

आयकर अपीलीय अधिकरण 'डी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.2355/Chny/2019**
(निर्धारण वर्ष / **Assessment Year: 2003-04**)

M/s. Janisen Industrial Diamond Company (P) Ltd. 3, II West Street, Kamraj Nagar, Chennai – 600 041.	बनाम/ Vs.	ITO Corporate Ward-2(3), Chennai.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AAACJ-4071-H		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Dr. V.S. Jaganathan (C.A) – Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Ms. R. Anita (Addl. CIT) –Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	10-01-2022
घोषणा की तारीख / Date of Pronouncement	:	10-01-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2003-04 arises out of the order of learned Commissioner of Income Tax (Appeals)-6, Chennai [CIT(A)] dated 24-06-2019 in the matter of order passed by Ld. Assessing Officer [AO] u/s.143(3) r.w.s. 250 of the Act on 15-02-2019. The grounds of appeal read as under:

1. The order dated 24-06-2019 passed by the Ld. CIT(A)-6, Chennai confirming the addition of the Respondent is bad under law and also on the facts and circumstances of the case.
 2. The Ld. CIT(A) is wrong on the facts while coming to the finding and conclusion that the addition of sum of Rs.5,87,930/- being the difference in sales due to non-reconciliation has been confirmed by the Ld. CIT(A)-III vide his order dated 23.08.2012, when the same was referred to the Assessing Officer to verify and restrict the additions to unreconciled amount.
 3. The order dated 24-06-2019 passed by the Ld. CIT(A)-6, Chennai confirming the addition of the Respondent is bad under law as the order of the Respondent suffers from latches and delays.
 4. The order of the Respondent is bad under law as no order giving effect to appellate orders can be passed after the period of limitation specified u/s.153(2A) or under the amended provisions of sec. 153(5) and sec.153(7).
 5. The order of Ld. CIT(A)-6, Chennai making a categorical finding in this case that the Income Tax Act, 1961 has not prescribed any time limit to give effect to the orders of the superior appellate authorities is erroneous and contrary to the provisions of sec. 153(5) and 153(7) of Income Tax Act, 1961.
 6. After conceding limitation, the action of the Assessing Officer to give effect only to a part of the appellate order u/s 143(3) r.w.s.250 confirming the additions is bad, and thus the order dated 15-02-2019 is bad under law.
 7. The order dated 15-02-2019 imposing tax is bad under law as there is no assessed income, when there is complete merger with the unimplemented appellate order which is barred by limitation under Income Tax Act, 1961, latches and delays and what remains is only the returned income after removing the issues considered in appeal.
 8. The Appellant craves leave to add, amend, alter vary and / or withdraw any or all the above grounds of appeal.
- Under these circumstances, it is prayed that the Honorable ITAT may be pleased
1. to annul the order of the Ld.CIT(A)-6, Chennai confirming the order dated 15.02.2019 of the Income Tax Officer, Corporate Ward 2 (3), Chennai, Chennai-600 034 and to direct the Assessing Officer to restore the returned income by treating the original assessment for the A.Y.2003-2004 as abated.
 2. To delete the demand payable of Rs.4,97,409 as assessed in the order and
 3. to pass any order/s as may be necessary and deem fit to circumstances of the case and thus render the justice.

2. The Ld. AR advanced argument to submit that order giving effect to appellate order was passed by Ld. AO beyond time limit as prescribed u/s 153(5) / 153(7) and therefore, the assessment was bad in law. Consequently, the return filed by the assessee was to be accepted. The Ld. DR, on the other hand, submitted that original assessment order would survive and the assessee would be in worst position. Having

heard rival submissions and after due consideration of orders of lower authorities, our adjudication would be as under.

3. The original return of income filed by the assessee on 25-02-2004 was processed u/s 143(1). However, pursuant to survey u/s 133A, the case was reopened and an assessment was framed u/s 143(3) r.w.s. 147 on 29-12-2006. In this assessment, the assessee was saddled with addition of Rs.15 Lacs as unexplained investment u/s 69. Another addition of Rs.5.97 Lacs was also made being difference in sales. Upon further appeal, Ld. CIT(A), vide order dated 23-08-2012, partly allowed the appeal and restricted the addition u/s 69 to Rs.7.50 Lacs. Regarding addition of unreconciled sales, Ld. AO was directed to verify the claim of the assessee and restrict the addition only to the un-reconciled amount. It has been submitted that no further appeal was preferred by the assessee against this order.

4. Consequent to appellate order, the assessment has been revised by Ld. AO vide order dated 15-02-2019 wherein Ld. AO has deleted the addition on account of unreconciled sales and reduced the addition u/s 69 to Rs.7.50 Lacs as per appellate order. However, the assessee again challenged this order before Ld. CIT(A) vide impugned order dated 24-06-2019. In this appeal, the assessee contended that the order passed by Ld. AO on 15-02-2019 was time barred and hence not valid. As per the statutory mandate, the order giving effect to appellate order could be passed by Ld. AO on or before 31-03-2017 as per the amended provisions of sub-sections (5) and (7) of Sec.153 w.e.f. 01-06-2016. Thus, the order of Ld. AO was barred by limitation of time.

5. The Ld. CIT(A) noted that in the present case the appellate order had decided the issue clearly, leaving no role to be played by Ld. AO

while giving effect to appellate order. Therefore, the passing of giving effect order was merely a formality and any delay in passing such order could not be treated as fatal. Aggrieved, the assessee is in further appeal before us.

6. Upon careful consideration of factual matrix, we find that two additions were made by Ld. AO in assessment order dated 29-12-2006 viz. addition u/s 69 for Rs.15 Lacs and another addition of Rs.5.97 Lacs on account of difference in sales. This assessment order was very much valid in the eyes of law. Upon further appeal, Ld. CIT(A), vide order dated 23-08-2012, partly allowed the appeal and restricted the addition u/s 69 to Rs.7.50 Lacs. Regarding addition of unreconciled sales, Ld. AO was directed to verify the claim of the assessee and restrict the addition only to the un-reconciled amount. It could be noted that no further appeal was preferred by the assessee against this order and this order has attained finality. In other words, the order of Ld. AO has merged with this order. The argument of Ld. AR is that the order giving effect has been passed on 15-02-2019 which violates the statutory mandate of Sec.153(5) / 153(7) and therefore, this order would be bad-in-law. If this position is to be accepted, then it would effectively mean that the appellate order could not be given effect to and the assessment framed by Ld. AO u/s 143(3) r.w.s. 147 on 29-12-2006 would attain finality since this assessment was very much validly framed. In other words, the assessee would be in much worst addition since partial relief has been provided by Ld. CIT(A) to the assessee in appellate order. Therefore, we are not inclined to accept the argument of Ld. AR. The grounds urged before us stand dismissed.

7. The appeal stands dismissed.

Order pronounced on 10th January, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 10-01-2022
EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF