

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "S.M.C." : DELHI]

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER,
S.M.C.

आ.अ.सं./I.T.A No. 3017/Del/2022
निर्धारणवर्ष /Assessment Year: 2018-19

M/s. Denso Ten Minda India Pvt. Ltd., B-64/1, Wazirpur Industrial Area, Delhi - 110 052.	बनाम Vs.	ACIT, Circle : 7 (1) New Delhi.
PAN No. AACCF0162H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारितकीओरसे /Assessee by :	Shri R. K. Kapoor, F. C. A.
राजस्वकीओरसे / Department by :	Shri Om Parkash, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	28/02/2023
उद्घोषणाकीतारीख/Pronouncement on :	22/05/2023

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the assessee against the order of the ld. Commissioner of Income Tax (Appeals) [hereinafter referred to

CIT (Appeals)]/National Faceless Appeal Centre [NFAC] dated 10.10.2022 for assessment year 2018-19.

2. The assessee has filed concise grounds as under:-

“1.0 That the appellate order passed by the Ld. CIT (A) u/s 250 is bad in law.

2.0 That the Ld. AO CIT(A) has erred on facts & in law in sustaining the addition made by the Ld. AO of Rs.15,39,930/- u/s 80JJAA of the IT Act without appreciating that the gross total income of the Assessee is NIL and it has not claimed such deduction in its return of income

3.0 That the Ld. AO has erred in law in taking in to account the adjustment of Rs.2,95,30,361/- u/s 143(1) which have the effect of increasing in Book Profit u/s 115JB of the Act without issuing any Show Cause Notice.

4.0 That the Ld. CIT(A) has erred on facts and in law by not deleting the adjustment of Rs.2,95,30,361/-in computing Book Profit u/s 115JB of the Act.

5.0 That the Ld. AO/ Ld. CIT(A) has erred in law in initiating penalty proceedings u/s 270A(1) which is bad in law.

6.0 The aforesaid grounds of appeal are without prejudice to one another.”

3. The ld. Counsel for the assessee, at the outset, submits that ground Nos. 1 & 6 are general in nature and no need for adjudication.

4. With regard to ground No. 2 of grounds of appeal the ld. Counsel submits that in the return of income filed, no claim under Chapter VIA of the Income Tax Act has been made because the assessee filed return of income at NIL after setting of the brought forward losses of earlier years. Reference was made to

Paper Book Page 37, Serial No. 9, where the gross total income of the assessee after setting of brought forward losses is zero/NIL. Reference is also made to Page 38 wherein the deduction under Chapter VIA have been identified as NIL. It is submitted that the reasons given by the Ld. AO that assessee failed to file the statutory form and claimed deduction in the income tax return filed are factually incorrect. It is submitted that since assessee didn't claim this deduction at all in the computation of income, there was no reason for the AO to make any addition or disallowance of this amount. It is further submitted that although no deduction was claimed by the assessee u/s 80JJAA, but the same had to be quantified in the income tax return from where the Ld. AO assumed that deduction u/s 80JJAA has been claimed. Reference was made to Page 65 of the paper book where the amount is quantified at Rs.15,39,930/-. It is submitted that since no deduction has been claimed in the computation of income for this amount, there was no reason for the AO to make any disallowance or to make any addition of this amount.

5. The ld. Counsel submits that the Ld. CIT(Appeals) upheld the disallowance for different reasons that assessee filed a delayed return on 30.11.2018 although as per CIT(A) the due date was 30.10.2018. It is submitted that this reason of Ld. CIT(A) is erroneous on facts because assessee had to file a report u/s 92E of the Income Tax Act for the international transactions. In such cases, the due date was 30.11.2018 and not 30.10.2018 as has been held by Ld. CIT(Apeals). It is also submitted that assessee failed to raise the plea which is now being raised before the

Hon'ble ITAT that assessee did not claim the deduction under section 80JJAA as the gross total income itself was NIL after adjusting the brought forward losses and deduction under chapter VIA could not have been claimed even accepted by the ITR while filing it online.

6. The ld. DR, on the other hand, submits that the issue may be restored to the file of the Assessing Officer for verification of the fact as to whether the assessee has made claim in ITR for deduction under section 80JJAA of the Income Tax Act, 1961 (the Act).

7. On hearing both the parties and in view of the submissions of the assessee that it had not claimed any deduction under section 80JJAA of the Act in the return of income this issue is restored to the file of the ld. Assessing Officer to examine the contentions of the assessee and to decide in accordance with law after providing adequate opportunity of being heard.

8.1 Coming to ground Nos. 3 & 4 of the grounds of appeal of the assessee which is in respect of adjustment made to the book profit under section 115JB of the Act the ld. Counsel for the assessee submits that assessee had computed book profits under section 115JB of the Act at Rs.11,99,54,253/-. The ld. Counsel submits that while completing the assessment under section 143(3) of the Act the Assessing Officer has not discussed any adjustment made to the book profits. However, in the computation sheet the Assessing Officer computed the book profits at Rs.14,94,84,614/- without any discussion in the assessment order.

The Id. Counsel submits that the difference between these two amounts i.e. Rs.14,94,84,614/- computed by the Assessing Officer and Rs.11,99,54,253/- computed by the assessee is Rs.2,95,30,361/- and this amount represents the provision for current tax as is evident from page No. 30 of the paper book which is the copy of the return, in column No. 46. The Id. Counsel submits that while filling up in the statutory format of Income tax return the assessee while claiming the deductions in serial No. 6 against item (k) filled up an amount of Rs.8,57,75,147/- which amount represents the following three figures:-

- | | | |
|-------|------------------------------|----------------|
| (i) | Depreciation | Rs.7,75,86,299 |
| | This is to be reduced. | |
| (ii) | Current tax | Rs.2,95,30,361 |
| | This is to be added. | |
| (iii) | Provision after deferred tax | Rs.4,17,19,209 |
| | This is to be reduced. | |

8.2 The Id. Counsel submits that the net amount (Rs.8,97,75,147/-) assigned has been disclosed at column No. 6 (k) in the return of income. Therefore, the Id. Counsel for the assessee submitted that had the assessee disclosed the amount of Rs.2,95,30,361/- in column at serial No. 5 under computation of minimum alternate tax payable under section 115JB of the Act and disclosed only the other two amounts in column No. 6 (k) in the computation of income then there would have been no confusion or misunderstanding at any level because in such a case the taxable deemed income under section 115JB of the Act

would have been computed at the same figure of Rs.11,99,54,253/- as has been declared by the assessee. It is, therefore, submitted that the Assessing Officer has not discussed this item in the assessment order and the Id. CIT (Appeals) erroneously stated that this issue is consequential in nature, assessee deserves relief on this issue.

9. The Id. DR relied on the orders of the authorities below.

10. On hearing both the parties and on perusing the orders of the authorities below and after examining the computation of income and disclosures made therein, I observe that the assessee has declared net amount instead of reporting each item separately. Since there was no examination by the Assessing Officer and no discussion in the assessment order, I feel it appropriate to restore this issue to the file of the Assessing Officer for examining the contentions of the assessee and adjudication afresh. Thus, this issue is restored to the file of the Assessing Officer and the Assessing Officer is directed to examine the contentions of the assessee and decide the issue in accordance with law after providing adequate opportunity of being heard to assessee.

10. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on : 22/05/2023.

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 22/05/2023.

MEHTA

Copy forwarded to :-

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

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	17.05.2023
Date on which the typed draft is placed before the dictating member	18.05.2023
Date on which the typed draft is placed before the other member	22.05.2023
Date on which the approved draft comes to the Sr. PS/ PS	22.05.2023
Date on which the fair order is placed before the dictating member for pronouncement	22.05.2023
Date on which the fair order comes back to the Sr. PS/ PS	22.05.2023
Date on which the final order is uploaded on the website	22.05.2023
Date on which the file goes to the Bench Clerk	22.05.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	