□□□□ □□□□□□ □□□□□□, □□□□□□□□ □□□

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं /**ITA No.867/Hyd/2017**
(निर्धारण वर्ष/Assessment Year:2008-09)

M/s. Jel Finance & Investments Limited, Hyderabad. Telangana. PAN: AAACJ6045P	**Vs.**	Dy. Commissioner of Income Tax, Circle-2(1), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri M.V. Anil Kumar , Advocate	
राजस्व द्वारा/Revenue by::	Ms. Sheetal Sarin, DR	
सुनवाई की तारीख/Date of hearing:	20/06/2024	
घोषणा की तारीख/Pronouncement:	28/06/2024	

आदेश/ORDER

PER SHRI MADHUSUDAN SAWDIA, A.M:

This appeal filed by M/s. Jel Finance & Investments Limited ("the assessee") feeling aggrieved by the order dated 20.01.2017 of the Learned Commissioner of Income Tax (Appeals)-9, Hyderabad ("Ld. CIT(A)") relating to A.Y. 2008-09.

2. The grounds raised by the assessee reads as under :

" 1. The CIT(A) ought to have held that the Assessing Officer erred in law and facts of the case in issue of notice under section 148 of the Income Tax Act, 1961.

2. The CIT(A) ought to held that the assessment is bad in law and quashed the same for the reasons that the Assessing Officer failed to dispose of the objection by a speaking order, before proceeding with the assessment.

3. The CIT(A) as well as the Assessing Officer ought to have appreciated the fact that the Foreign exchange gain includes reinstatement of debtors/creditors/others as at the year end and on account of actual realization payment of debtors/creditors/others during the period, which forms part of the export turnover, thereby eligible for deduction under section 10B of the Income Tax Act, 1961.

4. The CIT(A) as well as the Assessing Officer erred in law and facts of the case in stating that the amount are not realized within six month from the end of the financial year, ignoring the details of the FIRC's and copies of the FIRC's filed during the assessment and appellate proceedings. Therefore denial of deduction under section 10B on mere suspicion, assumptions and surmises is bad in law.

5. Your Appellant submits that the Assessing Officer ought to have considered the fact that the business income of the undertaking have to be computed as per section 28 to 44AC and such profits are eligible for deduction under section 10B."

3. Brief facts of the case are that, the assessee is a Company , engaged in the business of manufacturing and trading of Engineering Goods, filed its return of income for A.Y.2008-09 on 27-09-2008 admitting total income of Rs.1,38,32,986/-under the normal provisions of the income tax Act,1961(" the Act") and Book Profits of Rs. 6,77,32,892/- u/s 115JB of the Act. The assessment under section 143 (3) of the Act was completed by the learned Assessing Officer ("Ld.AO") on 29-12-2010 computing the total income at Rs. 1,39,88,070/- under the normal provisions of the Act and Book Profit of Rs. 6,77,32,892/-. Thereafter a notice under section 148 of the Act was issued on 17-07-2012 and the assessment under section 143 (3) r.w.s. 147 of the Act was completed by the Ld.AO on 12-03-2014 computing the total income at Rs.2,60,74,932/- under the normal provisions of the Act .

4. Feeling aggrieved by the order passed by the Ld. AO, assessee filed an appeal before the Ld. CIT(A), who provided partial relief to the assessee.

5. Feeling aggrieved with the order of Ld. CIT(A) on the issue on which no relief had been given by the Ld. CIT(A), the assessee is now in appeal before us on as many as 5 grounds. Ground No.1 related to the objection raised by the assessee on the validity of the notice issued by the Ld. AO u/s. 148 of the Act. The Ld. AR submitted that on reading the reasons given (as per page no.2 of the PB), it can be resumed that the issue of the notice under section 148 is based on an audit objection as there is reference to the tax impact. In this connection the Ld. AR further submitted that, the audit objection cannot be a ground/information for re-opening of an assessment u/s 147 of the Act. When an assessment is re-opened based on audit objection, it cannot be said that Ld. AO had tangible material to come to conclusion that there is escapement of income from assessment and that he had reason to believe that income had escaped assessment. In the absence of both tangible material and reason to believe that income had escaped assessment, it is only a mere change of opinion. It is also submitted that during the original assessment the then Ld. AO had disallowed certain expenditure and recomputed the deduction under section 10B of the Act, therefore it cannot be said that the Ld. AO had not verified the eligibility of the inclusion of foreign exchange gains on account of reinstatement of debtors and creditors. The Ld. AR also submitted that reinstatement of debtors and creditors is part of the undertaking being an 100% EOU unit. Therefore, issue of notice under section 148 based on the information on record amounts to change of opinion. Further the Ld. AR prayed that the issue of notice under section 148 is bad in law and the assessment may be quashed.

6. Per contra, the Ld. DR placed heavy reliance on the order of authorities below and requested to uphold the order of the Ld. CIT(A).

7. We have heard the rival contentions, perused the material available on record and gone through the orders of the Revenue authorities. There is no dispute on the fact that there was no discussion on the issue in the original assessment order passed u/s. 143(3) of the Act and when there is no finding either positive or negative arrived at during the course of assessment proceedings, it cannot be stated that an opinion was formed by the Ld. AO originally and hence there is no question of any change of opinion subsequently. Further audit objection can be part of information which after proper analysis and investigation can form basis of the reasons for reopening. In the present case the Ld. AO based on the audit objection which served as information, formed his own opinion that the income has escaped assessment and hence the decision in the above case is not merely on the basis of an audit objection. Hence we are of the considered opinion that the assessment was reopened as the Ld. AO had reasons to believe based on the information available that income had escaped assessment and there was no question of change of opinion as no opinion was originally formed by the Assessing Officer in this regard. Therefore, we dismiss this ground of the assessee on this count.

8. Ground No.2 related to the objection raised against reopening were not disposed off by the Ld. AO by speaking order. The Ld. AR submitted that the Ld. AO did not address to the objections raised by the assessee vide his letter dated 19/09/2012 with regard to the reasons recorded by the Ld. AO for issue of notice u/s 148 of the Act , failing which the assessment under section 143(3) r.w.s. 147of the Act is bad in law and hence he prayed before the Bench to quash the order passed by the Ld. AO.

9. Per contra, the Ld. DR placed heavy reliance on the order of authorities below and requested to uphold the order of the revenue authorities.

10. We have heard the rival contentions, perused the material available on record and gone through the orders of the Revenue authorities. The Ld. AR submitted that the Ld. AO did not address to the objections raised by the assessee vide his letter dated 19/09/2012 with regard to the reasons recorded by the Ld. AO for issue of notice u/s 148 of the Act. We have gone through the said letter dated 19/09/2012(as per page Nos. 3 to 5 of the PB). The letter was towards the submission of information for the purpose of reassessment proceedings made by the assessee before the Ld. AO. Hence we are of the opinion that the assessee did not raise any objection to the reopening during the assessment proceedings and hence the Ld. AO had no necessity to deal with the objections and dispose them off by a speaking order. Therefore, we dismiss this ground of the assessee on this count also.

11. Ground no.3 to 5 relates to the disallowance of exemptions made of Rs. 68,31,048/- towards foreign exchange gain on account of reinstatement of trade debtors and creditors. The Ld. AR submitted that the entire amount of Rs.68,31,048/- is on account of reinstatement of debts and creditors and are related to the export business, therefore eligible for deduction under section 10B. Hence it should not be deducted from the eligible profit of the undertaking.

12. Per contra, the Ld. DR placed heavy reliance on the order of authorities below and requested to uphold the order of the revenue authorities.

13. We have heard the rival contentions, perused the material available on record and gone through the orders of the Revenue authorities. The gain of Rs. 68,31,048/- is on account of reinstatement of debts and creditors, arrived as a result of accounting entry and

therefore is only a notional gain. Hence in our considered opinion such notional gain which is a result of only accounting entry, cannot be stated to be a business profit derived from the export business eligible for exemption u/s.10B. Hence we are of the opinion that assessee is not eligible for exemption u/s 10B on account of notional gains and dismiss the appeal of the assessee on this count also.

14. To sum up the appeal of the assessee is dismissed.

Order pronounced in the open Court on 28th June, 2024.

Sd/-	Sd/-
(K. NARAIMHA CHARY) JUDICIAL MEMBER	(MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER

Hyderabad.
Dated: 28/06/2024.
** Reddy gp*

Copy of the Order forwarded to :

1. M/s. JEL Finance & Investments Limited, C/o M. Anandam & Co., CAs, 7A, Surya Towers, S.D. Road, Secunderabad-500 003
2. DCIT, Circle 2(1), Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard file.

BY ORDER,

Assistant Registrar
ITAT, Hyderabad