IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No.241/CTK/2023
Assessment Year : 2014-15

Tata Steel Ltd. (Successor to Tata Steel Long Products Ltd.), Bileipada, Joda, Keonjhar	Vs.	Asst. Commissioner of Income Tax-, Circle- Rourkela
PAN/GIR No.AAACT 2803 M		
(Appellant)	..	(**Respondent**)

Assessee by : Ms Shreya Loyalka, CA
Revenue by : Shri Sanjay Kumar, CIT DR

Date of Hearing : 22/05/2024
Date of Pronouncement : 22/05/2024

O R D E R

Per Bench

This appeal is filed by the assessee against the order of ld. CIT(A), NFAC, Delhi dt. 8.5.2023 in Appeal no.CIT(A), Bhubaneswar-1/10129/2017-18 for the assessment year 2014-15.

2. Ms Shreya Loyalka, Ld AR appeared for the assessee and Shri Sanjay Kumar, ld CIT DR appeared for the revenue.

3. In the appeal memo, assessee has taken total 9 grounds of appeal which relate to the disallowance 1,28,79,022/- made u/s 37 of the Act.

Thereafter vide letter dated 20.05.2024, assessee has filed petition for the admission of additional grounds of appeal under Rule 11 of ITAT Rules, 1963 which are as under:

> :10) For that upon facts and circumstances of the case, the ld DCIT erred in initiating the reassessment proceedings under section 147 of the Act.
>
> 11) For that upon facts and circumstances of the case, there was no reason to believe that income chargeable to tax has escaped assessment.
>
> 12) For that upon facts and circumstances of the case, the reassessment proceedings were initiated on mere change of opinion and thus invalid and is bad in law.
>
> 13) For that upon facts and circumstances of the case, there was no new tangible material on the basis of which the ld DCIT initiated reassessment proceedings and thus the same is invalid.
>
> 14) For that upon facts and circumstances of the case, the notice under section 148 is void ab initio as the same is based on incorrect understanding of law.
>
> 15) For that upon facts and circumstances of the case, the reasons for reopening the assessment is invalid and incorrect and is based on incorrect interpretation of law and renders the reassessment proceedings invalid."

4. For the admission of additional grounds of appeal, ld. A.R of the assessee submitted that the grounds of appeal taken are purely legal in nature and goes to the root of the matter. She submits that the validity of reassessment proceedings is a question of law and legal issue can be raised at appellate stage also. In support reliance has been placed on various judicial pronouncements which are as under:

1) NTPC Ltd vs CIT (1998) 229 ITR 383 (SC)

2. Jute Corporation of India Ltd vs CIT(1991) 187 ITR 688 (SC)
3. Ahmedabad Electricity Co Ltd. Vs CIT(1993) 199 ITR 351 (Bom)
4. DCIT vs Wheels India Ltd (ITA No.251/Chny/2010 order dated 14th March, 2014
5. All Cargo Global Logistics Ltd vs DCIT (ITA No.5018/Mum/2010) order dated 6th July, 2012.

5. Per contra, ld. CIT D.R objected to the admission of the additional grounds taken and submits that if the assessee has any objections regarding the validity of the re-assessment proceedings, the same could have been taken before the lower authorities, which the assessee has not opted. He further submitted that there is no reasonable cause for raising these grounds at this stage. He, therefore, requested not to admit the additional grounds of appeal.

6. We have considered the rival submissions. From the perusal of additional grounds of appeal, it appears that in all these additional grounds assessee has challenged the initiation of reopening of the completed assessment. Rule 29 of ITAT Rules, 1963 has given power to the Tribunal which is to be exercised judicially for doing justice between the parties. The additional grounds raised by the assessee being a legal issue and there is no question of fresh investigation or examination of any new facts since they are borne out from the facts which are already available on record of

lower authorities. This being so, the additional grounds of appeal as taken are hereby admitted for adjudication in view of the judgment of the Hon'ble Supreme Court in National Thermal Power Co. Ltd. (supra) wherein the hon'ble Apex court has held that tribunal should allow to raise question of law when it is necessary to consider that question in order to assess the tax liability of an assessee.

7. Brief facts of the case are that that assessment for this year was completed u/s. 143(3) of the Act vide orders dt. 14.03.2016. Later on, the assessment was reopened by issuing notice u/s. 148 dated 29.03.2017 for the reason that the assessee has claimed certain expenses in the nature of Corporate Social responsibility ('CSR' in short) which is not considered for disallowance and consequently assessment order u/s. 143(3) r.w.s. 147 of the Act was passed after making disallowance of CSR expenditure of Rs.1,29,54,170/-. In first appeal filed by the assessee against the reassessment order so passed, ld. CIT(A) has allowed part relief. Thus the present appeal is filed by the assessee before us.

8. Before us the ld. AR requested to take up the additional grounds of appeals No.1015 first and contended that the issue of allowability of CSR expenses was already subject matter of original assessment and the AO had raised various queries vide notice issued u/s 142(1) dt. 11.01.2015 which

includes the peripheral expenses claimed as CSR expenses. The assessee replied vide letter dt. 03.02.2016 and all the information and evidences as filed were available on record. According to the ld. AR, considering the same issue in the reopened assessment in absence of any fresh tangible material is change of opinion, which cannot be done by the AO. Therefore, what was disclosed was fully disclosed and nothing more was required to be done. The AO completed the assessment after considering all the issues raised in the original assessment proceedings including the issue of allowbility of CSR expenses. According to the ld. AR in the notice u/s. 148 dated 29.03.2017 issued, there was no allegation that there was any failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. Later, the AO took up the same issue that was already considered in the original assessment for reopening the assessment. Being so, the reopening of assessment is only on account of change of opinion on the basis of same facts and figures which were available during the original assessment proceedings. Ld. A/R further submits that reason to believe was not correct where the AO has referred to the amendment to section 37(1) in relation of activities towards CSR development and stated the same to be inserted by Finance Act, 2013 which is incorrect. The Explanation 2 to section 37(1) was inserted by Finance (No. 2) Act, 2014 w.e.f. 01.04.2015 and is prospective in nature and would applicable from AY 2015-16 onwards. This shows that there was

no application of mind before recording the reason for issue of notice u/s 148. Since the impugned assessment year is AY 2014-15, therefore even otherwise it is not applicable to the year under appeal. For this reliance is placed on the judgements of Hon'ble Bombay High court in the case of Siemens Information System Ltd. Vs. ACIT reported in 172 Taxmann 315 (Bombay) and also of Hon'ble Delhi High court in the case of PCIT vs. Steel Authority of India Ltd. reported in 148 Taxmann.com 132 (Delhi). She thus prayed that the action of the ld.AO in reopening the concluded proceedings deserves to be held bad in law and the reassessment order so passed be quashed.

9. On the other hand, the ld. CIT DR submitted that in the present case, income liable to tax has escaped assessment in the original assessment due to oversight and inadvertence or mistake, therefore the AO exercised jurisdiction u/s. 147 of the Act to reopen the assessment. Regarding the issue of validity of the reasons recorded, he stated that this issue was not raised before the ld. CIT(A), therefore, in the interest of fair-play the same may be sent back to the file of the CIT(A) for his decision on this issue. Regarding change of opinion and availability of tangible material for reopening the assessment, he submits that it is not necessary that the information must be derived from external source of any kind. He further stated that the reassessment is possible if the information is borne out from the records after proper investigation or from enquiry or reasons into facts

or law. He submitted that the assessee cannot take advantage of any lapse on the part of the AO. However he fairly admits that with regard to the allowability of CSR expenditure, the law stood amended w.e.f. 01.04.2015 by Finance Act (No. 2), 2014. He relied on the orders of the lower authorities and requested for the confirmation of the reassessment proceedings as done by AO.

10. We have heard both the parties and perused the material on record. In the present case the AO raised the issue of claim of CSR expenditure of Rs.1,29,54,170/-. From the records, it is seen that during the course of scrutiny assessment, assessee provided all the details sought for in support of various claims of expenditure debited to P&L account vide letter dated 03.02.2016 including details of expenditure incurred on CSR at Rs.1,29,54,170/-. After due application of mind the same were allowed in the order dt. 14.03.2016 passed u/s 143(3) of the Act, hence the question of disallowance does not arise. Once the AO had already applied his mind on the issue raised in reasons recorded, the same cannot be made basis for reopening of the completed assessment. It is a matter of fact that after considering the details filed of the assessee, the AO had not made any addition relating to CSR expenditure. Thereafter, AO initiated reassessment proceedings by issue of notice u/s. 148 after recording the reasons with regard to CSR expenditure of Rs.1,29,54,170/-. The reason recorded is available at paper book page 8 which reads as under :

> " During the F.Y. 2013-14, relevant to A.Y. 2014-15, the assessee company has claimed Rs.1,29,54,170/- towards activities relating Corporate Social Responsibilities under the sub-head "peripheral Expenses". Explanation to section 37(1) of the IT Act inserted by Finance Act 2013 clarifying Term "wholly and exclusively for the purpose of business" peripheral expenses (Corporate social responsibilities expenses) is not an allowable expenses and require to be added back to the total income of the assessee for the year"

11. From the perusal of the reasons shows that the AO has reached to the satisfaction of escaped income by relying upon the Explanation 2 to section 37(1) of the Act by observing that the same is inserted by Finance Act, 2013 and applicable from AY 2014-15. AO has disallowed claim of the assessee company by misinterpreting the provisions as contained in section 37(1) of the Act. The Explanation 2 as inserted is reproduced hereunder:

> "Explanation 2 of Section 37(1), states that any expenditure incurred on corporate social responsibility activities as per section 135 of the Companies Act 2013 shall not be deemed as sustained for business or profession, and no deduction shall be allowed for such expenditure."

12. The Explanation 2 to section 37(1) prohibits the claim of expenditure in relation to the CSR activities referred to in section 135 of the Companies Act, 2013 and is inserted by Finance Act (No.2), 2014 w.e.f. 01.04.2015 and applicable from AY 2015-16 onwards and is prospective in nature. So Explanation (2) to section 37(1) of the Act is not applicable to the present case also. This view is expressed by the Hon'ble Delhi High court in following cases:

- PCIT Vs. Steel Authority of India Ltd. 148 Taxmann.com 132 (Del)
- PCIT Vs. PEC Ltd reported in 146 Taxmann.com 407 (Del)

13. Ld. CIT(A) also admits that the operation of Explanation 2 is prospective yet has confirmed the disallowance. In the instant case, as discussed above, the AO has recorded satisfaction that the CSR expenses is not allowable in view of the Explanation 2 which is inserted by Finance Act, 2013 and is applicable from AY 2014-15 is incorrect, therefore reasons recorded for issue of notice u/s 148 has no basis and is issued by misinterpreting the law. Thus, by respectfully following the findings of the Hon'ble Delhi high court (supra) that said Explanation -2 is prospective in nature, we hold that expenses incurred on corporate social responsibility in the year under consideration i.e. AY 2014-15, cannot be disallowed by invoking Explanation-2 to section 37(1) of the Act.

14. Now the contention of the ld. AR that it is only a change of opinion and this issue was discussed in the original assessment proceedings and after considering the reply of the assessee on this issue, the AO has not made any addition. Considering the same issue amounts to change of opinion as held by the Supreme Court in the case of CIT v. Kelvinator of India Ltd., 320 ITR 561 (SC) that section 147 would not give arbitrary power to the AO to reopen the assessment on the basis of mere change of opinion which cannot be per se reason to reopen. It was also held that there is a difference between power to review and power to reassess. The AO has no power to review, but he has power to reassess. But reassessment is to be made based on fulfilling certain pre-conditions and "if

the concept of change of opinion" is removed in the garb of reopening of assessment, review would take place. We must treat the "concept of change of opinion" as an in-built test to check the abuse of power by the AO. Hence after 1st April, 1989, AO has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment.

15. In view of the above discussion, we are of the considered view that in the instant case, action of the AO in initiating reassessment proceedings for making disallowance of CSR expenses is an attempt to review his own earlier order, which is nothing but change of opinion on the issue which has already been concluded by him in the original assessment in favour of the assessee. Further the amendment in section 37(1) of the Act wherein Explanation 2 is inserted by Finance Act (No.2) 2014 w.e.f. 1.4.2015 and applicable from AY 2015-16 onwards therefore, in our opinion reopening of assessment in this case is bad in law. Hon'ble Bombay High court in the case of Siemens Information Systems Ltd. (supra) has held that since AO had proceeded on the basis of provisions which were not applicable in respect of relevant assessment year, there was non-application of mind on the part of the assessing officer and, therefore, reassessment notice based that reason was invalid and will be liable to be quashed. Accordingly, in the facts and circumstances of the case, we hold that the reopening is not valid

and, therefore, the reassessment framed by the AO is without jurisdiction and consequently the reassessment order passed is quashed.

16. Hence, additional grounds of appeal Nos. 10-15 are allowed.

17. Since we have allowed the additional grounds No. 10-15 of the appeal where reopening has been quashed, therefore, the other grounds remained academic and the same are not required to be adjudicated.

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

Order dictated and pronounced in the open court on 22/05/2024.

Sd/- sd/-

(George Mathan) **(Manish Agarwal**
JUDICIAL MEMBER ACCOUNTANT MEMBER

Cuttack; Dated 22/05/2024
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Tata Steel ltd (Successor to Tata Steel Long Products Ltd.,) Tata Centre, First floor, 43, Jawaharlal Nehru Road, Kolkata-700071
2. The respondent: Asst. Commissioner of Income Tax-, Circle, Rourkela
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT,
5. DR, ITAT,
6. Guard file.

//True Copy// **By order**

Sr.Pvt.secretary
ITAT, Cuttack