

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI O.P. KANT, ACCOUNTANT MEMBER**

I.T.A. No.6249/DEL/2013
Assessment Year 2009-10

R. Systems International Ltd., B-104A, Greater Kailash-I, New Delhi.	v.	DCIT, Circle-15(1), New Delhi.
TAN/PAN: AABCR9541B		
(Appellant)		(Respondent)

Appellant by:	Shri Satyen Sethi, Adv. & Shri A.T. Panda, Adv.		
Respondent by:	Shri Parikshit Singh, Sr.D.R.		
Date of hearing:	11	02	2020
Date of pronouncement:	17	02	2020

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the assessee against the impugned order dated 02.09.2013, passed by Ld. Commissioner of Income Tax (Appeals)-XVIII, New Delhi for the quantum of assessment passed u/s.143(3) for the Assessment Year 2009-10. In the grounds of appeal, the Assessee has raised following grounds:

“Whether under the facts and circumstances of the case and in law, the learned CIT(A)-XVIII, New Delhi was justified in upholding the findings of the AO as below-

a) Deducting expenditure of Rs.7,66,46,785/- on account of Traveling expenses incurred in foreign currency and

Rs.30,43,099/- on account of Telecommunication expenses (ISP) incurred both in INR and foreign currency, out of export turnover as well as total turnover for the purpose of calculation of deduction u/s 10A of the Act, considering the same as incurred for the purpose of delivery of computer software.

b) Charging of interest u/s 234B of Rs. 12,55,330/- and U/s. 234C Rs.3,44,216/- on the tax on book profit without keeping in view the facts of retrospective amendment on the basis of amendment brought into legislature by the Finance Act (No.2), 2009 w..e.f. 01-04-2001.

The arbitrary, uncalled for and unwarranted action of the learned CIT (A) is liable and urged to be cancelled.”

2. At the outset, ld. counsel submitted that both the grounds now stands covered by the decision of Tribunal in assessee's own case for the Assessment Year 2008-09, passed in ITA No.690/Del/2013 wherein ground no.1(a) has been remanded back to the file of the Assessing Officer and ground no.2 has been decided in favour of the assessee.

3. Ld. DR also accepted that both the issues are covered by the order of the ITAT.

4. The facts in brief are that the assessee has filed return of income on 2309.2009 declaring income at Rs.3,56,93,528/- under the normal provisions of the Act and books profit u/s.115JB at Rs.34,13,01,729/- which was subsequently revised at book profit of Rs.37,18,54,455/- in the wake of retrospective amendment brought by the Finance Act (2),

2009, whereby the provisions for unascertained liabilities like provision for doubtful debts and advances, etc., are not to be considered for determination of book profit. Here, in this case, Assessing Officer following the assessment order for Assessment Year 2008-09 has disallowed the expenditure of Rs.7,66,46,785/- on account of travelling expenses incurred in foreign currency and Rs.30,43,099/- on account of telecommunication expenses (ISP) out of export turnover for the purpose of deduction u/s.10A and also levied interest u/s.234B and 234C calculated on the tax of low profit based on retrospective amendment brought by the Finance Act (2) 2009 with retrospective effect from 01.04.2001.

5. Ld. CIT (A) too following the order for the Assessment Year 2008-09 and has confirmed the said addition on interest.

6. We find that the Tribunal in assessee's own case has dealt with exactly similar grounds of appeal being ground no.1(a) and ground no.3 which is reproduced hereunder:-

“Whether under the facts and circumstances of the case, the learned CIT(A)-XVIII, New Delhi, was justified in upholding the contention of the AO

a) Deduction of expenditure incurred in INR and foreign currency towards -

i) Travelling Expenses 76,307,974

ii) Communication expenses 27,628,106

out of Export Turnover (ET) as well as Total Turnover (TT) for

calculation of deduction u/s.10A of the Act.”

7. The Tribunal has dealt and decided these issues in the following paragraph:-

“We have heard both the parties and perused all the relevant material available on record. From the submissions of the working of deduction under Section 10A, the Ld. AR admitted that there is mistake in figures pertaining to one undertaking. The Ld. AR submitted that by revised return filed on 22.09.2009, deduction u/s 10A of Rs. 25,61,48,875/- was claimed. Deduction u/s 10A was claimed in respect of four undertaking. Against the claim of deduction of Rs. 25,61,48,875/-, the Assessing Officer allowed deduction of Rs.23,95,42,286/- (difference of Rs. 1,66,06,589) as under:

**Profit of the business was taken at Rs. 23,22,45,490/-*

**Export turnover and total turnover was reduced by Rs. 3,08,53,780/- and Rs. 7,80,68,057/- on account of telecommunication expenses and travel expenses.*

**Though deduction of Rs. 23,95,42,286/- was allowed in the respect of four undertakings having profit, however, by mistake only the figures pertaining to Noida IT were noted.*

Thus, these aspects needs to be verified and should be put before the Assessing Officer for fresh adjudication. It will be appropriate to remand back this issue to the file of the Assessing Officer. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Thus, Ground No. 1(a) is partly allowed for statistical purpose.

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As regards ground no. 3 relating to charging of interest of Rs. 29,16,943/- u/s 234B of tax computed u/s 115JB. The Ld. AR submitted that pursuant to amendment of section 115JB by the Finance (No.2) Act 2009 with retrospective effect of 1.4.2001, the assessee filed revised computation of book profit and thereby, provision for bad debts of Rs. 1,68,37,339/- and provisions for doubtful advances of Rs. 3,67,86,988/- was added to the book profit. It led to shortfall in advance tax. The legal position is settled that in such cases, interest u/s 234B cannot be charged. The Ld. AR relied upon the following decisions:

(i) *Emami Ltd. v. CIT* [2011] 337 ITR 470 (Cal)

(ii) *CIT vs. Jupiter Bio Science Ltd.* [2013] 352 ITR 113 (Karn)

(iii) *CIT v. National Dairy Development Board* (2017) 397 ITR 543 (Guj)

(iv) *CIT v. Glenmark Pharmaceuticals Ltd.*, (2017) 398 ITR 439 (Bom)

(v) *Pr. CIT v. NHPC Ltd.* (2017) 399 ITR 275 (P&H)

(vi) *CIT vs. Kirloskar Systems Ltd.*, (2014) 220 Taxmann.1 (karn.)

15. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

16. We have heard both the parties and perused all the relevant material available on record. From the perusal of the record it can be seen that as the amendment of section 115JB by the Finance (No.2) Act 2009 operates with retrospective effect from 1.4.2001, the assessee filed revised computation of book profit and thereby, provision for bad debts of Rs. 1,68,37,339/- and provisions for doubtful advances of Rs. 3,67,86,988/- was

added to the book profit which led to shortfall in advance tax. Thus, on such interest u/s 234B cannot be charged as held in various decisions. The legal position is settled that in such cases, interest u/s 234B cannot be charged. Therefore, Ground No. 3 is allowed.”

8. Thus, following the earlier year precedent, we hold that in so far as ground no.1 is concern, the matter is remanded back to the file of the Assessing Officer to be decided afresh in line of the earlier order of the Tribunal after giving due and effective opportunity of hearing to the assessee.

9. In so far as charging of interest u/s.234B and 234C is concern as the tax computed u/s.115JB, the same are deleted following the order of the Tribunal (supra). Accordingly, the appeal of the assessee is partly allowed for statistical purposes.

10. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 17th February, 2020.

Sd/-

[O.P. KANT]

ACCOUNTANT MEMBER

DATED: 17th February, 2020

PKK:

Sd/-

[AMIT SHUKLA]

JUDICIAL MEMBER