

आयकर अपीलीय अधिकरण
कोलकाता 'बी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य
एवं
श्री संजय अवरथी, लेखा सदस्य
के समक्ष
Before

**SRI SANJAY GARG, JUDICIAL MEMBER
&
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No.: 1075/KOL/2024
Assessment Year: 2017-18**

***DIC Fine Chemicals Pvt. Ltd.....Appellant
[PAN: AACCD 6812 G]***

Vs.

PCIT-2, Kolkata.....Respondent

Appearances:

Assessee represented by: Akkal Dudhewala, A/R.

Department represented by: Abhijit Kundu, CIT D/R.

Date of concluding the hearing : June 25th, 2024

Date of pronouncing the order : August 7th, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

In this case the appellant had moved for early hearing vide his letter dated 04.06.2024 and the same was granted by an appropriate Bench of ITAT, Kolkata. Pursuant to this, the case was taken up for hearing whereby the facts were enumerated through the course of a detailed hearing. In this case return of income was filed for the present assessment year on 30.11.2017 showing a total income of Rs. 12,02,70,890/-. It is important to note that the case was picked up for scrutiny on account of, among other issues, 'reduction in profit due to ICDS'. Thereafter, the Assessing Officer (hereinafter referred to as ld. 'AO') apparently disallowed the claim of Rs. 51,54,082/- on account of change

in foreign exchange rates, out of two issues; the second being the increase in profit pertaining to ICDS-V being tangible fixed assets at Rs. 5,82,61,440/- (impugned amount).

1.1. Thereafter, the ld. Pr. CIT, Kolkata-2 initiated proceedings u/s 263 of the Income Tax Act, 1961 (in short the 'Act') on the ground that the auditors in Form-3CD for the present assessment year had certified at Sl. No. 13(d) & 13(e) that an adjustment was required to be made in the profit to the tune of Rs. 5,82,61,440/- on account of tangible fixed assets. It is mentioned in the impugned order that the opportunities given to the appellant could not be availed of leading to the presumption that the AO had failed to add back the impugned amount in spite of the auditors clearly pointing it out for such treatment. Ld. Pr. CIT proceeded to provisionally compute the grant of excess depreciation at 15% of Rs. 5,82,61,440/-, being Rs. 87,39,216/-. It has also been stated in the impugned order that excess WDV of plant and machinery has also been allowed. Thus, after detailed calculations the ld. Pr. CIT worked out that the under assessment had a total tax effect of Rs. 2,01,63,118/-.

1.2. Before us, the ld. Counsel for the assessee filed a paper book running into 158 pages containing show cause notice u/s 263 of the Act, copies of replies furnished, etc. The response to notice u/s 263 of the Act submitted by the appellant, which apparently was not taken into consideration by the Ld. Pr. CIT for some reason as it is clearly mentioned in paragraph 5 of the impugned order that notices issued u/s 263 of the Act were not responded to. At this stage, it is unclear as to the reasons for the communication gap between the assessee and the ld. Pr. CIT. Be that as it may, it is seen that the following documents were purportedly submitted before the ld. Pr. CIT:

- a) Audited financial statements for FY 2016-17.
- b) Copy of computation of income for AY 2017-18.
- c) Tax audit report for AY 2017-18.
- d) Income tax return for AY 2017-18.

e) Notice u/s 142(1) of the Act dated 10.02.2021.

f) Assessment order u/s 143(3) of the Act dated 27.04.2021 AY 2017-18.

1.3. It is clear from the description above that all these documents would be available with the AO or would have been filed along with the return of income for the year under consideration. Thus, apparently all documents placed before us, and which were not considered by Ld. Pr. CIT, would not be fresh evidence.

2. Considering these facts, we have decided to proceed ahead with the adjudication on the basis of documents placed before us. Before proceeding any further, the grounds of appeal may be reproduced for reference:

“1. For that on the facts and in the circumstances of the case and in law, the Ld. PCIT was unjustified in law and on facts in revising the assessment order u/s 143(3) of the Act dated 27.04.2021 even though the said order was neither erroneous nor prejudicial to the interest of the Revenue for the reasons set out in the show cause notice.

2. For that on the facts and in the circumstances of the case and in law, the Ld. Pr. CIT also failed to appreciate that the issue raised in the SCN as well as the impugned order had already been examined and enquired into by the Assessing Officer in the original assessment completed u/s 143(3) of the Act and therefore the order of the AO could not be held to be erroneous and prejudicial to the interests of the Revenue.

3. For that on the facts and in the circumstances of the case and in law, the assessee having substantiated before the Ld. Pr. CIT that the impugned issue viz., increase in profit of Rs.5,82,61,440/- disclosed in the Clause 13(e) of Form 3CD had already been added while declaring the total income in the return of income, no further adjustment / addition in this regard was warranted and in that view of the matter the action of Ld. Pr. CIT proposing to disallow 15% of Rs.5,82,61,440/- i.e., Rs.87,39,216/- as excess depreciation claimed by the assessee ought to be held as wholly unjustified on facts and in law.

4. For that on the facts and in the circumstances of the case and in law, the Ld. Pr. CIT was unjustified in setting aside the assessment and directing the AO to re-verify the issue, without objectively dealing with the submissions put forth by the assessee which clearly showed that the assessment order was neither erroneous nor prejudicial to the interest of the Revenue.

5. For that on the facts and in the circumstances of the case and in law, the order dated 21.03.2024 passed u/s 263 of the Act passed by the Ld. Pr.CIT is untenable on facts and in law and thus deserves to be deleted.

6. For that the assessee craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before.”

2.1. All the grounds of appeal basically challenge the action of ld. Pr. CIT in resorting to the provisions of Section 263 of the Act and recording that the AO's order was erroneous and prejudicial to the interest of the Revenue and thus meriting its cancellation, and directing the AO to pass a fresh assessment order on the basis of impugned under assessment of tax.

2.2. Ld. D/R relied on the findings contained in the impugned order.

3. We have carefully gone through the documents placed on record and the averments of the ld. A/R/ld. D/R. A brief recapitulation of the facts would help in putting the issue in perspective. In the return of income itself the audited financial statements indicated that as per ICDS-V (tangible fixed assets) there would be an increase in profit of Rs. 5,82,61,440/-. However, the ld. A/R explained that this figure is part of the working on account of depreciation on both tangible and intangible assets which would need to be worked out in a dual manner: (i) as per books of accounts and (ii) as per income tax provisions. This exercise has been tabulated below:

<i>Particulars</i>	<i>Tangible Assets (in Rs.)</i>	<i>Intangible Assets (in Rs.)</i>	<i>Total (in Rs.)</i>
	<i>(A)</i>	<i>(B)</i>	<i>(A) + (B)</i>
<i>Depreciation as per books of accounts (a)</i>	15,81,51,980	7,24,440	15,88,76,420
<i>Depreciation as per Income Tax provisions (b)</i>	9,98,90,540	5,53,940	10,04,44,480
<i>(a) - (b)</i>	5,82,61,440	1,70,500	5,84,31,940

3.1. It is seen that the Central Government had notified the Income Computation and Disclosure Standards (ICDS) which need to be followed for computation of income chargeable under the head 'profits and gains from business or profession'. ICDS-V deals with treatment of tangible fixed assets. The tax audit report proforma was amended to incorporate reporting of the

adjustments under the ICDS. Clause 13(e) of audited report requires ICDS-wise reporting of the adjustments in the profit and loss account, after showing a clear increase/decrease in profits as well as the overall net effect of such adjustments. It has been pointed out that the tax auditors had accordingly reported the difference between the depreciation as per books of accounts and depreciation allowable u/s 32 of the Act as under:

<i>ICDS</i>	<i>Increase in Profit (Rs.)</i>	<i>Decrease in Profit (Rs.)</i>	<i>Net Effect (Rs.)</i>
<i>ICDS V - Tangible Fixed Assets</i>	<i>5,82,61,440/-</i>	<i>NIL</i>	<i>5,82,61,440/-</i>

3.2. The amount of Rs. 5,82,61,440/- does not include values concerning intangible assets and hence, such values were not included for the purpose of ICDS-V. However, as has been mentioned earlier the depreciation as per books of accounts and depreciation as per Income Tax Act has been worked out after including the values pertaining to both tangible and intangible assets. In the paper book a copy of the computation of income has been brought to our notice in which it is clearly depicted that depreciation as per books has been added back and depreciation as per the Income Tax Act has been reduced, which is the correct procedure to be followed in accounting as also being in consonance with the Act. Thus, on the face of it the amount considered by the Id. Pr. CIT has been duly taken care of in working out the taxable income and even in the copy of a return of income the same has been dealt with in item 13(e).

3.3. It is also noteworthy, as mentioned earlier, that one of the reasons for picking up the case for scrutiny was the 'reduction in profit due to ICDS'. Accordingly, the AO is seen to have given a specific query in this regard which has been placed before us in the paper book. This specific query deserves to be extracted:

“Q6 As per column No. 13(e) of Form 3CB it is seen that there is an adjustment made to the profit and loss for complying with the ICDS notified as per section 145(2) of the Act. Please give a detailed working of such adjustments made by you with proper documentary evidences and justification.”

3.4. The reply filed in this regard has also been placed before us, in which it is clear that the accounts working of depreciation actually chargeable under the profit and loss account has been correctly worked out and more importantly disclosed in the audit report filed along with the return of income. On this fact alone, the impugned order deserves to be quashed since the issue has been considered by the AO and dropped for any adverse treatment on account of the response filed by the assessee. It is interesting to note that the two items pertaining to the ICDS were issues on which the case was picked up for scrutiny and whereas on the ground that we have discussed above, the matter was dropped for considering any addition by the AO, the second ground pertaining to the ICDS-V (change in foreign exchange rates) at Rs. 51,54,082/- has been taken adverse note of and an addition has been made to that extent. This amply demonstrates the application of mind by the AO on the issues before him and reveals that he has duly considered the explanation offered by the assessee regarding the issue around ICDS-V.

4. Considering the totality of facts and circumstances, it is clear that the impugned order started off on an erroneous premise and did not duly take into consideration the details contained in the audit report filed along with the return of income and thereby ended up with an erroneous conclusion. The fact of the issue in question already having been considered by the AO further strengthens the arguments of the ld. A/R that the impugned order is not sustainable in the eyes of law and is accordingly quashed. Accordingly, the appellant succeeds with regard to his grievance regarding the impugned action u/s 263 of the Act.

5. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 7th August, 2024.

Sd/-
[Sanjay Garg]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 07.08.2024

Bidhan (P.S.)

Copy of the order forwarded to:

1. **DIC Fine Chemicals Pvt. Ltd., Transport Depot Road, Taratala Brace Bridge, Kolkata, West Bengal, 700088.**
2. **PCIT-2, Kolkata.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata