

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH : BANGALORE

BEFORESHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND

SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No. 884, 886, 888 & 890/Bang/2015
Assessment Years : 2008 – 09 to 2011 – 12

N/s Swastik Steel Hospet Pvt. Ltd., No. 1223/3185 Ward, Bhagat Singh Nagar, Opp. PMC, 1 <sup>st</sup> Floor, DAM Road, Hospet <b>PAN: AABCH9470M</b>	vs.	DCIT, Central Circle – 2 (1), Bangalore
APPELLANT		RESPONDENT

&

ITA No. 405 to 407/Bang/2017
Assessment Years : 2008 – 09, 2009 – 10 & 2011 – 12

N/s Swastik Steel Hospet Pvt. Ltd., No. 1223/3185 Ward, Bhagat Singh Nagar, Opp. PMC, 1 <sup>st</sup> Floor, DAM Road, Hospet <b>PAN: AABCH9470M</b>	vs.	DCIT, Central Circle – 2 (1), Bangalore
APPELLANT		RESPONDENT

Assessee by	:	Shri H. N. Khincha, C. A.
Revenue by	:	Ms. Neera Malhotra, CIT (DR)
Date of hearing	:	07.11.2019
Date of Pronouncement	:	06.12.2019

**ORDER**

Per Shri A. K. Garodia, Accountant Member

Out of these seven appeals filed by the assessee, four appeals filed in the year 2015 are directed against respective order of CIT passed u/s 263 and the remaining three appeals filed by the assessee in the year 2017 are directed against a combined order of CIT (A) – 11, Bangalore dated 27.11.2016 for A. Ys. 2008 – 09, 2009 – 10 & 2011 – 12 and these three appeals are arising in the proceedings initiated by the AO by passing consequential orders u/s 143 (3) r.w.s. 153C & 263 of I. T. Act, 1961. All these appeals were heard together and are being disposed of by way of this composite order for the sake of convenience.

2. First we take up those four appeals filed in the year 2015 which are directed against respective order of CIT passed u/s 263 of I. T. Act, Regarding the order of CIT for A. Y. 2008 – 09, it was submitted by the learned AR of the assessee that on pages 1 to 3 of the combined paper book filed by the assessee is a letter submitted by the assessee in the office of CIT on 11.02.2015 in which reply was submitted by the assessee in respect of show cause notice issued by CIT u/s 263 for that year and although the impugned order of CIT u/s 263 is dated 27.03.2015, the reply of the assessee was not considered by the CIT in this impugned order and therefore, the matter should go back to him for a fresh decision after considering the reply of the assessee and for passing a speaking and reasoned order after affording reasonable opportunity of being heard to the assessee.

3. He also submitted that similar is the case in A, Y. 2009 – 10 and about this year, he pointed out that on page 4 of the same combined paper book is the letter submitted by the assessee in the office of CIT on 06.02.2015 in which reply was submitted by the assessee in respect of show cause notice issued by CIT u/s 263 for that year and although the impugned order of CIT u/s 263 for this year also is dated 27.03.2015, the reply of the assessee was not considered by the CIT in his impugned order for this year also and therefore, in this year also, the matter should go back to him for a fresh decision after considering the reply of the assessee and for passing a speaking and reasoned order after affording reasonable opportunity of being heard to the assessee.

4. He also submitted that similar is the case in A, Y. 2010 – 11 and about this year, he pointed out that on page 5 to 7 of the same combined paper book is the letter submitted by the assessee in the office of CIT on 11.02.2015 in which reply was submitted by the assessee in respect of show cause notice issued by CIT u/s 263 for that year and although the impugned order of CIT u/s 263 for this year also is dated 27.03.2015, the reply of the assessee was not considered by the CIT in his impugned order for this year also and therefore, the matter should go back to him for a fresh decision in this year also after considering the reply of the assessee and for passing a speaking and reasoned order after affording reasonable opportunity of being heard to the assessee.

5. Regarding A. Y. 2011 – 12, he submitted that in this year, learned CIT has reproduced the reply filed by the assessee on 06.02.2015 copy available on page 8 of the same paper book but learned CIT has proceeded on this basis alone that the assessment order is erroneous and prejudicial to the interest of the revenue because no enquiry was made by the AO but there is no finding given by him that the assessment order is prejudicial to the interest of the revenue even after considering the reply of the assessee in which it is explained by the assessee that advance payment of Rs. 50 lacs was made by the assessee to a supplier of Iron Ore M/s Shri Krishna Minerals Pvt. Ltd. because without advance payment, supply of iron ore was not possible in that period and this money is still lying with the supplier and the said advance do not carry any interest. He pointed out that this was also a submission before CIT as per this letter that the said party M/s Shri Krishna Minerals Pvt. Ltd. has also not recognized any interest in their books and no TDS was deducted by that party. He pointed out that this was the final submission in this letter of the assessee that the proposal to levy income tax on the accrued interest said to have been accrued from this company should be dropped in view of these facts of the present case. Learned DR of the revenue supported the orders of CIT passed by him u/s 263. About A. Y. 2011 – 12, in which the reply of the assessee was duly reproduced by CIT and considered by him, she submitted that in this year, learned CIT has followed an order of the tribunal rendered in the case of Sadiq Sheikh in ITA Nos. 170 to 173/PNJ/2014 in which the tribunal held that lack of enquiry by the AO will tantamount to the assessment order being erroneous and prejudicial to the interest of the revenue. She submitted that the order of CIT for A, Y. 2011 – 12 should at least be confirmed because in this year, the reply of the assessee was considered by the CIT.

6. We have considered the rival submissions. In respect of the appeals of the assessee for A. Ys. 2008 – 09 to 2010 – 11, we find force in the submissions of the learned AR of the assessee that in these years, the matter should go back to CIT for fresh decision after considering the reply of the assessee and for passing a speaking and reasoned order after affording reasonable opportunity of being heard to the assessee. For these three years, we set aside the orders of CIT passed by him u/s 263 for this reason that the reply of the assessee was not

considered by the CIT in his impugned order for these three years and restore the matter back to his file in these three years for fresh decision with the direction that he should consider the reply of the assessee and should pass a speaking and reasoned order after affording reasonable opportunity of being heard to the assessee.

7. For A. Y. 2011 – 12, we find that in this year, learned CIT has reproduced the reply of the assessee and passed the impugned order by following a tribunal order as noted above but when a specific submission is made by the assessee before CIT that the said advance do not carry any interest and that the said party M/s Shri Krishna Minerals Pvt. Ltd. has also not recognized any interest in their books and no TDS was deducted by that party, learned CIT should have made necessary enquiry as to whether any prejudice is in fact caused to the revenue because of lack of enquiry by the AO in the facts of the present case. Hence, in this year also, we set aside the order of CIT passed by him u/s 263 and restore the matter back to his file for fresh decision after making necessary enquiry to find out whether any prejudice is in fact caused to the revenue because of lack of enquiry by the AO in the facts of the present case.

8. Now, we take up the remaining three appeals arising in the proceedings initiated by the AO by passing consequential orders u/s 143 (3) r.w.s. 153C & 263 of I. T. Act, 1961. Since, the orders of CIT u/s 263 are set aside and the matter is restored to CIT for fresh decision, we feel it proper to restore the matter back to CIT (A) for a fresh decision after fresh orders are passed by CIT as per our direction because the direction of CIT u/s 263 may be different in the fresh orders. We order accordingly.

3. In the result, all seven appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-  
(BEENA PILLAI)  
Judicial Member  
Bangalore,  
Dated, the 04<sup>th</sup> December, 2019.  
/MS/

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Copy to:

1. Appellant
2. Respondent
3. CIT

4. CIT (A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Bangalore.