

IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No. 533/Mum/2022
(A.Y: 2014-15)

Everest Kanto Cylinder Ltd., 204, Raheja Centre Free Press Journal Marg, Nariman Point, Mumbai – 400021.	Vs.	DCIT (LTU) – 2 29 th Floor, Centre-1, World Trade Centre-1 Cuffe Parade, Mumbai-400005.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACE0836F		
Appellant	..	Respondent

Appellant by :	Shri.Sekhar Gupta.AR
Respondent by :	Shri.Pankaj Kumar.DR

Date of Hearing	21.06.2022
Date of Pronouncement	22.06.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the National Faceless Appeal Centre (NFAC), New Delhi passed u/s 143(1) r.w.s 144C and 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal.

i.The Ld. CIT(A) has erred in law and on the facts of the case in disallowing Rs. 13,08,034/- under regular provisions and while computing the book profit u/s 115jB on account of

difference in income between 26AS and books of account of the assessee.

ii. The assessee craves leave to add, alter or amend the above ground of appeal.

2. The brief facts of the case are that the assessee company is engaged in the business of high pressure seamless gas cylinder services & compressed natural gas cylinders. The assessee has filed the return of income electronically for the A.Y 2014-15 on 29.11.2014 disclosing a total loss of Rs. 95,58,89,034/- under normal provisions and book loss of Rs. 88,33,22,027/- u/s 115JB of the Act. Subsequently the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued. In compliance to the notice the Ld. AR of the assessee, Chief Finance Officer of the assessee attended from time to time and submitted the details and the case was discussed. On perusal of the financial statements, the Assessing Officer (A.O.) found that the assessee has international transactions, therefore the matter was referred to the TPO for determination of ALP. As per the TPO order U/sec 92CA(3) of the Act dated

13.10.2017 the Arm's Lengths Price (ALP) adjustment under the provisions of Sec.92CA(4) of the Act is Rs. 3,02,39,630/-.

3. Whereas, in respect of corporate issues, (i) the A.O found that the assessee has received dividend income and claimed exemption u/s 10(34) of the Act. The assessee has submitted the details of disallowance u/s 14A of the Act on 8-12-2017 and the AO was not satisfied with the details and determined the disallowance u/s 14A of the Act r.w.r 8D(2)(ii)&(iii) of Rs. 33,33,166/-. Similarly (ii) the A.O observed that the assessee has claimed interest expenses and the details were furnished. The A.O. on verification found that the expenses are in the nature of penalty and has disallowed Rs. 2,12,653/-. (iii) In respect of the receipts from the parties, the A.O found that the assessee has under stated the receipts to the extent of Rs. 13,08,034/- on comparison with the information in Form26AS was added and determined the total loss of Rs. 92,07,95,550/- and passed the order u/s 143(3) r.w.s 144C(3) of the Act dated 04.01.2018.

4. Aggrieved by the order the assessee has filed an appeal with the CIT(A). Whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the A.O and has granted partial relief in the grounds of appeal and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has not considered the information on record and the assessee has a good case on merits and is filing application for the admission of additional evidence which goes to the roots of the case and prayed to consider the additional evidence and allow the assessee appeal. Contra, the Ld. DR supported the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld. AR that the assessee for various reasons could not submit the information before the AO and the CIT(A) in respect of the additions. The assessee has filed an application for

admission of additional evidence before the Honble Tribunal. The Ld. AR prayed that this additional evidence play a vital role in the decision making of the case and prayed for an opportunity to substantiate before the lower authorities. We considering the facts, circumstances, provisions of law and to meet the ends of justice shall provide one more opportunity to the assessee to substantiate with the evidence. Accordingly, we admit the additional evidence and restore the entire disputed issues to the file of the A.O. to verify and examine the material information and decide on merits and the assessee should be provided the adequate opportunity of hearing and shall cooperate in submitting the information. And the grounds of appeal of the assessee are allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 22.06.2022.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 22.06.2022

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Mumbai / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)

ITAT, Mumbai