

IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” BENCH, MUMBAI  
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 174/Mum/2021

(A.Y: 2015-16)

Simplex Papers Ltd 2 <sup>nd</sup> Floor, Simplex Mills Compound, 30, Keshavrao Khadye Marg, Sant Gadge Maharaj Chowk, Mumbai – 400 011.	Vs.	Pr. CIT (Central) – 2 1920, Air India Bldg Nariman Point, Mumbai – 400 021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCS6910M		
Appellant	..	Respondent

Appellant by :	Shri. Satish Modi.AR
Respondent by :	Shri Ajit K. Srivastava.DR

Date of Hearing	24.03.2022
Date of Pronouncement	25.04.2022

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the Principle Commissioner of Income Tax(Pr.CIT)(Central-2)Mumbai passed u/s 263 of the Act, 1961.

At the time of hearing, the Ld. Counsel for the assessee submitted that there is a delay of 12 days in

filing the appeal before the Hon'ble Tribunal and filed the affidavit for condonation of delay. We find the facts mentioned in the affidavit are reasonable and accepted. Contra, Ld. DR has no specific objections. Accordingly the delay is condoned and admit the appeal.

The assessee has raised the following grounds of appeal:

1. *General:*

*On the facts and in the circumstances of the case and in law, the order passed by the Learned Pr, Commissioner of Income Tax (Central) - 2, Mumbai (hereinafter referred to as "Pr. C IT") u/s 263 is bad in law and liable to be quashed.*

2. *The Ld. Pr. CIT erred in law and on facts in invoking provisions of section 263 in respect of the issue of allowability of cost of stores of Rs 61,80,986 ignoring the fact that it was already verified by the Assessing Officer (hereinafter referred to as 'AO') during the course of assessment proceedings and applied his mind on the submissions made. The Ld. AO during the course of scrutiny assessment made specific inquiries in the matter and applied his mind on the submissions made and consciously allowed the same and hence, the order cannot be said to be erroneous.*

3. *The Ld. Pr. CIT failed to appreciate that the treatment of cost of stores in the books of account during the year under reference is as per the accrual basis of accounting and hence, the same should be allowed as a deduction,*

4. *The Ld. Pr. CIT erred in law and on facts in issuing*

*the show cause notice alleging that the brought forward business losses were allowed to be set off beyond the period of 8 years and later on passing the order on the basis that such brought forward business losses would not be set off against short term capital gain.*

5. *The Ld, Pr. CIT erred in law and on facts in invoking provisions of section 263 in respect of the allowability of set off of business losses against short term capital gain arising from sale of depreciable assets by ignoring the well settled legal position that such set off of loss is allowable.*

6. *The above grounds are independent and without prejudice to one another.*

7, *Your appellant craves leave to add, alter, amend or delete any of the grounds of appeal.*

2. The brief facts of the case are that the assessee company is engaged in the business of manufacturing of papers. The assessee has filed the return of income for the A.Y 2014-15 on 29.09.2015 with a total income of Rs.Nil. Subsequently the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act are issued. In compliance, the Ld. AR of the assessee appeared from time to time and filed the submissions and documents. The assessing officer (A.O) considered the facts and material submitted supporting the information and accepted the returned income and

passed the order u/s 143(3) of the Act dated 16.10.2017.

3. Subsequently the Pr.CIT on perusal of the records found that the A.O has passed the passed the assessment order without examining and making enquiry with respect to the claims (i) the set off of brought forward business loss of A.Y. 2007-08 against the short term capital gains of current year which in beyond a period of 8 years and (ii) the assessee has debited to profit and loss account cost of stores of Rs. 61,80,986/- as it pertains to earlier years. The Pr.CIT has issued notice u/s 263 of the Act and in compliance to the notice, the assessee has submitted the details of set off of brought forward losses of earlier years against the short term capital gains of the current year to the extent of Rs. 2,46,91,234/-.The contentions raised by the Ld. AR that as per the provisions of Sec 72 of the Act, the loss computed for the A.Y 2007-08 shall be set off for a period of 8 consecutive years and A.Y 2015-16 is the 8<sup>th</sup> year hence the loss has to be allowed for set off against income.

4. On the second disputed issue of cost of stores claimed in the profit and loss account, the Ld. AR submitted that at the time of purchase of stores, it is carried as inventory in the books of account and are debited to profit and loss account as and when the same are issued for production and consumed. The assessee follow the mercantile method of accounting wherein the raw material, packing material, stores and spares, etc consumed during the year are debited to profit and loss account and all the stores consumed in the earlier years is debited to profit and loss account in the year of consumption. In this financial year, all the stores items are carried in opening stock where sold upon closure of the manufacturing unit and therefore the items are consumable and packing stores and the nature of items required for repairs and maintenance of machinery and supported with the details. The Ld. AR relied on the provisions of Sec. 37(1) of the Act to claim as a business expenditure and supportive judicial decisions. Whereas, on first issue of set off of loss, the Pr.CIT is of the opinion that the assessee has business loss for the A.Y 2007-08 which could not be set off against the income from other

heads in the current assessment year. The assessee has earned income from short term capital gains and claimed set off of brought forward loss. The Pr.CIT dealt on the provisions of Sec.72 of the Act in respect of the claim and issued directions to A.O. on two disputed issues as under:

*1. To determine the extent of brought forward business losses of A.Y. 2007-2008 available for set off upto 8 assessment years (ii) to adjust such brought forward business loss against the profit and gains from the business for the current assessment year and (iii) as it is not permissible under section 72 of the Income-tax Act, 1961, not to allow the adjustment of the brought forward business loss against the short term capital gains of the current year*

*2. To verify that Cost of stores of Rs. 61,80,9861-debited to Profit and Loss account is not debited to any books of account and (ii) to decide afresh on the admissibility of such earlier year expenses as per law*

*3. To pass a fresh assessment order after making necessary inquiry in the light of above discussion and after affording the assessee reasonable opportunity of being heard The AO is further directed to properly investigate and verify the contention made in show cause notice, among other things The Assessing officer is also directed to properly apply the provision of the section 72 of the Income-tax Act, 1961.*

5. Aggrieved by the order, the assessee has filed an appeal before the Honble Tribunal.

6. At the time of hearing, the Ld.AR submitted that the Pr.CIT has erred in set aside the order u/s 143(3) of the Act, which does not satisfy the twin conditions of erroneous and prejudicial to the interest of the revenue and direct the A.O to do afresh assessement. The Ld.AR submitted that the explanation 2 to sec 263 of the Act ought to be considered only when the AO has not applied his mind, the facts are to be verified and no enquiry is conducted. Whereas, on the merits of the case with respect to set off of brought forward business loss against the short term capital gains and the cost of stores debited to profit and loss account pertains to the earlier years. The Ld.AR substantiated the arguments relying on the documentary evidence, provisions of the Act, judicial decisions and factual paper book and prayed for allowing the appeal.

7. Whereas the Ld.DR supported the order of the Pr. CIT and made submissions with respect to the importance and application of the provisions and explanation 2 to section 263 of the Act.

8. We heard the rival submissions and perused the material available on record. Prima-facie the Pr.CIT has passed the revision order with a directions to the

A.O. on two aspects (i) set off of brought forward business loss and (ii) the cost of stores debited to profit and loss account. On the first disputed issue with respect to set off of brought forward losses, the Ld. AR submitted that it is a limited scrutiny and incompliance to notice u/sec 142(1) of the Act dated 28-02-2017, the assessee has filed detailed reply on 17.04.2017 referred at page 1 of the paper book with the justification of large other expenses claimed in the profit and loss account as annexure-1 and the details of losses adjusted against other heads of income are supported with the earlier year Assessement order of A.Y.2007-08 and the list of scrap(stores) at page 2,point.1 where the cost of stores sold as scrap were worth Rs.61,80,986/- at book value. Further the assessee has filed letter dated 7-08-2017 before the A.O. placed at page 3 of paper book with a note on stores lying unused since 2006 and the reasons for sale as scrap, details of all scrap items sold with invoice, bills etc. Whereas, on the query from the bench on the accounting policy adopted, the Ld.AR referred to page 60 of the paper book were a letter dated 29.09.2017 was filed before the A.O. explaining

the details of inventories, stores, sundry sales (scrap) and compliance of Accounting Standard 2 of ICAI and claim allowable u/sec37(1) of the Act. We find the assessee has filed the information in compliance to the notice issued and clarifications are filed over a period of time in the assessment proceedings on the cost of stores debited to the profit and loss account. The Ld.AR has demonstrated the documents filed in the factual paper book discussed. Accordingly the assessee has diligently complied with the provisions of Act, and maintained the facts /details in the books of accounts and followed the Accounting standard -2 in valuation of inventories. Therefore we are of the opinion that the directions of the Pr.CIT order in respect of claim of stores in the profit and loss account cannot be sustained and allow the grounds of appeal pertaining to the disputed issue on claim of stores.

9. On the second disputed issue with respect to set off of brought forward business loss against the short term capital gains. The contentions of the Ld.AR are that the Building and plant & machinery were sold as block of assets and short term capital gains worked out over and above the WDV. The assessee has carried

forward business loss of A.Y.2007-08 and claimed set off with the short term capital gains and relied on the judicial decision on merits. The Ld.DR submissions are that the PCIT has dealt on the facts which proves that the A.O. has not applied his mind and not made enquiries on the issues. We find the assessee has submitted the assessment order pertaining to A.Y 2007-08 before the A.O on 17.04.2017. We find the A.O has called for the information, but there is no examination and verification of the facts or findings by the A.O on the set off of short term capital gains with carry forward loss. Accordingly, the matter needs to be verified and reasons for claim should be justified. We do not find infirmity in the order of the Pr.CIT on the directions to A.O. for verification of set off of loss and up hold the same and dismiss this ground of appeal of the assessee and partly allow the assessee appeal.

10. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 25.04.2022

Sd/-  
(PRASHANT MAHARISHI)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 25.04.2022

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

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आदेशानुसार / BY ORDER,

( Asst. Registrar)  
ITAT, Mumbai