

IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI

BEFORE
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.2727/Mum/2018
(Assessment Year 2013-14)

ITA No.2728/Mum/2018
(Assessment Year 2014-15)

Dy. Commissioner of Income-tax Central Circle-5(2) Mumbai-400021	Vs.	Sudar Industries Ltd. 27/29, Paud Village, Mazgaon Road, Taluka-Khalapur, Raigad-410222 Maharashtra.
PAN/GIR No. : AAGCS4668D		
Appellant	..	Respondent

Appellant by :	Shri.Hemant Kumar Chimanlal Leava-CIT DR
Respondent by :	None

Date of Hearing	05.07.2022
Date of Pronouncement	12.07.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

These two appeals are filed by the Revenue against the separate orders of the Commissioner of Income Tax

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(Appeals)-53, Mumbai passed u/s 143(3) r.w.s. 153C and 143(3) r.w.s 147 and 250 of Income Tax Act, 1961.

2. On perusal of the facts, the appeal was filed by the revenue on 3-05-2018 and the case was posted for hearing on 7.10.2021, 6.12.2021, 2.2.2022, 24-03-2022, and today i.e 05.07.2022, none appeared on behalf of the assessee on dates of hearing nor any application was filed for adjournment. On considering the facts and the action of the assessee in non appearance on date of hearing. The presumption is that the assessee is not inclined/ interested to appear in the revenue appeal. Accordingly, we heard the Ld.DR submissions and decided the appeal based on the material information available on record.

3. Since, these two appeals have common and identical issues, hence are clubbed, heard and the consolidated order is passed. For the sake of convenience, we shall take up the ITA No.2727/Mum/2018 Asst. Year 2013-14 facts narrated. The Revenue has raised the following grounds of appeal:

“1. Whether on the facts and circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs.7,34,82,942/- made on account of depreciation on capital expenditure pertaining to earlier years ?”

2. *“Whether on the facts and circumstances of the case and in law, the ld. CIT(A) failed to appreciate that the capital expenditure of earlier years was proved bogus ?”*

4. The brief facts of the case that the assessee company is engaged in business of job works of readymade garments. There was search & seizure operations on M/s Aanjaneya Lifecare Service Ltd and group concerns on 24.09.2013. The Assessing Officer after recording the satisfaction has issued notice u/s 153C of the Act. The assessee has filed return of income declaring a total loss of Rs.1,29,34,011/- on 26.02.2016. Subsequently, The Assessing officer has issued notice u/sec 143(2) &142(1) of the Act. In compliance to the notice, the Ld.AR has appeared and submitted information. In the course of search operations, it was found that the assessee has financial transactions referred at page 3 of the assessment order and the explanations are called for. In response to the notice, the Ld.AR has submitted the detailed explanations on 21.03.2016 discussed at page 3 to 5 of the order. The Assessing Officer(A.O.) was not satisfied with the explanations and made addition on account of unexplained cash

receipt of Rs.1,50,50,000/-. The Assessing Officer called for the information of the purchases as the assessee has made purchases with the three parties aggregating to Rs.34,81,84,752/-. The A.O. required the assessee to substantiate the genuineness of the purchases. The Assessing Officer was not satisfied with the explanations and relied on the judicial decisions of the Honble High Court and the Coordinate Bench of the Honble Tribunal and estimated the income @25% of non genuine purchases which worked out to Rs.8,70,46,188/-. Further the Assessing Officer has made disallowance u/sec14A r.w.r.8D of Rs.1,12,871/- and incidental charges of Rs.4,760/-. The A.O. found that the assessee company has booked bogus capital expenditure in A.Y.2010-11 to 2012-13 and are carried forward, therefore the A.O. has categorized and disallowed cumulative depreciation of Rs.7,34,82,942/- and assessed the total income of Rs.16,27,62,750/- and passed the order u/s 143(3) r.w. s. 153C of the Act dated 28.03.2016.

5. Aggrieved by the order, the assessee has filed an appeal with CIT(A). The appellate authority has considered the grounds of appeal, submissions of

the assessee, findings of the Assessing Officer and deleted the disallowance of depreciation on Assets and granted partial relief in the other grounds of appeal and partly allowed the appeal.

6. Aggrieved by order of CIT(A), the revenue has filed an appeal with the Honble Tribunal. At the time of hearing none appeared on behalf of the assessee. The Ld. DR submitted that the CIT(A) has erred in deleting the disallowance of depreciation on the Assets overlooking the facts that the fictitious Assets were being carried forwarded from the earlier years and relied on the Assessing Officer order.

7. We have heard the Ld.DR submissions and perused the material of record. The Ld.DR contentions are that the CIT(A) has erred in deleting the depreciation on capital expenditure pertaining to earlier years overlooking the facts that the search operations took place on 29.09.2013 in the Financial Year 2013-14. The disallowance is purely based on the factual aspects of fictitious assets carried forwarded from earlier years. At this juncture, we considered it appropriate to refer to the observations of the CIT(A) on the disputed issue at page 13 Para 8.1 to 8.3 of the order which is read as under :

“8.1 Grounds of Appeal No.6 is in respect of addition of depreciation of Rs.7,33,87,734/- @ 15% on capital expenditure incurred in the AYs 2010-11, 2011-12, and 2012-13.

8.2 In the course of assessment proceedings, the AO noted that the assessee company has booked bogus capex in AY 2010-11, AY 2011-12 & AY 2012-13. These fictitious assets were being carried forward in this AY. The AO held that the fictitious assets of Rs.6,34,720/- as booked in AY 2013-14 has also become the part of the block of asset in which the fictitious assets as booked in AY 2010-11, AY 2011-12 & AY 2012-13. Hence, cumulative depreciation of Rs.7,34,82,942/- was disallowed and added to the total income.

*8.3 In the appellate proceedings, no submission has been filed by the appellate. However, the disallowance is clearly based on the conclusions of the assessment order of the earlier AYrs 2010-11, 2011-12 & 2012-13, In my appellate order of even date, it has been held that such disallowances cannot be Made since in those AYrs, there were no incriminating material found to support the disallowances and the return was filed which has become final. As a consequence, the disallowance made of Rs.7,33,87,734/-cannot be justified as far as it pertains to capex capitalized in earlier years and is, therefore, deleted.
Ground of Appeal No.6 is allowed.”*

We find the CIT(A) has observed that no incriminating material pertaining to depreciation disallowance was found and the return of income was filed. But the fact remains that the assessee has not filed the return of income within the time allowed u/sec139(1) of the Act, whereas the assessee has

filed return of income in compliance to notice U/sec153C of the Act on 26.02.2016. We are of the opinion that the CIT(A) has deleted the disallowance of depreciation relying on conclusions based on the findings in assessment years 2010-11, 2011-12 & 2012-13 and no incriminating material found in support of disallowances cannot be accepted. The search took place on 24.09.2013 and the assessee has not filed the return of income U/sec139(1) of the Act, therefore the findings and observations of the CIT(A) are not tenable. We considering the facts, circumstances, provisions of law and the principles of natural justice shall restore this issue to the file of the CIT(A) to adjudicate fresh on merits and pass a speaking order and we allow the grounds of appeal of the Revenue for statistical purposes.

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8. As the facts and circumstances in this appeal is identical to ITA No. 2727/Mum/2018(except variance in figures and the Asst Order was passed u/sec143(3)r.w.s147 of the Act, further the CIT(A) in this appeal has discussed and relied on the decision of A.Y.2013-14). Therefore the decision rendered in above

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paragraphs would apply mutatis mutandis for this case also. Accordingly, grounds of appeal of the Revenue are allowed for statistical purpose.

9. In the result, the two appeals filed by the revenue are allowed for statistical purpose.

Order pronounced in the open court on 12.07.2022

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 12.07.2022
PK, Sps

आदेश की प्रतिलिपि अग्रहित/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, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai