

।आयकर अपीलीय अधिकरण न्यायपीठ नागपुर में।  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
NAGPUR BENCH : : NAGPUR**

[VIRTUAL HEARING AT PUNE]

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL  
MEMBER AND  
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No.20/NAG/2023

निर्धारण वर्ष / Assessment Year : 2018-19

Bajaj Steel Industries Limited, 539/540, Imambada Road, Maharashtra. PAN: AAACB 5340 H	Vs	The Assessing Officer, National e-Assessment Centre, Delhi.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Rajesh V. Loya – CA
Revenue by	Shri Kailash Kanojiya – Sr.DR
Date of hearing	28/08/2023
Date of pronouncement	30/08/2023

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This appeal filed by the Assessee is directed against the order under section 250 of the Income Tax Act, 1961 passed by the Id.CIT(A)[NFAC], Delhi dated 22.12.2022 for A.Y.2018-19 emanating from assessment order under section 143(3) r.w.s. 144B of the Act dated 24.04.2021. The assessee has raised following grounds of appeal :

“1. That the assessment order passed by the learned Assessing Officer, National e-Assessment Centre, Delhi passed u/s. 143(3) is bad in law and wrong on facts and the learned CIT(A) erred in confirming the same.

2. That the learned CIT(A) erred in law and on facts in upholding the order passed by AO not providing proper opportunity of being heard and not properly considering the facts of the case available on record and evidences brought on record. On facts and circumstances of the case, the action of learned CIT(A) is highly unjustified.

3. That the learned CIT(A) erred in law and on facts in sustaining the action of AO in making addition of Rs. 19,14,906/- being 30% of total of Rs.63,83,020/- comprising of Gratuity, Supervision Charges, Leave Encashment and Attendance Allowance u/s 40(a)(ia) of the Income Tax Act, 1961 holding that the TDS has not been deducted on the same. On the facts and circumstances of the case, TDS is not required to be deducted on said expenses and wherever they are required, the same was duly deducted and paid. The explanation and supporting evidences have been furnished and therefore the action of both the authorities in not considering the same is illegal and highly unjustified.

4. That the learned CIT(A) erred in law and on facts in sustaining the action of AO in making addition of Rs.3,35,20,381/- being 30% of Wages to Contractors of Rs. 11,17,34,605/- u/s 40(a)(ia) of the Income Tax Act, 1961 holding that the TDS has not been deducted on the same. On

*the facts and circumstances of the case, the TDS has been duly deducted and paid, the details and supporting evidences have been furnished and therefore the action of both the authorities is arbitrary and therefore highly unjustified.*

5. *That the learned CIT(A) erred in law and on facts in sustaining the action of AO in making addition of Rs. 19,62,868/- on the basis that excess claim of remuneration to directors has been made in the Profit and Loss A/c. On the facts and circumstances of the case, the difference is towards commission paid to directors and is properly claimed in Profit & Loss A/c and therefore the action of both the authorities is without any sound basis.*

6. *That the learned CIT(A) erred in law and on facts in sustaining the action of AO in making addition of Rs.7,98,150/- being 30% of Rent expense of Rs.26,60,500/- u/s 40(a)(ia) of the Income Tax Act, 1961 holding that the TDS has not been deducted on the same. On the facts and circumstances of the case, the TDS has been duly deducted and paid, the details and supporting evidences have been furnished and therefore the action of both the authorities is arbitrary and therefore highly unjustified.*

7. *That the learned CIT(A) erred in law and on facts in sustaining the action of AO in making addition of Rs.3,14,734/- being 30% of Commission of Rs. 10,49,114/- u/s 40(a)(ia) of the Income Tax Act, 1961 holding that the TDS has not been deducted on the same. On the facts and circumstances of the case, the TDS has been duly deducted and paid, the details and*

*supporting evidences have been furnished and therefore the action of both the authorities is arbitrary and therefore highly unjustified.*

8. *That the learned CIT(A) erred in law and on facts in sustaining the action of AO in making addition of Rs.76,00,413/- being 30% of Interest of Rs.2,53,34,713/- u/s 40(a)(ia) of the Income Tax Act, 1961 holding that the TDS has not been deducted on the same. On the facts and circumstances of the case, the TDS has been duly deducted and paid, the details and supporting evidences have been furnished and therefore the action of both the authorities is arbitrary and therefore highly unjustified.*

9. *That the learned CIT(A) erred in law and on facts in sustaining the action of AO in making addition of Rs.84,010/- being 30% of Interest of Rs.2,80,032/- on Bill of Exchange u/s 40(a)(ia) of the Income Tax Act, 1961 holding that the TDS has not been deducted on the same. On the facts and circumstances of the case, the action of both the authorities is highly unjustified.*

10. *That the learned CIT(A) erred in law and on facts in sustaining the action of AO in making addition of Rs.51,839/- on account of Interest expense holding that the details have not been furnished. On the facts and circumstances of the case, the expense is incurred and duly debited in Profit and Loss A/c and therefore the action of both the authorities is highly unjustified.*

11. That the learned CIT(A) erred in law and on facts in sustaining the action of AO in making addition of Rs.41,29,282/- being difference in Duty Drawback as per Custom department and that received by assessee holding that the same is not considered in income by the assessee. On the facts and circumstances of the case, the said amount of duty drawback is received by company in later years and considered as income in respective year of receipt as per the revenue recognition policy consistently followed by the company. The action of both the authorities is highly unjustified.

12. That the learned CIT(A) erred in law and on facts in sustaining the action of AO in not allowing the set off of brought forward business loss to the extent of Rs.9,86,788/- pertaining to A.Y.2017-18 and duly claimed therein. The action of both the authorities in not allowing set off of such brought forward loss against income of year under consideration is highly unjustified.

13. That the learned CIT(A) erred in law and on facts in sustaining the action of AO in not allowing credit of TDS of Rs.18,48,627/- claimed in return. On the facts of the case, the TDS amount is rightly claimed during the year since the corresponding income has been earned, accounted and returned during the year. The action of both the authorities in short allowing TDS credit is unjustified.

14. That the learned CIT(A) erred in law and on facts in sustaining the action of AO in charging interest u/s. 234A,

*234B and 234C of the Income Tax Act. The interest charged is improper.*

*15. That for any other grounds with kind permission of your honour at the time of hearing of appeal.”*

**Submission of Id.AR :**

2. The Id.AR filed written submission, relevant part of the written submission is reproduced here under:

*“1. The learned CIT(A) passed ex-parte order dated 22-12-2022 without providing proper opportunity of hearing to the assessee.*

*2. That the notice dated 16-11-2022 skipped the attention of accountant due to finalization of Transfer Pricing Report and filing of Income Tax return during that period. Hence the same could not be forwarded to the counsel.*

*3. The notice dated 5-12-2022 was received and the submissions were under preparation. There were 13 Grounds for adjudication on different issues. The preparation of submission alongwith enclosures took substantial time. The same could be finalized by the evening of 20-12-2022 i.e. the date of hearing. The counsel made attempt to file the submission on ITBA portal at around 7.30 PM. and it was found that the link was already closed.*

*4. It is humbly requested that an opportunity may be granted for hearing before the learned CIT(A).”*

**Submission of Id.DR :**

3. The Id.Departmental Representative(Id.DR) for the Revenue relied on the orders of the Lower Authorities.

**Findings & Analysis :**

4. We have heard both the parties and perused the records. On perusal of the Id.CIT(A)'s order, it is observed that Id.CIT(A) has dismissed the appeal without discussing each ground and reason for dismissal. The relevant part of the Id.CIT(A)'s order is reproduced as under :

*“3. Notice u/s 250 of the I.T Act was issued to the appellant on 16.11.2022 asking the appellant to file details in support of the grounds of appeal on or before 01.12.2022. However, appellant did not reply to the notice. Accordingly, a 2<sup>nd</sup> notice u/s 250 of the I.T Act was issued on to the appellant on 05.12.2022 asking the appellant to file details in support of the grounds of appeal on or before 20.12.2022. In this notice the appellant was duly informed that this is the final opportunity granted. However, appellant again did not reply to the 2<sup>nd</sup> notice too till date. In absence of details in support of GOA filed, appeal cannot be decided. The non-compliance to the 2 notices issued shows that the appellant is not interested in pursuing its appeal. The order of A.O is upheld and the appeal stands DISMISSED.*

**Commissioner of Income-tax (Appeals)  
Income Tax Department”**

4. As per section 250 of the Act, the Id.CIT(A) is duty bound to discuss each and every ground of appeal and he has to pass the speaking order on each and every ground of appeal raised by the assessee.

5. The Hon'ble Bombay High Court in the case of CIT vs. Premkumar Arjundas Luthra 297 CTR 614 (Bom) has held as under :

*“8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act. Further Section 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251 (1 )(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of Section 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In*

*fact the CIT(A) is obliged to dispose of the appeal on merits. In fact with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) is co-terminus with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore just as it is not open to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the Section 251 (1 )(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for nonprosecution as is evident from the provisions of the Act.”*

6. In the present case, the ld.CIT(A) has not discussed each ground, when there were total 13 grounds raised by the assessee with reference to various additions. As held by the Hon'ble Bombay High Court, ld.CIT(A) has to pass a speaking order irrespective of the fact whether the assessee has filed submission or not! The ld.CIT(A) powers are co-terminus with that of the Assessing Officer. The ld.CIT(A) has the power to conduct the necessary investigation if required.

7. In this case, since the ld.CIT(A) dismissed the appeal of the assessee without discussing the merits of the addition, respectfully following the Hon'ble Bombay High Court, we set-aside the order ld.CIT(A) to ld.CIT(A) for denovo adjudication. The ld.CIT(A) shall pass a speaking order. The ld.CIT(A) shall provide opportunity of hearing to the assessee. Accordingly, Ground No.2 of the assessee is allowed for statistical purpose.

8. Since we have set-aside the order of ld.CIT(A) to the ld.CIT(A) for denovo adjudication, we are not deciding all remaining grounds of the appeal raised by the assessee with reference to various additions. Therefore, Ground No.1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 are dismissed as not adjudicated.

9. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 30<sup>th</sup> August, 2023.

**Sd/-**  
**(S.S.GODARA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DR. DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 30<sup>th</sup> Aug, 2023/ SGR\*

**आदेश की प्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि,आयकर अपीलीय अधिकरण, नागपुर बेंच,  
नागपुर/ DR, ITAT, Bench, Nagpur.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.