IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" DELHI

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

I.T.A. No.3703/DEL/2015
Assessment Year 2007-08

Sutlej Textiles and Industries Ltd., Pachpahar Road, Bhawanimandi, Rajasthan.	v.	Dy. Commissioner of Income Tax, Circle-24(2), New Delhi.
TAN/PAN: AAJCS1850N		
(Appellant)		(Respondent)

I.T.A. No.3371/DEL/2015
Assessment Year 2007-08

Dy. Commissioner of Income Tax, Circle-9(1), New Delhi.	v.	Sutlej Textiles and Industries Ltd., Pachpahar Road, Bhawanimandi, Rajasthan.
TAN/PAN: AAJCS1850N		
(Appellant)		(Respondent)

Appellant by:	Shri Rohit Jain, Adv. Shri Saksham Singhal, Adv.		
Respondent by:	Shri Anuj Garg, Sr.D.R.		
Date of hearing:	01	08	2022
Date of pronouncement:	08	08	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned cross appeals have been filed by the Assessee and the Revenue respectively seeking to impugned the action of the CIT(A).

2. The grounds of appeal raised by the assessee reads as under:

"1. That the CIT(A) erred on facts and in law in not holding

that the reassessment order dated 04.03.2013 passed by the assessing officer under section 147/143(3) of the Income-tax Act, 1961 ("the Act") to be beyond jurisdiction, bad in law and void-ab-initio.

1.1 That the CIT(A) erred on facts and in law in not appreciating that proceedings under section 147 of the Act were initiated on a mere change of opinion, without formation of reasonable belief regarding escapement of income, which is sine-qua-non for assumption of valid jurisdiction.

1.2 That the CIT(A) erred on facts and in law in not appreciating that entire material facts were disclosed by the appellant during the original assessment proceedings and no new tangible material/ information had come into existence to justify reopening of assessment.

2. That the CIT(A) erred on facts and in law in not holding that assessment order passed by the assessing officer under section 147/143(3) of the Act, being non-speaking, to be bad in law.

Without Prejudice

3. That the CIT(A) erred on facts and in law in not deleting the addition of Rs.3,01,05,546 made by the assessing officer on account of additional depreciation claimed by the appellant on plant and machinery.

3.1 That the CIT(A) erred on facts and in law in not adjudicating the issue of addition of additional depreciation holding the same to be academic in nature.

3.2 That the CIT(A) erred on facts and in law in not deleting

the aforesaid addition made by the assessing officer on erroneous premise that the said depreciation stood claimed by the appellant in the return of income for assessment year 2006-07.

4. Without prejudice, in case the appellant's claim of additional depreciation is held to be not allowable in assessment year 2007-08, that the same should be directed to be allowed in assessment year 2006-07.

5. That the CIT(A) erred on facts and in law in upholding the disallowance of Rs.6,15,847 on account of prior period expenses.

5.1 That the CIT(A) erred on facts and in law in not adjudicating the issue of disallowance of prior period expenses holding the same to be academic in nature.

5.2 That the CIT(A) erred on fact and in law in not appreciating that the aforesaid prior period expenses crystallized during the relevant assessment year and actually represented amount ascertained/ settled/ paid during the relevant assessment year.

6. Without prejudice, in case the appellant's claim of deduction of prior period expenses is held to be disallowable, then, prior period income of Rs.23,49,611 offered by the appellant in the return of income should also be held to be not liable for tax.

7. That on the facts and circumstances of the case and in law subsidies received by the appellant under various schemes of the Central/State Government aggregating Rs. 13,55,96,736/- should be directed to be excluded from the taxable income of the

appellant, being in the nature of capital receipt, not liable to tax.

7.1 That the CIT(A) erred on facts and in law in not adjudicating ground No.6 taken by the appellant regarding exclusion of the aforesaid subsidies aggregating Rs.13,55,96,736/- from the taxable income of the appellant, without assigning any reason."

3. The grounds of appeal raised by the Revenue reads as under:

"1. The Ld. CIT(A) erred in law and on the facts in deleting the additions made for calculating book profit u/s.115JB of the Income Tax Act, 1961 of Rs.57,81,123/- on account of provisions for retirement benefits."

4. As per its grounds, the assessee has challenged the order of the CIT(A) both on jurisdiction as well as merits.

5. The jurisdiction being under challenge, we deem it expedient to deal with the challenge to the jurisdiction at the outset.

6. The assessee has challenged the jurisdiction assumed by the Assessing Officer under Section 147 of the Act on the basis of reasons recorded under Section 148(2) of the Act.

7. The reasons recorded under Section 148 for Assessment Year 2007-08 in question being central to determination of jurisdictional challenge, is reproduced hereunder:

"Return declaring total income of Rs.10,76,09,197/- and Rs.41,84,29,628/- under MAT was filed on 28/10/2007. Subsequently, assessment in this case was made u/s 143(3) at a income of Rs.43,95,84,360/- under MAT on 23/11/2009.

During the year, perusal of records revealed that the assessee had claimed additional depreciation of Rs.3,01,05,546/- on the addition of plant and machinery of the last year on which depreciation was already claimed in the A.Y. 2006-07. Therefore, an amount of Rs.3,01,05,546/- should be added back to the income of the assessee.

Further, it is also noticed that an amount of Rs.36,78,530/- as "Provision for doubtful debts" and Rs.57,81,123/- as "Provision for Retirement benefits were added back while computing the income under normal provision of the Act. But while computing the income under special provisions of the Act. While computing the income under special provisions of the Act, this amount was not added back being an unascertained liability. The same should be added while computing income under special provisions of the Act.

On perusal of 3CD report (annexure-15), it is revealed that the assessee has prior period income of Rs.23,49,611/- but has offered only Rs. 17,33,764/- for taxation in Profit and Loss account. The difference of Rs.6,15,847/- (23,49,611 - 17,33,764) should be added back to the income of the assessee.

In view of this, 1 have reason to believe that an amount of Rs.4,01,81,046/- (3,01,05,546 + 36,78,530 + 57,81,123 + 6,15,847) has escaped assessment within the meaning of section 147 of the IT Act, 1961."

AC1T, Circle-9(1), New Delhi"

8. The ld. counsel for the assessee strongly contended that the notice issued under Section 148 is illegal and issued without satisfying the pre-requisites of Section 147 of the Act. It was

submitted that the assessment was earlier carried out under Section 143(3) of the Act vide order dated 27.11.2009 which has been sought to be reopened by issuance of notice under Section 148 dated 16.01.2012. To support its claim for lack of jurisdiction under Section 147 of the Act, the ld. counsel for the assessee broadly submitted that; (i) the Assessing Officer has proceeded on factually incorrect premise; (ii) the disposal of objection thereon by Assessing Officer without any speaking reasons and in a non challant manner. We shall deal with the nuances of various objections at appropriate place in succeeding paragraphs.

9. The ld. DR for the Revenue relied upon the action of the lower authorities and submitted that no fault can be found in the action of the Assessing Officer in the backdrop of the facts of the present case. It was further submitted that where the Assessing Officer has formed *prima facie* belief based on relevant material available with him, sufficiency of the belief *per se* cannot be examined vis-à-vis reasons recorded for escapement.

10. We have considered the rival submissions and the material referred to and relied upon in the course of hearing. The assumption of jurisdiction under Section 147 being subject matter of challenge and goes to the very root of the subject matter, the same is dealt with hereunder.

10.1 On perusal of the reasons recorded, we observe that the Assessing Officer has sought to reopen the completed assessment alleging escapement on three counts; (i) incorrect claim of additional depreciation of Rs.301,05,546/- already claimed in the assessment year 2006-07; (ii) provisions of doubtful debt of Rs.36,78,530/- and provisions for Retirement Benefit at

Rs.57,81,123/- have not been adjusted upward and the book profit reduced due to such provisions were not increased to this extent whereas such provisions are in the nature of unascertained liabilities; (iii) the assessee has only offered Rs.17,33,764/- as against the actual prior period income of Rs.23,49,611/-.

10.2 The assessee filed a detailed objection thereto dated 6th August, 2012 before the Assessing Officer seeking to challenge the reasons so recorded in the light of the judgment of the Hon'ble Supreme Court in the case of *GKN Driveshafts (India) Ltd. vs. ITO* as reported in *(2003) 259 ITR 19 (SC)*. The objections placed before Assessing Officer were adverted. On perusal of the aforesaid objections, we observe that the assessee contended before the Assessing Officer that additional depreciation was claimed on purchase of 'plant and machinery' in the Assessment Year 2006-07 @ 10% instead of 20% eligible to the assessee having regard to the fact that the assets were put to use for less than 180 days. Consequently, the assessee was entitled to remaining additional depreciation in this year and thus correctly claimed in accordance with law and assessed by the Assessing Officer in the original assessment in the light of the tax audit reports, actions of the earlier year and the law prevailing in this regard. The assessee thus contends that the allegation of escapement towards extra claim of additional depreciation is misconceived in law and on facts. The assessee essentially contends that additional depreciation eligible to assessee were bifurcated in two Assessment Years 2006-07 and 2007-08 and no escapement has occurred to such action. We notice that while disposing the objections, the Assessing Officer has not touched upon the factual matrix narrated in the objection at all. The

Assessing Officer, in our opinion, has failed to carry out *quasi judicial* duty cast upon him in this regard. The Assessing Officer was expected to deal with the factual assertions of such vital nature and give a conclusive finding in this regard in accordance with law. The Assessing Officer has failed to do so. The Assessing Officer has declined to entertain the objection of the assessee only on the abstract reasoning that where no opinion has been formed in the original assessment. On this issue, the question of change of opinion does not arise. We totally disagree with the course adopted by the Assessing Officer while disposing of the objection. The explanation offered by the assessee is plain and simple and the Assessing Officer could not have shunned aside such explanation without dealing with it.

10.3 Before us as well, Mr. Jain, the ld. counsel for the assessee has demonstrated on facts that the additional depreciation was claimed on ½ the *per centage* of the entitlement due to partial use of assets in the earlier year for lesser number of days. The asssessee was entitled in law to claim remaining additional depreciation in the current year when the asset was under use. The admission of the claim by the Assessing Officer in the original assessment thus cannot be said to be in defiance of law. Clearly, the Assessing Officer has proceeded on wholly erroneous presumption of facts not being in the nature of liability in the first instance. There being no escapement, the reopening on this count was not justified at all.

10.4 Adverting to the second reason, we take notice of the plea on behalf of the assessee that the 'provisions for doubtful debts' cannot be termed as unascertained liabilities in the light of the

judgment of the Hon'ble Supreme Court in the case of *CIT vs. HCL Comnet Systems & Services Ltd.,* as reported in *305 ITR 409 (SC).* The plea of the assessee being the tune of law laid down by the Hon'ble Supreme Court, we find merit in the plea of the assessee. A debt being an asset and not a liability, consequential provisions on account of doubtful recovery cannot be alleged to be an unascertained liability as correctly pleaded. Thus, no adjustment was required as per the extant law while computing the book profit on account of impairment / diminution of assets. For arriving at such conclusion, we also notice that clause (i) to Explanation-1 appended to sub Section 2 of Section 115JB does not feature in the reasons recorded and the solitary basis for escapement is allegation towards unascertained liability. As noticed earlier, the provision for doubtful debt does not bear the nature of liability *per se* and therefore, the foundation for claiming escapement by Assessing Officer is shaken to its roots.

10.6 As regards provisions of Retirement Benefit, it was contended in the objection that the said provision was on account of leave encashment on the basis of actuarial valuation and therefore the provision was in the nature of 'ascertained liability' in contrast to observation of the Assessing Officer and thus does not qualify for addition/adjustment for the basis of computation of book profit under the special provisions of Section 115JB of the Act. We find merit in the aforesaid plea in the light of the factual matrix.

10.7 The second reason for reopening is also thus without any legal basis. The assessment was completed in the instant case under Section 143(3) of the Act and all these facts were made

available before the Assessing Officer. The Assessing Officer was not justified in making allegation of escapement qua book profit on this score.

10.8 The third ground for reopening is based on allegation of lower reporting of prior period income. The assessee contends that when the income itself is prior period income and relates to earlier years, where is the question of escapement of charitable income by such income of earlier year. Secondly, the assessee had adjusted the prior period expense against prior period income in sync with plethora of judicial precedents including *Saurashtra Cement & Chemical Industries vs. CIT, 213 ITR 523 (Guj.)* wherein it has been clearly held that the assessee is entitled to make such adjustment and offer the net income of the earlier years. Thus, the action of the Assessing Officer in the original assessment cannot be assailed and the allegation of escapement could not have been made in the factual backdrop. The action of Assessing Officer is thus in the realm of review based on change of opinion which is not permissible in law. We thus find justification in the plea of the assessee on this score too as noted.

10.9 Noticiably, the Assessing Officer has failed to deal with any of the objection raised before him and passed a summary order without dealing with any of the objection by a speaking order as called upon him in the judgment of the Supreme Court rendered in *GKN Driveshaft (Supra)*. This has defeated the very purpose of the procedure laid down in *GKN Driveshaft (supra)* for meeting the objections raised on behalf of the assessee. Notwithstanding, on scrupulous examination of factual backdrop, we are satisfied that the reasons recorded does not *prima facie* indicate any actual

escapement and does not satisfy the pre-requisites of Section 147 in the instant case where the assessment was completed under Section 143(3) of the Act.

10.10 In the light of the delineations made above, the notice issued under Section 148 is without legal foundation and thus requires to be quashed. The re-assessment order framed on the basis of such notice is without sanction of law and thus does not survive.

12. The re-assessment order being bad in law, we do not consider it necessary to go into the merits under challenge on behalf of the assessee.

13. The appeal of the assessee is thus allowed in term of observations noted above.

14. The re-assessment order being bad in law, grounds of appeal on merits raised by the Revenue does not survive. The appeal of the Revenue is thus dismissed.

15. In the result, the appeal of the assessee is allowed and the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 08/08/2022.

Sd/-	Sd/-
[KUL BHARAT] **JUDICIAL MEMBER**	**[PRADIP KUMAR KEDIA]** **ACCOUNTANT MEMBER**

DATED: **/08/2022**

Prabhat