

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI ABY T. VARKEY, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 1523/CHNY/2018 (A.Y: 2013-14)

M/s. Tata International Limited {erstwhile Bachi shoes Ltd} No. 147, Sidco Industrial Estate Sipcot, Ranipet – 632403	v.	ACIT – Circle – 1 NO.2, 2 nd Floor Central Revenue Building Barracks Cross Street Officers Line, Vellore -632001
(Appellant)		(Respondent)

Assessee by	:	Ms. Aastha Shah
Department by	:	Shri Rajesh Damor
Date of Hearing	:	02.06.2022
Date of Pronouncement	:	30.06.2022

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)–13, Chennai [hereinafter in short "Ld.CIT(A)"] dated 05.03.2018 for the A.Y. 2013-14.

2. Assessee has raised following grounds in its appeal: -

"The appellant objects to the Commissioner of Income tax (Appeals) [CIT(A)]'s order Dismissing the appeal against the Assessment order, for 2013-14 aly

i) Omitting to reduce the adjustments of Rs. 5,69,560 u/s 145A as per letter dated 25.2.2016;

ii) Omitting to reduce the disallowances of Rs.5,84,600 u/s 40(a)ia as per letter dated 25.2.2016;

ii) Omitting to deduct the expenditure of Rs.22,79,597, accounted in the following year as 'prior period expenditure', as per letter dated 25.2.2016; iv) Omitting to carry forward the balance $\frac{1}{2}$ of deduction of Rs.27.79,597 under 32(1)(iia) and

v) Not giving credit for the balance TDS of Rs.7475 (TDS claimed Rs.27.233 TDS credit given Rs.19,858),

on the following grounds:

1. The CIT(A) erred in omitting to REDUCE Rs.5,69,560 from the adjustments us 145A made in the return on account of an error in Statement No.1 in Form 3CD, which was pointed out by the Appellant's letter dt.25.2.2016.

2. The CIT(A) erred in omitting to REDUCE Rs. 5,84,600 from the Disallowance u/s 40(a)ia made in the return on account of an error in Statement No.4 in Form 3CD, which was pointed out by the Appellant's letter dt.25.2.2016

3. The CIT(A) erred in not directing the A.O to deduct the expenditure of Rs.22,65,922, relating to y.e 31.3.2013, paid for and accounted in the following y.e 31.3.2014, inspite of asking for and obtaining additional evidences on 25.2.2016, which were furnished with the Appellant's letter dt.27.2.2016.

4. Having allowed Rs. 27,79,597, being % of the deduction of claimed u/s 32(1)(iia), the CIT(A) misdirected himself in not allowing the carry forward of the balance $\frac{1}{2}$ of the deduction of Rs.27,79,597 under the 3rd Proviso to Sec.32(1)(iia) AND failing to appreciate that it is not a separate claim.

5. The CIT(A) failed to appreciate that none of the above are fresh claims for "Deductions", contemplated in the decision in Goetze (India) Itd vs CIT 284 ITR 323 (SC)

6 The CIT(A) failed to appreciate that, being an Appellate authority, the decision in Goetze (India) Itd. case would not apply to him and he was duty bound to consider the claim raised before him as decided by the Apex Court and Madras High Court.

7. The CIT(A) ought to have followed the binding decisions of the Madras High Court directly on this issue of carry forward of balance Additional Depreciation u/s 32(1)(ii) in CIT vs T.P. Textiles private ltd. 394 ITR 483 (Mad)

8. *The CIT(A) omitted to decide on the error in giving credit for tax of credit for the TDS of Rs. 19,858 only as against the correct TDS of Rs.27333 and sending the matter back to the AO.*

On these grounds and on such other grounds as may be put forth at the time of hearing. the appellant prays that the:

i) Adjustments u/s 145A be REDUCED by Rs. 5,69,560, as per letter dated 25.2.2016;

ii) Disallowances u/s 40(a)(ia) be REDUCED by Rs.5,84,600, as per letter dated 25.2.2016;

iii) Expenditure of Rs.22,79,597, accounted in the following year as 'prior period expenditure', be DEDUCTED, as per letter dated 25.2.2016:

iv) Balance ½ of deduction of Rs.27,79,597 under 32(1)(ia) be carried forward under the 3rd Proviso;

v) Credit for the balance TDS of Rs.7475 (TDS claimed Rs.27,333 TDS credit given Rs.19,858) be granted;

vi) Income for 2013-14 a/y be determined at Rs. 21,19,54,020 and

vii) Refund of Rs.22,96,929, be granted as per aforesaid computation and justice rendered."

3. Before us, at the time of hearing, assessee filed petition along with additional evidences and prayed for admission of additional evidences.

Ld.AR submitted that these additional evidences go to the root of the matter, the same may be admitted and remit the same to the file of the Assessing Officer for examination.

4. Ld. DR has no serious objections in sending back the matter to the file of the assessing officer.

- 5.** We have heard the submissions and perused the orders of the authorities below. On a perusal of the additional evidences furnished before us, we are of the view that these evidences go to the root of the matter, accordingly the same are admitted. These evidences have to be examined by the Assessing Officer as these evidences were not available for verification at the time of assessment. Thus, we restore all these additional evidences and the issue in hand to the file of the Assessing Officer for denovo adjudication in accordance with law. The assessee may file all these evidences before the assessing officer to substantiate its claim. Needless to say that the assessee shall cooperate with the assessment proceedings before the Assessing Officer and the Assessing Officer shall provide adequate opportunity of being heard to the assessee.
- 6.** In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 30th June, 2022.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER
Mumbai / Dated 30.06.2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum