IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

ITA No. 847/Coch/2022
(Assessment Year: 2017-18)

Vysali Pharmaceuticals Ltd. IX/639, Edathala P.O. Ernakulam 683561 [PAN:AAACV 5491P]	vs.	The Principal Commissioner of Income Tax -1 C.R. Building, I.S. Press Road Kochi - 682018
(Appellant)		(Respondent)

Assessee by:	Shri Narayanan P. Potty, Advocate
Revenue by:	Shri Sanjit Kumar Das, CIT-DR

Date of Hearing:	19.10.2023
Date of Pronouncement:	17.01.2024

O R D E R

Per Sanjay Arora, AM

This Appeal by the Assessee agitates the revision of it's assessment under section 143(3) of Income Tax Act, 1961 ('the Act') dated 30/10/2019 for Assessment Year (AY) 2017-18 by the Principal Commissioner of Income Tax-1, Kochi (Pr. CIT) vide order under section 263 of the Act dated 30.03.2022.

2. The 68-day delay in filing the appeal is explained by an Affidavit dated 14.7.2023 by Shri A.D. Krishnan, Managing Director of the assessee-company. We find the reasons stated therein as genuine and debilitative of the assessee's capacity in filing the appeal in time. The appeal was accordingly admitted, and the hearing proceeded with.

3. The brief facts of the case are that the assessee returned nil income for the year in view of the claim of brought forward unabsorbed depreciation at Rs.4,34,54,353, absorbing its entire profit of Rs.1,58,39,577. The same was processed u/s.143(1) of

the Act, disallowing though the brought forward depreciation, against which the assessee filed rectification application u/s. 154 of the Act. Impending it's disposal, the assessee's case was selected under CASS for limited scrutiny on the following points:

(a) Unsecured loan

(b) Squared-up loans

(c) Bonus and commission paid to employees (PB-2, pg. 5)

4. The returned income was accepted in assessment, including the claim for depreciation, save disallowance for Rs.2,57,033, principally towards delayed payment of employee's contribution to employee welfare funds, u/s. 36(1)(va) of the Act. The impugned revision is for the reason of non-enquiry by the Assessing Officer (AO) in assessment *qua* the following:

(a) *Unsecured Loans*: the assessee had acquired loans from it's Directors at Rs.1.68 cr., which was explained as out of Rs.1.79 crores withdrawn by them from the company. This had not been properly enquired into by the AO, particularly considering that the Directors had no taxable income. Also, there were cash transactions contravening section 269SS/T of the Act, not pointed out by the AO.

(b) The assessee explained the advances from it's customers as for meeting it's working capital requirements, which had been transferred to a joint account maintained by the Directors, for being utilized for it's purposes. This account has not been enquired into and verified by the AO.

c) The AO had set-off the entire assessed income, at Rs.1,60,96,610, against unabsorbed depreciation, which as per the audit report u/s.44AB of the Act, is at Rs.96.50 lakhs.

The assessment, in view of the foregoing, was erroneous and prejudicial to the interests of Revenue and, accordingly, set aside by the revisionary authority for a *de novo* consideration per a fresh, speaking order. Aggrieved, assessee is in appeal.

5. We have heard the parties, and perused the material on record.

5.1 That lack of enquiry would by itself result in the ensuing assessment as being erroneous and prejudicial to the interest of the Revenue, liable for revision, is trite law, toward which the ld. Pr. CIT cites *Malabar Industrial Co. Ltd. vs. CIT* [2000] 243 ITR 83 (SC) and *Raja & Co. vs. CIT* [2011] 335 ITR 381 (Ker), being in fact since co-opted in the statute w.e.f. 01.06.2015. The assessee before us sought to exhibit adequate enquiry in assessment. We are, however, thoroughly unimpressed. The only reply in assessment brought to our notice is dated 13.07.2019 (PB-3, pg. 1) whereby some primary details were furnished. We find no whisper of any enquiry in the material on record. We shall, nevertheless, issue specific findings *qua* each.

5.2 There is nothing to exhibit the source of the funds, ostensibly obtained by the company from it's Directors (Rs.1.68 cr.), particularly considering that they admittedly had no taxable income for the year. Furnishing their ledger accounts in the assessee-company – which is again in the s. 263 proceedings, is of no moment inasmuch as what is relevant from the standpoint of the instant proceedings is the inquiry and, thus, due application of mind in the matter by the assessing authority. The ledger accounts only exhibit the disclosure of the transactions, and which itself is the subject matter of verification, being one of the two areas to examine and verify which the assessment proceedings stand initiated. Further, the fact that the amount repaid is higher – even if only marginally, than that received, is by itself no proof that the said amounts stand recycled which, rather, inasmuch as it presumes that the funds were obtained only to be parked in the bank account, for being given back to the company on being required, goes against prudence, common-sense and business practice. The bank accounts of the Directors, which would prove the identity of the creditors, and also the truth of the assessee's statement, were admittedly not produced during the assessment proceedings. The remission is legally valid.

5.2 The financing of working capital would also need to be verified, particularly considering that the same is again an unusual practice. The same would require being verified with the concerned customer, from accounts, etc., for the purpose.

5.3 As regards the set off of brought forward depreciation, the same, as it appears, does not fall within the scope of limited scrutiny. This aspect, however, stands raised neither before the revisionary authority, nor before us and, accordingly, not responded to by the other side. We therefore do not consider it proper to travel thereto and, accordingly, concern ourselves with the merits of the issue arising. Admittedly, therefore, this aspect, without doubt germane, remained to be examined in assessment, validating revision. The assessee has before us submitted that the auditor has since issued a clarification in the matter. We find an undated certificate by the auditor as part of assessee's reply dated 25.04.2019, placed at pages 17 & 18 of the paper book-3. The unabsorbed depreciation brought forward from the earlier years would only be a subject matter of record. The statement of depreciation for the assessment years 1995-96 to 2016-17 (PB -1, pg. 19), to which our attention was drawn during hearing by Shri Potty, the ld. counsel for the assessee, is of the depreciation allowance claimed for the relevant years, and not that of unabsorbed depreciation brought forward. There can be no presumption that no part of it was set off, implying a continuous loss to the assessee for 41 years. Be that as it may, the AO shall accordingly upon verification, clarify of this aspect as well.

6. We in view of the foregoing, we find no infirmity in the impugned order, which is accordingly upheld. We decide accordingly.

7. In the result, the assessee's appeal is dismissed.

Order pronounced on January 17, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-	Sd/-
(Manomohan Das)	(Sanjay Arora)
Judicial Member	Accountant Member

Cochin, Dated: January 17, 2024

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The CIT-DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin