

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.633/Viz/2019
(निर्धारण वर्ष / Assessment Year : 2005-06)**

Asst.Commissioner of Income Tax Vs. M/s Vinayaka Alloy Castings (P)
Circle-1 Ltd.,
Rajamahendravaram RSN 227/1, Main Road, Razole
[PAN : AAACV7382D]
(अपीलार्थी/ Appellant) (प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : None
प्रत्यर्थी की ओर से / Respondent by : Shri ON Hari Prasada Rao, DR
सुनवाई की तारीख / Date of Hearing : 29.08.2022
घोषणा की तारीख/Date of Pronouncement : 09.09.2022

ORDER

Per Shri Duvvuru RL Reddy, Judicial Member :

This appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"], Rajamahendravaram in ITA No.10113/2013-14/CIT(A)/RJY dated 27.08.2019 for the Assessment Year (A.Y.) 2005-06.

2. Brief facts of the case are that the assessee company filed its return of income dated 30.10.2005 for the A.Y.2005-06 admitting taxable income of Rs.Nil and worked out the book profits u/s 115JB of the Income Tax Act,

1961 (in short 'Act') as Nil. The assessee had claimed credit for set off of depreciation loss and business loss from out of the net profit as per profit & loss account. On verification of record, the AO observed that book profit needs to be restricted to the extent of the business loss available, hence, notice u/s 148 of the Act was issued to the assessee to file the return. In response, the assessee filed a letter to treat the same return which was filed on 30.10.2005 for the A.Y.2005-06 and submitted that the assessee has rightly arrived at the computation of book profit u/s 115JB. However, the AO has again worked out the book profit u/s 115JB after giving credit only in respect of the business loss but not depreciation loss and completed the assessment proceedings by passing an order dated 31.12.2012.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) allowed the appeal of the assessee holding that on the basis of suspicions and presumptions, the AO cannot invoke the provisions under section 147 of the Act.

4. Aggrieved by the order of the Ld.CIT(A), the revenue preferred appeal before the Tribunal and raised the following grounds of appeal :

1. *The order of the Ld.CIT(A) is erroneous both on facts and in law.*
2. *The Ld.CIT(A) erred in stating that the Assessing Officer cannot re-open assessments on the basis of "mere change of opinion" citing the*

decision held by the Hon'ble Supreme Court in the case of CIT Vs. Kelvinator of India Ltd. The Ld.CIT(A) ought to have appreciated the fact that the assessment in the subject case was made for the first time and the case was never assessed u/s 143(3) of the Act earlier.

3. *The Ld.CIT(A) should have taken the law into consideration that as per clause(iii) of Explanation (1) to the section 115JB, the amount of loss brought forward or unabsorbed depreciation whichever is less as per books of account to be set off while arriving at the book profit.*

4. *The appellant craves leave to add or delete or substitute or amend any ground of appeal before and / or at the time of hearing of the appeal.*

For these and any other grounds that may be urged at the time of hearing of the appeal, it is prayed that the appeal may please be allowed as the case falls under the exception (c) of para 10 laid down in the Circular No.3/2018 dated 11.07.2018 though the tax effect involved in the instant case is below the monetary limits prescribed as per CBDT Circular No.17/2019 dated 08.08.2019.

5. None appeared on behalf of the assessee during the course of appeal hearing despite the notices were issued and served on the assessee.

6. We have heard the Ld.DR and perused the orders of the lower authorities. It is evident from the order sheet notings that the assessee has not appeared though the notices were issued, served on the assessee and the acknowledgement of having received the notice by the Director of the firm was received. The case has been adjourned on many occasions. The assessee has not even filed any material or written submissions. It appears that the assessee is not interested to prosecute it's appeal. The assessee has not placed any evidence to establish that it is eligible for credit in respect of

depreciation loss while computing the book profit u/s 115JB. Therefore, we set aside the order passed by the Ld.CIT(A) and allow appeal of the revenue.

7. In the result, the appeal of the revenue is allowed.

Order pronounced in the open court on 9th September, 2022.

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| Sd/- (एस बालाकृष्णन) (S.BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER Dated : 09.09.2022 L.Rama, SPS | Sd/- (दुव्वूरु आर.एल रेड्डी) (DUVVURU RL REDDY) न्यायिकसदस्य/JUDICIAL MEMBER |
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आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- M/s Vinayaka Alloy Castings (P) Ltd., RSN 227/1, Main Road, Razole
2. राजस्व/The Revenue - Asst.Commissioner of Income Tax, Circle-1, Aayakar Bhawan, Veerabhadrapuram, Rajamahendravaram
3. प्रधान आयकर आयुक्त / The Principal Commissioner of Income Tax, Rajamahendravaram
4. The Commissioner of Income Tax (Appeals), Rajamahendravaram
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam