

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. KUL BHARAT, JUDICIAL MEMBER**

ITA No.1664/Del/2022
Assessment Year: 2009-10

ACIT Central Circle -16(1) New Delhi	Vs.	Magnum Steel Ltd. 312, Essel House, 10 Asaf Ali Road, New Delhi- 110002 PAN No.AADCM6400E
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Subhra Jyoti Chakraborty, CIT DR
Respondent by	Sh. Atriya G. C., Advocate

Date of hearing:	05/02/2024
Date of Pronouncement:	07/02/2024

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-27, New Delhi dated 23.05.2022 pertaining to A.Y. 2009-10.

2. The grievance of the revenue read as under :-

“1. Whether in the facts and circumstances of the case, Ld. CIT(A) was justified in deleting the addition of Rs. 4,23,82,000/- made on

account of undisclosed sales in A.Y 2009-10 on the basis of order of Ld. CIT(A) passed for A.Y 2010-11?

2. Whether in the facts and circumstances of the case, Ld. CIT(A) was justified in deleting the above addition ignoring the fact that only redistribution of addition of Rs. 8,71,32,000/- was made in A.Y 2010-11 vide order /s 154 for A.Y 2009-10 which is apparent from the order of Ld. CIT(A) passed for A.Y 2010-11?

3. A perusal of the aforestated grounds show that the entire quarrel revolves around order of the CIT(A)-XXXII, dated 20.06.2014 wherein the CIT(A) held as under :-

“18.3. However, I agree with the alternate submission of the appellant that even if an addition is made on this account then the same should be restricted only to the entries which related to the assessment year under consideration and not in respect of entries which did not relate to the assessment year under consideration. According to the AR of the appellant the entries which related to year under consideration amounted to Rs. 3,80,50,000/- only and therefore, the addition, if any, should be restricted to this amount only and the balance addition of Rs. 4,82,82,000/- may be deleted. In support of this addition, the AR of the appellant filed an annexure marked 'A' wherein complete details were given of the entries and the assessment year to which they relate. As per this annexure entries amounting to Rs. 3,88,50,000/- relate to the year under consideration, Rs. 4,23,82,000/- relate to the assessment year 2009-10 and Rs. 59,00,000/- relate to the assessment year 2008-09. The Assessing Officer is directed to verify the submissions of the appellant from the seized material and if the same are found to be

correct, the addition during the year under consideration may be restricted to Rs. 3,88,50,000/- only and allow the relief in respect of the balance amount of Rs. 4,82,82,000/-."

4. From the above findings it can be seen that the CIT(A) has never given direction for reopening / rectifying the error for A.Y. 2009-10.

5. The assessment for A.Y. 2009-10 was completed by the order dated 30.12.2011 framed u/s. 153A r.w.s. 143 (3) of the Act wherein the returned income of Rs.10952781/- was assessed at Rs.12328957/-.

6. After receiving the order of the CIT(A) for A.Y.2010-11 the AO suo-moto framed the order dated 21.07.2015 u/s.154/250/153A/143 (3) of the Act and made the addition of Rs.42382000/-. This was challenged before the CIT(A) on the ground that the AO could not have framed any order u/s. 154 of the Act without affording a reasonable and adequate opportunity of being heard to the assessee more so when the CIT(A) in A.Y.2010-11 did not give any direction for reopening / rectification of order for A.Y. 2010-11.

7. After considering the facts and the submissions the CIT(A) was convinced and held that the impugned rectification order is not sustainable.

8. Before us the DR could not point out any factual/ legal error or infirmity in the findings of the CIT(A). We have given a thoughtful consideration to the orders of the CIT(A) read with the order for A.Y.2010-11. We find that while deciding the appeal for A.Y. 2010-11 no direction was given to the AO for the rectification of assessment for A.Y. 2009-10.

9. The AO has assumed the powers conferred upon him by the provisions of section 154 of the Act and rectified the order suo-moto without affording any opportunity of being heard to the assessee.

10. On these facts we do not find any reason to interfere with the findings of the CIT(A). The appeal of the revenue is dismissed.

Order pronounced in the open court on 07.02.2024.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

NEHA

Date:- .02.2024

Copy forwarded to:

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

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI