

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No. 5481/Del/2019
(Assessment Year: 2015-16)**

Rukmani Wires Pvt. Ltd, G-1087, DSIIDC Industrial Complex Area, New Delhi (Appellant) PAN:AACCR7552F	Vs. DCIT, Circle-1(2), New Delhi (Respondent)
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Assessee by : Shri Lalit Mohan, CA
Shri Parth Singhal, Adv

Revenue by: Shri Vivek Vardhan, Sr. DR

Date of Hearing 03/06/2024
Date of pronouncement 29/08/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.5481/Del/2019 for AY 2015-16, arises out of the order of the Commissioner of Income Tax (Appeals)-38, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 340/2018-19 dated 22.04.2019 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.11.2017 by the Assessing Officer, ACIT, Circle-21(2), New Delhi (hereinafter referred to as 'Id. AO').

2. Ground Nos. 2, 3 and 5 raised by the assessee were stated to be not pressed by the Id AR for which necessary endorsement was duly made in our file. Accordingly, the Ground Nos. 2, 3 and 5 are hereby dismissed as not pressed.

3. Ground No. 1, 4, 6 and 7 are challenging the levy of penalty u/s 271(1)(C) of the Act in the sum of Rs. 57,98,464/-.

4. We have heard the rival submissions and perused the material available on record. During the year under consideration, the assessee company was engaged in the business of manufacturing of MS wires, bright steel bars, trading in iron and steel, acting as brokerage and commission agents and deriving income thereon along with income from other sources. The original return of income was filed by the assessee company on 27.09.2015 declaring total taxable income of Rs. 11,000/- and carrying forward long-term capital loss of ₹2,81,47,885/-. This return was revised on 10.11.2017 with the same figures. The Id AO noticed that the assessee company was holding 65,450 equity shares of M/s Kansil Alloys Pvt Ltd, hereinafter called Investment Company" as on 20.02.2015 on that date the assessee company was offered to tender up 62500 equity shares held as investment in the "Investee Company" as per the buy back offer given by the investee company to its share holders at a price of Rs. 125.75 per share (at the book value of investee company as on 31/12/2014). This offer was accepted by the assessee company and it tendered 62,500 shares to the investee company for buy back@ 125.75 per share as per the Buy back offer". These shares were purchased in original allotment by the assessee company on 31.03.2008 at a price of Rs.310 per share (face Value Rs 10/- + Rs 300/- share premium] as per the law then in vogue. The shares tendered for buy back by the investee company were out of this allotment. The investee company completed all the legal requirements of the Companies Act, 2013. This transaction has resulted in a book loss of Rs. 1,15,15,625/- to the assessee. After indexation, this long term capital loss was increased to Rs. 2,81,47,885/- as shown in the ITR.

5. The Id AO show caused the assessee that as per section 10(34A) of the Act, Income arising to an assessee/ shareholder on buy back of shares is exempt and hence finally the loss of ₹2,81,47,885/- could not be allowed for assessment year 2015–16. Assessee responded as under:-

"RE NEGATIVE INCOME OF Rs 1,15,15,625/- SHOWN IN ITR:

In the ITR the assessee has filed its income u/s 46A of Income Tax Act [read before insertion of section 115QA]

<i>Cost of acquisition FY 2007-2008</i>	<i>Rs 1,93,75,000/-</i>
<i>Indexed cost of acquisition u/s 48 is</i> <i>1,93,75,000 x 1024/551</i>	<i>Rs 3,60,07,260/-</i>
<i>Sale price</i>	<i>Rs.78,59,375/-</i>
<i>Book Loss</i>	<i>Rs 1,15,15,625/-</i>
<i>Long Term loss after Indexation</i>	<i>Rs 2,81,47,885/-</i>

The assessee company filed its ITR to the best of its knowledge. Section 115QA was introduced recently w.e.f 01-06-2013, the assessee company had no knowledge of the same.

The assessee company has no objection if its income is assessed in the light of provisions of section 115QA read with Section 10(34A) as applicable in the current assessment year. Under Section 115QA read with Section 10(34A) the provisions of Section 46A and Section 18 does not apply to the assessee therefore the negative, income of Rs 1,15,15,625/- is exempt negative income U/s 10(34A) and same is not allowable to carried forward for adjustment with any other Income in any of the subsequent years.

Since in the case of the assessee company, the buyback of its investments by the investee company ve Kansil Alloys Pvt Ltd is covered under section 115QA read with section 10(34A) of the Act the provisions of. section 48 relating to indexation are not applicable.

6. The Id AO in the quantum assessment proceedings denied the benefit of carrying forward long-term capital loss of ₹2,81,47,885/- by

applying the provisions of section 115QA read with section 10(34A) of the Act and initiated the penalty proceedings u/s 271(1)(c) of the Act on the pretext that assessee had furnished inaccurate particulars of income. This quantum assessment was accepted by the assessee by not preferring any further appeal. Accordingly, the penalty was levied u/s 271(1)(c) of the Act in the sum of Rs 57,98,464/- vide order dated 25.03.2018 that assessee had furnished inaccurate particulars of income. This was confirmed by the Id CIT(A).

7. We have heard the rival submissions and perused the material available on record. It is pertinent to understand that assessee company has shown negative income of ₹1,15,15,625/- in its profit and loss account and seeking to carry forward long-term capital loss of ₹2,81,47,885/- in its income tax return. This loss arose on account of buy back of 62500 shares held by the assessee of Kansil Alloys Pvt Ltd at a price of ₹125.75 per share. These shares were bought by the assessee company on 31.03.2008 at a price of ₹310 per share thus resulting in a book loss of ₹1,15,15,625/-(62500 X 184.25) and long-term capital loss of ₹2,81,47,885/- after indexation which the company intended to carry forward. According to the Id AO, since the income arising to assessee/ shareholder on account of buy back of shares of the company as referred to in Section 115QA is exempt u/s 10(34A) of the Act, therefore, any loss arising thereon would also not be allowable to the assessee company. The assessee had pleaded ignorance of the new provision of section 115QA of the Act introduced in the statute w.e.f. 01.06.2013. This ignorance of law was not considered as an excuse by the lower authorities and penalty ultimately stood levied on the assessee u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income.

8. Let us now examine the applicability of the provisions of Section 115QA of the Act to the facts of the instant case. The provisions of Section 115QA of the Act seeks to tax the amount of distributed income by the company on buy back of unlisted company shares from a shareholder @20% of the distributed income. The explanation to Section 115QA of the Act, defines the expression "distributed income" as under:-

"distributed income" means the consideration paid by the company on buy-back of shares as reduced by [the amount, which was received by the company for issue of such shares, determined in the manner as may be prescribed].

9. In the instant case, the issue price is ₹310 per share. The consideration received i.e. the buyback price was ₹125.75 per share. Hence, it could be seen that the consideration paid to the shares is less than issue price. Hence, there cannot be any distribution of income. Accordingly, provisions of Section 115QA of the Act per se cannot be applied to the facts of the instant case.

10. Let us now see whether section 10(34A) of the Act could be made applicable to the instant case. For the sake of convenience, the provisions of section 10(34A) of the Act are reproduced below:-

"(34A) any income arising to an assessee, being a shareholder, on account of buy back of shares by the company as referred to in section 115QA"

11. Since, we have already held that provisions of section 115QA of the Act per se cannot be made applicable to the facts of the instant case, the provisions of section 10(34A) also consequentially would not have any application. Hence, the very basis of denial of carry forward long-term capital loss per se made by the Id AO is legally incorrect. Since the

assessee had not challenged the same in the quantum proceedings, the penalty u/s 271(1)(c) of the Act stood levied on the assessee. As we have already held that the denial of long-term capital loss per se is not sustainable in the eyes of law, there cannot be any alleged furnishing of inaccurate particulars thereon. In any event, this is only question of interpretation of law of the relevant provisions of the Act as all the details for determination of long-term capital loss either for its acceptance or denial are already available on record before the Id AO in the income tax computation sheet itself. Hence, it cannot be construed as furnishing of inaccurate particulars of income by the assessee. At best, it could be construed only as an incorrect claim. Hence, no penalty could be levied on an incorrect claim. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Reliance Petro Products Private Limited reported in 322 ITR 158 (SC) and Price Waterhouse Coopers (P) Ltd. Vs. CIT reported in 348 ITR 306 (SC).

12. In view of the aforesaid observations and respectfully following the judicial precedents relied upon herein above, we direct the Id AO to delete the penalty levied u/s 271(1)(c) of the Act. Accordingly, ground Nos. 1, 4, 6 and 7 raised by the assessee are hereby allowed.

13. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 29/08/2024.

-Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 29/08/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent

3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi