

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'D' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No.2722/Chny/2019
निर्धारण वर्ष/Assessment Year: 1997-98

M/s. Tamil Nadu Cements
Corporation Limited, No. 735,
LLA Building, Anna Salai,
Chennai 600 002.
[PAN:AABCT1819J]

The Assistant Commissioner of
Vs. Income Tax,
Company Circle III(1),
Chennai 34.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri G. Baskar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri G. Johnson, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 25.01.2022
घोषणा की तारीख /Date of Pronouncement : 31.01.2022

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 11, Chennai dated 08.07.2019 relevant to the assessment year 1997-98.

2. Brief facts of the case are that the assessment for the assessment year 1997-98 was completed on 13.03.2000 and reassessment was completed on 31.03.2005 and subsequently revised on 31.10.2005. In its original return of income, the assessee has

claimed carry forward depreciation of ₹.15,36,91,995/-, and investment allowance of ₹.4,71,806/- and set it off against income from business. The income computed under section 115JA of the Act was ₹.5,16,13,292/-. In the course of the reassessment, the Assessing Officer set off brought forward depreciation of ₹.10,89,92,040/- and business loss of ₹.64,83,291/- for the assessment year 1995-96.

3. However, the Id. CIT issued notice under section 263 of the Act dated 05.02.2007 on the assessee show-causing as to why the assessment made on 31.3.2005 should not be set aside to compute the correct amount of carried forward business loss, depreciation and investment allowable in accordance with law. After considering the submissions of the assessee and materials available on record as well as in view of the decision of the case of Seshasayee Paper & Boards Ltd. Vs. DCIT 272 ITR 165 (Mad), the Id. CIT remanded the matter to the Assessing Officer to recompute the income of the year after determining the correct amount of brought forward loss, unabsorbed depreciation and investment allowance in accordance with law. Against the order of the Id. CIT, the assessee preferred an appeal before the Tribunal. The appeal filed by the assessee was disposed of by this

Tribunal vide order dated 07.01.2009 for want of clearance from High Powered Committee to pursue its appeal as the assessee being a Public Sector Undertaking. Against order of the Tribunal, the assessee filed an appeal before the Hon'ble jurisdictional High Court and the Hon'ble High Court vide its order in Tax Case (Appeal) No.471 of 2009 dated 10.11.2009, remitted the matter back to the file of the Tribunal for adjudication on merits after taking note of the fact that the High Powered Committee has permitted the assessee to pursue its appeal before the Tribunal. After considering the rival submissions, orders of authorities below, vide order in I.T.A. No. 1544/Mds/2007 dated 30.03.2007, the Tribunal upheld the revision order passed under section 263 of the Act and dismissed the appeal filed by the assessee.

4. The Assessing Officer completed the assessment under section 143(3) r.w.s. 263 of the Act dated 28.12.2007, against which, the assessee filed an appeal before the Id. CIT(A). After considering the submissions of the assessee and facts of the case, the Id. CIT(A) has observed as under:

“7. The assessee has objected to the same. However, it is seen that the unabsorbed depreciation of the previous years does get merged into the depreciation of the current year and shall be given precedence while computing the business income of the assessee. The net business income thus computed after allowing depreciation, is available for any

set off of unabsorbed investment allowance. To this extent, the order of the Assessing Officer dated 28.12.2017 is sustained. The AR for the assessee has also expressed her inability to produce any order of M/s. BFIR to the contrary and in favour of the assessee. Considering the same, the grounds of appeal of the assessee, taken as per original appeal filed in ITA No. 1951/2013-14 of 2018, are rejected.

5. Against the above order of the Id. CIT(A), the assessee preferred appeal by raising following grounds:

1. *The order of the CIT(A) is wrong, untenable in law, opposed to facts and is liable to set aside.*
- 2.1 *The CIT(A) erred in upholding the giving effect order of the AO wherein he has given precedence to set off unabsorbed investment allowance over unabsorbed depreciation.*
- 2.2 *The CIT(A) failed to consider the specific submission of the Appellant that the procedure in setting off unabsorbed depreciation first has been followed for many years and disturbing the same this year will distort the financials of all previous and subsequent years.*
- 2.3 *The CIT(A) ought to have seen that there is a specific direction from the Board for Industrial Finance and Reconstruction (BIFR) to set off unabsorbed depreciation first.*
- 2.4 *The CIT(A) has incorrectly and hastily concluded that the issue has been decided against the assessee by the order of CIT dated 30.03.2007, and has failed to see that the findings in the said order have no bearing on the present appeal.*
- 2.5 *In any event, the CIT(A) should have seen that the order u/s 263 dated 30.03.2007 has not been accepted by the Appellant and an appeal challenging the same is admitted and pending disposal before the Hon'ble High Court.*
3. *Any other ground/s that may be appended at the time of hearing.*

6. Besides challenging the appellate order passed by the Id. CIT(A),

the Id. Counsel for the assessee has mainly agitated that the assessee has preferred further appeal against the revision order passed under section 263 of the Act before the Hon'ble Jurisdictional High Court and therefore, the assessment order passed in view of the order under section 263 of the Act as well as appellate order are liable to be dismissed.

7. On the other hand, the Id. DR has submitted that the order passed under section 263 of the Act has been upheld by the Jurisdictional Tribunal vide order in I.T.A. No. 1544/Mds/2007 dated 30.03.2012 and become final, being final facts finding authority, the present appeal of the assessee is liable to be dismissed.

8. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In this case, against the assessment order, by invoking the provisions of section 263 of the Act, the Id. CIT directed the Assessing Officer to redo the assessment. Accordingly, the Assessing Officer completed the assessment order under section 143(3) r.w.s. 263 of the Act dated 28.12.2007. The appeal filed by the assessee before the Tribunal against the order under section 263 of the Act has been dismissed and

the Tribunal has upheld the revision order vide order in I.T.A. No. 1544/Mds/2007 dated 30.03.2012. The Id. Counsel for the assessee has not brought on record any order of higher forum having modified or reverted the order of the Tribunal dated 30.03.2012, which was filed against the revision order under section 263 of the Act, the present appeal filed by the assessee is liable to be dismissed. On merits, the Id. Counsel for the assessee has not advanced any argument. Accordingly, the appeal filed by the assessee is dismissed.

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on 31st January, 2022 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 31.01.2022

Vm/-

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.