

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES, "C" BENCH : BANGALORE**

**Before Shri Chandra Poojari, AM & Shri George George K, JM**

ITA No.	A.Y.	Appellant	Respondent
402/Bang/19	2011-12	M/s.Jaysons Infrastructure India Pvt. Ltd., No.2, Champaka Mansion, National High School Road, Behind SBI, V.V.Puram, Bengaluru [PAN: AACJ2951N]	Income Tax Officer, Ward-4(1)(1), Bengaluru
403/Bang/19	2012-13		

Assessee by : Shri Ravi Shankar, Adv.  
Revenue by : Smt. Priyadarshini Basaganni, Addl.CIT

Date of Hearing : 07-04-2022

Date of Pronouncement : 11-04-2022

**ORDER**

**PER CHANDRA POOJARI, A.M:**

These two appeals filed by the assessee are directed against the common order of CIT(A)-9, Bengaluru, dated 31-12-2018. The assessee raised the following grounds of appeal in ITA No.402/Bang/2019:

- 1. The order of the learned Commissioner of Income Tax (Appeals) in so far as it is against the appellant are opposed to law, equity and weight of evidence, natural justice, facts and circumstances of the case.*
- 2. The appellant denies itself liable to be assessed to total income of Rs.1,32,45,679/- as against the returned NIL income on the facts and circumstances of the case.*

Issues in respect of 80IA

- 3. The authorities below are not justified in failing to appreciate that the appellant was eligible to the claim of 80IA of the Act, and the activities of the appellant fall within the definition and*

scope of section 80IA of the Act, on the facts and circumstances of the case.

4. *The authorities below ought to have appreciated that the claim of deduction under section 80IA of the Act, was a valid claim and the appellant was eligible to the claim in full, on the facts and circumstances of the case.*
  5. *The Learned CIT(A) is not justified in holding that the appellant was not eligible to claim deduction under section 80IA of the Act, on the facts and circumstances of the case.*
  6. *The Learned CIT(A) ought to have appreciated that the order passed under section 143(3) r.w.s.147 was without application of mind and the data appearing in the order was erroneous and hence, the order ought to have been set aside as bad in law.*
  7. *The appellant denies the liability to pay interest under section 234B of the Act in view of the fact that there is no liability to additional tax as determined by the assessing officer. Without prejudice, the rate, period and on what quantum the interest has been levied are not in accordance with the law and are not discernable from the order and hence deserves to be cancelled on the facts and circumstances of the case.*
  8. *The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.*
  9. *For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity”.*
2. The assessee also raised the following additional grounds in ITA No.402/Bang/2019:

*Additional Grounds of Appeal*

1. *The notice issued u/s.148 of the Act is bad in law and consequently the order of reassessment is void ab initio on the facts and circumstances of the case.*
2. *The order of assessment passed by the learned assessing officer under section 143(3) r.w.s.147 of the Act is bad in law*

*since the mandatory conditions as envisaged in the Act to assume jurisdiction under section 148 did not exist or having not been complied with and consequently, the reassessment requires to be cancelled on the facts and circumstances of the case.*

- 3. The learned Commissioner of Income-tax [Appeals] has not appreciated the fact that the learned assessing officer was not justified in reopening the case of the appellant u/s.147 of the act since there was no new material which has come to the hands of the learned assessing officer, to form an opinion that income had escaped assessment on the facts and circumstances of the case.*
  - 4. The authorities below were not justified in appreciating that it is settled position of law that “consent does not confer jurisdiction”, on the facts and circumstances of the case.*
  - 5. The appellant craves leave of this Hon’ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.*
  - 6. For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity”.*
- 3. The assessee raised the following grounds of appeal in ITA No.403/Bang/2019:*

- 1. The order of the learned Commissioner of Income Tax (Appeals) in so far as it is against the appellant are opposed to law, equity and weight of evidence, natural justice, facts and circumstances of the case.*
- 2. The appellant denies itself liable to be assessed to total income of Rs.1,79,36,583/- as against the returned NIL income on the facts and circumstances of the case.*

*Issues in respect of 80IA*

- 3. The authorities below are not justified in failing to appreciate that the appellant was eligible to the claim of 80IA of the Act, and the activities of the appellant fall within the definition and scope of section 80IA of the Act, on the facts and circumstances of the case.*

4. *The authorities below ought to have appreciated that the claim of deduction under section 80IA of the Act, was a valid claim and the appellant was eligible to the claim in full, on the facts and circumstances of the case.*
5. *The Learned CIT(A) is not justified in holding that the appellant was not eligible to claim deduction under section 80IA of the Act, on the facts and circumstances of the case.*

*Issues in respect of revised return:*

6. *The Learned CIT(A) is not justified in failing to appreciate that the appellant has filed a revised return which was not considered by the AO and the revised turnover ought to have been adopted for the purpose of computing the total turnover, on the facts and circumstances of the case.*
7. *The Learned CIT(A) is also not justified in not appreciating that the appellant has filed a revised VAT return which was not considered by the AO and the revised turnover ought to have been adopted for the purpose of computing the total turnover, on the facts and circumstances of the case.*
8. *Without prejudice the authorities below ought to have adopted the turnover as appearing in the Form 26AS or the VAT returns, since the business of the appellant was restricted to the water supply board, on the facts and circumstances of the case.*
9. *The Learned CIT(A) is not justified in failing to appreciate that the expenditure claimed was allowable in computing the income of the appellant and was required to be allowed in full, on the facts and circumstances of the case.*
10. *The Learned CIT(A) ought to have appreciated that the order passed under section 143(3) was without application of mind and the data appearing in the order was erroneous and hence, the order ought to have been set aside as bad in law.*
11. *The authorities below were not justified in appreciating that it is settled position of law that “consent does not confer jurisdiction”, on the facts and circumstances of the case.*
12. *The appellant denies the liability to pay interest under section 234B of the Act in view of the fact that there is no liability to additional tax as determined by the assessing officer. Without prejudice, the rate, period and on what quantum there interest has been levied are not in accordance with the law and are not*

*discernable from the order and hence deserves to be cancelled on the facts and circumstances of the case.*

13. *The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.*

14. *For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity”.*

4. The assessee also filed additional evidence in these appeals as follows (2011-12):

1. *The appellant humbly submits the following for the kind consideration and favourable order by the Hon'ble Income tax Appellate Tribunal. The appellant wishes to submit before your Honour the additional evidences which are as follows in support of the case of the appellant:*

a) *Copy of Reassessment Order u/s.39(1) of the KVAT Act 2003 passed by ACCT (Audit)-36, D.V.O-3, Bangalore dtL31-05-2013 (Page No.16-20)*

b) *Copy of the Order passed u/s.62(6) of the KVAT Act 2003, by JCCT (Appeals)-3, Shantinagar, Bengaluru dt:21-03-2014 (Page No.21-47)*

c) *Copy of refund Order passed by ACCT (Audit) 3.6 D.V.O. III Bangalore Dt:02-08-2018 (Page No.57-62).*

4.1. Additional evidence for AY.2012-13:

1. *The appellant humbly submits the following for the kind consideration and favourable order by the Hon'ble Income tax Appellate Tribunal. The appellant wishes to submit before your Honour the additional evidences which are as follows in support of the case of the appellant:*

d) *Copy of Reassessment Order u/s.39(1) of the KVAT Act 2003 passed by ACCT(Audit)-36, D.V.O-3, Bangalore dt:31-05-2013 (Page No.15-19);*

*e) Copy of the Order passed u/s.62(6) of the KVAT Act 2003, by JCCT (Appeals)-3, Shantinagar, Bengaluru dt:21-03-2014 (Page No.20-52);*

*f) Copy of refund Order passed by ACCT (Audit) 3.6 D.V.O. III Bangalore Dt:02-08-2018 (Page No.66-74).*

5. The assessee also filed application in both the assessment years and explained the reasons for not filing these evidence on earlier occasions. In our opinion, there is no sufficient reason in not filing these evidences on earlier occasions before the lower authorities as these are not available at that time. Accordingly, we admit these additional evidences for adjudication.

6. At the time of hearing, Ld.AR made a submission that for the AY.2011-12, the assessee is pressing only Ground Nos.2 & 7 in main grounds of appeal and Ground No.4 in additional ground of appeal and not interested in pressing the remaining grounds in ITA No.402/Bang/2019.

6.1. Accordingly in AY.2012-13 for ITA No.403/Bang/2019, the Ld.AR made a submission that the assessee is pressing the Ground Nos.2,7,8,11 and 12 in main grounds of appeal and did not press the remaining grounds. Accordingly, he made an endorsement to this effect. Being so, we are confined to adjudicate only the grounds which are pressed before us in these assessment years and dismiss the other grounds in both the assessment years, which are not pressed. Further, the assessee filed petition for admission of additional grounds of appeal in ITA No.402/Bang/2019 and submitted that these additional grounds raised for the first time before this Tribunal as there is no necessity of investigation of fresh facts otherwise on record and submitted that adjudication of these grounds is very much necessary for fair adjudication of the appeal and prayed that these grounds may be admitted.

7. After hearing both the parties, we are of the opinion that these additional grounds are very much necessary for adjudication of this appeal for AY.2011-12. Accordingly, by placing reliance on the judgment of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd., Vs. CIT [229 ITR 383] (SC), wherein it was held that *tribunal can very well entertain a new ground going to root of the matter so as to determine correct tax liability of a taxpayer*. Following the same, we admit the additional grounds of appeal for adjudication.

8. Brief facts of the case for the AY.2011-12 are that the assessee filed return declaring the total income of NIL as against this the AO passed an assessment order dt.26-03-2015 (wrongly written as 26-03-2013) in the assessment order) u/s.143(3) of the Income Tax Act (Act). The AO has assessed the total income at Rs.1,32,45,680/-.

8.1. Brief facts of the case for the AY.2012-13 are that, the assessee-company e-filed its return of income for the AY.2012-13 on 30-09-2012 declaring NIL income after claiming deduction of Rs.32,15,273/- u/s.80-IA of the Act. Subsequently, filed a revised return of income on 04-10-2012 declaring NIL income after claiming deduction of Rs.1,79,36,583/- u/s.80-IA of the Act. Another revised return of income was filed on 12-07-2013 declaring income of Rs.1,23,90,626/-. In this 2<sup>nd</sup> revised return, the assessee has withdrawn claim of deduction u/s.80-IA of Rs.1,79,36,583/- but has claimed deduction of Rs.55,53,121/- "as income declared under proprietary concern" but no details have been furnished with regard to claim of deduction of income declared under proprietary concern. Finally, the AO has assessed the total income at Rs.1,87,09,290/- for AY.2012-13.

9. The Ld.AR submitted that the total turnover declared by the assessee in these assessment years to the Income Tax Department not in conformity with the turnover declared to the Commercial Tax Department and there were certain mistakes in computing the turnover in these assessment years, corresponding turnover declared in Commercial Tax Department and this required to be examined at the end of the AO. Accordingly, in the interest of justice, we remit the only grounds, which are pressed before us in both the assessment years, including the additional grounds for AY.2011-12, to the file of AO for fresh consideration. The AO has to go through the entire records relevant to these two assessment years and decide the issue afresh limiting to the adjudication in these two assessment years only to the extent of grounds pressed before us.

10. In the result, these two assessee's appeals are treated as partly allowed for statistical purposes.

Order pronounced in the open court on 11<sup>th</sup> April, 2022

Sd/-  
**(GEORGE GEORGE K.)**  
**JUDICIAL MEMBER**

Sd/-  
**(CHANDRA POOJARI)**  
**ACCOUNTANT MEMBER**

Bengaluru, Dated: 11<sup>th</sup> April, 2022

*TNMM*

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A)-9, Bengaluru*
4. *The Pr.CIT-4, Bengaluru*
5. *The DR, ITAT, Bengaluru*
6. *Guard File*

By Order

//True Copy//

*Assistant Registrar  
ITAT, Bengaluru*