

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'A' JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 400/JP/2018
निर्धारण वर्ष/Assessment Year :2012-13

| | | |
|--|-------------|--------------------------------------|
| Advent Infra Projects Private Limited 424-425, 4 th Floor, Ganpati Plaza, M.I. Road, Jaipur | बनाम Vs. | DCIT Central Circle-03, Jaipur |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADCA2327C | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : Sh. P. C. Parwal (CA)
राजस्व की ओर से / Revenue by : Sh. Amrish Bedi (CIT DR)

सुनवाई की तारीख / Date of Hearing : 02/07/2020
उदघोषणा की तारीख / Date of Pronouncement: 08/07/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-4, Jaipur dated 09.01.2018 wherein the assessee has taken following grounds of appeal:-

- "1. Under the facts and circumstances of the case the Learned CIT(A) 4, Jaipur has grossly erred in law as well as facts in confirming the disallowance of loss to be carried forwarded which was caused by addition of income tax expenses wrongly made by assessee company in original computation due to some clerical error.*
- 2. Under the facts and circumstances of the case the Learned CIT(A) 4, Jaipur has grossly erred in law as well as facts in confirming the disallowance of loss to be carried forwarded by considering the*

order of Hon'ble Rajasthan High Court in case of M/s Jai Steel Vs. ACIT, 36 taxmann.com 523."

2. The Id AR submitted that the assessee company is having income from toll collection. It filed its original return of income on 21.09.2012 declaring loss of Rs.22,31,247/-. A search was conducted on 17.12.2014 at the premises of assessee. In response to notice u/s 153A, assessee filed the return of income on 15.05.2015 declaring total loss of Rs.44,51,756/-. The AO did not allow the excess loss of Rs.22,20,509/- claimed by the assessee in the return filed u/s 153A by holding that loss claimed in the original return filed u/s 139(1) will only be allowed. The Ld. CIT(A) after relying on the decision of Hon'ble Rajasthan High Court in case of Jai Steels Vs. ACIT 36 Taxmann.com 523 held that no fresh claim can be filed in the return filed u/s 153A. Accordingly, he confirmed the disallowance of loss of Rs.22,20,509/-.

3. In the above background, the Id. AR submitted that difference between the loss claimed by the assessee in the return filed u/s 139(1) and in the return filed u/s 153A is on account of doubly adding the income tax expense of Rs.22,20,509/- in the return filed u/s 139(1). The loss as per P&L A/c is Rs.68,46,302/-. In the computation of total income, loss as per P&L A/c is shown at Rs.46,25,793/-. This loss is after adding back the income tax expense of Rs.22,20,509/-. However, this amount of Rs.22,20,509/- was again added back in the computation of total income by mistake as disallowable expense u/s 40(a)(ii). Thus, the income tax expense was disallowed twice in the original return. Thereafter, while filing the return u/s 153A, this mistake was noticed. Accordingly, the profit as per P&L A/c was taken at loss of Rs.68,46,302/- to which income tax expense of Rs.22,20,509/- was added back and the actual business loss of Rs.44,51,756/- was claimed for carry forward. Thus, in the return filed u/s

153A, no additional claim/ deduction is made, only the clerical mistake apparent on record is rectified.

4. It was submitted that the Hon'ble Rajasthan High Court in case of Jai Steels Vs. ACIT has held that it is not open for the assessee to seek deduction or claim expenditure which has not been claimed in the original assessment, which assessment already stands completed, only because assessment under section 153A of the Act in pursuance of search or requisition is required to be made. However, the present case is not a case of claim of deduction or expenditure but only a case of correct computation of income. Hence, the decision of Jai Steels relied on by the CIT(A) is not applicable in assessee's case.

5. It was further submitted by the Id AR that otherwise also, in various cases, it is held that once return of income is filed under section 153A of the Act, it has to be considered as a return of income filed under section 139 of the Act and all other provisions would apply as though it is a return of income filed under section 139 which includes reconsideration of any deduction permissible under the law. For this purpose reliance is placed on the following cases:-

- A. Srinivas Raju Vs. DCIT (2016) 47 CCH 668 (Hyd.) (Trib.)
- ACIT & Anr. Vs. Splendor Landbase Ltd. & Anr. (2018) 53 CCH 118 (Del.) (Trib.)

6. Per contra, the Id CIT/DR submitted that in the original return of income, the assessee has claimed loss of Rs 22,31,247/- which was revised to loss of Rs 44,51,756/- in the return filed under section 153A of the Act. It was submitted that it is clearly a case of additional claim of loss which cannot

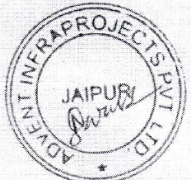
be allowed as per the decision of the Hon'ble Rajasthan High Court in case of Jai Steels (supra). It was further submitted that even where it is accepted that there was mistake in filing the original return of income, given that the original return of income was filed on 21.09.2012, the assessee had ample time to file the revise return of income which the assessee has not filed and therefore, having failed to file the revised return of income, the assessee cannot be allowed to make a fresh claim in the return filed in response to notice u/s 153A of the Act.

7. We have heard the rival submissions and perused the material available on record. The comparative position in the original return of income filed under section 139(1) and the return of income filed in response to notice u/s 153A as submitted by the assessee during the course of appellate proceedings before the Id CIT(A) is as under:-

| Particulars | Return filed u/s. 139(1) | Return filed u/s. 153A |
|--|--------------------------|------------------------|
| Profit (Loss) as per P&L A/c. | (-)6846302 | (-)6846302 |
| Add: Income Tax Expenses | 2220509 | 2220509 |
| Net Loss | (-)46,25,793 | (-)46,25,793 |
| Add: Income Tax Expenses (as above, double entry) | 2220509 | 0 |
| Add: Depreciation as per books | 474937 | 474937 |
| | (-)1930347 | (-)4150856 |
| Less: Depreciation allowable under IT Act Rs. 300900/- , restricted to NIL | 0 | 0 |
| Income from Business as per IT Act 1961 | (-)1930347 | (-)4150856 |
| Add: Unabsorbed Depreciation | (-)300900 | (-)300900 |
| Total Business Loss and Unabsorbed Depreciation carried Forward | (-)2231247 | (-)4451756 |

8. The claim of the assessee is that income tax expenses of Rs 22,20,509/- has been added twice to the loss of Rs 68,46,302/- as per the profit/loss account while filing the original return of income and the same has now been rectified while filing the return in response to notice u/s 153A of the Act. On perusal of the assessee's financial statements, we find that there is a loss of Rs 68,46,302/- as reflected in the profit/loss account and the said loss has been computed after claim expense under the head "Income tax" amounting to Rs 22,20,509/- and the details of the same as per ledger account is as under:-

| Advent Infraprojects Private Limited | | | | |
|---|---|----------|---------------------|---------------------|
| 201-202, Girnar Colony Gandhi Path, Vaishali Nagar, Jaipur Phone : 0141-2820555 CIN :- U45400RJ2001PTC017249 EMAIL ID : NKOTHARI5@GMAIL.COM CIN: U45400RJ2001PTC017249 | | | | |
| Income Tax Exp. | | | | |
| Ledger Account | | | | |
| 1-Apr-2011 to 31-Mar-2012 | | | | |
| Date | Particulars | Vch Type | Debit | Page 1 Credit |
| 28-9-2011 | Cr (as per details) | | | |
| | Income Tax Refundable (2010-11) | Journal | 72,70,016.00 Dr | |
| | ADVANCE TDS (2010-2011) | | 1,10,025.00 Cr | |
| | T C S (2010-2011) | | 93,80,500.00 Cr | |
| | INCOME TAX FOR AY 2011-12 ADJUSTED WITH TDS AND TCS AND BALANCE TRANSFERRED TO INCOME TAX REFUNDABLE | | | |
| | | | 22,20,509.00 | |
| | Dr Closing Balance | | | 22,20,509.00 |
| | | | 22,20,509.00 | 22,20,509.00 |



9. We therefore find that what has been debited in the profit/loss account is an expense on account of income tax which is not allowable u/s 40(a)(ii)

of the Act. While filing the original return of income, the assessee has taken loss as per profit/loss account amounting to Rs 46,25,793/-(after adjusting income tax expense of Rs 22,20,509/-) and thereafter, has further adjusted such loss by same income tax expense of Rs 22,20,509/-. Thus, the income tax expense which is disallowable u/s 40(a)(ii) of Rs 22,20,509/-has been disallowed twice while filing the original return of income. The same is clearly a mistake apparent on record and there cannot be two views about it or any debate for that matter as the expense cannot be disallowed twice. Even where the Assessing officer has to disallow such an expense, he would have disallowed the same once and not twice as mistakenly done by the assessee. We therefore find that there is no fresh claim of any expenditure while filing the return in response to notice u/s 153A of the Act. What has been done is correction of mistake whereby the income tax expense which has been suo-moto disallowed twice while filing the original return of income has been corrected to single disallowance while filing the return of income in response to notice under section 153A of the Act.

10. The Assessing officer has not stated any specific reasons for not accepting the loss as per return filed in response to notice u/s 153A of the Act. All he has stated is that original return e-filed on 21.09.2012 wherein loss of Rs 22,31,247/- has been claimed which was revised to a loss of Rs 45,51,756 in the return filed u/s 153A and loss claimed in the original return of income e-filed u/s 139(1) will only be allowed. The Id CIT(A) has however stated that it is a case of fresh claim and the AO was right as no fresh claim can be filed in return filed u/s 153A of the Act. We find that both the authorities have not appreciated the exact reasons for the difference in the loss figures as per the original return and return filed in response to notice u/s 153A and has summarily rejected the assessee's position and as we have noted above, it is a case of mistake whereby the income tax expense which

has been disallowed twice while filing the original return of income has been corrected while filing the return of income under section 153A of the Act and there is no fresh claim of any expenditure or loss which was not claimed earlier and has now been claimed for the first time while filing the return in response to notice u/s 153A of the Act.

11. Further, it is no doubt true that though the original return of income was filed on 21.09.2012 and the time limit for filing the revised return had expired as contended by the Id CIT/DR, however, being a mistake apparent from record, the assessee can invoke the provision of section 154 and seek rectification of intimation issued u/s 143(1) dated 15.03.2013 before expiry of four years and which has not expired at the time of issuance of notice u/s 153A of the Act on 1.04.2015. Therefore, when the assessee filed the return in response to notice u/s 153A, the assessee still had time to rectify the original return of income and where such rectification is sought as part of return of income filed u/s 153A instead of initiating separate proceeding by way of filing a rectification application, no fault can be said to arise in such a case.

12. In the entirety of facts and circumstances of the case and in light of aforesaid discussions, we are of the considered view that it is a not a case of fresh claim of loss in the return filed u/s 153A and therefore, the decision of Hon'ble Rajasthan High Court in case of Jai Steels (supra) doesn't support the case of the Revenue. The decision of the lower authorities is set-aside and the matter is decided in favour of the assessee and against the Revenue.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 08/07/2020.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 08/07/2020

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Advent Infra Projects Private Limited
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-03, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 400/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar