

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H': NEW DELHI
BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No.2618/Del/2022
(ASSESSMENT YEAR 2018-19)**

M/s Aamor Inox Ltd. B-29, Ashok Vihar Phase-I New Delhi-110 052 PAN-AAFCA 0194B (Appellant)	Vs.	DCIT, Circle-1 National Faceless Appeal Centre, (NFAC) Delhi (Respondent)
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Appellant by	Mr. Suresh K. Gupta, CA
Respondent by	Mr. Amit Katoch, Sr. DR

Date of Hearing	02/08/2023
Date of Pronouncement	29/08/2023

ORDER

PER M. BALAGANESH AM:

This appeal of the Assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi, [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No. NFAC/17-18/10034828 dated 14/10/2022 against the order passed by CPC, Bangalore (hereinafter referred to as the

'Ld. AO') u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 13/04/2019.

2. The assessee has raised the following grounds of appeal:-

"1. The Ld. CMA) has grossly erred on facts and in law in not considering the claim of the appellant in the processing intimation passed u/s 143(1) of the IT Act, 1961 that income of Rs.2,15,96,571 from the scrips granted under MEIS of the Foreign Trade Policy 2015-20 be treated as capital receipts not chargeable to tax and therefore the same should not from part of the taxable income notwithstanding the fact that the same has been offered for tax in the return of income.

2. That Ld. CMA) has erred of facts and in law in not considering the claim of the appellant processing initiation u/s 143(1) of the IT Act, 1961 that the income of Rs.2,15,96,571-from scrips granted under MEIS of the Foreign Trade Policy 2015-20 being capital receipts should not from part of the book computed u/s 115/B of the IT Act, 1961 notwithstanding the fact the same form part of the book profit as per the return of income."

3. We have heard the rival submissions and perused the materials available on record. The assessee is a limited company engaged in the business of manufacturing of steel. The return of income for the Asst Year 2018-19 was filed on 26.10.2018 declaring loss of Rs 1,81,92,071/- under normal provisions of the Act and book profit of Rs 1,42,31,007/- u/s 115JB of the Act. Further a revised return of income was filed on 23.03.2019 declaring loss of Rs 1,81,92,071/- under normal provisions of the Act and book profit of Rs 1,42,31,007/- u/s 115JB of the Act and paid taxes

thereon. The same was duly processed vide intimation u/s143(1) of the Act dated 13.04.2019 accepting the return.

4. During the year under consideration, the assessee received MEIS in the form of export incentives in the sum of Rs.2,15,96,571/- which was duly offered to tax in the return of income as revenue receipt. The assessee filed an appeal before the Id. CIT(A) to withdraw the aforesaid offer of revenue receipt to tax by claiming that the said receipt of export incentive would be capital receipt and hence not chargeable to tax. It was submitted by the assessee that it is engaged in the business of manufacturing of steel bars of various kinds and shapes and substantial part of the manufactured products are exported to various countries. Accordingly, the assessee would be granted export incentives by the Government of India from time to time. The Government, in order to award the exporters, happened to devise a scheme through the Foreign Trade Policy 2015-20 announced for the previous year relevant to Asst Year 2018-19. The key objective of the MEIS schemes introduced through above Foreign Trade Policy was to furnish the exporters with rewards in the form of duty credit scrips. These duty credit scrips were awarded under the above scheme to

enable exporters to pay customs duty. The primary objective of offering these incentives to exporters was to increase the flow of foreign exchange into India. The idea was to increase exports of notified goods such as cardamom, coffee, pepper, rubber, iron and steel, timber, plywood and glass manufactured in India. The intent for providing awards through duty credit scrips, as spelt out in the Foreign Trade Policy Document, had been to offset domestic inefficiencies, both infrastructural and regulatory, associated in the process of manufacturing goods for export, to provide a level playing field to the exporters and also to promote the manufacturers to promote employment potential, incentive to produce goods with higher export intensity thereby ensuring India's export competitiveness. These rewards are given to exporters and percentage of rewards are 2% to 5% depending on the items exported. These duty credit scrips/ licences are freely transferable and can also be used for payment of custom duty. It was submitted further that the assessee from Asst Year 2016-17 had been consistently in receipt of such awards under the above scheme. These awards are transferred to the other parties for a consideration and that the loss or profit, as the case may be, from transfer of such awards/ licences is duly accounted for as part of

Export benefit. The assessee during the Asst Year under consideration had unsold MEIS scrips/licences of Rs 1,09,12,611/- in hand as on 01.04.2017. The assessee was awarded the MEIS licences for face value of Rs 2,25,61,137/- on the basis of exports done in Asst Year 2018-19. It was submitted that the assessee during the year under consideration transferred the MEIS licences of face value of Rs 2,03,40,003/- for aggregate consideration of Rs 1,93,75,437/- resulting into loss of Rs 9,64,566/-. The details of individual MEIS licences together with the profit or loss thereon were duly furnished before the Id. CIT(A). The closing balance of MEIS licences as on 31.03.2018 stood at Rs 1,31,33,746/-, which is shown in the Balance Sheet as part of 'Balance with Government Authorities' in Note No. 12 under the head Loans and Advances. The loss of Rs 9,64,556/- from sale of MEIS licences was claimed as deduction while accounting for the export benefit . The export benefit as per Note No. 17 under the head 'Revenue from Operations' as per the audited balance sheet Rs 3,61,41,698/- includes MEIS receipt of Rs 2,25,61,137/- and also loss of Rs 9,64,566/- and net amount of revenue from MEIS licences thus was Rs 2,15,96,571/-.

5. It was pleaded before the ld. CIT(A) that the above receipt though offered to tax as revenue receipt in the return, would have to be construed as a capital receipt not chargeable to tax. The assessee also submitted the various documents in support of its contentions together with some case laws decided on the issue before the ld. CIT(A). Similarly, the said receipt of MEIS licences was also sought to be excluded from the book profits computed u/s 115JB of the Act on the plea that it is capital receipt right from inception and hence cannot find its place in the profit and loss account.

6. The ld. CIT(A) in para 5 of his order simply observed that the ld. CPC Bengaluru in the intimation u/s 143(1) of the Act had not made any adjustment under any head of income regarding the aforesaid issue and neither refund is reduced nor any demand is created. The ld. CIT(A) further observed that once an amount is offered in the return of income by an assessee, the same cannot be sought to be reduced in the appellate proceedings. We are unable to comprehend ourselves to accept to this proposition of the ld. CIT(A). The assessee is always at liberty to plead that a particular receipt has been erroneously offered to tax in the return. It is trite law that there is no estoppel against the statute. Since no factual

finding has been given by the ld. CIT(A) on the detailed concerns raised by the assessee , we deem it fit and appropriate, in the interest of justice and fairplay, to restore this appeal to the file of ld. CIT(A) for denovo adjudication in accordance with law. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 29th August, 2023.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 29/08/2023

Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI