

आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सटस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. Nos. 384 & 1090/Kol/2023
Assessment Years: 2017-18 & 2022-23

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| Maithan Alloys Limited (PAN: AABCM 7758 B) | Vs. | AO, Kolkata DCIT, CPC, Bangalore |
| Appellant / (अपीलार्थी) | | Respondent / (प्रत्यर्थी) |

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| Date of Hearing / सुनवाई की तिथि | 09.05.2024 |
| Date of Pronouncement/ आदेश उद्घोषणा की तिथि | 21.05.2024 |
| For the Appellant/ निर्धारिती की ओर से | Shri Siddharth Kejriwal, CA |
| For the Respondent/ राजस्व की ओर से | Shri S. Dutta, CIT D.R Shri Bibekananda Madhu, JCIT, Sr. D.R |

ORDER / आदेश

Per Rajesh Kumar, AM:

These are the appeals preferred by the assessee against the separate orders of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 23.02.2023 and the Ld. Joint Commissioner of Income Tax (Appeals)-2, Mumbai for the AY 2017-18 & 2022-23. First we shall take in ITA No. 1090/Kol/2023 for AY 2022-23.

2. The only issue raised by the assessee in the various grounds of appeal is against the confirmation of addition by the Ld. CIT(A) as made by AO(CPC) on account of notional gain on investments on the basis of the Tax Audit Report resulting into double addition in respect of Rs. 14,92,99,044/-.

3. Facts in brief are that the assessee filed return of income on 5.11.2022 which was revised on 29.12.2022 u/s 139(5) of the Act declaring total income of Rs. 10,68,60,62,088/- which was processed u/s 143(1) of the Act vide intimation dated 29.07.2023 wherein addition of Rs. 29,85,98,902/- was made by AO(CPC). The assessee is registered company and is listed on NSE & BSE and therefore mandatorily required to prepare financial statements as per IND AS – 109 & ICDS -1 issued by the ICAI and Income Tax Act, 1961 respectively. Pursuant to IND AS-109 the assessee has to value its investments at Fair market value which were shown and reflected in Note no. 11 of Notes to Audited Financial Statements for the year ended 31.03.2022 and a notional gain of Rs. 14,92,99,043/- was recorded in the books of account. At the time of filing return, the said notional gain as reflected in the books of account is deducted from the profits in accordance with and compliance with ICDS-1 in order to arrive the taxable income of the assessee. According to ICDS-1 read with Circular 10/2017 dated 23.03.2017, notional gain shall not be recognized for the computation of total income. This has been done in preceding and succeeding assessment years. In the Tax Audit Report the said notional gain has been reported in Clause 13(e) and the tax auditor inadvertently reported the said amount as increase in profits instead of decrease in profit and on that basis the AO (CPC) added this amount to the income of the assessee. Pertinent to state that at the time of filing the return of income the assessee reduced the said notional profit of investment in the computation of income.

4. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee by giving a wrong finding on this issue.

5. After hearing the rival contention and perusing the material on record, we find that the assessee is a registered company and is listed on NSE and BSE. The assessee is required to apply the mandatory IND-AS-109 & ICDS-1 in the maintenance of its books of accounts. Accordingly the assessee has to recognize in its books of account the notional gain on investments pursuant to the accounting standard 109. During the instant year, the assessee recognized a notional gain of Rs. 14,92,99,043/- in the books of account accordingly under Schedule No. 31 titled "Other Income" sub-head "Fair Value Gain on Investments" and corresponding effect in Schedule No. 11 titled "Investment in Mutual Funds" –(FVTPL) . At the time of filing of return, the assessee has duly reduced the said notional gain from the profits in the computation of income in order to arrive at the correct taxable income in terms of ICDS-1. At the time of reporting the said notional gain in clause 13(e) of tax audit report , the tax auditor reported said amount as increase in profit instead of decrease in profits. The AO (CPC) added the same to the income instead of reducing the same from the income thereby resulting into double addition made by AO(CPC) in the intimation u/s 143(1) of the Act to the taxable income . The assessee filed certificate of the tax auditor to this effect and submitted that this was an inadvertent mistake on the part of the tax auditor. We note that the assessee has valued the investments at fair market value pursuant to the accounting standard i.e INDAS-109 and ICDS-1 and at the time of filing return the said notional gain/ notional losses has been adjusted in the computation of income by making necessary adjustment. The assessee has submitted the amount of notional gain and notional loss has been meted out the same treatment in the preceding and succeeding assessment years and has been accepted by the Deptt. We have also perused the CBDT circular No. 14 of 1955 which provides that officer of the department must not take the advantage of the ignorance of the assessee. In our opinion, this was a mistake on the part of tax auditor of the assessee which should have been fixed and corrected at the appellate stage before the Ld. CIT(A) however the Ld. CIT(A) did not take cognizance of the same. Considering these facts and circumstances of the case, we are inclined to set aside the order of Ld. CIT(A)

and direct the AO to delete the addition. Accordingly ground raised by the assessee is allowed.

ITA No. 384/Kol/2023 A.Y. 2017-18.

6. The only issue raised by the assessee is against the order of Ld. CIT(A) confirming the addition of Rs. 17,23,694/- as made by the AO u/s 14A of the Act while computing books profit u/s 115JB of the Act.

7. Facts in brief are that during the course of assessment proceedings, the AO noted that the assessee has made investments in shares/securities however no corresponding disallowance was made u/s 14A of the Act in relation to earning of exempt income. Accordingly the AO invoked the provisions of Section 14A of the Act and disallowance of Rs. 17,23,694/- was computed and added to the book profits in the assessment framed u/s 143(3) of the act dated 23.04.2021.

8. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee without giving any justification /reasoning for the same.

9. After hearing the rival contention and perusing the material on record, we note that the disallowance u/s 14A is made and added the same to the book profit of the assessee u/s 115JB of the Act which is apparently wrong and against the provisions of Act. Section 115JB of the Act is a complete code in itself and any addition or deduction in order to arrive at books profit has been mentioned in the section itself and there is no scope for making any other adjustment other than as mentioned in the section itself. In our opinion, the adjustment made by the AO is not sustainable and has to be deleted and therefore the order passed by the Ld. CIT(A) confirming the addition is also not valid in the eyes of law. The case of the assessee finds support from the decision of Special Bench of Delhi in the case of Vireet Investment Pvt. Ltd. [2017] 82 taxmann.com 415 (Delhi-Trib) wherein it has been held that on addition u/s 14A can be done to the book profit u/s 115JB of the Act. Similarly the Hon'ble Apex Court in the case of Atria Power Corporation Ltd. [2022] 142 taxmann.com 413(SC)

dismissed the SLP against the High Court ruling of Karnataka High Court as reported [2022] 142 taxmann.com 412 (Kar) wherein the Hon'ble Karnataka High Court has held that the disallowance made u/s 14A of the Act to the book profit is wrong and cannot be sustained.

10. In the result, both the appeals of the assessee are allowed.

Order is pronounced in the open court on 21st May, 2024

Sd/-
(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 21st May, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Maithan Alloys Limited, 4th Floor, Ideal Centre, 9, A.J.C. Bose Road, Kolkata-700017
2. Respondent – DCIT, CPC, Bangalore
AO, Kolkata
3. Ld. CIT(A)-NFAC, Delhi
Ld. Addl/JCIT(A)-2, Mumbai
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata