

IN THE INCOME TAX APPELLATE TRIBUNAL

"F" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 7226/MUM/2005

(Assessment Year : 1997-98)

DCIT – 3(1)

Room No.607,

6th Floor, Aayakar Bhavan,

M.K. Road, Mumbai – 400020

Maharashtra

..... Appellant

v/s

Bajaj Auto Limited,

Bajaj Bhawan, 226-Nariman Point,

Mumbai – 400021

PAN : AAACB3370K

..... Respondent

ITA No. 7341/MUM/2005

(Assessment Year : 1997-98)

Bajaj Auto Limited,

Bajaj Bhawan, 226-Nariman Point,

Mumbai – 400021

..... Appellant

PAN : AAACB3370K

v/s

DCIT – 3(1)

Room No.607,

6th Floor, Aayakar Bhavan,

M.K. Road, Mumbai – 400020

Maharashtra

..... Respondent

Assessee by :Ms. Vasanti Patela/wShri Charu Mittal and
Shri Kirit Kamdar

Revenue by :Shri Sunil A. Umap, CIT-DR

Date of Hearing – 12/11/2024

Date of Order - 12/11/2024

ORDER

The present cross-appeal has been filed by the assessee and the Revenue against the impugned order dated 26/09/2005, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-XXVII, Mumbai, [*learned CIT(A)*], for the assessment year 1997-98.

2. In its appeal, the Revenue has raised the following grounds: -

"On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition made by the A.O. By withdrawal of excess depreciation claimed by the assessee company amounting to Rs.27,38,017/-"

"On the facts and in the circumstances of the case and in law, the CIT(A) has ignored the value of aircraft taken in Wealth Tax assessment for 1995-96 at Rs.1,70,00,000/-. The depreciation was allowed at WDV Rs.3,06,70,085/- as against WDVRs.1,70,00,000/-."

"The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."

3. While the assessee has raised the following grounds in its appeal: -

"1. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the validity of the re-opening under section 148 of the Act.

2. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in holding that the levy of interest under section 234D is not an appellable issue.

3. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in following the findings given in the appellate order dated 11" March, 2005 in appeal no. CIT(A) XXVII / DCIT Cir. 3(1)/IT9/04-05 in respect of the following issues:

(a) In declining to pass a judgement in respect of the action of the Assessing Officer in including excise duty and custom duty while valuing closing stock but allowing the same under section 43B, on the ground that the issue is academic.

(b) In upholding the action of the Assessing Officer in including a sum of Rs.23,71,572/- being sundry credit balances written back under the provisions of section 41(1) of the Act.

(c) In holding that miscellaneous receipts amounting to Rs.50,78,91,907/- comprising of scrap sales, miscellaneous scrap sales and sundry sales, ought to be included in 'total turnover' for the purpose of computing deduction under section 80HHC.

(d) In rejecting the appellant's claim that for the purpose of computation of 'indirect costs' in respect of traded goods exported as per section 80HHC(3)(b), those costs which have been incurred for the purpose of manufacturing, having no connection with the trading activity carried on by the appellant, ought to be excluded.

(e) The appellant submits that 'other expenses' included items that had not been allowed as a deduction in the assessment order and accordingly, in any case, the said items ought not to have been included as part of the indirect costs while computing 'indirect costs' attributable to the export of trading goods for the purpose of deduction under section 80HHC.

(f) The appellant submits that while computing 'indirect costs' attributable to the export of trading goods for the purpose of deduction under section 80HHC, the Assessing Officer ought to be directed to exclude expenses attributable to other income and export incentives estimated at 10% thereof.

(g) In upholding the action of the Assessing Officer and holding that eligible profits for the purpose of deduction under sections 80HH and 80-IA have to be computed after excluding the following incomes:

Particulars	Plant II (Deduction u/s. 80HH)	Plant III (Deduction u/s. 80-IA)
Other Miscellaneous Receipts	5,04,772	46,23,581
Duty Draw Back/Cash Assistance	2,360	17,66,412
Sundry Credit Balances appropriated	29,419	17,627
Interest	14,673	1,10,074

(h) The appellant submits that if at all the aforesaid items are to be excluded then only the net interest and the net cost of raw materials, net of duty drawback received ought to be taken into account while computing the profits of the eligible undertakings. Similarly, recovery of cost through miscellaneous receipts ought to be taken into account while computing profits of the eligible undertakings.

(i) The appellant submits that just as only income 'derived from' the undertaking is included in the profits for the purpose of computing deduction under sections 80HH and 80-IA, then, the same norm should also apply to expenditure and accordingly, expenditure which has no direct nexus with the undertaking ought not to be considered."

4. At the outset, we noticed that the only addition made by the Assessing Officer ("AO") vide order dated 31/03/2005 passed under section 143(3) read with section 147 was on account of an excess claim of depreciation on aircraft amounting to Rs.27,38,017. The learned CIT(A), vide impugned order, directed the AO to delete the addition of Rs.27,38,917 in respect of the excess claim of depreciation on aircraft. Being aggrieved, the Revenue is in appeal before us and has raised the afore-mentioned grounds.

5. Since the only addition under dispute in Revenue's appeal is amounting to Rs.27,38,017 on account of the excess claim of depreciation on aircraft, it is but obvious that the tax effect relating to the grounds of appeal raised by the Revenue is below the monetary limit of Rs.60 lakh, applicable to appeals before the Tribunal, as per CBDT Circular no.9 of 2024, dated 17/09/2024. In this regard, the learned Authorised Representative ("*learned AR*") submitted that none of the exceptions as provided in the aforesaid CBDT Circular would apply to Revenue's appeal and the Revenue's appeal being covered under the aforesaid Circular is not maintainable.

6. The learned Departmental Representative could not produce any material before us to controvert the submission so made on behalf of the assessee.

7. Having considered the submissions and perused the material available on record, we are of the view that the tax effect relating to the grounds of appeal raised by the Revenue in the present appeal is below the monetary limit of Rs. 60 lakh as per CBDT Circular no.9 of 2024, dated 17/09/2024. In

view of the aforesaid, Revenue's appeal deserves to be dismissed. However, the Revenue is granted the liberty to seek recall of this order if, at a later point in time, it is found that the appeal falls under any of the exceptions provided in the Circular referred to above.

8. During the hearing, the learned AR submitted that if the Revenue's appeal is dismissed then the assessee will not press the grounds raised by it in its appeal. Since we have dismissed the Revenue's appeal, therefore, considering the submissions of the learned AR, the grounds raised by the assessee in its appeal are dismissed as not pressed. However, if subsequently the Revenue's appeal is recalled on the basis that the Revenue's appeal falls under any of the exceptions provided in the Circular referred to above, in such a case we direct that the assessee's appeal be also restored in the interest of justice.

9. In the result, the present cross-appeal filed by the assessee and the Revenue are dismissed.

Order pronounced in the open Court on 12/11/2024

Sd/-
OM PRAKASHKANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 12/11/2024
Prabhat

Copy of the order forwarded to:

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

By Order

Assistant Registrar
ITAT, Mumbai