amended law had not expired. As such, the said depreciation has come to be governed by the law existing on or after 01.04.2002 and continued to exist during the assessment year in question. Therefore, the allowance*

*of carry forward of the said depreciation is perfectly justified under law in the facts and circumstances of the case.*

*c. Because the notice u/s 148 has to be issued on the basis of reason to believe, whereas in the case in hand, there is no tangible material to come to conclusion that there is a escapement of income nor the said reason have any live link with the formation of the belief that income has escaped assessment as such the reassessment proceedings are bad and liable to be quashed.*

*d. Because the Ld. CIT(A) is dismissed the appeal in a cursory manner without considering the contentions raised in memorandum of appeal and also without recording reasons as such the order passed by Ld. CIT(A) 30.08.2017 is in violation of principles of natural justice and liable to be set-aside.*

*That in any view of the matter the appellant reserves his right to take any fresh grounds of appeal before hearing of appeal.*

*It is therefore prayed that in the light of submissions made above relief may be allowed accordingly.”*

3. At the time of hearing none appeared on behalf of assessee in spite of issuance of notice for hearing more than one occasion and Ld. Departmental Representative(DR), was present for the appellant Revenue. In the absence of any appearance by the assessee, the appeal is being disposed of ex parte qua the assessee, after hearing Ld. DR for the Revenue on merits in terms of Rule 24 of the Income Tax Appellate, Tribunal, Rules, 1963.

4. The brief facts qua the issue are that the assessee's main business is manufacturing and trading of irons. The assessee filed its return of income for Assessment Year 2006-07 on 27.11.2006 declaring total income at Rs.NIL. The assessee's case was processed u/s 143(1) on 12.10.2007. Subsequently, the case was selected for scrutiny and notices u/s 142(1) & 143(3) were issued and served on the assessee. The assessment was completed u/s 143(3) of the Act, on 23.12.2008, at assessed income of Rs.3,38,521/-.

5. Later on, the assessee's case was reopened u/s 147 of the Income Tax Act, 1961 by issuing notice u/s 148 of the Act, dated 25.03.2013. The assessing officer on careful examination of the accounts, assessment order and records of the assessee company for the Assessment Year 2006-07, found that the assessee has set off brought forward depreciation loss of Rs.13,82,054/- for Assessment Year 1997-98 and Rs.23,17,557/- for Assessment Year 1998-99. As per Finance Act, 1996 Circular No.762 dated 18.02.1998 unabsorbed depreciation allowance up to 1996-97 shall be

added to the allowance of 1997-98 and carry forward and set off of unabsorbed depreciation is allowed for eight Assessment Years only (w.e.f. 1997-98). In Finance Act, 2001 the restriction of eight years was dispensed w.e.f. Assessment Year 2002-03 and subsequent years. In view of the above, assessee had the option to carry forward unabsorbed depreciation of Assessment Years 1998-99 for set off till Assessment Year 2006-07. In the instant case, the set off of unabsorbed depreciation loss for A.Y.1998-99 of Rs.23,17,557/- has been set off in two parts (A.Y.2005-06 Rs.12,10,978/- and A.Y.2006-07 Rs.3,38,521/-). The balance of unabsorbed depreciation of Rs.7,68,058/-, has been carried forwards which is not allowed as it has to be set off within eight Assessment Years succeeding the Assessment Year 1998-99. So, there is excess carry forward of unabsorbed depreciation of Rs.7,68,058/- and thus income of Rs.7,68,058/- has escaped assessment. In view of the above findings and circumstances, the reassessment proceedings u/s 147 of the Act, 1961 was initiated with the prior approval of CIT. Accordingly, a notice u/s 148 was issued on 25.03.2013 which was properly served on the assessee on 26.03.2013.

6. In connection with the above, a notice u/s 142(1) was issued on 30.10.2013 asking the assessee to furnish the details of unabsorbed depreciation in the format prescribed overleaf of the notice. In response, the assessee submitted that reopening was done on the basis of the issue raised by the audit party on a question of law, therefore, reopening is bad in law.

7. Ld Assessing officer rejected the contention of the assessee and held as follows:

*“Furthermore, it is clear that the provision of section 32(2) substituted by Finance Act, 1996 w.e.f. 01.04.1997, unabsorbed depreciation allowance upto Assessment Year 1996-97 shall be added to such allowance of the Assessment Year 1997-98 and will be deemed to be the allowance of that year. Carry forward and set off of unabsorbed depreciation for the Assessment Year 1997-98 was to be allowed for subsequent eight Assessment Years. In view of the above, assessee had the option to carry forward unabsorbed depreciation of Assessment Year 1998-99 for set off till Assessment Year 2006-07. In the instant case, the set off of unabsorbed depreciation loss for Assessment Year 1998-99 of Rs.23,17,557/- has been set off in two parts (Assessment Year 2005-06 Rs.12,10,978/- and Assessment Year 2006-07 Rs.3,38,521/-). Balance of unabsorbed depreciation of Rs.7,68,058/- has been carried forward which is not allowed as it has to be set off within eight Assessment Years succeeding the Assessment Years 1998-99. So, there is excess carry forward of unabsorbed depreciation of Rs.7,68,058/- and thus income of R.7,68,058/- has escaped assessment in contravention of the provision of the Income Tax Act, 1961.*

*The unabsorbed depreciation of Rs.3,38,521/- is available to be set off against the income of the Assessment Year 2006-07 and balance amount of Rs.7,68,058/- is not eligible for carry forward being beyond time limit of eight Assessment Year."*

8. Aggrieved by the stand so taken by the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has dismissed the appeal of the assessee. Ld CIT(A) noted that there was no incorrectness about the reopening of the case which was done in accordance with the provisions of the law.

9. Aggrieved by the order of Id CIT(A), the assessee is in appeal before us. The Id. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer which we have discussed in our earlier para and is not repeated for the sake of brevity.

10. After hearing the Id DR for the Revenue, we note that the impugned assessment order stand challenged on account of the facts that the notice u/s 148 r.w. section 147 of the Act, was issued on the basis of audit objection on a issue which is the point of law. The issue of law pointed out by the Audit objection was relatable to the set off of unabsorbed depreciation relating to the Assessment Year 1998-99, the set off of which to the extent of Rs.3,38,521/- stands allowed against the income of year in the question and set off of Rs.12,10,970/- was allowed in the preceding Assessment Year and the balance in subsequent Assessment Year. According to the audit party the unabsorbed depreciation for Assessment Year 1998-99 was eligible for set off of within a period of 8 years vide amendment made in law. In support of this fact assessee submitted before the Id CIT(A) the text of the audit objection.

We note that the notice under section 147/148 in the assessee's case was issued on the basis of point of law raised. This by itself exposes the invalidity of the action of issuance of notice u/s 148 of the Act. It is well established principle of law that resort to proceedings u/s 147 r.w.s 148 cannot be had to on a question of law raised by audit party. This law has been laid down by the Hon`ble Supreme Court in the case of CIT vs. Lucas TVS Ltd. 249 ITR 306 (SC), wherein it was held as follows :

*"An audit opinion in regard to the application or interpretation of law cannot be treated as information for reopening the assessment under s. 147(b)."*

In view of the above position in law proceedings set in motion with the issuance of notice u/s 148 r.w.s. 147 of the Act, on the basis of audit query are not sustainable under law in the facts and circumstances of the case and as such the impugned assessment order is not maintainable and sustainable under law hence on this ground alone the assessment order deserves to be vacated.

11. In the result, the appeal filed by the assessee is allowed.

Order is pronounced in the open court on 30.11.2018.

Sd/-  
(S. S. GODARA)

न्यायिकसदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 30/11/2018

(RS, Sr.PS)

Sd/-  
(A. L. SAINI)

लेखासदस्य / ACCOUNTANT MEMBER

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant- M/s. Girish Rolled Products & Alloys Ltd.
2. प्रत्यर्थी/ The Respondent- DCIT, Circle-3, Kolkata – 69.
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.  
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,  
I.T.A.T, Kolkata Benches,  
Kolkata.