

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 667/Chd/2023
निर्धारण वर्ष / Assessment Year : 2012-13

The DCIT Circle-1, 1 Chandigarh	बनाम	Unipro Techno Infrastructure Pvt. Ltd. SCO 36, Madhya Marg, Sector 7-C, Chandigarh
स्थायी लेखा सं. / PAN NO: AABCU1732D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate and
Shri A.K. Sood, C.A
राजस्व की ओर से/ Revenue by : Smt. Kusum Bansal, CIT DR
सुनवाई की तारीख/Date of Hearing : 13/08/2024
उदघोषणा की तारीख/Date of Pronouncement : 30/08/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by Revenue against the order of the Ld. CIT(A)/NFAC, Delhi dt. 06/09/2023 pertaining to Assessment Year 2012-13.

2. In the present appeal, Revenue has raised the following grounds of appeal:

1. The Ld. CIT(A) has erred in facts and law in passing order u/s 250 solely on the basis of decision of the Hon'ble ITAT ignoring the fact that further appeal of the Department is still pending before the Hon'ble P&H High Court.
2. The appeal crave to amend or add any other grounds of appeal at the time of hearing.

3. Briefly the facts of the case are that the assessee company filed its return of income for impugned assessment year on 28/09/2012 declaring income of Rs. 1,05,18,430/- after claiming deduction of Rs. 3,97,31,584/- under section 80IA of the Act. Thereafter the assessee revised its return of income on 17/04/2013 declaring income of Rs. 45,93,490/- after claiming deduction of Rs. 4,56,56,527/- under section 80IA of the Act. The matter was selected for

scrutiny and notice under section 143(2) and 142(1) were issued and after calling for necessary information / documentation from the assessee, the assessment proceedings were completed and order under section 143(3) dt. 20/12/2014 was passed by the AO whereby the assessed income was determined at Rs. 59,31,383/-. Subsequently, the assessment records were called and examined and proceedings under section 263 were initiated by the Ld PCIT and the Ld. PCIT vide his order dt. 30/03/2017 set aside the assessment order to the file of the AO to pass fresh order in accordance with law. The assessee thereafter challenged the order of the Ld. Pr. CIT passed under section 263 before the Tribunal and the Tribunal vide its order dt. 01/12/2017 quashed the order passed by the Ld. Pr. CIT under section 263 dt. 30/03/2017. The AO, however in compliance to the order passed by the Ld. Pr. CIT under section 263, issued fresh notice to the assessee and passed the consequent order under section 143(3) r.w.s 263 dt. 19/12/2017 wherein the claim of deduction under section 80IA amounting to Rs 4,56,56,527/- was disallowed beside an addition of Rs. 67,38,310/- as per the original assessment order dt. 14/10/2013 were made and the assessed income was determined at Rs. 5,69,88,327/-.

4. Against the said order, the assessee carried the matter in appeal before the Ld. CIT(A) who has allowed the appeal of the assessee following the order of the Tribunal in ITA No. 867/Chd/2017 dt. 01/12/2017 wherein the order passed by the Ld. Pr. CIT under section 263 dt. 30/03/2017 was quashed.

5. Against the said order of the Ld. CIT(A), the Revenue is in appeal before us.

6. During the course of hearing, the Ld. CIT DR drawn our reference to the order passed by the AO under section 143(3) r.w.s 263 of the Act and in particular, reference was drawn to para 3.1 to 3.4 of the AO's order which read as under:

“3.1 During the year, the assessee company was awarded contracts by Himachal Pradesh Government, Irrigation and Public Health Department Division Thural Division and Dehra Division, of H.P. Government and Government of Uttarakhand Peyjal Nigam, Pauri and Rudraprayag. The projects were covered under the definition of “Work Contract”. However, the assessee company had claimed deduction u/s 80IA of I.T. Act, 1961 on the profits of the said contract. Accordingly as per the explanation to sub-section 13 of Section 80IA, deduction u/s 80IA of I.T. Act, 1961 was not allowable on the profits derived from these projects.

3.2 Accordingly, with the intent to make proper enquiry and thorough analysis on the issue discussed above, a questionnaire along with notices under sections 143(2) and 142(1) of the Income Tax Act, 1961 was issued to the assessee on 31/07/2017 asking it to provide a detailed note along with supporting documents regarding its claim of deduction u/s 80IA of Income Tax Act, 1961.

3.3 It is further seen that in this case, the Hon'ble Jurisdictional ITAT recently vide its order dated 06/02/2017 in the case of the assessee for the A.Y. 2011-12 in ITA No. 361/Chd/2016 had set aside the order of the Pr. CIT-1, Chandigarh passed u/s 263 of the Act for the A.Y. 2011-12. In this regard it is pertinent to mention here that the order of the Hon'ble ITAT was not accepted by the Department on merits & further appeal was not filed only due to low tax effect.

3.4 Similarly, during the assessment proceedings the assessee provided a copy of the order of the Hon'ble ITAT Chandigarh dated 01/12/2017 vide which the order u/s 263 for the year under consideration has been quashed. However, as stated above, the order of the Hon'ble ITAT was not accepted on merits for A.Y. 2011-12. On similar lines, the order of the Hon'ble ITAT is not acceptable on merits and the tax effect in the year under consideration is also above the prescribed monetary limits for filing appeal as per CBDT's instruction No. 21/2015. Accordingly, further appeal would be recommended in the year consideration. Since the order of the Hon'ble ITAT has not been received by the O/o Pr. CIT-1, Chandigarh till date and the likelihood of filing further appeal against the order of the Hon'ble ITAT is there (in view of the department's stand of not accepting the Hon'ble ITAT's decision for AY. 2011-12 on the same issue), accordingly the issue under consideration is being decided in order to keep the issue alive.”

6.1 It was accordingly submitted that in order to keep the issue alive and the fact that the Revenue has not accepted the order of the Tribunal and further appeal is pending before the Hon'ble Punjab & Haryana High Court, the Revenue has preferred the present appeal against the order so passed by the Ld. CIT(A).

7. In his submission, the Ld. AR submitted that firstly, the order under section 143(3) r.w.s. 263 has been passed by the AO basis the order of the Ld.

Pr. CIT under section 263 of the Act. It was submitted that where the Tribunal has quashed the order under section 263 so passed by the Ld. Pr. CIT, there is no basis for the AO to pass the consequential order under section 143(3) r.w.s. 263 of the Act as the same has become redundant and infructuous in view of quashing of the order under section 263 by the Tribunal. It was further submitted that it is not a case where the assessee company did not inform the AO about passing of the order by the Tribunal quashing the order passed by the Ld. Pr. CIT under section 263 of the Act and infact, copy of the order so passed by the Tribunal was submitted before the AO which he has infact acknowledged and referred to the assessment order. It was submitted that in spite of the AO seized of the fact that the order under section 263 has been quashed by the Tribunal, he continued with the proceedings and passed the consequent order under section 143(3) r.w.s 263 dt. 19/12/2017. It was further submitted that as far as the contention raised by the Ld CIT DR that the order so passed by the Tribunal quashing the order under section 263 has not been accepted by the Revenue and the appeal is pending before the Hon'ble High Court, it was submitted that there is no order which has been passed by the Hon'ble High Court either reversing or quashing the order so passed by the Tribunal and therefore, as on date, the order so passed by the Tribunal is valid and that the Ld. CIT(A) has rightly decided the matter in favour of the assessee company quashing the order so passed by the AO under section 143(3) r.w.s 263 of the Act. It was accordingly submitted that the appeal so filed by the Revenue be dismissed and the order of the Id CIT(A) be sustained.

8. We have heard the rival contentions and perused the material available on record. Admitted and undisputed facts as emerging from the records as well as from contentions raised by both the parties are that the AO has passed the consequent order u/s 143(3) r/w 263 dated 19/12/2017 pursuant to order passed by the Id PCIT u/s 263 dated 30/03/2017 and well before the passing of the said order, the Tribunal on appeal by the assessee

has quashed the order so passed by the Id PCIT vide its order dated 01/12/2017. Therefore, well before the date of passing of the order by the AO, the Tribunal has already quashed the order u/s 263 basis which the consequent proceedings were initiated by the AO. The order so passed by the Tribunal has neither been stayed nor reversed by the Hon'ble High Court and the matter as so stated by the Id CIT/DR is pending adjudication before the Hon'ble High Court. Once the matter is decided by the Hon'ble High Court, the findings and directions therein shall bind both the parties subject to right of further appeal as per law. However, as the matter stand today and in light of the undisputed facts as stated above, we donot see any infirmity in the order so passed by the Id CIT(A) quashing the order so passed by the AO by following the order passed by the Tribunal whereby it had allowed the assessee's appeal by quashing the order passed by the Id PCIT u/s 263.

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

Order pronounced in the open Court on 30/08/2024

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar