

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAM LAL NEGI, JM

ITA No. 7290/Mum/2016
(Assessment Year: 2012-13)

Tata Marcopolo Motors Ltd. 1 st Floor, Bombay House, 24, Homi Mody Street, Hutatma Chowk, Mumbai-400 001	Vs.	Dy. CIT-1(3)(1) Aaykar Bhawan, Mumbai-400 0020
PAN/GIR No. AACCT 5547 J		
(Appellant)	:	(Respondent)

Appellant by	:	Shri R. R. Vozd & Shri Nikhil Tiwari
Respondent by	:	Shri D. G. Pansari

Date of Hearing	:	29.11.2018
Date of Pronouncement	:	04.02.2019

ORDER

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-3, (‘ld.CIT(A) for short) dated 19.09.2015 and pertains to the assessment year (A.Y.) 2012-13.

2. The grounds of appeal read as under:

Book profit computation under Section 115JB of the Act

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the revised computation of book profits submitted by the Appellant during the course of the assessment proceedings and in not adjudicating on the merits of the case.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in making an observation that the appellant had falsely taken the plea that its letter dated 22.01.2015 submitting the revised computation under section 115JB was not considered by the AO merely relying on an office note maintained by the AO to which the Appellant is not privy to.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the AO has neither referred nor discussed in the assessment order u/s 143(3) dated 23.01.2015, the revised computation u/s 115JB of the Act which was filed

on 22.01.2015 and forming part of the assessment records. The said revised computation was filed before the date of passing of the assessment order.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not giving an opportunity of being heard while relying on the office note maintained by the AO to which the appellant is not privy to. The Ld. CIT(A) further erred in not appreciating that the AO also did not give any opportunity to the appellant to be heard in respect of the said office note. Accordingly, the order of the CIT(A) is invalid and bad in law as it is in violation of the principle of natural justice.

Interest under Section 234C of the Act

5. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not directing the AO to compute interest under section 234C of the Act as per law.

3. Brief facts of the case are as under:

The Assessing Officer processed e-filed return of income which was filed by the assessee on 30/11/2012 through the income tax portal declaring total income of Rs.15,99,44,895/- u/s 115JB of the I.T. Act. Subsequently, the case was selected for scrutiny and the Assessing Officer after considering the submission of the assessee passed the order on 23/01/2015 at the total income as disclosed by the assessee u/s.115JB of the Act meaning thereby accepted the return of income as filed by the assessee.

4. Before the ld. CIT(A), the assessee submitted that during the course of assessment proceedings, the assessee filed a letter dated 22/01/2015, submitted the revised computation of its book profit u/s.115JB of the I.T. Act declaring total income of Rs.2,48,07,947/-. It was further submitted that there was an inadvertent computation of book profit u/s 115JB of the I T Act as per the income tax return. The assessee requested the Assessing Officer to revised computation of book profit u/s.115JB of the I T Act as submitted before the Assessing Officer. It was further submitted that in the assessment order u/s.143(3) of the I T Act, the A.O. has not considered the revised computation of book profit u/s. 115JB of the I T Act filed along with the letter dated 22/01/2015 and accepted the return of income of the appellant of Rs.15,99,44,895/- u/s.115JB of the I T

Act as against the revised total income of Rs.2,48,07,947/- u/s.115JB of IT Income Tax Act, 1961.

5. Having noted the above contentions of the assessee, the Id. CIT(A) noted that there was a office note by the A.O. regarding the revised computation of the book profit. However, the A.O. has rejected the same as the assessee had not claimed the same while filing the original return. Hence, the Id. CIT(A) rejected the contention of the assessee by holding as under:

6.2 I have carefully considered the rival submissions and examined the case record of the appellant. The unrebutable fact has emerged from record that, the assessment proceedings was completed by the Assessing Officer on 22/01/2015 after giving a reasonable opportunity of being heard to the appellant and passed the assessment order on 23/01/2015. The Assessing Officer has put an office note in the assessment order that, "The assessee in his letter dated 22.01.2015 had requested that the revised computation of book profit u/s 115JB should be allowed however, the assessee did not claim while filing original Return of Income. Hence the claim of the assessee is hereby rejected and assessment completed accordingly".

6.3 Therefore, it emerged from the record that the AO had duly considered the letter dated 22/01/2015 of the appellant and the computation filed along with the letter. He had also given the reasons for why he has not considered revised computation. The appellant had falsely taken the plea that its letter dated 22/01/2015 was not considered. In view of the above fact and circumstances of the case, I did not find any merit on the submission of the appellant and therefore, Ground No. 1 is dismissed.

6. Against the above order, the assessee is in appeal before us.

7. We have heard both the counsel and perused the records. We find that the revised computation of the assessee has been rejected by the A.O. solely on the ground that the assessee has not filed the same in the original return of income. This aspect has been confirmed by the Id. CIT(A). We note that the Hon'ble Apex Court in the case of *Goetze (India) Ltd. v. CIT* [2006] 284 ITR 323 (SC) has expounded that the ITAT has powers to admit the grounds otherwise than by filing the original return. In the present case, in our considered opinion, the revised computation submitted by the assessee does not deserve to be rejected solely on the ground of not filing it along with the original return.

Accordingly, in the interest of justice, we remit this issue to the file of the A.O. The A.O. is directed to consider the issue on merits of the revised computation submitted by the assessee.

8. In the result, this appeal by the assessee stands allowed for statistical purpose.

Order pronounced in the open court on 04.02.2019

Sd/-

Sd/-

(Ram Lal Negi)
Judicial Member

(Shamim Yahya)
Accountant Member

Mumbai; Dated : 04.02.2019

Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai