

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. C.M. GARG, JUDICIALMEMBER
AND
SH. N. K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No.1350 & 1351/Del/2013
Assessment Year: 1989-90 & 1991-92

DCIT Central Circle -6, New Delhi	Vs	Sahara India Ltd. 1, Kapoorthala Complex, Aliganj Lucknow PAN No. AADCS4482J
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Kanav Bali, Sr DR
Respondent by	Sh. J. J. Malhotra, CA Sh. Devasish Malhotra, Advocate

Date of hearing:	07/12/2022
Date of Pronouncement:	23/01/2023

ORDER

PER N. K. BILLAIYA, AM:

ITA No. 1350/Del/2013 and 1351/Del/2013 are two separate appeals by the revenue preferred against the two separate orders of the CIT(A)-1, New Delhi dated 04.12.2012 pertaining to A.Y.1989-90 and 1991-92.

2. Since common grievance is involved in both these appeals they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The common grievance of the revenue is that the CIT(A) has erred in directing the AO to verify the working of loss determined by the assessee whereas he has also given directions to the AO to adopt the said figure of loss. The quantum may differ in both these appeals.

4. With the concession of both the representatives we have considered the facts of ITA No.1350/Del/2013 A.Y.1989-90.

5. Briefly stated the facts of the case are that the assessment was completed on 28.03.1992 at total income of Rs.49561714/- again order u/s.143(3)/251 was passed on 25.10.1994 determining total income at Rs.21823380/-. Appeal was preferred before the CIT(A) which was decided vide order dated 29.09.1995 and income was computed at Rs.10077350/-. Appeal was preferred before the Tribunal and the Tribunal vide order dated 31.05.2005 decided accordingly. The matter was referred to the third member who vide order dated 27.10.2017 decided the quarrel which was challenged before the Hon'ble High Court and the Hon'ble High Court has held as under :-

14. *This situation was created by third Member who appears to have forgotten its own duty and statutory obligation that it has to decide specific points referred for its opinion and not to sit in appeal over the entire matter and take its own decision independently and bereft of points formulated by different Members and referred for*

opinion of third Member.

15. *We have no option but are constrained to observe that order and approach of third Member is patently erroneous, illegal, impermissible and constitutionally unsustainable in law rendering order dated 31.12.2003, passed by Regular Bench, unsustainable.*

16. *The Questions formulated above, in these appeals, we answer in favour of appellants and accordingly set aside not only order passed by Regular Bench on 31.12.2003 but also third Member's order dated 26.03.1998 and remand the matter to President of Tribunal to nominate another Bench constituting one or more members to consider and decide seven points formulated by differing Members in their order dated 16.10.1996 for giving opinion thereon and thereafter the Regular Bench may decide the matter in the light of majority opinion as contemplated in Section 255(4) of Act, 1961.*

17. *Since all these are old matters, we expect that the Tribunal shall expedite hearing of these appeals and decide the same at the earliest, preferably within three months from the date of production of a certified copy of this order.*

18. *All the appeals are allowed in the manner as aforesaid."*

6. We have carefully perused the orders of the authorities below. The quarrel relates to the treatment of income and expenditure and finally position with regard to income as well as expenditure is subscription has to be taxed as income of the year in which it is received and the entire expenditure relating to prices which are payable over the period of scheme have to be allowed in the year in which the subscription is treated as revenue. Receipt on pro rata basis without applying discounting factor. We find that the first appellate authority have considered subsequent years decision in the case of the assessee for A.Y.1992-93 and 1993-94 and found that on identical set of facts the net profit figure have been re-casted as per P & L account prepared by the assessee as per the directions of the ITAT. For

the year under consideration i.e. 1989-90 the assessee has furnished following figures :-

	As per AO	As per assessee
Income as per order u/s 143(3) /251 dated 25.10.94	21823380	21823382
Add:		
Prizes under GKS allowed by AO u/s 143(3) / 251	18500000	18500000
	40323380	40323382
Less:		
Prizes under GKS allowed as per ITAT order 31.05.05	33464612	96256401
	6858768	-55933019
Less:		
Notional interest added by AO vide order u/s 143(3) / 251 dated 25.10.94 but deleted vide ITAT order dated	8821365	858606
	-1962597	-56791625
Less:		
Excess collection accounted by AO in the recasted P&L a/c but deleted by ITAT vide order dated 31.05.2005		4044359
		-60835984
Less:		
Expenses disallowed by AO but allowed by ITAT vide order dated		7962759
Profit / (Loss) as per recasted P & L a/c	-1962597	-68798743

7. The CIT(A) has directed the AO to verify the aforementioned calculation by the assessee and if found correct allow impugned computed loss. Considering the facts in totality in the light of the subsequent decisions in the case of assessee we do not find any error or infirmity in the aforementioned directions of the CIT(A), the appeal of the revenue is accordingly dismissed.

ITA No.1351/Del/2013 A.Y. 1991-92

8. The facts of ITA No.1351/Del/2013 A.Y.1991-92 are pari materia the same, therefore, that appeal is also dismissed.

Order pronounced in the open court on 23.01.2023.

Sd/-
[C.M. GARG]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: .01.2023

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi