

**THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'E', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 4723/Del/2017 : Asstt. Year : 2006-07

National Fertilizers Ltd., Core-111, Scope Complex, 7, Institutional Area, Lodhi Road, New Delhi-110003	Vs	ACIT, Circle-13(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACN0189N		

ITA No. 5547/Del/2017 : Asstt. Year : 2006-07

ACIT, Circle-13(1), New Delhi	Vs	National Fertilizers Ltd., Core-111, Scope Complex, 7, Institutional Area, Lodhi Road, New Delhi-110003
(APPELLANT)		(RESPONDENT)
PAN No. AAACN0189N		

Assessee by : Sh. Ved Jain, Adv.

Revenue by : Sh. Atiq Ahmad, Sr. DR

Date of Hearing: 05.12.2022

Date of Pronouncement: 01.03.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee and the Revenue against the orders of Id. CIT(A)-38, New Delhi dated 31.05.2017.

2. In ITA No. 4723/Del/2017, following grounds have been raised by the assessee:

"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred in rejecting the contention of the assessee that the reassessment proceedings initiated by the learned A.O. are bad in the eye of law as the reasons recorded for the issue of notice under Section 148 are bad in the eye of law and are contrary to the facts.

3. On the facts and circumstances of the case, the learned CIT(A) has erred in confirming the initiation of proceedings under section 148 of the Act despite the fact that the assessment has been reopened without there being any allegation in the reasons recorded about the income having escaped assessment on account of the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment.

4. On the facts and circumstances of the case, the learned CIT(A) has erred in rejecting the contention of the assessee that the notice issued under Section 148 is barred by limitation as the same has been issued after a period of four years from the end of relevant assessment year and the original assessment was done under Section 143(3) of the Act.

5(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of an amount of Rs.7,70,13,000/- made by AO on account of rebate and discounts claimed by the assessee.

(ii) That the said disallowance has been confirmed without appreciating the explanation and evidences brought on record by the assessee to show that the cash discount is different from the quantity rebate and both are accounted for separately in books of accounts i.e. quantity rebate (net of sales) and cash discount (shown under other expense) and claimed accordingly.

(iii) That the disallowance has been confirmed by the CIT(A) misunderstanding the quantity rebate and cash discount as one and the same thing.

6(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance to an extent of Rs.2,68,17,071/- on account of expenditure in foreign currency on account of know-how and professional charges.

(ii) That the CIT(A) has erred both on facts and in law in confirming the said disallowance, without giving any cogent findings in this regard.

7(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of an amount of Rs.4,73,15,868/- made by AO on account of additional depreciation on plant and machinery.

(ii) That the said disallowance was made despite the assessee being eligible for the same as per the provisions of the Act."

3. In ITA No. 5547/Del/2017, following grounds have been raised by the Revenue:

"1. Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in reducing disallowance of Rs. 7,57,47,000/- to Rs. 2,68,17,071/- on account of 'know-how' & professional charges' by ignoring the fact that during assessment proceeding the assessee could not discharge its initial onus to prove that the said expenses were not of capital in nature even after providing sufficient opportunities of being heard?

2. Whether on facts and in circumstances of the case, the Ld CIT(A) is legally justified in deleting the disallowance on account of 'prior period expenditure' of Rs. 1 1,35,27,000/- without recording material evidence to reach a conclusion that liability to incur the expenditure was actually crystallized during the year under consideration and by ignoring a fact that the assessee had not proved that liability to incur expenditure of Rs. 11,35,27,000/- was actually crystallized during the year under consideration?

3. *Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting the disallowance of Rs.11,35,27,000/- on 'prior period expenses' by ignoring a fact that the assessee was following mercantile system of accounting?*

4. *Whether on facts and in circumstances of the case, the Ld CIT(A) is legally justified in deleting the addition of Rs. 2,22,06,299/- u/s 41(1) of the Act by ignoring finding of facts recorded by the AO and by accepting self-serving new claims and documents filed by the assessee even when the assessee had not fulfilled conditions as laid down under Rule 46A of Income Tax Act, 1962(the Rule) and without providing opportunity of being heard to the AO?*

Reasons for the belief that income has escaped assessment:

4. The assessment u/s 143(3) of the Act in the case M/s National Fertilizers Ltd. was completed at an income of Rs. 308,46,24,760/- on 22.12.2008, as against returned income of Rs. 245,21,91,974/-.

5. From the **perusal of assessment records** of AY 2006-07 it has been found that,

i) assessee had **claimed** Rs.7,70,13,000/- on account of Rebates and discount **in the profit and loss account** but as per notes to accounts sales are net of rebates and discounts. Hence, this amount had already been netted from the gross sales. Therefore, the expenditure claimed by the assessee shall be disallowed and added back to the Income of the assessee. Hence, under assessment of income of Rs.7,70,13,000/-.

ii) **As per additional information enclosed with notes** to accounts assessee had claimed Rs. 7,57,47,000/- expenditure in foreign currency on account of Knowhow and professional charges : As the know-how acquired by the assessee is of enduring nature, it should have been capitalized as intangible asset and Rs.5,68,10,250/- (after allowing-depreciation@ 25 percent) should have been added back to the income of the assessee Hence, under assessment of income of Rs, 5,68,10,250/-.

iii) The assessee had debited Rs. 11,35,27,000/- on account of arrears on PF contribution on leave encashment for the period 1.10.1994 to 31.3.2005. **As these expenses claimed by the assessee are prior period expenditure** therefore, it should have been disallowed and added back to the income of the assessee. Hence, under assessment of income of Rs. 11,35,27,000/-.

iv) assessee had **claimed** Rs. 4,73,15,868/- as **additional depreciation** on plant and machinery **as per depreciation chart** under Income-Tax Act. **As per 3CD Report** assessee was engaged in the business of manufacturing of Nitrogenous fertilizers and other related industrial products, as this was not covered under Eleventh Schedule of the Act, therefore the additional depreciation claimed by the assessee should have been disallowed and added back to the income of the assessee Hence, under assessment of income of Rs.4,73,15,368/- involving short levy of tax of Rs. 2,11,82,273/-.

v) an amount of Rs.2,22,06,299/- **disclosed in the form 3CD** as "profit chargeable to tax u/s 41" was not added back in the

computation of income of the assessee. Hence, under assessment of income of Rs.2,22,06,299/-.

On the basis of examination of the facts and circumstances for A.Y. 2006-07 as above, I have reason to believe that the income has escaped assessment **on account of failure on the part of the assessee to disclose truly and fully all material facts** necessary for assessment within the meaning of proviso to Section 147 of the Income Tax Act, 1961.

6. Since four years have expired from the end of the relevant assessment year and the assessment was made u/s 143(3) of the I.T. Act, as per provisions of Section 151(1) of the I.T. Act, necessary approval of the Commissioner of Income Tax, Delhi-V, New Delhi is solicited for issue of notice u/s 148 of the I.T. Act for A.Y. 2006-07.

7. We have perused the reasons recorded in detail and we find that,

- ❖ The assessment has been completed u/s 143(3) determining income at Rs.308.46 crores against the returned income of Rs.245.21 crores.
- ❖ With regard to rebate & discounts, the information was available in P&L account which is before the revenue authorities during the assessment proceedings.
- ❖ With regard to the know-how and capitalization, this information was available with the revenue authorities in the notes to accounts which was a part of the financial statement.

- ❖ The details of PF contribution and Leave Encashment are also available during the assessment proceedings.
- ❖ The claim of the additional depreciation was available on the depreciation chart and also in Form 3CD report.
- ❖ With regard to profit chargeable to tax u/s 41, the same is disclosed in Form 3CD.

8. On going through the reasons recorded, we also find that the Assessing Officer has mentioned that they have reasons to believe that the income has escaped assessment on "account of failure on the part of the assessee to disclose truly and fully" all material facts necessary for assessment within the meaning of proviso to Section 147 of the Income Tax Act, 1961. This observation of the AO is repellently against the facts on record. The AO has made reference of audit report and notes to accounts in reasons recorded which is the assessee's own audit report, which has been filed with the return of income before the revenue authorities. There is no new tangible material with the AO after four years that the assessee company has escaped assessment. Thus, there is no whisper in the reasons recorded, of any tangible material which came to the possession of the Assessing Officer subsequent to the issue of the intimation. Hence, we have no hesitation to hold that the case has been re-opened bereft of the conditions prescribed u/s 148 of the Income Tax Act, 1961. Consequently, we hold that the assessment u/s 148 is *void ab initio*.

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

Order Pronounced in the Open Court on 01/03/2023.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 01/03/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR