

आयकर अपीलीय अधीकरण, न्यायपीठ – “सि” कोलकाता,  
IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “C” KOLKATA

Before Shri J.Sudhakar Reddy, Accountant Member and  
Shri Sanjay Garg, Judicial Member

ITA No. 262/Kol/2019  
Assessment Year: 2009-10

I.T.O., Ward 10(2), Kolkata Room No. 3178 P-7 Chowringhee Square, Kolkata	बनाम / V/s.	M/s. S.M. Carriers P.Ltd 402, Sagar Trade Cube, 104 S.P. Mukherjee Road, Kolkata-700 026. PAN: AAJCS1430N
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

**Hearing through video Conferencing**

अपीलार्थी की ओर से/By Appellant	Shri Supriyo Paul, Addl. CIT, DR
प्रत्यर्थी की ओर से/By Respondent	None appeared for the assessee
सुनवाई की तारीख/Date of Hearing	11-01-2021
घोषणा की तारीख/Date of Pronouncement	24-03-2021

**आदेश /O R D E R**

Per Sanjay Garg, Judicial Member:-

The present appeal has been preferred by the revenue against the order dated 14-08-2018 of the Learned Commissioner of Income Tax Appeals)-4, Kolkata [hereinafter referred to as ‘Ld. CIT(A)].

2. The revenue has raised the following grounds of appeal :-

1. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 4,82,18,986/- in computing the income u/s. 115JB of the I.T Act, 1961.
2. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in accepting evidences/documents which were not furnished before the Assessing Officer in spite of the fact that the assessee company had

*proper and reasonable opportunity to furnish such documents, such action of Ld. CIT(A) being clear violation of the provisions of Rule 46A of the I.T Rules, 1962.*

*3. That the appellant craves to add, delete or modify any of the grounds of appeal before or at the time of hearing.*

3. No one has put in appearance on behalf of assessee. Therefore, the impugned appeal is decided ex parte of the assessee after going through the records and after hearing the Ld.DR.

4. At the outset, it is noticed that the appeal filed by the revenue is time barred by 47 days. A separate application for condonation of said delay has been filed, wherein reasons for delay in filing this appeal have been mentioned. Considering the above reasons mentioned therein (in the condonation application/affidavit dt. 13-02-2019) the delay is hereby condoned.

5. The facts of the case are that the assessee company filed its return of income for the assessment year 2009-10 on 29-09-2012, declaring the total income at Rs. 1,33,17,718/-. The case was selected for scrutiny through CASS and assessment u/s. 143(3) of the Income-tax Act, 1961 (in short, the 'Act') was made on 08/12/2011, determining the total income at Rs. 1,33,17,718/-. Subsequently, it was noted by the Learned Assessing Officer (in short, the Ld.AO) that the assessee company debited expenditure of Rs. 4,82,18,986/-, which had related to goods on transit. The assessment was, therefore, reopened u/s. 147 of the Act During the course of re-assessment proceedings, the Learned Assessing Officer (in short, Ld. A.O] found that none of the parties, to whom the payments were required to be made, submitted any bill to the assessee company till the end of the financial year (in short, F.Y) i.e. 31-03-2009. Accordingly, the Ld. AO was of the opinion that the expenditure was nothing but a provision and the amount was not an ascertained liability. Accordingly, the amount was added back to the total income as 'provision' for non-ascertained liability in the assessment order passed u/s. 147/143(3) of the Act on 03-09-2014. Being aggrieved, the assessee company preferred appeal before the Ld. CIT(A) against the impugned assessment order passed u/s. 147/143(3) of the Act dt. 03-09-

2014. The Ld. CIT(A) has passed the appellate order on 14-08-2018 deleting the entire addition of Rs. 4,82,18,986/- by observing as under:-

*Findings of Ld. CIT(A):*

*“ I have perused the Assessment Order and the Submissions of the Ld. AR. The assessee lifts iron ore fines from the premises of the miners i.e. Essel Mining/MMTC and stores it outside the mines. Upon this event happening the miners are debiting the entire expenditure for transportation up to the port point in their books of account and deducting TDS on the same. However, the assessee was yet to incur the expenditure on transportation of goods from just outside the mines to the ports. Question here would be whether the revenue could tax the income without allowing matching expenditure. It is a basic principle of accounting in matching concept that all the expenditure related to an income have to be accounted for before arriving at a profit or loss during the accounting period. If the revenue has been taken into account it is only natural that corresponding expenditure whether actual or estimated has to be taken into accounts otherwise the accounts will not show true and fair view. The AO has shown an absolute lack of knowledge of accounting principle in framing the Assessment. If the view of the AO has to be accepted, financial result of the company would be hugely inflected. If the AO was of the view that the expenditure would be excluded then he should have excluded the corresponding revenue also. He cannot take the revenue into account and exclude the expenditure.*

*During the course of Appellate hearing the assessee was asked to show a break up of revenue booked in advance on account of stock in transit of MMTC and Essel Mining and the corresponding expenditure provided for by the assessee in the accounts which has been incurred before the due date of filing of return. It was found that the assessee has matched each of these expenses against the revenue booked.*

*In view of the above, additions made are without any basis, against the principles of accounting and therefore, deserves to be deleted. “*

Being aggrieved, by the said order of the Ld. CIT(A), the Revenue has preferred this appeal before this Tribunal.

6. We have heard the Ld. DR and also gone through the record. We find that the Ld. CIT(A) has given categorical findings that the expenditure incurred by the assessee was not an uncertain liability. He observed that since the Ld. AO has taken into account the income earned from the transactions, then the Ld. AO was also required to take into consideration all the expenditure relating to the said business

transaction. The Ld. DR could not point out any infirmity in the impugned order of the Ld. CIT(A) in warranting our interference. We, therefore, uphold the impugned order of the Ld. CIT(A) on this issue.

In the result, the appeal of the revenue stands dismissed.

Order pronounced in open court on 24/03 /2021

Sd/-

(लेखा सदस्य)  
(J.Sudhakar Reddy)  
Accountant Member  
\*\*PP-Sr.PS

Sd/-

(न्यायिक सदस्य)  
(Sanjay Garg)  
Judicial Member

दिनांक:-24/03/2021 कोलकाता / Kolkata

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant/Revenue-I.T.O., Ward 10(2), Kolkata, Room No. 3178 P-7 Chowringhee Square, Kolkata-69.
2. प्रत्यर्थी/Respondent- M/s. S.M. Carriers P.Ltd, 402, Sagar Trade Cube, 104 S.P. Mukherjee Road, Kolkata-700 026.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता/DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता ।