

IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH KOLKATA

BEFORE SHRI P.M. JAGTAP, V.P & SHRI S. S. GODARA, JM

आयकर अपीलसं./I.T.A No.1209/Kol/2018

(निर्धारण वर्ष / Assessment Year: 2007-08)

Hindustan Steelworks Construction Ltd. 5/1, Commissionrate Road, (Hastings) Kolkata – 700022(W.B)	Vs.	ITO, Ward-12(1), Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACH9524R		
(Appellant)	..	(Respondent)

Appellant by : Shri S.M. Surana, Adv./H.V. Bhardwaj, FCA/Swaraj Kr., FCA

Respondent by : Smt. Ranu Biswas Meena, DR

सुनवाईकीतारीख/ Date of Hearing : 13/02/2020

घोषणाकीतारीख/Date of Pronouncement : 12/06/2020

आदेश / O R D E R

Per Shri S. S. Godara:

This assessee's appeal for assessment year 2007-08 arises against the Commissioner of Income Tax (A) - 4, Kolkata dated 01.03.2018 passed in Case No.1999/CIT(A)-4/2014-15/Kol involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. For the reasons stated in assessee's petition dated 01.06.2018 and on account of no objection from department side, we condone four days' delay in filing of the instant appeal.

3. It transpires at the outset that the assessee has raised an additional ground challenging validity of reopening initiated u/s 148/147 of the Act. A very strong objection has come from the Revenue side that this additional ground does not deserve to be admitted at second appellate stage. We find no merit in Revenue's

instant technical objection in view of hon'ble apex court's landmark decision in National Thermal Power Corporation 229 ITR 383(SC) as considered in All Cargo Global Logistic Ltd. vs. DCIT (2012) 137 ITD 24(Mum)(SB) that we can very well entertain such an additional ground going to root of the matter provided all relevant facts form part of records. We thus admit assessee's legal ground challenging validity of the reopening in these facts and circumstances. The same are taken up for adjudication alongwith the former substantive ground raising the very issue.

4. Case file suggests at page 41 that the Assessing Officer recorded the following reason(s) whilst forming his belief that the assessee's taxable income had escaped assessment during scrutiny proceedings finalized on 31.12.2009 u/s 143(3) of the Act:

“Assessment u/s. 143(3) was completed on 31-12-2009 for the A.Y 2007-08 at a total loss of Rs.71,81,63,291.

On verification of the records, it is seen that the assessee company received a Grant-in-aid Rs.164.03 crore from the Government of India on 28th March, 2007 vide no. 4(8)2005-HSM for the purpose of payment of old income tax liability for the assessment year 2000-01. However, the assessee did not include this grant as its income though u/s. 28 it should have been treated as revenue receipt. Omission to treat this grant as revenue receipt resulted in over assessment of loss by Rs.71.82 crore and underassessment of income 92.21 crore having potential tax effect Rs. 55.21 crore.”

5. There is hardly any dispute that we are in assessment year 2007-08 and the Assessing Officer initiated the impugned proceedings in the year 2014 i.e beyond a period of four years from the end of relevant assessment year. Learned departmental representative fails to rebut that there is not even a whisper in the Assessing Officer's foregoing reopening reason that there has been any failure on assessee's part in disclosing 'fully and truly' all material particulars in the earlier record. He has rather formed his impugned belief on verification of records already available with him.

6. Learned departmental representative vehemently argued that the Assessing Officer's reopening reasons are very much speaking one to set in motion the impugned proceedings on account of assessee's failure in above stated terms only.

7. We find no merit in Revenue's arguments. The fact remains that the assessee had not recognized the sum in dispute of Rs.1640300000/- received from Govt. of India in the nature of grant-in-aid for the purpose of payment of old tax liability pertaining to assessment year 2000-2001. It reported the same in Note No.7(J) of the Notes on account alongwith balance sheet and also did not record the impugned sum as income in the P&L a/c at the threshold stage. Hon'ble jurisdictional high court's decision in Jay Shree Tea & Industries Ltd. vs. DCIT (2000) 245 ITR 567(Cal) holds that such a disclosure does not mean that there has been any failure in not stating "fully and truly" all necessary particulars regarding computation of income. Their lordships latter decision in India Steamship Co. Ltd. vs. JCIT (2005) 275 ITR 155(Cal) also reiterates the very view.

8. This tribunal's coordinate bench's decisions in Dipak Kr. Dasbhowmik vs. ITO ITA No.2384/Kol/2017 dated 23.02.2018 and ACIT vs. Fortune Steel Industries ITA No.3095/Mum/2006 dated 13.10.2010 also quash similar reassessment(s) wherein the Assessing Officer had not recorded the foregoing failure as prescribed u/s 147 1st proviso of the Act.

9. Learned departmental representative has quoted hon'ble Bombay high court's decision in IPCA Laboratories Ltd. vs. DCIT [2001] 252 ITR 420 (Bombay) which is not applicable in facts of the instant case since the reopening therein was not beyond four years from the end of the relevant assessment year as in the instant case. We thus hold that the impugned reopening forming subject matter of the assessee's former as well as additional substantive ground(s) deserves to be quashed on this count alone. Ordered accordingly. The assessee's legal grounds to this effect stand accepted. All other pleadings on merits are rendered infructuous.

10. Before parting, it is noted that the order is being pronounced after ninety (90) days of hearing. However, taking note of the extraordinary situation in the light of the COVID-19 pandemic and lockdown, the period of lockdown days need to be excluded. For coming to such a conclusion, we rely upon the decision of the Co-ordinate Bench of the Mumbai Tribunal in the case of *DCIT vs. JSW Limited in ITA No. 6264/Mum/2018 & 6103/Mum/2018, Assessment Year 2013-14, order dt. 14th May, 2020.*

11. This assessee's appeal is allowed in above terms.

Order is pronounced in the open court on 12.06.2020.

Sd/-
(P. M. Jagtap)
VICE-PRESIDENT

Sd/-
(S. S. Godara)
JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 12/06/2020

RS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. The Appellant- Hindustan Steelworks Construction Ltd.
2. The Respondent- ITO, Ward-12(1), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata [sent through email]
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

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