

IN THE INCOME TAX APPELLATE TRIBUNAL "C"
BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rajesh Kumar, Accountant Member

I.T.A. No.2593/Kol/2019
Assessment Year: 2013-14

Kamrup Coke Industries..... Appellant
1/1A, Biplabi Anukul Chandra
Street, Kolkata-700072.
[PAN: AAGFK3064J]

vs.

ACIT, Circle-37, Kolkata..... Respondent

&

I.T.A. No.2579/Kol/2019
Assessment Year: 2013-14

ACIT, Circle-37, Kolkata..... Revenue

vs.

Kamrup Coke Industries..... Assessee
1/1A, Biplabi Anukul Chandra
Street, Kolkata-700072.
[PAN: AAGFK3064J]

Appearances by:

Shri None appeared on behalf of the appellant.

Smt. Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing :August 24, 2022

Date of pronouncing the order : September 13, 2022

ORDER

Per Sanjay Garg, Judicial Member:

The captioned are the cross-appeals, one by the assessee and the other by Revenue against the order dated 24.09.2019 of the Commissioner of Income Tax (Appeals)-11, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). Since the facts and issues involved in both the appeals are identical, hence, both the captioned appeals were heard together and are being disposed of with this common order. The assessee in its appeal has taken the following grounds of appeal:

"1. That the order of Ld. CIT(A) is against the law and facts of the case.

2. That in the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in conditional allowing section 80IC taking 40% G.P Rate.

3. That in the facts and in the circumstances of the case and in law, the Ld. CIT(A) has wrongly restricted to G.P Percentage – 40% for allowability u/s 80IC of the Income Tax Act though the appellant's G.P 46.83%. Appellant is regularly assessed u/s 143(3) of the Income Tax Act since A.Y 2004-05 and full gross profit had been allowed for deduction u/s 80IC of the Act.

4. That in the facts and in the circumstances of the case and in law, the Ld. CIT(A) has wrongly taken about GP and restricted to GP – 40% and wrongly stated that rest amount be taken for tax.

5. That the appellant craves leave for the permission to add, delete or amend the grounds of appeal before or at the time of hearing of appeal.”

The Revenue in its appeal has taken the following grounds of appeal:

i) That Ld. CIT(A) has erred on facts of the case in directing AO to compute deduction u/s 80IC by taking 40% GP when verifiability of sales was itself in doubt at assessment stage before AO as well as before CIT (A) during appellate stage where CIT(A) recorded a finding of fact that assessee's books of account do not reveal true and correct picture of profits earned?

(ii) The CIT(A) has erred on facts of the case to accept assessee's explanation despite expressing doubt on same when assessee was unable to back its stand of abrupt increase in GP, because of increase in sale price of finished goods, without bringing on record any data of either national level or any data from Government Department or Government Undertaking ?

(iii) The CIT(A) has erred on facts of the case in deciding 40% GP rate when assessee's statement for high GP rate (that cost of manufacturing remained subdued while sale price had increased & issue of transport subsidy was not found correct) was not substantiated and CIT(A) held that all is not well what the assessee had reported in its submissions before first appellate authority?

(iv) The CIT(A) has erred on facts of the case in deciding the GP rate at 40% even when that GP and NP rate declared by assessee over the years were erratic and reason for abrupt rise in GP in AY 2013-14, was not properly explained by assessee before first appellate authority, leading to finding recorded by FAA that profit had been inflated to plough in more amount, as an exempt income, for the purpose of enhanced claim of 80IC deduction.

(v) That the appellant craves the leave to add, amend, modify or withdraw any or all the above ground of appeal either before or at the time of hearing of appeal.”

2. The unit of the assessee is eligible for 80IC deduction. Though the assessee claimed GP Rate for the year under consideration at 46.83% and claimed deduction u/s 80IC thereupon, however, the Id. CIT(A) restricted the GP percentage at 40% and accordingly allowed deduction under 80IC to the assessee on the income so arrived. Now, the assessee in his appeal has contested the action of the CIT(A) in reducing/restricting the GP Rate to 40% as against 46.83% claimed by the assessee and thereby reducing the claim of deduction u/s 80IC of the Act, whereas the Revenue is in appeal contesting the action of the CIT(A) in allowing 40% GP Rate and thereby directing the Assessing Officer to compute a deduction u/s 80IC on the said GP Rate. The plea of the Revenue is that the action of the CIT(A) was not justified because there were no verifiable sales especially when the Id. CIT(A) himself has given a finding of fact in the impugned order that assessee's books of account did not reveal true and correct picture of the profits earned. Further that the assessee had failed to explain about the abrupt increase in GP and that even the CIT(A) expressed doubt about the same in the impugned order. That the action of the CIT(A) was not justified in directing the Assessing Officer to give 80IC deduction to the assessee by taking the GP Rate at 40% even when the GP and NP rate declared by the assessee over the year was erratic and even reasons for increase of GP in assessment year 2013-14 were not explained by the assessee.

3. The Id. Counsel for the assessee, at the outset, has invited our attention to the common order dated March 02, 2022 passed by this Tribunal in the case of group companies of the assessee in respect of the appeals preferred by the Revenue, in the following cases:

- (i) DCIT vs. M/s Parasnath Coke Industries I.T.A. No.1021/Kol/2019;
- (ii) DCIT vs. M/s Ganesh Metcoke Industries I.T.A. No.1026/Kol/2019;
- (iii) DCIT vs. M/s Jai Coke Industries I.T.A. No.1027/Kol/2019;
- (iv) DCIT vs. M/s Sri Balaji Coke Industries I.T.A. No.1028/Kol/2019;

The Tribunal in its order dated March 02, 2022 has taken cognizance of the identical grounds of appeal taken by the Revenue in the aforesaid appeals and has reproduced the grounds of appeal taken in ITA No.1021/Kol/2019, which for the sake of ready reference are reproduced as under:

“2. Since the facts and issues involved are identical, these appeal have been taken for disposal by this common order. For the sake of convenience ITA No.1021/Kol/2019 is taken as lead case. The Revenue in this appeal has taken the following grounds of appeal:

“1. On the facts and circumstances of the case, the CIT(A) erred in re-computing the net profit of the assessee as Rs.3,26,704/- as against the net profit of Rs. 1,84,07,598/- showing by the assessee in its return of income.

2. On the facts and circumstances of the case, the CIT(A) erred in allowing expenses to the assessee while in re-computing the income of the assessee however the Ld. CIT(A) accepted that the assessee failed to prove any business activities carried out by the assessee.

3. On the facts and circumstances of the case, the CIT(A) erred to in re-computing the income of the assessee at Rs. 3,26,704/- instead of Rs. 1,84,07,598/-, being the highest figures derived from the three methods i.e. (i) Net Inflow of Money Method (ii) Peak in cash or Bank book (iii) Accretion to assets in the Balance Sheet however the Ld. CIT(A) accepted that the assessee failed to prove any business activities carried out by the assessee.

4. On the facts and circumstances of the case, the CIT(A) erred in accepting the Cash Book which is a fresh submission made by the assessee before Ld. CIT(A), whereas it was required that an opportunity should have been given to the assessing officer, therefore, CIT(A) has violated the provisions of Rule 46A of the Income Tax Rules.

5. That the appellant craves the leave to add, alter, modify, include or delete any grounds of appeal.”

4. It is to be noted at this stage that in the aforesaid referred to appeals decided by common order dated March 02, 2022, the Revenue was aggrieved by the action of the CIT(A) in re-computing the net profit of the assessee at a very low amount of Rs.3,26,704/- as against the high net profit of Rs.1,84,07,598/- shown by the assessee in its return of income, whereas, in the captioned appeals before us, the Revenue is aggrieved by the action of the CIT(A) in determining high net profit wherein the case of the Revenue is that the assessee could not satisfactorily explain such an exaggerated gross profit @48.83%. Even the assessee is also aggrieved by the action of the CIT(A) in restricting the gross profit @40% as against 43.83% claimed by the assessee. The reason for which a diagonally opposite stand both by the assessee and revenue in earlier appeals with this appeal is obvious that perhaps the assessee is not eligible

for deduction u/s 80IC in respect of the appeals decided vide order dated March 02,2022 (supra), whereas, the present assessee is eligible for deduction u/s 80IC for the assessment year under consideration.

5. As noted, above the Assessing Officer during the assessment proceedings held that the assessee was unable to substantiate its claim for high GP rate and was unable to prove the purchase of raw material, production of LAMC, Breeze coke and its sale to various persons. He, therefore, concluded that the assessee's claim u/s 80IC was not genuine and disallowed its section 80IC claim worth Rs.1,94,40,833/- and computed the taxable income of the assessee at Rs.2,63,05,090/- as against nil income declared by the assessee.

6. In appeal before the CIT(A), the assessee had taken the plea that since the business of the assessee has been turned into the non-performing asset (NPA) on the loans taken from bank, the bank had taken possession of the premises under SAFAESI Act, 2002 and had sealed it. Therefore, many documents lying in the premise of the assessee could not be produced before the Assessing Officer.

7. The Id. DR has contended that since the premise of the assessee was sealed and taken over by the bank, therefore, there was a serious doubt about the business operation of the assessee and that even the assessee did not produce the relevant documents showing the business operations and explanation for such a high GP rate. At this stage, the Id. AR of the assessee has submitted that the assessment year under consideration is A.Y 2013-14 relevant to F.Y 2012-13, whereas, the possession of all the seven factories of the group companies of the assessee including that of the assessee was taken over by the bank u/s 13(4) of the SARFAESI Act, 2002 on 04.12.2015. He, therefore, has submitted that the factory of the assessee was in operation during the relevant period i.e. F.Y 2012-13.

At this, the relevant question which has struck to our minds is as to when there were high profits @43.83% shown by the assessee and the profits of the assessee were eligible for 80IC deduction and even the deduction has also been allowed in the past eight years, then, what circumstances led the assessee to become defaulter of the bank and ultimately forced the bank to declare the assessee as a NPA and ultimately to take the possession of the assessee's factory premises under SARFAESI Act, 2002.

The Id. Counsel for the assessee could not give any explanation in this respect. The matter was heard on the earlier date on 22.08.22 and it was directed to the Id. Counsel for the assessee to produce cash book of the assessee on the next date of hearing so as to verify the genuineness of the claim of the assessee about such a high profit rate and also to explain the reasons for assessee going into NPA despite such high profits of 43.83% and that too eligible for deduction u/s 80IC of the Act. However, no one has appeared on the next date of hearing i.e. 24.08.22, which means that when a very particular question striking at the very moot point of controversy has been asked, the assessee has disappeared without any explanation being offered to this Tribunal. However, we are conscious of the proposition that nobody should be condemned unheard, hence, following the principles of natural justice, we deem it appropriate to restore the matter to the file of the Assessing Officer for assessment afresh on the above issue as directed in the group companies of the assessee vide order dated 02.03.2022 (supra), the relevant portion of the order of the Tribunal for the sake of ready reference is reproduced as under:

“Now, the contention of the Id. DRs is that, in this case, neither books of account nor the relevant documents have been examined either by the Assessing Officer or by the Ld. CIT(A). It has been submitted that the Ld. CIT(A) has given substantial relief to the assessee on assumptions and presumptions of certain facts without appreciating the evidences on record. The Ld. DRs, therefore, have submitted that the matter may be restored to the file of the Assessing Officer for assessment afresh. It has been further submitted that since the facts in all the captioned appeals are identical, therefore, the matter in relation to all the appeal be restored to Assessing Officer.

7. *At this stage, the Id. AR has submitted that even the assessee is not satisfied with the order of the Id. CIT(A). He has also requested that the matter may be restored to the file of the Assessing Officer for de novo assessment.*

8. *In view of the submissions of the Ld. representatives of both the parties, the impugned orders of the CIT(A) are set aside in relation to the captioned appeals and matter is restored to the file of the Assessing Officer for de novo assessment in each case.*

8. It is further directed that the Assessing Officer will in the case of the assessee further call for explanations, evidences including the cash book and examine the issue and relevant factors as to why the assessee became bankrupt despite such a huge profits and deduction u/s 80IC and to examine this aspect for the purpose of verifying the genuineness of the claim of the assessee. In view of the directions given above, the matter is restored to the file of the Assessing Officer for de novo assessment.

9. In the result, both the appeals of the assessee as well as of Revenue are treated as allowed for statistical purposes.

Kolkata, the 13th September, 2022.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 13.09.2022.

RS

Copy of the order forwarded to:

1. Kamrup Coke Industries
2. ACIT, Circle-37, Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches