

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C' KOLKATA

**[BEFORE SHRI J. SUDHAKAR REDDY, HON'BLE ACCOUNTANT MEMBER &
MS. MADHUMITA ROY, HON'BLE JUDICIAL MEMBER]**

[THROUGH VIRTUAL COURT]

I.T.A. No. 748/Kol/2019

Assessment Year: 2013-14

M/s. Darjeeling Organic Tea Estates Pvt. Ltd.....Appellant
7th Floor, Jain Centre, 34A, Metcalfe Street,
Kolkata - 700 013.
[PAN: AADCD 1923 B]

VS.

DCIT, CIR - 4(1), KolkataRespondent
P-7, Chowringhee Square,
Kolkata - 700 069.

Appearances by:

Shri S.M. Surana, Advocate appearing on behalf of the Assessee.

Shri Vijay Shankar, CIT appearing on behalf of the Revenue.

Date of concluding the hearing : November 17, 2020

Date of pronouncing the order : November 20, 2020

ORDER

Per J. Sudhakar Reddy, AM

This appeal filed by the assessee is directed against the order passed by the Ld. Principal Commissioner of Income Tax, Kolkata - 2, Kolkata dated 19.03.2018 for the Assessment Year 2013-14 under section 263 of the Income Tax Act, 1961 ('the Act').

2. There is delay of 44 days in filing of the appeal. After perusing the petition for condonation of delay, we are convinced that the assessee was prevented from reasonable cause for filing of the appeal in time. Hence we condone the delay and admit the appeal.

3. The Principal Commissioner of Income Tax Proposed to revise the assessment order passed u/s 143(3) of the Act on 11.03.2016 for the following reasons.

"2. The assessment records of the assessee company were called for and on the basis of the verification of the material available on record, it was found that the order of assessment u/s 143(3) dated 11.03.2016 for the A.Y. 2013-14 is erroneous in so far as it is prejudicial to the interest of revenue on the following grounds:

i. It was noticed from the profit & loss account for the year ended 31st March, 2013 that the assessee had debited an amount of Rs. 2,94,51,304/- towards "Depreciation and Amortization Expenses" (Schedule B.06 to the P&L A/c) as per Co. Act, scrutiny of assessment records revealed that as per 'Fixed Asset' schedule (Schedule A.08 to the Balance Sheet as at 31.03.2013), that an addition amounting to Rs. 8,70,18,401/- was made under "Leasehold Land & Plantations" and no depreciation was charged against the said assets as per Company Act. It was also noticed from the assessee's computation of taxable income for the assessment year 2013-14 that the assessee claimed depreciation u/s 32 of the Income Tax Act amounting to Rs. 11,79,93,037/- which includes Rs. 8,70,18,401/- (depreciation charged @ 100%) and the same was allowed. It was however revealed from the Schedule DPM - 14 (vii) [Blick entitled for depreciation on plant & machinery @ 100% u/s 32(1)(ii)] of the Income Tax Return submitted for the assessment year 2013-14 that, while calculating depreciation on plant and machinery, depreciation was charged on Rs. 8,70,18,401/- which is identical to the addition as stated above. However, as per section 32 of the Income Tax Act, there was no provision for charging depreciation @ 100% on 'leasehold Land & Plantation" under the Block "Plant & Machinery). Thus, the above depreciation which was claimed and allowed was irregular in nature and required to be disallowed and added to the total income of the assessee.

ii. As per Profit & Loss Account for the year ended 31st March, 2013 you have credited an amount of Rs. 3,59,18,260/- under the head 'Other Income' (Schedule B. 02 to the P&L A/c) which included Rs. 3,52,12,998/- as 'Interest Income'. For the purpose of Rule 8 of Income Tax Rules, 'Interest Income' cannot come under the purview of composite income. However, it was further noticed from the assessee's computation of taxable income for the assessment year 2013-14 that only 40% of it was taken for taxation purpose resulting in reduction of taxable income of Rs.

2,11,27,799/- (60% of Rs. 3,52,12,998/-). Accordingly, the assessee company's taxable income required to be revised taking into account of the above mentioned amount."

4. The assessee replied that on the first issue, the judgement of the Jurisdictional High Court in the case of Tasati Tea Company reported in 263 ITR 388 in favour of the assessee and that all expenditure incurred for replacing, by way of re-plantation, of old and dead bushes, in the existing plantation, was allowable as deduction as revenue expenditure as per this judgement. on interest income of fixed deposit, it was submitted that the issue was adjudicated in favour of the assessee in its own case by the ITAT for the A.Y. 2014-15, in ITA No. 125/Kol/2018 by the Kolkata 'B' Bench of the Tribunal vide order dated 29.03.2019.

5. On the first issue, the Ld. Pr. CIT after extracting the judgement of the Jurisdictional High Court in the case of CIT vs Tasah Tea Ltd. (supra) held as follows;

"4.1. I am of the considered view that the decision of the jurisdictional High Court is squarely applicable to the facts of the case. It is also seen that the operation of the said decision has not been stayed by the Supreme Court. Therefore, the Assessing Officer is directed to decide the issue in the light of the decision in the case of CIT vs Tasah Tea Ltd. (supra)."

6. On the issue of taxability of interest income, we held as follows:

"5.1. I am of the considered view that the decisions of the jurisdictional High Court in Eveready Industries India Ltd. vs CIT (2010) 323 ITR 312 (Cal) and Warren Tea Ltd. vs CIT (2015) 374 ITR 06 (Cal) are squarely applicable to the facts of the case. It is also seen that the operation of the said decisions has not been stayed by the Supreme Court. Therefore, the Assessing Officer is directed to decide the issue in the light of the decisions

in the cases of Eveready Industries India Ltd. vs CIT (2010) 323 ITR 312 (Cal) and Warren Tea Ltd. vs CIT (2015) 374 ITR 06 (Cal)."

7. The Ld. Pr. CIT thereafter set aside the assessment order and directed the Assessing Officer, to pass a fresh assessment order, on these two issues referred above, after giving the assessee adequate opportunity.

8. Mr. S.M. Surana submitted that both the issues are covered in favour of the assessee and that the Ld. Pr. CIT had admitted that the issues are covered in favour of the assessee and hence the assessment order passed u/s 143(3) of the Act by the A.O., cannot be held to be erroneous in so far as it is prejudicial to the interest of the revenue.

9. The Ld. CIT, DR submits that the facts of the case have to be examined and only after examining the fact, the applicability or otherwise of the proposition of law laid down by the jurisdictional High Court on the issue can be decided. He submitted that the fact as to whether the expenditure on the plantation is in the capital field or revenue field is a matter of fact, which has to be verified. He argues that the Assessing Officer has not verified this issue during the course of assessment proceedings. Thus, he submits that there was non-application of mind and non-examination of these issues by the A.O. which has resulted in an error in so far as it is prejudicial to the interest of revenue and that the order u/s 263 of the Act was validly passed.

10. After hearing rival contentions, we find that the assessee had claimed depreciation @ 100% under the block 'plant & machinery'. The assessee explains that this 100% depreciation was claimed for removal and re-plantation of old and dead bushes on the existing plantation. The decision of the jurisdictional High Court in the case of CIT vs Tasah Tea Ltd. is on the issue as to whether, a particular expenditure incurred for re-plantatopm and for plants raised in a nursery is a capital field or revenue field. Thus in our considered view, the argument of the learned counsel for the assessee that the issue is covered by the judgement of the jurisdictional High Court cannot be accepted. The Ld. Pr. CIT in this case is merely set aside the issue to the file of the Assessing Officer for fresh adjudication, after carrying out necessary verification. We find no infirmity in this direction. The assessee has also not placed before us evidence that the Assessing Officer had at the stages of assessment called for details and examined this issue. There is difference in claiming 100% depreciation and having incurred expenditure in the revenue field. 100% depreciation was claimed on fixed assets. That implies that the assessee has capitalised the expenditure in question. Hence in our view the order of the Ld. Pr. CIT that the assessment order is erroneous in so far as it is prejudicial to revenue has to be upheld.

11. Coming to the issue of interest income, we find that this is covered both on facts and in law by the decision of Kolkata 'B' Bench of the Tribunal in assessee's own case for the A.Y. 2014-15 in ITA No. 125/Kol/2018. Hence the revision u/s 263 of the Act on this issue is

bad in law. In the result, the order of the Ld. Pr. CIT is upheld as dismissed above.

12. In the result, the appeal of the assessee is dismissed.

Order Pronounced in the Open Court on November 20, 2020.

Sd/-
(Madhumita Roy)
JUDICIAL MEMBER

Sd/-
(J. Sudhakar Reddy)
ACCOUNTANT MEMBER

Dated: 20/11/2020
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Darjeeling Organic Tea Estates Pvt. Ltd., 7th Floor, Jain Centre, 34A, Metcalfe Street, Kolkata – 700 013.
2. DCIT, CIR – 4(1), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar
ITAT, Kolkata