

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 2434/MUM/2022
Assessment Year: 2018-2019

Shapoorji Pallonji Oil and Gas Pvt.
Ltd.,
41/44 Shapoorji Pallonji Centre,
Minoos Desai Marg, Colaba,
Mumbai-400 005.

PAN No. AAEECC 9599 B
Appellant

Vs.

The National Faceless
Assessment Centre,
Mumbai.

Respondent

Assessee by : Mr. Gautam Thacker
Revenue by : Dr. Kishor Dhule, CIT-DR

Date of Hearing : 02/05/2023
Date of pronouncement : 11/05/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against final assessment order dated 22.07.2022 passed by the Assessing Officer of National Faceless Appeal assessment unit, pursuant to the direction of the Ld. Dispute Resolution Panel (DRP) dated 02.03.2022. The grounds raised by the assessee are reproduced as under:

“Ground No. 1:



The assessment Order under section 143(3) read with section 144C(13) read with section 144B of the Act passed by the NaFAC is bad in law since it is not in compliance with the directions issued by the Hon'ble Dispute Resolution Panel-2, Mumbai ('DRP').

It is prayed that the assessment Order be quashed and cancelled.

Ground No. 2:

On the facts and circumstances of the case and in law, the NaFAC erred in assessing the loss at Rs. 9,05,39,173 on the basis of the intimation issued under section 143(1) of the Act dated 12

December 2019 instead of considering the total loss of Rs. 14,80,17,785 as per the revised return of income filed by the Appellant on 22 March 2019.

The NaFAC erred in not complying with the specific directions of the Hon'ble DRP.

It is prayed that the NaFAC be directed to consider the total loss of Rs. 14,80,17,785 as per the revised return of income filed by the Appellant.

Ground No. 3:

3.1 On the facts and circumstances of the case and in law, the NaFAC and the Hon'ble DRP has erred in ignoring the long-term capital loss amounting to Rs. 22,79,65,217 (computed in USD terms in accordance with Rule 115 of the Income-tax Rules, 1962) claimed by the Appellant during the assessment proceedings.

3.2 On the facts and circumstances of the case and in law, the NaFAC and the Hon ble DRP has erred in not allowing to carry forward the long-term capital loss of Rs. 22,79,65,217 claimed by the Appellant.

3.3 On the facts and circumstances of the case and in law, the DR has erred in not adjudicating upon the claim for long-term capital loss of Rs. 22,79,65,217 claimed by the Appellant in the course of assessment proceedings.



It is prayed that the NaFAC be directed to consider and allow the long-term capital loss as claimed by the Appellant.

3.4 Without prejudice to above, if the Appellant's claim for long term capital loss of Rs. 22,79,65,217 is not allowed then, the long-term capital loss amounting to Rs. 6,19,79,028 (computed in Rupee terms) and short-term capital loss of Rs. 2,24,00,000 (computed in Rupee terms) should be allowed to the Appellant.

It is prayed that the NaFAC be directed to consider and allow the long-term capital loss of Rs.6,19,79,028 and short-term capital loss of Rs. 2,24,00,000 as claimed by the Appellant.

2. At the outset, the Ld. Counsel of the assessee submitted that appeal was filed with the delay of three days. He referred to the application of the assessee, which is supported by affidavit by the director of the assessee company. He submitted that due to some personal exigency of the director of the assessee company resulted in delay, which was neither deliberate nor wilful. After considering rival submission we are of the opinion that the assessee had sufficient cause for not presenting the appeal within the prescribed limitation period. Accordingly, we condoned the delay of three days in filing the appeal and the appeal was admitted for adjudication.

3. Briefly stated, facts of the case are that the assessee company was engaged in business of providing onshore, offshore and related services in oil and gas sector to various entities including Associated Enterprises (AEs). For the year under consideration, the assessee filed return of income, which was processed by the Central Processing Centre (CPC), Bangalore on 12.11.2019 in terms of section 143(1)(a) of the Income-tax Act, 1961 (in short 'the Act'). The



return of income was further selected for scrutiny and in view of international transactions carried out by the assessee with its AEs, the matter of determination of the arm's length price of the international transaction was referred to the Ld. Transfer Pricing Officer (TPO). The Ld. TPO proposed transfer pricing adjustment of Rs.7,53,62,289/-. However, on further objection raised by the assessee before the Ld. DRP, the transfer pricing adjustment was deleted. But, the Ld DRP rejected a fresh claim of allowing capital loss to the assessee. In the impugned final assessment order passed by the Assessing Officer, pursuant to the direction of the Ld. DRP, no adjustment has been made and income has been assessed at a loss of Rs.9,05,39,173/, which was computed under section 143(1) of the Act. The assessee is aggrieved with the amount of loss assessed as well as not admitting one of the claims by the Ld. DRP.

4. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record including the Paper Book filed by the assessee consisting of pages 1 to 366.

4.1 The Ground No. 1 is general in nature; therefore, we are not required to adjudicate specifically. In the ground No. 2 of the appeal, the assessee is aggrieved for non-considering the revised return of income while computing the assessed loss. Before us, the Ld. Counsel of the assessee referred to page No. 152 of the Paper Book and submitted that rectification application filed before the Assessing Officer on 18.06.2020 for considering the loss as per



revised return is still pending and which has not been disposed off. We note from the impugned order of the Ld. DRP that the Assessing Officer has been directed for verification and disposal of the rectification application observing as under:

“11. We have gone through the objection of the assessee as well as the written submissions of the assessee. We find that the objection relates to certain adjustments done by the CPC in the processing of return of income us. 143(1) of the Act. The assessee has also filled rectification application with the jurisdictional assessing officer vide letter dated 18.06.2020. It seems that the same is pending. We direct the assessing officer to consider the rectification application and dispose off the same at an early date. The ground of objection no. 5 is disposed off accordingly.”

4.2 Since the ld DRP already directed the Assessing Officer for verification, despite the Assessing Officer omitted to give effect to the direction in the impugned final assessment order. We are of the opinion that this issue of non-considering the income/loss declared in the revised return of income by the Assessing Officer while passing the final assessment order is a subject matter of rectification and for which the assessee is already before the Assessing Officer. Therefore, the ground raised before us, is infructuous. However, we direct the Ld. Assessing Officer to dispose off the rectification of the application of the assessee on priority so as to resolve the grievance of the assessee raised in the ground No. 2 before us. The ground of appeal is accordingly allowed partly for statistical purposes.



4.3 The ground No. 3 of the assessee relates to a fresh claim of long term capital loss amounting to Rs.22,79,65,217/- which has been rejected by the Ld. DRP observing as under:

“13. We have gone through the objection of the assessee as well as the written submissions on the same objection. We note that the assessee is claiming capital loss arising from redemption of preferenceshares to be allowed to it. Apparently, the assessee has not claimed the same in the return of income u/s. 139(1) of the Act. We note that the Hon'ble SC in the case of M/s. Goetze (India) Ltd. (2006, 284 ITR 323, SC) held that assessing officer does not have authority to entertain a claim otherwise than by filing a revised return. The assessee in the instant case has not claimed the loss in the return of income u/s. 139 (1) of the Act. The assessee has filed a letter before the assessing officer as well as before us requesting for allowance of the capital loss. We note that we are extension of the assessment proceedings as provided in the scheme of the Act regarding the functioning of DRP. The same position about the DRP has been upheld by the Hon'ble Bombay HC in the case of M/s. Vodafone India Services Pvt. Ltd (2014, 361 ITR 0531, Bom). Therefore, in view of the decision of the Hon'ble SC in the Goetze case (supra), the ground of objection no. 6 is dismissed.”

4.4 We find that the Ld. DRP has rejected the claim of the assessee in view of the decision of the Hon'ble Supreme Court in the case of **Goetze (India) Ltd. [(2006, 284 ITR 323, (SC))]**, on the ground that proceedings under Ld. DRP are extension of the assessment proceedings. However, the Hon'ble Supreme Court in the case of Goetze (India) Ltd. (supra) has not restricted the appellate authorities including ITAT from entertaining a fresh claim by the assessee. In the facts and circumstances of the case and in the interest of substantial justice, we feel it appropriate to restore



the matter back to the file of the Assessing Officer for examining the claim of the assessee in accordance with law. The ground No. 3 of the appeal is accordingly allowed for statistical purposes.

5. In the result, the appeal is allowed partly for statistical purposes.

Order pronounced in the open Court on 11/05/2023.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 11/05/2023
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai