

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 5274/Del./2016 : Asstt. Year : 2012-13

Addl. CIT, Special Range-8, New Delhi	Vs	M/s Steel Authority of India Ltd., Ispat Bhawan, Lodhi Road, New Delhi-110003
(APPELLANT)		(RESPONDENT)
PAN No. AAACS7062F		

ITA No. 4962/Del./2016 : Asstt. Year : 2012-13

M/s Steel Authority of India Ltd., Ispat Bhawan, Lodhi Road, New Delhi-110003	Vs	Addl. CIT, Special Range-8, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACS7062F		

Assessee by : Sh. M.P. Rastogi, Adv.

Revenue by : Sh. S. S. Rana, CIT DR

Date of Hearing: 23.09.2019

Date of Pronouncement: 22.10.2019

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The cross appeals have been filed by the Revenue against the order of the Id. CIT(A)-28, New Delhi dated 25.07.2016.

2. Brief facts and history of the case are that in A.Y. 2000-01, a capital reserve had come into existence on account of waiver of loans to the extent of Rs. 5,072 crores by the Government of India of loans granted by it from SDF (Steel Development Fund) as General Funds, which was not available to it for distribution as profits.

3. The Company had in turn waived of loans to the extent of Rs. 2,072 crores granted by it to IISCO. The Balance of Capital Reserve of Rs. 3,001 crores was utilized to revalue down wards its fixed assets (acquired in much earlier years) which in its opinion had got capitalized at a high value on account of various Expenses During Construction(EDC) including interest that were capitalized- on account of over run of period.

4. While the company held the view that if assets are revalued upwards/downwards, it would not result in allowance of a higher/lower depreciation, since it is only a notional book entry.

5. The Assessing Officer treated it as a reduction in the cost of assets met by the government of India and disallowed proportionate depreciation. The Co-ordinate Bench of ITAT confirmed the action of Assessing Officer vide order dated 25.06.2009 for A.Y. 2000-01, which was also upheld by the High Court of Delhi. The matter is pending before the Supreme Court of India, at present.

6. Since, the issue is sub-judice, the company is continuing with its earlier view-while disclosing all the relevant particulars. The revenue has been disallowing consequential proportionate depreciation, on the reduced WDV of such downward revaluation. The appellate authorities have been following the order for A.Y. 2000-01 in all the subsequent years in confirming the disallowance made by the revenue. For the sake of ready reference, the relevant portion of the order of the ITAT for the assessment year 2007-08 in ITA No. 751/Del/2011 dated 26.10.2012 at paras 5 & 6 are reproduced hereunder:

"Excess Claim of Depreciation on assets consequent to waiver of loan:

5. During assessment proceedings, the Assessing Officer observed that assessee was granted waiver of loan to the extent of 5.073 crores by the Govt. of India out of loans granted by it from Steel Development Fund. During the year, the Assessing Officer further observed that assessee in turn had waived loans to the extent of 2072 crores granted by it to Indian Iron & Steel Co. Ltd. and the balance amount of 3001 crores was transferred to capital reserve which was utilized by the assessee to re-value down wards its fixed assets which had got capitalized at a high value on account of various expenses during construction. The Assessing Officer disallowed the depreciation on proportionate basis on reduction amount of assets relying upon the provisions of section 43(1), 43(6) & 32 (1) which according to him clearly allowed depreciation on reduced written down value of assets. In this respect explanation 10 to section 43(1) which states that where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Govt. or by State Govt. or any authority established under any law in the form of a subsidy or grant then so much of the cost as it relatable to such subsidy or grant of reimbursement shall not be included in the actual cost of the assets of the assessee. The assessee submitted before the Assessing Officer that when a loan is obtained it is of a capital nature and when loan is utilized, it does not become an expense. Therefore, when a loan is waived/written off by an assessee, it is not an allowable deduction as it is capital in nature and similarly when the loan is waived in favour of assessee it retain its capital nature and does not result into a taxable receipt. It further submitted that when an asset is revalued up-ward depreciation allowance as per Income Tax Act remains as per WDV of assets. Similarly, the assessee pleaded that when fixed assets of a company are revalued downward due to receipt of grant or waiver of loan, the consequent reduction in depreciation on the amount of waiver is not justified. However, the Assessing Officer did not agree with the contention of the assessee and made the addition.

6. Before the Ld CIT(A), the assessee reiterated its arguments. The Ld CIT(A) however, observed that Hon'ble ITAT in its order dated 25.6.2009 for assessment years 2000-01 to 2002-03 had confirmed the similar addition."

7. Since, the issue stands covered by the judgment of the Hon'ble High Court, in the absence of any material changes, we hereby decline to interfere with the order of the Id. CIT (A).

8. The second ground taken up by the assessee pertains to disallowance of consultancy charges of Rs.48 lacs. The Assessing Officer disallowed this amount paid on account of consultancy charges in the earlier years. The revenue observed this amount has been debited to capital work in progress in earlier years and the same is now being claimed as revenue expenditure. The Id. CIT (A) confirmed the addition on the grounds that the expenditure has not been crystallized in the year in consideration. On the similar issue, the revenue held that de-capitalization of interest is not allowed but consequential depreciation is allowable. This position has been accepted by the revenue and no further appeal have been filed. Hence, we hereby hold that the assessee is eligible for consequential depreciation on the capitalization. As a result, the appeal of the assessee on this ground is allowed for statistical purposes.

9. In ITA No. 5274/Del/2016, the revenue raised the issue of disallowance of depreciation on water & sewage plant deeming it to be building instead of plant.

10. Brief facts of the issue are that the revenue has been consistently disallowing the depreciation claimed on account of water supply and sewerage plants from the year 1995-96, 1996-97 and from 2007-08, 2008-09, 2009-10 and 2010-11. The revenue apportioned the depreciation claimed on these assets, 75% for business purpose and 25% of the balance for

residential purpose. The Id. CIT (A) held that the disallowance under the similar head for all the earlier years stands deleted by the order of the various benches of ITAT. Placing reliance on the order of the Co-ordinate Bench of Bombay ITAT in the case of TISCO in ITA No. 8116/Bom/1991, the water & sewerage plant catering to the factory as well as the residential colony is held to be entirely as plant & machinery and allowed complete depreciation. Hence, keeping in view, the fact that the issue stands covered by the earlier orders of the ITAT, in the absence of any material changes, we hereby decline to interfere with the order of the Id. CIT (A). The appeal of the revenue on this ground is rejected.

11. The second ground raised by the revenue pertains to disallowance of interest on the foreign exchange fluctuation on account of loan from KFW Germany. This issue has been dealt by the revenue in the year 1998-99 and the interest has been continuously disallowed by the revenue. The said disallowance has been deleted by various orders of the ITAT from the year 1995-96, 1996-97 and from 2007-08, 2008-09, 2009-10 and 2010-11. The issue pertains to the loans received in foreign currency from KFW Germany of Rs.260 billion DM for moderation of steel plant. As per the agreement the assessee was to pay 8.75% interest on the said loan. Out of this amount of 8.75% per annum, interest at the rate of 0.75% per annum in Dutch Mark was to be paid to the accounts of the KFW as specified and of the balance of 4% is to be allocated to the provisions to be used exclusively to cover exchange rate losses incurred in connection with the loan and the remaining 4% to be used for Pollution Control Environmental Management Schemes

of the Rourkela Steel Plant. The assessee's submission is that as per the agreement if the interest of 8% was disbursed as specified in article 3.2(a) the payment shall be effected in local currency with debt discharging effect. It was his further submissions that as per the agreement if the exchange rate of losses fell below the provisions made being 4% per annum allocated the remaining provisions was to be written back and the amount thus realized from the provisions shall also be used for the Pollution Control Environment Management Schemes of the Rourkela Steels Plant. The Assessing Officer held that only 0.75% per annum actually represented the interest component are allowed only that portion of the interest and the balance 8% was held to be in fact a transfer to the reserves and not an allowable expense. Hence, keeping in view, the fact that the issue stands covered by the earlier orders of the ITAT, in the absence of any material changes, we hereby decline to interfere with the order of the Id. CIT (A). The appeal of the revenue on this ground is rejected.

12. In the result, the appeal of the assessee is partly allowed and that of Revenue is dismissed.

Order Pronounced in the Open Court on 22/10/2019.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 22/10/2019

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR