

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
(Through Video Conferencing)**

**BEFORE SHRI O. P. KANT, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 3950/DEL/2018
Asstt. Year 2013-14

Triveni Engineering & Industries Ltd., 8 th Floor, Express Trade Towers, Plot No. 15-16, Sector – 16A, Noida-201301. PAN AABCT6370L (Appellant)	Vs.	Assistant Commissioner of Income Tax, Circle – 3, Noida (Respondent)
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Assessee by:	Ms. Somya Jain, CA
Department by :	Shri Jagdish Singh, Sr. DR
Date of Hearing	11/11/2021
Date of pronouncement	24/11/2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 28.02.2018 passed by the CIT (A)-1, Noida for Assessment Year 2013-14.

2. The grounds of appeal are as under :-

1. *“That on the facts and circumstances of the case and in law, the impugned order passed by the Commissioner of Income Tax (Appeals) |‘CH(A)‘| dismissing the appeal filed by the appellant against the order dated 30.12.2016 passed under section 143(3) of the Income Tax Act, 1961 (‘the Act’), is illegal and bad in law.*
 - 1.1. *That the CIT(A) erred on facts and in law in dismissing the appeal in limine and that too without affording opportunity of being heard to the appellant holding that the appeal is not maintainable on the ground that the assessment order was passed under section 144C r.w.s. 143(3) of the Act.*
 - 1.2. *That on the facts and circumstances of the case and in law, the CIT(A) erred in not appreciating that the appeal preferred by the appellant against assessment completed under section 143(3) of the Act cannot be rejected merely on account of quoting of wrong section in the assessment order by the assessing officer.*

On Merits - Without prejudice

2. *That the CIT(A) erred on facts and in law in not deleting the addition of Rs.2.26,72,296/- on account of remission of statutory levies under the Sugar Industry Promotion Policy, 2004 (in short ‘Policy’).*
 - 2.1. *That the (11 (A) assessing officer erred on facts and in law in not appreciating that the subsidy/incentives under the Policy was merely a contingent receipt, not resulting in accrual of any amount in favour of the appellant.*
 - 2.2. *That the CIT(A)/assessing officer erred on facts and in law in not appreciating that remission of statutory levies under the Policy (since revoked) was, in any case, in the nature of a capital receipt, not liable to tax under the provisions of the Act, considering the avowed objective of the policy.*
3. *That the CIT(A) erred on facts in law in not deleting the addition of Rs.6,60,517 on account of alleged income from sale of fly ash generated from bagasse during the assessment year under consideration.*

- 3.1 *That the CIT(A) erred in not deleting the aforesaid addition made on a notional basis on assumed sale of fly-ash by adopting sale price of Rs. 15/- per metric tonne (MT), even though there was no evidence to support such allegation/ presumption.*
- 3.2. *That the CJT(A)/assessing officer erred on facts and in law in not appreciating that fly- ash generated from bagasse was not saleable and the appellant had to, on the contrary, incur expenditure for clearing the same from the factory.*
4. *That the CIT(A)/assessing officer erred on facts and in law in not allowing deduction of expenses aggregating to Rs.7,87,096/-, being expenses relatable to the relevant assessment year but debited in the Profit & Loss Account of the subsequent assessment year(s).*
5. *That the CIT(A)/assessing officer erred in not allowing deduction of Rs.2,36,00.000, being anticipated loss arising on completion of the project holding the same to be a contingent liability in nature.*
- 5.1. *That the CIT(A)/assessing officer erred on facts and in law in not appreciating that as per the consistent method of accounting followed by the appellant the foreseeable loss arising on sustaining completion of the project ought to have been allowed as deduction in the relevant previous year.*

The appellant craves leave to add, alter, amend or vary the aforesaid grounds of appeal at or before the time of hearing.”

3. The assessee company is engaged in the business of manufacture/production and sale of sugar, gears & gear box, alcohol, power from bagasse based co-generation power plant and project related activities in the field of setting up of water/waste water treatment plants. The assessee is engaged in trading of branded goods, sales of spares and engineering services in the respective fields and operation of a fuel pump. The assessee filed

its return of income on 30.11.2013 declaring loss of Rs. 93,87,00,463/- which was subsequently revised on 26.3.2015 declaring loss of Rs. 93,55,39,947/-. The AO made addition related to incentives under UP sugar policy amounting to Rs. 2,26,72,296/-, addition in respect of fly ash amounting to Rs. 6,60,517/-, addition in respect of claim for expenses not debited in the current year amounting to Rs. 7,87,096/- and addition in respect of provisions for cost to completion amounting to Rs. 2,36,00,000/- .

4. Being aggrieved by the assessment order the assessee filed an appeal before the CIT(A). The CIT(A) dismissed the appeal only on the ground that the order passed by the Assessing Officer is u/s 144C and therefore the assessee should have invoked DRP proceedings and on jurisdictional issue the appeal of the assessee was dismissed.

5. Ld. AR submitted that the CIT(A) was not correct in holding that the appeal is not maintainable as there is no transfer pricing adjustment in the present appeal which is clearly set out in assessment order and merely mentioned in page No. 1 column No. 12 related to section 144C cannot be the criteria for holding that the assessment will be challenged only before the DRP and not before the CIT(A).

6. Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Assessing Officer has clearly mentioned in the assessment order that there are no transfer pricing adjustment. The provision u/s 144C are prerogative to the assessee and the assessee has proper remedy to file appeal before the CIT(A). Therefore, the CIT(A) was not right in dismissing the appeal of the assessee on jurisdictional basis. Hence we remand back the issues on merit contested by the assessee before the CIT(A) to be adjudicated upon by the CIT(A). Needless to say the assessee be given opportunity of hearing by following principle of natural justice.

8. In the result the appeal of the assessee is allowed.

Order pronounced in the open court in presence of both the parties on 24th November, 2021.

**Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated : 24/11/2021

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	12.11.2021
Date on which the typed draft is placed before the dictating Member	12.11.2021
Date on which the typed draft is placed before the Other Member	24.11.2021
Date on which the approved draft comes to the Sr. PS/PS	24.11.2021
Date on which the fair order is placed before the Dictating Member for pronouncement	24.11.2021
Date on which the fair order comes back to the Sr. PS/PS	24.11.2021
Date on which the final order is uploaded on the website of ITAT	24.11.2021
Date on which the file goes to the Bench Clerk	24.11.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	