

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'B', KOLKATA

[Before Shri Sonjoy Sarma, Judicial Member &
Shri Girish Agrawal, Accountant Member]

I.T.A. No. 957/Kol/2023
Assessment Year : 2012-13

Sun Steel Industries Pvt. Ltd.	vs	ITO, Ward-5(1), Kolkata
PAN: AADCS 5916 M		
Appellant		Respondent

Date of Hearing	01.02.2024
Date of Pronouncement	04.04.2024
For the Assessee	Shri Amit Agrawal, Advocate
For the Revenue	Shri P.P. Barman, Addl. CIT

ORDER

Per Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2012-13 is directed against the order dated 14.07.2023 passed by the ld. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the ld. CIT(A)'].

2. Brief facts of the case are that the assessee has filed its return of income for the A.Y. 2012-13 showing total income of Rs. 27,64,610/-. The return of the assessee was duly processed u/s 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny through CASS followed by statutory notices issued u/s 143(2) as well as 142(1) of the Act on various dates. In response to the notices, the ld. AR of the assessee appeared before the ld. AO time to time by furnishing the details in terms of the notices by fulfilling all compliances before him. The ld. AO after examining all the issues and discussed with ld. AR and two additions were made in the case of assessee, one is in relation to

delayed payment, service tax and TDS. Accordingly Rs. 2,68,680/- disallowed as expenditure and added to the income of the assessee. Similarly, from the ITS data, the ld. AO noticed that assessee has not credited one receipts of Rs. 51,50,449/- from Meghalaya Energy Corporation Ltd. while calculating the income of the assessee. Therefore, sum of Rs. 51,50,449/- has been added to the income of the assessee by assessing the income at Rs. 81,83,910/-.

3. Dissatisfied with the above order, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was partly allowed by enhancing the income of the assessee which were never assessed while framing the assessment order.

4. Aggrieved by the order of ld. CIT(A), assessee is in appeal before the Tribunal raising various grounds of appeal. Ground no. 1 & 2 challenged before the Tribunal relating to enhancement of the income of the assessee by Rs. 43,92,024/- alleging bogus payment to 4 parties on which neither any disallowances or additions were made in the assessment order by the AO. Similarly on ground no. 2, ld. CIT(A) enhanced the income of the assessee by Rs. 77,309/- alleging that delay in deposit the employees contribution of PF & ESI on which no addition was made by the AO while framing the assessment order. On the above context, the ld. AR of the assessee submitted before the bench that such enhancement of the income on the part of ld. CIT(A) is illegal and invalid and beyond the powers of ld. CIT(A) as because the ld. Assessing officer has not made any addition on account of alleged enhancement made by the ld. CIT(A) in his impugned order.

5. Further, he contended that the ld. CIT(A) cannot make any enhancement on the issue which does not arise out of the order of the assessment. Accordingly, section 251(2) of the Act that the impugned enhancement made by the ld. CIT(A) is not in accordance with law as the enhancement is not arising out of assessment proceedings. *The Ld. AR has relied on the various case laws more preciously that of Shapoorji Pallonji Mistry vs CIT (1958) 34 ITR 342 (Bom) (confirmed by the Apex Court in CIT vs Shapoorji Pallonji Mistry (1962) 44 ITR 891 (Hon'ble Supreme Court) wherein the Hon'ble Bombay High Court while dealing with the powers of the CIT(A) held that CIT(A) was not empower to enhance an income on an issue which was not the subject matter of the assessment. The ratio laid down in the judgment of full bench of Delhi High Court in the case of Sardari Lal & Co. (supra) is also relevant in assessee's case that the CIT(A) cannot touch upon an issue which does not arise from the order of the assessment and was outside the scope of the order of the assessment. The order of the CIT(A) does not sustain.* He has also submitted that similar issue have been considered and decided by various benches by applying the same proposition of law. He further submitted that the assessee has filed all necessary details of such expenses on which TDS was deducted and TDS certificate have been issued. Therefore, disallowance made in the case of assessee is unjustified on the merits of the case also. Similarly, on the issue of delayed deposit of PF & ESI no addition has been made by the ld. AO while framing the assessment order. Therefore, such enhancement is uncalled for before ld. CIT(A) while passing the impugned order. Accordingly, he prayed before the bench that

direction may be issued to ld. CIT(A) to delete the addition made against the assessee while passing the impugned order.

6. On the other hand, ld. DR heavily relied on the decision rendered by the ld. CIT(A).

7. We after considering the rival submissions of the parties and perused the material available on record considering the various proposition of law on this issue find that alleged enhancement made in the case of assesseeis wholly unjustified as the assessing officer did not make any disallowance on both the issues while framing the assessment order as in the case of assessee. The ld. CIT(A) has taken up alleged issues in the appellate proceeding accordingly both the issues did not arising out of the assessment proceeding. It is well settled law that the ld. CIT(A) was empowered to enhance the income which is not properly assessed at the time of framing of assessment order. The instant issues by ld. AO never made any addition while framing the assessment order are covered by the aforesaid judgements relied upon by ld. Counsel for the assessee. Therefore, it is clear that the ld. CIT(A) cannot touch upon on the issue which does not arise and assessed while framing the assessment order. Thus, the order of ld. CIT(A) cannot be sustained.

8. Considering the above discussions, we set aside the order of ld. CIT(A) and delete the addition of Rs. 43,92,024/- and Rs. 77,309/- as made in the case of assessee. Thus, ground no. 1 & 2 is allowed.

9. In ground no. 3 & 4, ld. AR does not like to press therefore, need not required to be adjudicated. In terms of the above, the appeal of the assessee is allowed.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 04.04.2024.

Sd/-

Sd/-

(Girish Agrawal)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 04.04.2024
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Sun Steel Industries Pvt. Ltd., 22, Strand Road, Kolkata-700001.
2. Respondent – ITO, Ward-5(1), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata