

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.91/Nag./2024
(Assessment Year : 2012-13)

ITA no.92/Nag./2024
(Assessment Year : 2013-14)

ITA no.93/Nag./2024
(Assessment Year : 2014-15)

ITA no.94/Nag./2024
(Assessment Year : 2015-16)

ITA no.95/Nag./2024
(Assessment Year : 2016-17)

ITA no.96/Nag./2024
(Assessment Year : 2017-18)

ITA no.97/Nag./2024
(Assessment Year : 2018-19)

Precision Component Hightech Ltd.
W-58, Hingna Road, MIDC Industrial Area
Hingna, Nagpur 440 016 PAN-AABCP8042P

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Central Circle-2(2), Nagpur

..... Respondent

Assessee by : Ms. Shikha Loya
Revenue by : Shri Kailash C. Kanojiya

Date of Hearing - 26/08/2024

Date of Order - 02/09/2024

ORDER

PER K.M. ROY, A.M.

The captioned appeals have been filed by the assessee challenging the impugned orders of even date 09/01/2024, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, [*learned CIT(A)*], for the assessment year 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19.

2. Since all these appeals pertain to the same assessee involving common issues arising out of identical set of facts and circumstances, except variation in figures, therefore, as a matter of convenience, these appeals were heard together and are being disposed off by way of this consolidated order. However, in order to understand the implication, it would be necessary to take note of the facts of one appeal. We are, accordingly, narrating the facts, as they appear in the appeal in ITA no.91/Nag./2024, for assessment year 2012-13, the decision of which shall mutatis mutandis apply to the appeals for other years as well.

ITA No.91/Nag./2024
Assessee's Appeal – A.Y. 2012-13

3. Following grounds have been raised by the assessee:–

"(1) That the assessment order passed by the learned Asst. Commissioner of Income Tax, Central Circle 2(2), Nagpur u/s. 143(3) r.w.s. 153C is bad in law and wrong on facts and the learned CIT(A) erred in confirming the same.

(2) That the learned CIT(A) erred in law and on facts in confirming the addition made in proceedings u/s. 153C in absence of incriminating documents relating to assessee unearthed as a result of search, when the case was already concluded i.e., unabated. The action of authorities is illegal and unjustified.

(3) That the learned CIT(A) erred in law and on facts in confirming the addition of AO in disregarding the returned loss of Rs.15,666/- derived on basis of audited financial statements and instead estimating net business profits at Rs.84,987/-. On the fact and circumstances of case, the learned CIT(A) erred in confirming the action of AO by summarily rejecting the submissions and case laws furnished during proceedings before him holding that the same are not applicable. The action of the authorities is unjustified.

(4) That the learned CIT(A) erred in law and on facts in confirming the action of AO in considering a common net profit margin on entire sales turnover for the year. On facts and circumstances of the case, the assessee was engaged in trading and manufacturing sales, having different profit margins for various products. The action of authorities of applying common net profit margin is hence based on conjectures and surmises and hence illogical.

(5) That the learned CIT(A) erred in law and on facts in disregarding the fact that the seized documents relied upon by AO to make the additions neither

belonged to assessee nor to the year under consideration and hence no addition could be made on basis of same. On the facts of case, the additions made by AO did not arise from the any seized documents relating to assessee and hence was void-ab-initio and the CIT(A) erred in confirming the same. The action of authorities is unjustified and liable to be quashed.

(6) That the learned CIT(A) erred in law and on facts in confirming the action of AO in charging interest u/s. 234B of the Income Tax Act. The interest charged is improper.

(7) That for any other ground with kind permission of your honour at the time of hearing of appeal."

4. Facts in Brief:- The assessee company is a manufacturer of cement Resin and cement capsules and engaged in trading sale activities. The books of account are regularly maintained and audited under the Companies Act as well as Income Tax Act and return of income is also filed regularly. The assessee filed its original return of income under section 139(1) of the Income Tax Act, 1961 ("*the Act*") on 27/09/2012, declaring total loss of ₹ (-) 15,666. A notice under section 153C of the Act was issued on 26/09/2019, and served upon the assessee. In compliance to the said notice the assessee filed its return of income for the year under consideration on 20/11/2019, declaring total loss of ₹ (-) 15,666.

5. During the course of search proceedings under section 132 of the Act, various incriminating documents related to the assessee were found and seized. Accordingly, order under section 127 of the Act was passed by the learned PCIT-2, Nagpur, on 07/06/2018, and the case was centralized with the DCIT/ACiT, Central Circle-2(2), Nagpur.

6. During the search and seizure action under section 132 of the Act, in the case of M/s.Techno Precision Engineers Pvt. Ltd., it was noticed that

documents relating to M/s.Precision Components Hightech Pvt. Ltd., were found and seized. The details of documents seized are as under:–

| <i>ANNEXURE B-2 (23)</i> | |
|--------------------------|--|
| <i>Page no.</i> | <i>Details</i> |
| <i>17 – 21</i> | <i>Loose sheet containing sale register of the assessee and its sister concern</i> |
| <i>1 – 6</i> | <i>Sheet containing the cost calculation of Resin Capsules manufactured by the assessee and its sister concern</i> |

7. On a perusal of the aforesaid seized documents, it was noticed that the assessee company's profit margin of resin capsules manufactured by the assessee company was @ 20% for each year i.e., for all the years under consideration. The Assessing Officer completed the assessment under section 143(3) r/w section 153C of the Act on 26/12/2019, determining total assessed income at ₹ 84,990. Aggrieved, the assessee filed appeal before the first appellate authority.

8. The learned CIT(A) confirmed the order passed by the Assessing Officer by rejecting the submissions made by the assessee. The assessee again being aggrieved is in appeal before the Tribunal.

9. The learned Authorised Representative drew our attention to Satisfaction Note under section 153C of the Act, a copy of which is placed at Page-1 of the Paper Book. She vehemently averted that no incriminating materials were found to initiate proceedings under section 153C of the Act. She accordingly prayed that the proceedings be quashed. She also submitted that the cost calculation dated 28/04/2017, cannot be pressed into action for all seven years.

10. On the other hand, the learned Departmental Representative submitted that satisfaction has been recorded on correct lines and the assessment need not be tampered with. He further averted that estimated profit @ 20% has been pressed down to 16.67% in the assessment order. So, the assessee does not have any instance to be aggrieved.

11. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. It is deemed pertinent to reproduce the satisfaction note in verbatim.

"Satisfaction note

M/s. Precision Components Hightech Pvt. Ltd. PAN- AABCP8042P

Reason recorded for initiation of provision U/s 153C of the Income Tax Act, 1961 in the case of M/s. Precision Components Hightech Pvt. Ltd. A.Y.2012-13 to 2017-18.

During the search and seizure action u/s132 of the Income Tax Act, 1961 in the case of Shri Ramsharan Gupta Group of Cases. Nagpur search initiated on 26.09.2017 completed on 21.11.2017 document titled as sales register (Page 17 to 21 of B-2(23)) were found and seized from premises M/s Techno Precision Engg. Pvt Ltd, W-135 Hingna, MIDC, Industrial Estate Nagpur containing sales figure of group companies like M/s Techno Precision Engg. Pvt Ltd, M/s support Technologies. M/s Precision Components Hitech Pvt. Ltd., M/s. Mine Aid Product Pvt Ltd etc. These group companies are controlled by the family members of Gupta group and are involved in the production of the Resin and Cement Capsules. The multiple companies have been floated for the tender purposes. The same is supported by incriminating material seized and inventoried as A1-31. Placed on record.

The page no 1 to 6 of the seized document Annexure B-2(23), containing pages from 1 to 24 is related to cost calculation of Resin Capsule manufactured. Relevant documents placed on record. On perusal of the same considering the nature of business of the companies and material and evidences available on the record it is clear that the Net Profit earned by the company should not less than 20% and they accordingly quote the tender. The undisclosed income of Company must be determined on the basis of 20% of Net Profit reduced by the Net Profit returned by the assessee.

3. In the view of the reasons discussed above, I am satisfied that the document seized in the case of M/s Techno Precision Engg. Pvt Ltd. pertains to M/s Precision Components Hitech Pvt. Ltd.. Hence, it is a fit case for

assessment u/s 153C r.w.s 153A r.w.s 143(3) of the Income Tax Act, 1961. Accordingly notice u/s 153C is issued to the assessee."

12. The following are the glaring infirmities clearly visible viz. (i) Five concerns have been named in the Satisfaction Note. It is not clear as to how the documents pertain to the assessee; (ii) The said documents are not incriminating as per the satisfaction note since nowhere the name of the assessee is there. If that be so, how addition can be perpetrated against such documents. It is surprising to note that no addition has been made against the documents marked as "incriminating" Annexure B-2(23); (iii) The document dated 28/04/2017, is only an estimate of profit provided the price is quoted within the certain range. Nowhere it has been brought on record that actual price charged for resin capsules was within the same price range; (iv) Similar orders were passed verbatim for the other entities namely Techno Precision Engineers Ltd. and Support Technologies Ltd. The same document is pertaining to multiple entities as per the Assessing Officer who is same for all the assessees. We ask a question to ourselves as to whether it is at all possible? Abject non-application of mind and brazen untenable stand of the Assessing Officer is displayed; (v) An estimated profitability statement is held to be constant for seven years ignoring inflation. Then why for purpose of computing long term capital gain cost inflation index changes every year as enshrined in section 48 of the Act. The Satisfaction Note drawn on a combined basis without any specific reference to any year is baseless and unsustainable and defies common logic. The bedrock of usurpation of jurisdiction under section 153C of the Act is missing palpably in the instant case since these documents are not conclusively established to pertain with the assessee nor do the same have a bearing on the determination of total

income for the respective years. The year could then be subjected to action under section 154C of the Act only when the assessment is likely to be influenced or impacted by the material discovered. Section 153C of the Act neither mandates nor emerges a mechanical or an en-blank exercise of power. Hence, the assessment order is unsustainable on legal grounds. Accordingly, grounds no.1 and 2, raised by the assessee are allowed. Since the assessee succeeds in in successfully assailing the initial ground of usurpation of jurisdiction, we need not delve into the other grounds on merit.

13. In the result, assessee's appeal is allowed as above for all the seven years.

Order pronounced in the open Court on 02/09/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 02/09/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur