

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA**

**Before Shri Sanjay Garg, Judicial Member and Shri Rajesh Kumar, Accountant Member**

**I.T.A. Nos.1015 to 1017/Kol/2019**  
Assessment Year: 2013-14 to 2015-16

**DCIT, Circle-40, Kolkata.....Appellant**

vs.

**M/s Sethi Coke Industries.....Respondent**  
**1/1A, Biplabi Anukul Chandra Street,**  
**Kolkata-700072.**  
**[PAN:AAHFS4970K]**

**I.T.A. Nos.1018 to 1020/Kol/2019**  
Assessment Year: 2013-14 to 2015-16

**DCIT, Circle-40, Kolkata.....Appellant**

vs.

**M/s Shiva Coke Industries.....Respondent**  
**1/1A, Biplabi Anukul Chandra Street,**  
**Kolkata-700072.**  
**[PAN:ABLFS4254N]**

**I.T.A. Nos.1023 to 1025/Kol/2019**  
Assessment Year: 2013-14 to 2015-16

**DCIT, Circle-40, Kolkata.....Appellant**

vs.

**M/s Raj Coke Industries.....Respondent**  
**1/1A, Biplabi Anukul Chandra Street,**  
**Kolkata-700072.**  
**[PAN:AAIFR7991M]**

**Appearances by:**

Smt. Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Appellant.  
Shri Bisweswar Ghosh, Advocate, appeared on behalf of the Respondent.

Date of concluding the hearing : March 15, 2022

Date of pronouncing the order : March 30, 2022

**ORDER**

**Per Bench:**

The present nine appeals have been preferred by the Revenue against the separate orders all dated 19.02.2019 of the Commissioner of Income Tax (Appeals) – 12, Kolkata

[hereinafter referred to as 'CIT'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. Since the facts and issues involved are identical, these appeal have been taken for disposal by this common order. For the sake of convenience ITA No.1015/Kol/2019 is taken as lead case. The Revenue in this appeal has taken the following grounds of appeal:

*"1. On the facts and circumstances of the case, the CIT(A) erred in re-computing the net profit of the assessee as Rs.33,42,414/- as against the net profit of Rs. 15,13,46,873/- showing by the assessee in its return of income.*

*2. On the facts and circumstances of the case, the CIT(A) erred in allowing expenses to the assessee while in re-computing the income of the assessee however the Ld. CIT(A) accepted that the assessee failed to prove any business activities carried out by the assessee.*

*3. On the facts and circumstances of the case, the CIT(A) erred to in re-computing the income of the assessee at Rs. 23,42,414/- instead of Rs. 15,13,46,873/-, being the highest figures derived from the three methods i.e. (i) Net Inflow of Money Method (ii) Peak in cash or Bank book (iii) Accretion to assets in the Balance Sheet however the Ld. CIT(A) accepted that the assessee failed to prove any business activities carried out by the assessee.*

*4. On the facts and circumstances of the case, the CIT(A) erred in accepting the Cash Book which is a fresh submission made by the assessee before Ld. CIT(A), whereas it was required that an opportunity should have been given to the assessing officer, therefore, CIT(A) has violated the provisions of Rule 46A of the Income Tax Rules.*

*5. That the appellant craves the leave to add, alter, modify, include or delete any grounds of appeal."*

3. At the outset, the Ld. DR has submitted that these cases need to be restored to the file of Assessing Officer for de novo assessment. She has invited our attention to the impugned assessment orders as well as orders of the CIT(A) to submit that in these cases, during the assessment proceedings, the assessee could not furnish the books of accounts and supporting documents as the factory of the assessee at that time was sealed. The Assessing Officer, therefore, in the absence of books of account and documents and required verification etc. re-computed the net profits of the assessee at Rs.15,13,46,873/- against nil income by disallowing the deduction claimed by the assessee u/s 80IC of the Act. In appeal, the Ld. CIT(A) has given substantial relief to the assessee on assumptions and presumptions without appreciating the facts and evidences on file.

The Ld. DR has further submitted that in exactly identical facts and circumstances, the Tribunal in the bunch of appeals with the lead case "DCIT vs M/s. Parasnath Coke Industries" in ITA No. 1021/Kol/2019 vide common order dated 02.03.2022 has restored

the identical matters to the Assessing Officer for de novo assessment. The Ld. AR has also made the prayer for de novo assessment in these cases.

4. We find that the Tribunal in the bunch of appeals with lead case DCIT vs M/s. Parasnath Coke Industries (supra) has restored the matters for de novo assessment observing as under:

*“2. Since the facts and issues involved are identical, these appeal have been taken for disposal by this common order. For the sake of convenience ITA No.1021/Kol/2019 is taken as lead case. The Revenue in this appeal has taken the following grounds of appeal:*

*“1. On the facts and circumstances of the case, the CIT(A) erred in re-computing the net profit of the assessee as Rs.3,26,704/- as against the net profit of Rs. 1,84,07,598/- showing by the assessee in its return of income.*

*2. On the facts and circumstances of the case, the CIT(A) erred in allowing expenses to the assessee while in re-computing the income of the assessee however the Ld. CIT(A) accepted that the assessee failed to prove any business activities carried out by the assessee.*

*3. On the facts and circumstances of the case, the CIT(A) erred to in re-computing the income of the assessee at Rs. 3,26,704/- instead of Rs. 1,84,07,598/-, being the highest figures derived from the three methods i.e. (i) Net Inflow of Money Method (ii) Peak in cash or Bank book (iii) Accretion to assets in the Balance Sheet however the Ld. CIT(A) accepted that the assessee failed to prove any business activities carried out by the assessee.*

*4. On the facts and circumstances of the case, the CIT(A) erred in accepting the Cash Book which is a fresh submission made by the assessee before Ld. CIT(A), whereas it was required that an opportunity should have been given to the assessing officer, therefore, CIT(A) has violated the provisions of Rule 46A of the Income Tax Rules.*

*5. That the appellant craves the leave to add, alter, modify, include or delete any grounds of appeal.”*

*3. At the outset, the Ld. DRs have submitted that these cases need to be restored to the file of Assessing Officer for de novo assessment. They have invited our attention to the impugned assessment orders as well as orders of the CIT(A) to submit that in these cases, during the assessment proceedings, the assessee could not furnish the books of accounts and supporting documents as the factory of the assessee at that time was sealed. The Assessing Officer, therefore, in the absence of books of account and documents and required verification etc. re-computed the net profits of the assessee at Rs.1,84,07,598/- against nil income by disallowing the deduction claimed by the assessee u/s 80IC of the Act.*

*4. During the appellate proceedings, the assessee furnished necessary documents/evidences, whereupon, the Ld. CIT(A) called upon remand report from the Assessing Officer, however, the Assessing Officer in his remand report dated 25.01.2019*

*showed inability to submit the detailed report for want of time. The concluding para of the remand report is hereby reproduced hereinbelow:*

*“(9) The cases, Sir, are ones that involve substantial revenue.*

*Given these circumstances, Sir, a through probe needs to be done. (Even the most basis probes could not be done during assessment stage as the assessee said that did not have records as his factory was sealed).*

*(10) Sir, such probe needs time.*

*Sir, I request you to consider the same.”*

*5. Thereafter, another report dated 07.02.2019 was also sent by the Assessing Officer to the ld. CIT(A), however, the ld. CIT(A) did not get satisfied with the said report stating as under:*

*“4.4DC. Hardly any follow-up work worth mentioning seems to have been done post assessment during pendency of appeal. Having regard to complexity of case and lukewarm or no progress at A.O’s end, I decide the appeal on available materials”.*

*6. Thereafter the ld. CIT(A) proceeded to decide the issues and he computed net profit of the assessee at Rs.3,26,704/-.*

*Now, the contention of the ld. DRs is that, in this case, neither books of account nor the relevant documents have been examined either by the Assessing Officer or by the Ld. CIT(A). It has been submitted that the Ld. CIT(A) has given substantial relief to the assessee on assumptions and presumptions of certain facts without appreciating the evidences on record. The Ld. DRs, therefore, have submitted that the matter may be restored to the file of the Assessing Officer for assessment afresh. It has been further submitted that since the facts in all the captioned appeals are identical, therefore, the matter in relation to all the appeal be restored to Assessing Officer.*

*7. At this stage, the ld. AR has submitted that even the assessee is not satisfied with the order of the ld. CIT(A). He has also requested that the matter may be restored to the file of the Assessing Officer for de novo assessment.*

*8. In view of the submissions of the Ld. representatives of both the parties, the impugned orders of the CIT(A) are set aside in relation to the captioned appeals and matter is restored to the file of the Assessing Officer for de novo assessment in each case.*

*In the result, the appeals of the assesseees are treated as allowed for statistical purposes.*

5. The facts and issues involved in the captioned appeals being identical to the aforesaid case and as also requested by both the ld. representatives of the parties, the

matter in these appeals is also restored to the file of the AO for de novo assessment in each case.

6. In the result, all the appeals of the Revenue are treated as allowed for statistical purposes.

***Kolkata, the 30<sup>th</sup> March, 2022.***

Sd/-  
**[Rajesh Kumar]**  
**Accountant Member**

Sd/-  
**[Sanjay Garg]**  
**Judicial Member**

Dated: 30.03.2022.

*Biswajit*

*Copy of the order forwarded to:*

1. DCIT, Circle-40, Kolkata
2. (i) M/s Sethi Coke Industries  
(ii) M/s Shiva Coke Industries  
(iii) M/s Raj Coke Industries
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches