

**IN THE INCOME TAX APPELLATE TRIBUNAL), 'F' BENCH  
MUMBAI**

**BEFORE SHRI RAJESH KUMAR, AM**

**&**

**SHRI AMARJIT SINGH, JM**

**ITA No.2503/Mum/2019  
(Assessment Year :2013-14)**

M/s. JSW Steel Ltd., Bandra Kurla Complex Bandra (E) Mumbai- 400 051	Vs.	Principal Commissioner of Income Tax, Central -4 Room No.663, 6 <sup>th</sup> Floor Aayakar Bhavan, M.K.Road Mumbai
<b>PAN/GIR No. AAACJ4323N</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Rakesh Joshi
Revenue by	Ms. Leena Shrivastav
<b>Date of Hearing</b>	<b>06/01/2021</b>
<b>Date of Pronouncement</b>	<b>24/02/2021</b>

**आदेश / O R D E R**

**PER RAJESH KUMAR, ACCOUNTANT MEMBER:**

The aforesaid appeal has been filed by the assessee against the impugned order dated 22/03/2019, passed by the Pr.CIT(Central)-4, Mumbai, for the assessment year 2013-14.

2. The grounds raised by the assessee are as under:-

*“The Learned Principal Commissioner of Income Tax (PCIT) has erred in law as well as on facts while initiating proceedings U/s 263 of the Income Tax Act, 1961 (the Act) vide show cause notice dated 20.02.2019 and*

*passing an order U/s 263 of the Act without considering facts & Circumstances of the case.*

*The Learned PCIT has erred in law and facts while passing the order u/s 263 in not considering the order of learned CIT(A) and order of ITAT passed on the identical issue in A. Y. 2011-12 in case of JSW Ispat Ltd. ( amalgamated with the appellant company) where it was held that Gain on Prepayment of Deferred sales tax liability is not taxable.*

*The Learned PCIT has erred in law as well as on facts while passing the order u/s 263 without considering the submission of the appellant before him.*

*The Learned PCIT has erred in law by not following the binding decision of Hon'ble Jurisdictional High Court & Supreme Court on the very same issue in the proceedings initiated U/s 263 of the Act.*

*The appellant craves leave to add, amend, alter or delete the said ground of appeal.”*

3. The only issue raised in the various grounds of appeal is against the exercise of revisionary jurisdiction by the Pr. Commissioner of Income Tax (hereinafter referred as PCIT) under section 263 of the Act setting the aside the assessment order as framed by the Assessing Officer under section u/s.143(3) r.w.s. 144C(3) of the IT Act dated 10/02/2017 .

4. The facts in brief are that assessee has filed the return of income on 29/11/2013 declaring total income at Nil after claiming deduction u/s.80IA of the Act under the normal provisions of the Act and Rs.22,77,06,96,125/- under the special provisions of MAT. The case of the assessee was selected for scrutiny and notices were duly issued and served on the assessee on 01/09/2014. The assessment was completed

vide order u/s.143(3) r.w.s. 144C(3) of the IT Act on 10/02/2017 determining total income of Rs.16,51,87,470/- under the normal provisions of the Act and Rs.22,72,20,97,009/- of book profit under MAT. The Id. PCIT observed from the assessment order that assessee has reduced the gain/surplus arising from prepayment of deferred sales tax amounting to Rs.279,08,17,700/- in the computation of income and thus reduced its taxable income. The Id. PCIT observed that while computing the assessment in the case of assessee for A.Ys. 2014-15 and 2015-16, the AO had disallowed the same i.e the gain/surplus resulting from prepayment of sales tax deferral for A.Yrs. 2014-15 and 2015-16. Accordingly, the Id. PCIT came to the conclusion that assessment framed by the AO is erroneous and prejudicial to the interest of the revenue to that extent and hence, exercised the revisionary jurisdiction u/s.263 of the Act by issuing notice u/s.263 dated 20/02/2019 calling upon the assessee to show-cause the notice as to why the assessment issued u/s.143(3) r.w.s. 144C(3) dated 10/02/2017 should not be revised u/s.263 of the Act. The show-cause notice issued is reproduced as under for the sake convenience:-

*"2. On examination of records for AY 2013-14, it is noticed that the assessment proceedings were completed u/s 143(3) r.w.s. 144C(3) of the IT Act 1961 on 10.02.2017 determining total income of Rs. 16,51,87,470/- and book profit of Rs. 22,72,20,97,009/-*

*3. It has been noticed that you have reduced the gain on prepayment of deferred value of added/sales tax amounting to Rs. 279,08,17,700/~ in the computation of **income** and reduced the taxable profit. The same has been allowed by the Assessing **Officer** while passing order u/s 143(3) r.w.s. !44C(3 ) dated 30.12.2016.*

*4. The Hon'ble Supreme Court in the cases of Sahney Steel and Press Works Ltd and Ponni Sugar Chemicals has held that the subsidy received is not a capital receipt. The said Supreme Court decisions, which clearly are applicable to your case, ought to have been considered by the Assessing Officer while passing order u/s 143(3) r.w.s. 144C(3) in your case.*

*5. In light of the above facts, it is seen that the assessment order is based on erroneous assumption of facts in not applying the decision of the Apex Court. It is clear that there is failure on the part of the Assessing Officer, which has rendered the impugned assessment order passed u/s 143(3) r.w.s 144C(3) of the IT Act, erroneous in so far as it is prejudicial to the interest of revenue; in terms of explanation 2 to section 263 of the IT Act.*

*6. In view of the above, you are requested to show cause as to why the said assessment order should not be revised u/s 263 of the I. T. Act, 1961. Your objections, if any, to the proposed revision of the assessment order may be filed before the undersigned on or before 28.02.2019, The date of hearing is fixed for this purpose on 28.02.2019. You are requested to appear personally or through an authorized representative on the said date at 04.00 p.m. at Room No. 663, Ayakar Bhavan, M.K. Road, **Mumbai-400020.**"*

5. The assessee responded to the notice vide detailed written submissions dated 05/03/2019. The Id. PCIT rejected the contentions of the assessee and set aside the assessment order passed by the AO with the direction to complete the assessment *de-novo* afresh after conducting necessary enquiries and after affording proper and reasonable opportunity to the assessee. The Id. AR vehemently submitted before us that the jurisdiction u/s.263 of the Act was invalidly exercised by the Id. PCIT as the assessment order framed by the AO is neither erroneous nor prejudicial to the interest of the revenue. The Id. AR submitted that the assessee availed payment of deferred sales tax under the scheme floated by Government of Maharashtra under which the sales tax was to be paid after specified period could be paid at the present value of the future

liability. The Id AR submitted the deferment of sales tax for a specified period was an incentive given by the Government of Maharashtra to the Industry in the State of Maharashtra. Thereafter, the Government of Maharashtra came up with a scheme under which the various entrepreneurs who collected sales tax under scheme of deferred sales tax were incentivized and encouraged to pay the future sales tax liability at present value. The assessee availed the said scheme and accordingly, computed the present value of the outstanding sales tax liability which resulted into a surplus of Rs. 279,08,17,700/- which was credited in the profit and loss account. The Id AR submitted that thereafter at the time of filing of return of income, the same was reduced from the income of the assessee. The Id. AR submitted that the Pr. CIT has overlooked and ignored the fact that the surplus resulting from prepayment of deferred sales tax liability to the Government of Maharashtra at net present value has not resulted into any taxable gain in the hands of the assessee in as much as discharge it discharged its future liability which was due after 12 years in the current year after computing the net present value of the same. In other words, had this amount been received by the State Government after 12 years, it would have had the same amount as deferred by the assessee, therefore it has not resulted into any benefit or remission in favour of the assessee. The Id. AR submitted that therefore, the proceedings under section 263 of the Act and the order of Id. PCIT is wrong and deserved to be quashed. The Id AR submitted that the decisions

of the Hon'ble Apex Court in the case of Sahney Steel and Press Works Ltd., reported in 228 ITR 253 and Ponni Sugar Chemicals (306 ITR 392) are not applicable to the present case as the issue involved in those decisions were that of subsidy. The Id. AR submitted that the issue is no longer res-integra as the same is squarely covered by the decision Hon'ble Jurisdictional High Court in the case of CIT vs. Sulzer India Ltd., (369 ITR 177)(Bom) and the same has been upheld by the Apex Court in the case of CIT vs. Balkrishna Industries Ltd., (2018) 252 Taxman 375 (SC). The Id. AR submitted that the issue involved in the assessee's case was surplus in the books of the accounts resulting from prepayment of liability under deferred sales tax scheme which collected by the assessee from customers and was to be paid after 12 years but under the scheme of Government of Maharashtra, the same was paid at present value of the future liability and thus, the surplus accruing therefrom, is neither a benefit nor remission of liability as the assessee has discharged its entire liability in terms of the present value of the total liability payable at future date. The Id. AR also relied on the decision of the Hon'ble Supreme Court in the case of CIT vs. Sun Engineering Works P. Ltd., (1992) 198 ITR 297 wherein it has been held that it is neither desirable nor permissible to pick out a word or a sentence from the judgement of Supreme Court divorced from the contexts of the question under consideration and treat it to be the complete law declared by the Court. The judgment must be read as a whole and the observations from the judgement have to be considered in

the light of the questions which were before the Court. The decision of the Hon'ble Supreme Court takes its colour from the questions involved in the case in which it is rendered and, while applying the decisions to a later case, courts must carefully try to ascertain the true principle laid down by the decision. The Id. AR therefore, prayed that the exercise of jurisdiction by Id. PCIT has wrongly been exercised u/s.263 of the Act and may kindly be quashed.

6. The Id. DR on the other hand relied heavily on the order of Id. PCIT by submitting that the assessee apparently made a surplus upon prepayment of sales tax liability in the current year which has to be treated as remission of liability or a concession to the assessee and has to be brought to tax under the Act which AO has totally failed to consider and examine during the course of assessment proceedings. In other words the assessee has paid a lesser sum on account of deferred sales tax liability at its present value which was to be paid after 12 years. The Id. DR therefore, prayed that the order of Id. PCIT may kindly be affirmed on this issue so that the issue could be examined. Besides the Id. AR submitted that in any case, the assessee will get an opportunity to explain his position before the AO in the set aside proceeding and it is not that the AO has been directed to do the assessment in the set aside proceedings in a particular manner and therefore, there is no prejudice caused to the assessee. Thus, the order passed by the AO is apparently erroneous and

also prejudicial to the interest of the revenue and thus, the jurisdiction u/s.263 of the Act was rightly invoked by the Id. PCIT.

8. We have heard rival submissions and perused the material available on record. The undisputed facts are that the assessee had collected sales tax from the customers in the State of Maharashtra under deferred sales tax scheme which was to be paid after a specified period. We note that thereafter, the Government of Maharashtra brought out another scheme giving option to the entrepreneurs to prepay the collected the sales tax under the deferred sales tax scheme at its present value of the future sales tax liability. The assessee availed the said scheme and computed the net present value of the future liability which were payable after 12 years and discharged the same at present value which has resulted into a surplus in the hands of the assessee. Now, the only issue is that whether the surplus is a benefit or remission of liability. In our view, the surplus resulting from prepayment of deferred sales tax liability which was payable after 12 years at its present value is not a benefit or surplus nor remission of liability and therefore, cannot be charged to tax as business income u/s.41(1) of the Act being remission or cessation of trading liability. We note that the issue of the assessee is squarely covered by the decision of the jurisdictional High Court in the case of CIT vs. Sulzer India Ltd., reported in 369 ITR 177 (Bom) which was approved by Hon'ble Apex Court in the case of CIT vs. Balkrishna

Industries Ltd., (2018) 252 Taxman. 375. We also note that the decisions on by the Id. PCIT are distinguishable on facts as the same have been rendered on the issue of subsidy and not applicable in the present case. Accordingly, we are inclined to quash the revisionary jurisdiction exercised by the Id. PCIT u/s 263 of the Act and consequently the appeal of the assessee is allowed.

**9. In the result, appeal of the assessee is allowed.**

Order pronounced on 24/02/2021 by way of proper mentioning in the notice board.

**(AMARJIT SINGH)**  
**JUDICIAL MEMBER**

Mumbai; Dated 24/02/2021  
KARUNA, *sr.ps*

**(RAJESH KUMAR )**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai