

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./I.T.A. No. 757/Chny/2023
निर्धारण वर्ष/Assessment Year: 2011-12

M/s. Carborundum Universal Limited,
No. 43, VI Floor, Parry House, Moore
Street, Chennai G.P.O. Paryys,
Chennai 600 001.

Vs. The Deputy Commissioner of
Income Tax,
LTU-1, Chennai,
NFAC, New Delhi.

[PAN:AAACC2474P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri R. Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri D. Hema Bhupal, JCIT
सुनवाई की तारीख/ Date of hearing : 25.07.2023
घोषणा की तारीख /Date of Pronouncement : 25.07.2023

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi dated 27.04.2023 for the assessment year 2011-12.

2. Brief facts of the case are that the assessee filed its return of income for the assessment year 2011-12 on 30.11.2011 admitting a total income of ₹.117,65,52,629/-. The case was selected for scrutiny and assessment under section 143(3) r.w.s. 923CA of the Income Tax Act,

1961 ["Act" in short] was completed on 31.03.2015 by determining the income of the assessee at ₹.120,92,74,451/-. On further perusal of the records, the Assessing Officer has noted that assessee company has claimed 200% deduction under section 35(2AB) of the Act, for capital expenditure amounting to ₹.6.08 lakhs and revenue expenses of ₹.70.47 lakhs. Form 3CL dated 15.04.2014 available on record shows that out of the same capital expenditure approved by DSIR is ₹.6.08 lakhs and revenue expenditure is ₹.58.36 lakhs. However, the assessee claimed 200% deduction of revenue expenditure amounting to ₹. 70.47 lakhs overlooking the approval granted by DSIR. On this issue excess deduction of Rs.24.18 lakhs was claimed by the assessee. Further in Column 14(d)(ii) of Form 3CD audit report it is reported that the assessee earned foreign exchange gain of ₹.16,29,235/- during the year. It is stated therein that such sum is credited to P & L account and not adjusted to cost of asset. However, in the income computation statement, it is deducted from profits. In short, ultimately such gain is neither included in profit nor in cost of assets under section 43A of the Act. On this issue excess deduction of ₹.16,29,235/- was claimed. Thus the assessee has taken double advantage of such gain. Further, In the computation statement, the assessee has deducted a sum of ₹.74,86,082/- being "lease payments". Since this is capital expenditure

the same is not eligible for deduction. Schedule 17(iii) to Printed Annual Accounts show that such transactions were finance lease. On this issue, excess deduction of ₹. 74,86,082/- was claimed by the assessee. Moreover, as per Schedule 5 forming part of the printed Annual Accounts as on 31.03.2011, opening WDV of software being "intangible asset" is ₹.21.30 lakhs. Though it was disclosed as software license being "intangible asset" in the Annual accounts of the company, it was termed as "software" eligible for depreciation at the rate of 60% in the depreciation schedule prepared for income tax purposes as against the eligible rate of depreciation at the rate of 25%. Since, the assessee have purchased only license to use software and not software as such, as evident was placed before the shareholders, the assessee cannot shift its stand for income tax purposes alone. On this issue excess depreciation of ₹.7,45,500/- was claimed by the assessee.

3. In view of the above, the Assessing Officer believed that the income chargeable to tax has escaped he assessment and accordingly, issued notice under section 148 of the Act and served to the assessee on 31.03.2016. Notices under section 143(2) and 142(1) of the Act were also issued on 16.09.2016. After considering the submissions of the assessee, the Assessing Officer has completed the assessment under section

143(3) r.w.s. 147 of the Act dated 30.11.2016 assessing total income of the assessee at ₹.122,15,53,268/- after making various additions. On appeal, the Id. CIT(A) dismissed the appeal filed by the assessee since there was no response to the hearing notices or filed any submission.

4. On being aggrieved, the assessee is in appeal before the Tribunal.

4. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. During the course of hearing, the Id. Counsel for the assessee has submitted that before the Id. CIT(A), the assessee has raised various grounds including legal issue of reopening assessment under section 147 of the Act. It was further submission that reopening of assessment within four years on the same set of facts and without any tangible material would amount to mere change of opinion and without adjudicating the issues on merits, the Id. CIT(A) concluded the exparte appellate order is legally unsustainable. Thus, it was prayed for suitable direction to the Id. CIT(A) adjudicate all the issues afresh on merits and also prayed that the assessee may be afforded an opportunity of being heard since the assessee was prevented by reasonable cause as the assessee was unable to contact its counsel to represent the case during pre and post covid-19 pandemic period. We find force in the arguments of the Id. Counsel. On perusal of the appellate

order, we find that the assessee has raised various grounds including legal issue of reopening of assessment under section 147 of the Act and the Id. CIT(A) has not adjudicated the issues on merits. Accordingly, we set aside the appellate order and remit the matter back to the file of the Id. CIT(A) to decide all the issues afresh in accordance with law by affording an opportunity of being heard to the assessee. The assessee is also directed to furnish complete details with material evidences and convincing explanations before the Id. CIT(A) for consideration.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 25th July, 2023 at Chennai.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 25.07.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.