

**आयकर अपीलीय अधिकरण, कटक न्यायापीठ, कटक**

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND**

**SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**आयकर अपील सं/ITA No.253/CTK/2024**

**(निर्धारण वर्ष / Assessment Year : 2020-2021)**

Posco India Private Limited, Unit No.DCB 903, 9 <sup>th</sup> Floor, DLF Cybercity, IDCO Info Park, Chandaka Industrial Estate, Patia Bhubaneswar-751024	Vs	DCIT, Circle-1(1), Bhubaneswar
<b>PAN No. :AADCP 6735 B</b>		

<b>(अपीलार्थी /Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
निर्धारिती की ओर से /Assessee by	:	Shri B.K.Mahapatra & A.K.Sabat, CAs
राजस्व की ओर से /Revenue by	:	Shri Sanjay Kumar, CIT-DR
सुनवाई की तारीख / <b>Date of Hearing</b>	:	03/09/2024
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	03/09/2024

**आदेश / O R D E R**

**Per Bench :**

This is an appeal filed by the assessee against the order of the Id. PCIT, Bhubaneswar-1, passed in DIN & Order No.ITBA/REV/F/REV5/2023-24/1063289089(1) for the assessment year 2020-2021, on the following grounds of appeal :-

- That on the facts and in the circumstances the case, the order passed on 24.03.2024 u/s.263 of the Income Tax Act, 1961 [in short "I.T.Act "I "Act"] of the Learned Principal Commissioner of Income Tax-I, Bhubaneswar [in short "PCIT"] [vide DIN & Order No :ITBA/REV/F/REV5/2023-24/1063289089(1)}, in directing the Learned Assessing Officer [in short "AO"] to examine the issue is against the principle of natural justice, contrary to facts, arbitrary and erroneous and bad, both in the eye of law and on facts and legally untenable.*
- That on the facts and in the circumstances the case, the. notice dated 05.02.2024 u/s.263 of the Act and the assuming of jurisdiction u/s.263 of the Act by the learned PCIT is contrary to facts, arbitrary, erroneous and bad, both in the eye of law and on facts and legally untenable.*

3. *That the Order dated 24.03.2024 of the learned PCIT u/s. 263 of the Act holding that the Order of the AO is erroneous in so far it is prejudicial to the interest of the revenue is arbitrary, erroneous and bad, both in the eye of law and on facts and legally untenable.*
  4. *That the order dated 20.09.2022 u/s.143(3) of the Act by the Learned Assessing Officer is neither erroneous nor prejudicial to the interest of revenue and therefore the notice and order u/s.263 of the Act is arbitrary, erroneous and bad, both in the eye of law and on facts and legally untenable.*
  5. *In view of the jurisdictional Income Tax Appellate Tribunal, Cuttack Bench, Cuttack Orders in the case of the assessee holding that the interest on fixed deposits being not taxable, the order dated 24.03.2024 of the learned PCIT directing the learned AO to "consider the receipt of interest in similar fashion and give accordingly" is unwarranted, unjustified, bad in law, and legally untenable.*
  6. *On the issue of adjustment of brought forward business losses, the same being arising out of the issue of the aforesaid interests from Bank deposits, the notice u/s.263 and the order dated 24.3.2024 u/s. 263 of the Act by holding that the order dated 20.09.2022 is erroneous in so far it is prejudicial to the interest of the revenue is unwarranted, unjustified, bad in law, and legally untenable and the direction of remitting back it to the learned AO for his examination is unwarranted, unjustified, bad in law, and legally untenable.*
  7. *That without prejudice to the Grounds 2 to 6 above, in the facts and on the circumstances of the case, the "interest" being not taxable as income as has been held by the Jurisdictional Income Tax Appellate Tribunal, Cuttack Bench, Cuttack IT A T and CIT(Appeal) in the past years, the Order of the learned PCIT u/s.263 of the Act dated 24.3.2024 in directing the learned AO to examine the issue is unwarranted, unjustified, arbitrary, erroneous, and bad, both in the eye of law and on facts and legally untenable.*
  8. *That the appellant craves leave to add, supplement, modify the ground here-in-above before or at the time of hearing of the appeal.*
2. Brief facts of the case are that the assessee company engaged in manufacturing of steel rolled products and places. The return of income was filed on 15.02.2021 disclosing total income at Rs.15,50,04,960/- after

claiming set off of brought forward business loss and depreciation of Rs.2,40,17,457/-. The assessment was completed vide order dated 20.09.2022 determining total income at Rs.25,83,26,990/- by making various additions and adjustment to the set off of brought forward business loss and depreciation claimed by the assessee. Thereafter learned PCIT-1, Bhubaneswar found the assessment order as erroneous and prejudicial to the interest of revenue and revised the same wherein two directions were given to the AO which are under :-

- i) To disallow the business loss of Rs.1,47,26,425/- pertaining to A.Y.2018-2019 as claimed by the assessee and allowed by the AO; and*
- ii) To reduce the interest income from the fixed assets based on the decision of the ITAT Cuttack Bench in assessee's own case for the A.Y.2015-2016.*

3. Before us, Id. AR of the assessee submitted that the issue of brought forward loss and depreciation of preceding years cannot be treated held as erroneous and prejudicial to the interest of revenue since in those years appeals were pending before the various appellate forums and since the issue was not attained finality, the amount of loss of depreciation, if any, remained could not be ascertained at this stage. This being so, the assessee has claimed the set off of brought forward loss and depreciation in terms of the returns of income filed for the respective years and, therefore, this issue cannot be held as erroneous or prejudicial to the interest of revenue.

4. With regard to the other issue of interest income, it is submitted by the Id. AR that this issue has already been settled by this Bench of the

Tribunal in favour of the assessee in assessee's own case for the preceding assessment year 2015-2016, wherein the Bench has already held the interest income as not taxable in the hands of the assessee company. Therefore, the direction given by the Id. Pr.CIT are contrary to the settled position in the case of the assessee and, thus, such direction deserves to be struck down.

5. On the other hand, Id.CIT-DR supported the order of the Id. Pr.CIT-1, Bhubaneswar and submitted that when the preceding assessments were completed u/s.143(3) of the Act by making various additions and after considering those additions, there might be no loss remained for that year or the loss returned by the assessee would be reduced to large extent, therefore, the order of the AO in allowing brought forward loss as per its returns of income for those years is an error which prejudice the interest of revenue also. He, therefore, prayed for the confirmation of the order of the Id. Pr.CIT.

6. We have considered the rival submissions and perused the material available on record. It is seen that the assessments of preceding assessment years were completed u/s.143(3) of the Act, wherein the additions/disallowances were made as a result of which the business losses claimed by the assessee were reduced substantially. In the assessment year 2018-2019 also the position was the same where the loss claimed by the assessee was reduced while completing the assessment but the AO has allowed the set off of loss as per assessee's return of income for that year which is an error. Further before us, no

details have been filed by the either party with respect to the current position of the pending litigation and the resultant figure of the income finally computed after giving effect to the orders of the appellate authority. Under these circumstances, we are not able to precisely comment what could be the actual amount of brought forward loss which needs to be reduced from the total income computed for the year under appeal. However, we are in agreement with the observations of the Id. Pr.CIT that the AO has wrongly allowed the set off of brought forward loss of Rs.1,47,26,426/- pertaining to A.Y.2018-2019 as claimed in the return of income. Therefore, the order of the AO is erroneous as well as prejudicial to the interest of revenue to extent of allowability of correct amount of brought forward loss and we are in agreement with Id. Pr.CIT on this issue.

7. With regard to the second direction given by the Id. Pr.CIT for reducing the interest income from the cost of the asset, we observe that in the assessment order at page 14 in para 5.10, the AO has in categorical term has observed that the assessee has disposed off the land and cancelled the license of the leasehold land on which the company was planning to construct the steel plant in Odisha. The said observations of the AO as contained in para 5.10 of the assessment order are reproduced as under :-

*5.10 Further on perusal of financial statements submitted by the assessee, it is noticed that in Note No.-24, the assessee has noted that "In March 2018, license of leasehold land on which company was planning to construct a steel plant was cancelled". The relevant screen shot of note NO.24 of financial statements is placed under:-*

#### 24 Impairment of assets

*In March 2018 license of leasehold land on which company was planning to construct a steel plant was cancelled, Based on the impairment assessment carried out by a independent agency, the Company recognised impairment loss of Rs.2,368,807.56 thousand, equivalent to the carrying amount of all assets (in connection to steal plant) in the statement of profit and loss account as "Impairment losses"*

*During the previous year. building possession occupied by Company was handed over to another company for Rs.117,000 thousand and thus company has no future liability with regard to this building. Accordingly impairment loss recognised earlier was reversed as per Ind As 36 - Impairment of assets. The excess of sale value over impairment reversal was shown as other income.*

8. Since after cancellation of the leasehold land acquired for installation of the steel plant in Odisha stood cancelled and necessary adjustment has already been made in the books of accounts at the end of the year under appeal, there was no asset remained in Odisha project. Under these circumstances, we are unable to understand as to how the current year's interest income could be reduced from the cost of asset from the Odisha project. This being so, the direction given by the Id. Pr.CIT in this regard are contrary to the facts of the case and thus the assessment order cannot be held as erroneous as well as prejudicial to the interest of revenue on this account.

9. With this discussion, the order of the Id. Pr.CIT is modified with the direction that on account of allowability of brought forward loss and depreciation and held as the assessment order is erroneous and prejudicial to the interest of revenue, however, other direction with regard to the interest income is struck down. Thus, the order of the Id. Pr.CIT

passed u/s.263 of the Act stands modified in view of the direction given hereinabove.

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

Order dictated and pronounced in the open court on 03/09/2024.

**Sd/-  
(GEORGE MATHAN)**

**न्यायिक सदस्य / JUDICIAL MEMBER**

**Sd/-  
(MANISH AGARWAL)**

**लेखा सदस्य/ ACCOUNTANT MEMBER**

**कटक** Cuttack; दिनांक Dated 03/09/2024

*Prakash Kumar Mishra, Sr.P.S.*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant-  
Posco India Private Limited,  
Unit No.DCB 903, 9<sup>th</sup> Floor,  
DLF Cybercity, IDCO Info Park,  
Chandaka Industrial Estate, Patia  
Bhubaneswar-751024
2. प्रत्यर्थी / The Respondent-  
DCIT, Circle-1(1), Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कटक** / DR,  
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**आदेशानुसार/ BY ORDER,**

**(Assistant Registrar)**

**आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack**