

आयकर अपीलिय अधीकरण, न्यायपीठ –“C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
[Before Shri P. M. Jagtap, Vice President (KZ) & Shri A. T. Varkey, Judicial Men

I.T.A. No. 152/Kol/2020
Assessment Year: 2015-16

M/s. Ankit Metal & Power Ltd. (PAN: AAECA5230B)	Vs.	ACIT, Central Circle-3(3), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	08.10.2021
Date of Pronouncement	26.10.2021
For the Appellant	Shri S. K. Tulsian, Advocate & Mrs. Puja Somani, CA
For the Respondent	Shri Kalyan Nath, CIT

ORDER

Per Shri A. T. Varkey, JM:

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-21, Kolkata dated 09.12.2019 for AY 2015-16.

2. The assessee company is engaged in the manufacturing of ferro alloys ingots and trading in TMT bars. For the relevant assessment year (AY 2015-16) the assessee filed return of income on 29.09.2015 declaring loss of Rs.2,06,67,20,705/-. Later the case was taken up for scrutiny. According to the AO, even though statutory notices were issued time and again calling for details/explanations on several issues, assessee did not respond despite detailed show cause notice requiring/calling for details were asked vide letter dated 09.11.2017. According to the AO, he issued final notice/opportunity by fixing the case on 07.12.2017. However, the assessee only submitted few details, therefore, he had no other choice but to frame the assessment on 19.12.2017 without the assessee furnishing all documents called for by him. Therefore, he assessed the total income of the assessee at Rs.158,87,08,180/- by making the following disallowance:

“(i) Addition of Rs.4,11,947/- and Rs.67,8S,289/- on account of interest income;

- (ii) Disallowance of Rs.13,08,62,679/- u/s. 40(a)(ia) of the Act;
- (iii) Addition of Rs.1,74,536/- on account of donation ;
- (iv) Addition of Rs.14,09,500/- on account of donation made to political party;
- (v) Addition of Rs 1 crore u/s.68 of the Act ;
- (vi) Addition of Rs.3,02,09,868/- on account of excise duty payable ;
- (vii) Addition of Rs.2,27,120/- on account of wrong availment of cenvat credit ;
- (viii) Disallowance of expenses incurred towards interest on TDS and service tax to the tune of Rs.16,75,052/- and Rs.25,64,650/- respectively;
- (ix) Disallowance of interest paid to M/s. Wise Investment Pvt. Ltd. to the tune of Rs.20,34,248/- ;
- (x) Addition of Rs.3,32,12,00,000/- u/s.68 of the Act on account of loan taken from Astabhuj Properties Pvt. Ltd.;
- (xi) Addition of Rs.8,45,30,000/- on account of statutory dues;
- (xii) Addition of Rs.6,28,96,091/- alleging undisclosed investment.

3. Aggrieved by the aforesaid action of the AO, the assessee preferred an appeal before the Ld. CIT(A) who partly allowed the appeal of the assessee.

4. Before this Tribunal, the assessee has preferred the following grounds of appeal against the partial confirmation order passed by the Ld. CIT(A) which are as under:

“1. That the Ld. CIT(A) was not justified in directing the A.O. to verify and disallow the excise duty payable of Rs.3,02,09,868/- if the excise duty payable of Rs.1260.31 lacs was paid before the due date of filing return in spite of the fact that net effect of excise duty on change in stock of finished goods was debited under the head 'Manufacturing Expenses' with the net result that there was no effect on the profitability of the company for the year and moreover this accounting treatment has been followed and accepted by the department in the immediately preceding year.

2. That, the Ld. C.I.T.(A) was not justified in directing the A.O. to disallow interest of Rs.20,34,248/- after verification whether the money borrowed from Wise Investment Pvt. Ltd. had been used for non-interest bearing/non-business purpose

advance in spite of the fact that in the closing balance all the advances were business advances and the appellant had higher capital than the advance given.

3. That, the Ld. C.I.T.(A) erred in directing the A.O. to disallow the transport charges of Rs.118.63 lacs paid to Sangita Devi Drolia u/s.37 and not u/s. 40(a)(ia) of the Act on the alleged ground that the said transporter was owning a Van and Minibus and withdrawing cash immediately after deposit of cheques, without considering the facts and evidences that the said transporter used to hire vehicles for her transport activities.

4. That, the Ld.C.I.T.(A) also erred in directing to disallow u/s.37 transport charges of Rs. 4,49,61,970/- paid to Tanmay Ghosh on the alleged ground that there was no goods vehicle in his name and he withdrew cash immediate after deposit of cheques in the bank in spite of the fact that the said transporter arranged vehicles from outside for his transportation business and the payment was not disputed.

5. That, the Ld. C.I.T.(A) also erred in directing the A.O. to disallow u/s.37 the transportation charges of Rs. 4,80,33,651/- paid to the following transporters on the alleged ground that .the parties did not appear nor the assessee could produce them before the A.O. for verification when entire evidence in support of the expenses were filed:

<i>a) Balaji Coal</i>	<i>Rs.3,33,53,795</i>
<i>b) Trinaynee Vyapaar Pvt. Ltd.</i>	<i>Rs. 39,67,652</i>
<i>c) Shri Shyam Servies</i>	<i>Rs. 49,50,551</i>
<i>d) Rahul Dubey</i>	<i>Rs. 29,95,351</i>
<i>e) Surendra Sharma</i>	<i>Rs. 8,05,531(not Rs.925441)</i>
<i>f) Maa Tarini & Co.</i>	<i>Rs.19,60,771 Rs.4,80,33,651/-</i>

6a. That the Ld. C.I.T.(A) erred in treating the loan of Rs.32.12 crores taken from associate company M/s.Astabhuja Properties Pvt. Ltd. as unexplained cash credit u/s.68 of the Act on protective basis in the hands of the appellant on the alleged ground that bogus investments standing in the books of the said company had been converted in the form of loan given to the appellant-company.

6b. That, the Ld. C.I.T.(A) has erred in not considering that the loan of Rs.32.12 crores received from the said related party through normal banking channels was duly reflected in the audited accounts of both the companies, it had sufficient net worth to advance loan and further confirmation of accounts and other related details/evidences were also filed in support thereof.

7. That, as the order of Ld. C.I.T.(A) on the above issue suffers from illegality and is devoid of any merit, the same should be quashed and your appellant be given such relief(s) as prayed for.”

5. The assessee has also taken up the following additional grounds :

1. That the Ld. CIT(A) has exceeded his jurisdiction u/s. 251 of the Act in directing the Ld. AO to verify the claim of TDS credit in the current year when the reconciliation of income as per the audited accounts and as per Form 26AS was duly submitted before the Ld. CIT(A) and the same was also forwarded to the Ld. AO for his remand report.

2. That the Ld. CIT(A) has exceeded his jurisdiction u/s 251 of the Act in directing the Ld. AO to verify the Bank Statement in respect of donation given received back

of Rs.1 crore when the assessee had duly explained during appellate proceedings along with supporting documents that the credit of Rs.50 lacks was on account of a contra entry and the balance sum of Rs.50 lacs was a journal entry and not a receipt entry and the submissions/documents filed before the Ld. CIT(A) was forwarded to the Ld. AO for his remand report.

3. That the Ld. CIT(A) has exceeded his jurisdiction u/s. 251 of the Act in directing the Ld. AO to verify the double addition of Rs. 8,45,30,000/- on account of pending statutory dues when the appellant had explained along with documentary evidences during appellate proceedings that a sum of Rs.4,37,17,941/- was paid before the due date of filing the return u/s 139(1) of the Act and the balance sum of Rs.4,08,12,059/- was suo moto disallowed by the assessee in the computation of income filed for the year and the submissions/documents filed before the Ld CIT(A) was forwarded to the Ld. AO for his remand report.”

6. At the outset, the Ld. AR of the assessee fairly submitted that the assessee for reasons beyond its control could not place all documents before the AO during the assessment proceedings and even though remand report was sought by the Ld. CIT(A) in order to give partial relief to the assessee, however, since there was reasonable ground for the assessee not to place all the details before the AO citing/relying on the judgment of the Hon'ble Supreme Court (three judges bench) decision in Tin Box Company vs. CIT reported in (2001) 249 ITR 216 (SC), he pleaded that the issues raised from 1 to 7 may be adjudicated afresh by AO; and also the Ld. AR pointed out that the Ld. CIT(A) erred in giving certain directions which power he did not enjoy. Further according to Ld. AR, this impugned action of Ld. CIT(A) passing certain directions has been challenged by the assessee by preferring the additional ground nos. 1 to 3 (supra). According to the Ld. AR, the power of the Ld. CIT(A) u/s. 251 of the Act is only to *confirm, reduce, enhance or annul* the assessment and not to set aside the matter back to the file of the AO for further verification and, therefore, the direction of Ld. CIT(A) given in the impugned order to the AO need to be set aside.

7. Per contra, the Ld. CIT, DR submitted that though the assessee did not participate properly before the AO during the assessment proceeding, however, during the first appellate proceeding, the Ld. CIT(A) has duly taken note of this deficiency and, therefore, has taken note of the additional material placed on record by the assessee and had called for detailed remand report from the AO and thereafter has partly allowed the appeal of the assessee. According to the Ld. CIT,

DR, the directions given by the Ld CIT(A) are incidental to the issues raised by the AO during the assessment proceedings, so it is valid. Therefore, he does not want us to interfere with the order of the Ld. CIT(A).

8. We have heard rival submissions and gone through the facts and circumstances of the case. The aforesaid facts are not disputed, therefore, are not repeated for the sake of brevity. From a perusal of the assessment order dated 19.12.2017 it is noted that after the final opportunity was given by the AO fixing the date of hearing on 07.12.2017, the assessee started participating in the assessment proceedings and the AO had framed the assessment within twelve (12) days after giving the final opportunity. We note that mainly the disallowance/addition was made by the AO on the reason that there was no explanation or supporting document to the issue. Therefore, we find that the AO could not enquire properly regarding the issues raised by him in his show cause notice. And, therefore, has framed the assessment by making addition of Rs.158 cr. On appeal, the Ld. CIT(A) has called for remand report and has given partial relief to the assessee. Against the confirmation partly made by the Ld. CIT(A) the assessee has preferred this appeal before us. According to assessee, it could not place/file certain details/documents due to reasons which were beyond its control, because there was technical snag in the system and citing the decision of the Hon'ble Supreme Court in Tin Box (supra) the assessee pleads that the issues on which the Ld. CIT(A) has taken adverse view which have been raised in the grounds of appeal from 1 to 7 may be remanded back to the file of the AO for de novo consideration. We note that in the case of Tin Box (supra) the Hon'ble Supreme Court has held as under:

“1. It is unnecessary to go into great detail in these matters for there is a statement in the order of the Tribunal, the fact-finding authority, that reads thus :

"We will straightaway agree with the assessee's submission that the Income-tax Officer had not given to the assessee proper opportunity of being heard."

2. That the assessee could have placed evidence before the first appellate authority or before the Tribunal is really of no consequence for it is the assessment order that counts. That order must be made after the assessee has been given a reasonable opportunity of selling out his case. We, therefore, do not agree with the Tribunal and the High Court that it was not necessary to

set aside the order of assessment and remand the matter to the assessing authority for fresh assessment after giving to the assessee a proper opportunity of being heard.

3. Two questions were placed before the High Court, of which the second question is not pressed. The first question reads thus :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not setting aside the assessment order in spite of a finding arrived at by it that the Income-tax Officer had not given a proper opportunity of hearing to the assessee ?"

4. In our opinion, there can only be one answer to this question which is inherent in the question itself : in the negative and in favour of the asses-see.

5. The appeals are allowed. The order under challenge is set aside. The assessment order, that of the Commissioner (Appeals) and of the Tribunal are also set aside. The matter shall now be remanded to the assessing authority for fresh consideration, as afore-stated. No order as to costs."

9. In the light of the aforesaid decision of the Hon'ble Supreme Court since the assessee had reasonable cause for not furnishing the details/documents/explanations on the issues raised in the show cause notice dated 09.11.2017 as noted supra, we restore only the issues [ground nos. 1 to 7 (supra)] preferred by the assessee before us for fresh adjudication. Needless to say that the assessee needs to be given proper opportunity of hearing and the assessee is directed to file explanation/documents/written submission before the AO on all the issues which is contested from ground nos. 1 to 7 supra before us in this appeal.

10. Coming to the additional ground of appeal raised by the assessee, we note that the Ld. CIT(A)'s power while deciding an appeal is restricted to confirm the action of AO on any issue or, reduce it or enhancement of the addition and annulment of the assessment order. But he does not enjoy the power to set aside the issues back to the file of AO for further verification etc. Therefore, the directions given by the Ld. CIT(A) is set aside. We direct the AO to pass reasoned order on the issues which have been contested by the assessee before us vide ground nos. 1 to 7 (supra).

11. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 26th October, 2021.

Sd/-

(P. M. Jagtap)
Vice President

JD, Sr. PS

Dated: 26th October, 2021

Sd/-

(A. T. Varkey)
Judicial Member

Copy of the order forwarded to:

1. Appellant- M/s. Ankit Metal & Power Ltd., 35, Chittaranjan Avenue, 4th floor, Kolkata-700 012
2. Respondent – ACIT, Central Circle-3(3), Kolkata.
3. CIT(A)-21, Kolkata (sent through e-mail)
4. CIT, Kolkata.
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Senior Private Secretary/DDO
ITAT, Kolkata Benches, Kolkata
