

आयकर अपीलीय अधिकरण
मुंबई पीठ "एफ "
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीत सिंह, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
आअसं. 91/मुं/2022(नि.व.2013-14)
ITA NO. 91/MUM/2022(A.Y.2013-14)

M/s. Vijay Steel Corporation Ltd.
2, Sabhapati Bhavan,
19, Meera, Santacruz (West),
Mumbai 400 054
PAN;AAACV-3517-E

: अपीलार्थी/ **Appellant**

बनाम/ Vs.

ACIT-13(3)(2).
Mumbai

: प्रत्यर्थी/ Respondent

Appellant by : S/Shri Vivek Jani &
Balkrishan Mishra
Respondent by : S/ Shri S.N.Kabra & Mathews
सुनवाई की तारीख/
Date of Hearing : 20/05/2022
घोषणा की तारीख /
Date of Pronouncement : 20/05/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 07/12/2021 for the assessment year 2013-14.

2. Shri Vivek Jani appearing on behalf of the assessee submitted that this appeal arises out of proceedings under section 154 of the Income Tax Act,

1961 [in short 'the Act']. The assessee filed its return of income for assessment year 2013-14 declaring total income as 'Nil' after carrying forward loss of Rs.3,58,70,809/-. In scrutiny assessment proceedings the Assessing Officer inter-alia made addition of Rs.48,95,746/- under section 68 of the Act by disallowing assessee's claim of unsecured loans. The additions/disallowance made during assessment proceedings were set off against carry forward of business loss and unabsorbed amount of loss was allowed to be carry forward vide assessment order dated 17/03/2016 passed u/s. 143(3) of the Act. Thereafter, the provisions of section 115BBE of the Act were amended by the Taxation Laws (2nd Amendment) Act, 2016 w.e.f. 01/04/2017. Consequent to the amendment, the Assessing Officer invoked the provisions of section 154 of the Act and held that the addition made u/s 68 of the Act is to be taxed separately and cannot be allowed to set off against loss. The Id.Counsel for the assessee submitted that the CBDT vide Circular No.11/2019 dated 19/06/2019 has clarified that amendment to section 115BBE of the Act vide Finance Act,2016 would not affect set off of any loss prior to assessment year 2017-18 i.e. the assessee would be entitled to claim set off of loss against income determined under section 115BBE of the Act till assessment year 2016-17.

2.1 Aggrieved by the order dated 28/07/2017 passed under section 154 of the Act, the assessee filed appeal before the CIT(A). The CIT(A) without appreciating the clarification issued by CBDT(supra) dismissed the appeal of assessee, hence, the present appeal by the assessee. The Id.Counsel for the assessee pointed that the issue raised in the present appeal is squarely covered by the clarification Circular No.11/2019 issued by CBDT. The

Id.Counsel for the assessee further pointed that against the addition made under section 68 of the Act the assessee had filed appeal before CIT(A). After being unsuccessful before the First Appellate Authority, the assessee carried the issue in second appeal before the Tribunal in ITA No.6928/Mum/2018. The Tribunal vide order dated 27/01/2022 accepted the contentions of the assessee and deleted the addition u/s68 of the Act. Since, the addition under section. 68 of the Act has been deleted by the Tribunal, the order passed under section 154 of the Act loses its relevance.

3. Shri S.N.Kabra representing the Department vehemently defended the impugned order . However, the Id.Departmental Representative fairly admitted that the Tribunal in assessee's appeal for assessment year 2013-14 has deleted the addition made by Assessing Officer under section 68 of the Act.

4. Both sides heard. The solitary issue raised in this appeal is against the invoking of section 154 of the Act to disallow set off of addition made under section 68 of the Act against business losses.

5. In scrutiny assessment proceedings, the Assessing Officer inter-alia made addition of Rs.48,95,746/- under section 68 of the Act on account of unproved unsecured loans. The aforesaid addition along with other additions made were set off against business loss. Subsequent to the assessment order, the provisions of section 115BBE of the Act were amended by Taxation Laws (2nd Amendment) Act (supra). Consequent to the amendment, the Assessing Officer invoked provisions of section 154 thereby denying set off of disallowance made under section 68 of the Act . The assessee had also filed

appeal against the addition made in the assessment order. The assessee was unsuccessful before the CIT(A). In appeal before the Tribunal, the assessee agitated the addition made under section 68 of the Act on merits. The Tribunal vide order dated 27/01/2022(supra) deleted the addition made under section 68 of the Act. Once substratum for which provisions of section 154 were invoked has eroded, the rectification made under section 154 of the Act becomes redundant. Even otherwise the CBDT has clarified vide its Circular No.11/2019(supra) that the amendment made by Finance Act, 2016 w.e.f 01/04/2017 with respect to set off of loss against income determined under section 115BBE of the Act would be operative only after assessment year 2016-17. The relevant extract of the CBDT clarification is reproduced herein below:

“4. Thus keeping the legislative intent behind amendment in section 115BBE(2) vide the Finance Act, 2016 to remove any ambiguity of interpretation, the Board is of the view that since the term 'or set off of any loss' was specifically inserted only vide the Finance Act 2016, w.e.f. 01.04.2017, an assessee is entitled to claim set-off of loss against income determined under section 115BBE of the Act till the assessment year 2016-17”

6. Thus, in view of the above we find merit in appeal by the assessee. Hence, the impugned order is set aside and appeal is allowed.

Order pronounced in the open Court on Friday the 20th day of May, 2022.

Sd/-

(AMARJIT SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 20 /05/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai