

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

**BEFORE: SHRI B R BASKARAN, ACCOUNTANT MEMBER  
&  
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA No.100/Mum/2019  
(Assessment Year :2010-11)**

|  |     |  |
|--|-----|--|
| Dy. Commissioner of<br>Income Tax, Central Circle-<br>6(3), Mumbai<br>Room No.1926, 19 <sup>th</sup> Floor<br>Air India Building<br>Nariman Point,<br>Mumbai – 400 021 | Vs. | M/s. Tigaksha Metallica Pvt.<br>Ltd.,<br>6 <sup>th</sup> Floor, Hamilton A<br>Hiranandani Estate<br>Ghodbunder Road<br>Thane (West)<br>Maharashtra – 400 607 |
| <b>PAN/GIR No.AACCT2279B</b>   |     |  |
| <b>(Appellant)</b>   | ..  | <b>(Respondent)</b>  |

|                              |                      |
|------------------------------|----------------------|
| Assessee by                  | None                 |
| Revenue by                   | Shri Airiju Jaikaran |
| <b>Date of Hearing</b>       | <b>28/07/2022</b>    |
| <b>Date of Pronouncement</b> | <b>29/07/2022</b>    |
|                              |                      |

**आदेश / O R D E R**

**PER ANIKESH BANERJEE (J.M):**

The instant appeal was filed against order of the Id. Commissioner of Income Tax (Appeals)-54, Mumbai [in brevity the CIT(A)] bearing appeal No. Old: CIT(A)-41/IT-409/DC.CC.38/2012-13 New: CIT(A)-54/IT-409/DC.CC 6(3)/2012-13 order dated 30/10/2018, order passed u/s.263 of the Income Tax Act, 1961 (in brevity the 'Act') for the A.Y.2010-11. The impugned order was generated from the order of the Id. Dy.

Commissioner of Income Tax, Central Circle -6(3), Mumbai (in brevity 'the AO') order dated 15/01/2013, order passed u/s.143(3) of the Act.

2. The revenue has raised the following grounds of appeal:-

1. *"Whether on the facts and in the circumstances of the case and in law, the Id.CIT(A) erred in allowing following disallowance to the tune of Rs 7,71,64,502/- ignoring the fact that the during the year under consideration the assessee has not done any manufacturing activity.*

| <i>DISALLOWANCE</i>                      | <i>AMOUNT (Rs)</i>          |
|--|-----------------------------|
| <i>(i) Manufacturing Expenses</i>        | <i>2,64,13,746/-</i>        |
| <i>(ii) Payment to employees</i>         | <i>1, 80,46, 104/-</i>      |
| <i>(iii) Selling and Other Expenses</i>  | <i>66,27,930/-</i>          |
| <i>(iv) Interest and Finance Charges</i> | <i>2,60,76,722/-</i>        |
| <b><i>TOTAL</i></b>                      | <b><i>7,71,64,502/-</i></b> |

*"Whether on the facts and in the circumstances of the case and in law, the Id.CIT(A) erred in allowing the claim of depreciation ignoring the fact that the assessee on one side claiming depreciation NIL on assets at Shoghi as per Companies Act and on other side Rs 1,73,00,057/- as per Income Tax Act"*

3. Brief fact of the case is that the Revenue has filed the appeal against the order of the Id. CIT(A) for allowing the disallowance of different expenses total amounting to Rs.7,71,64,502/- and the depreciation under Income Tax Act amounting to Rs.1,73,00,057/-. The main issue is that the Id. AO determined that during the assessment year assessee has no business so the relevant expenses and depreciation are not allowed to accept for determination of net profit accordingly, disallowed the same. Assessee filed the appeal before the Id. CIT(A). The

Id. CIT(A) allowed the appeal of the assessee. Being aggrieved, the revenue filed an appeal before us.

3.1. During the hearing, the Id. DR relied on the order of the Id. AO and argued to sustain the grounds related to addition amount of Rs.7,71,64,502 and Rs.1,73,00,057/-.

3.2. The Id. Counsel of the assessee first pointed out the order of the Id. CIT(A) in paragraphs 6.5 & 6.6 are extracted as follows:-

*“6.5 In the case of the appellant, the business of the assessee has not stopped. The manufacturing activity at one of the two units, i.e, unit at Shogi stopped temporarily due to labour problems. But the activity was carried on in the other unit. Even though the assessee has Inadvertently shown the Income from job works as Income from other sources, It does not disentitle the assessee to claim the expenses Incurred for earning the said income. The appellant uses the same factory and machinery to do the manufacturing for job work. Besides, the expenses claimed by the assessee are not disproportionate compared to the earlier years.*

*6.6 In view of the above, the expenses claimed by the assessee under the heads manufacturing, payment to employees, selling and other expenses and Interest and finance charges are held to be incurred for the purpose of business and the additions made by the Ld.AO are deleted. These grounds of appeal are Allowed.*

4. We have heard rival submissions and relied on the documents available in the record. As per the observation of the Id. CIT(A), manufacturing activity of the assessee was not stopped. Only one unit at Shogi was stopped temporarily due to labour problems. The assessee has no depreciation under the Companies Act but during computation he allowed the depreciation under Income Tax Act and which is related to other unit also. During examination it is clear that the assessee's activity related to business was duly accepted by the Id. CIT(A). Considering the above fact and above discussion here, we are inclining with the order of the Id. CIT(A).

**5. In the result, appeal of the revenue is dismissed.**

Order pronounced on 29/07/2022 by way of proper mentioning  
in the notice board.

**Sd/-**  
**(B R BASKARAN)**  
ACCOUNTANT MEMBER

**Sd/-**  
**(ANIKESH BANERJEE)**  
JUDICIAL MEMBER

Mumbai; Dated 29/07/2022  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)  
ITAT, Mumbai