

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.581/MUM/2024
Assessment Year: 2013-14

Deputy Commissioner of Income Tax – 1(3)(1), Mumbai	Vs.	Zenith Industrial Rubber Products Pvt. Ltd. 141-144, 14 th floor, Free Press House, Free Press Journal Marg 215, Nariman Point, Mumbai – 400 021 (PAN : AAACA3874D)
(Appellant)		(Respondent)

Present for:

Assessee : Shri Smit Sheth, FCA
Revenue : Ms. Rajeshwari Menon, Sr.DR

Date of Hearing : 29.05.2024
Date of Pronouncement : 31.05.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1058346348(1), dated 30.11.2023 passed against the assessment order by the Deputy Commissioner of Income Tax – 1(3)(2), Mumbai, u/s. 143(3) r.w.s. 263 of the Income-tax Act (hereinafter referred to as the “Act”), dated 27.12.2018 for Assessment Year 2013-14.

2. Ground taken by the Revenueis reproduced as under:

“That on the facts and circumstances of the case and in law, the CIT(A has erred in allowing the appeal of the assessee and holding that the order u/s. 143(3) r.w.s. 263 does not survive without appreciating the Department has filed appeal u/s. 260A against ITAT order in ITA No.1110/MUM/2018”

3. Brief facts from records are that assessee filed its return of income on 27.09.2013 reporting total income at Rs.5,78,79,750/- which was assessed as such u/s.143(3) vide order dated 28.03.2016. In this assessment book profit u/s.115JB of Rs.6,25,87,255/- reported by the assessee was also accepted as such by the Id. Assessing Officer. Subsequent to this, revisionary proceedings were undertaken by the Id. PCIT-1, Mumbai u/s.263 for which the revisionary order was passed on 12.02.2018 directing the Assessing Officer to make a fresh assessment. This revisionary order was contested by the assessee before the Tribunal in ITA No.1110/Mum/2018. This appeal of the assessee was allowed by the coordinate bench by quashing the revisionary order passed u/s.263 of the Act vide order dated 22.11.2018. Findings given by the coordinate bench while quashing the revisionary order is as under:

“10. Upon careful consideration, we find that adjustment of the depreciation written back was duly shown in the computation of income. It is only on the basis of this computation of income, and examination thereof the A.O. has allowed the computation w / s 143(3) Hence, it cannot be said that the A.O. has not applied his mind on this issue. In this regard, reference is made to Hon'ble jurisdictional High Court decision in the case of SBI vs. ACIT (in WP No. 271 of 2018 vide order dated 15.06.2018).”

11. Furthermore, the adjustment of depreciation written back in the computation of book profit under section 115JB has been considered by the ITAT Bench in favour of the assessee in the case of ACIT vs. Srinivas Synthetics Packers P. Ltd (supra) and PSI Data Systems Ltd. (supra). These case laws were referred before the Id, CIT(A) but he choose to ignore the same. Admittedly, when there are ITAT decisions in favour of the assessee, it cannot be said that view adopted by the A.O. is not a possible view. Once it is held that the A.O is has adopted a possible view, the jurisdiction exercised by the Id. CIT(A) u/s 263, losses its legality. This view is supported by the Hon'ble Apex Court decision in the case of CIT (Central)vs Max India Limited [2007] 295 ITR 282 (SC) and Hon'ble Bombay High Court decision in the case of Grasim Industries Ltd. (supra).

12. *In the background of the above discussion and precedent, we quash the order passed by the Id. CIT(A) u/s. 263 of the Act.*

13. *In the result, the assessee's appeal is allowed."*

3.1 In the interim, before the pronouncement of order by the coordinate bench, the Id. Assessing Officer followed the due procedure as per the law and took up the effect giving assessment proceedings pursuant to revisionary order u/s. 263 of the Act. In the said assessment proceedings, disallowance of Rs.7,19,73,621/- towards excess depreciation claim was disallowed and added to the book profit u/s.115JB. Assessee went in appeal before the Id. CIT(A). By this time, the revisionary order passed u/s. 263 was quashed by the coordinate bench as stated above. Id. CIT(A) took cognizance of this fact and respectfully following the decision of the coordinate bench, held that there is no basis on which any of the additions in the assessment order can be sustained since the issue has been decided in favour of assessee by the coordinate bench.

4. Before us, Id. Counsel for the assessee has placed on record a paper book containing 26 pages, which includes the order of coordinate bench, quashing the revisionary order u/s.263 of the Act.

4.1. In the given set of facts and circumstances, we find that the legal maxim '*sublato fundamento cadit opus*' is applicable, meaning thereby – 'a foundation being removed, the superstructure falls'. Once the basis of a proceeding is gone, the action taken thereon would fall to the ground. Thus, in the absence of such foundation, exercise undertaken by the Assessing Officer is impermissible. Thus, there is no basis on which additions made in the assessment are sustainable. Accordingly, the assessment proceedings taken up by the Assessing Officer pursuant to order u/s.263 and order passed thereupon are bad

in law and are quashed. Ground taken by the Revenue in this respect is dismissed.

5. In the result, the appeal of Revenue is dismissed.

Order is pronounced in the open court on 31 May, 2024

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 31 May, 2024

MP, Sr.P.S.

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai