

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
(VIRTUAL HEARING AT BANGALORE)**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA Nos.268 & 269/COCH/2023
Assessment year : 2005-06

M/s. Skyline E Tech, 41/349B, Rajaji Road, Kochi – 682 035. PAN: AALFS 6538G	Vs.	The Assistant Commissioner of Income Tax, Circle 2(2), Kochi.
APPELLANT		RESPONDENT

Appellant by	:	Shri Radhesh Bhatt, CA
Respondent by	:	Shri Sanjit Kumar Das, CIT(DR)

Date of hearing	:	03.12.2024
Date of Pronouncement	:	03.01.2025

ORDER

Per Prashant Maharishi, Vice President

1. ITA No.268/Coch/2023 is filed by M/s. Skyline E Tech (the assessee/appellant) for the assessment year 2005-06 against the appellate order passed by the National Faceless Appeal Centre, Delhi (NFAC) [ld. CIT(A)] dated 16.2.2023 wherein appeal filed by assessee against the order u/s. 143(3) r.w.s. 263 of the Income-tax Act, 1961 (the Act) dated 26.12.2011 passed by the ACIT, Circle 2(2), Ernakulam [ld. AO] was partly allowed.

2. The assessee is aggrieved with the same and has preferred this appeal raising the following grounds: -

- “1. The order of the CIT(A), National Faceless Appeal Centre (NFAC) issued under section 250 of the Income Tax Act discussing the grounds relating to valuation of closing stock, disallowance of section 47 (XIII) and claim of depreciation is erroneous on facts and in law.
- 2.(i) Whether on facts CIT(A) was right in disallowing the claim u/s.47 (XIII) of the IT Act, since the appellant had complied with all the requirements of the said section.
- (ii) Whether the CIT(A) went wrong in disregarding the evidences produced by the appellant under the genuine belief that these records clearly establish beyond doubt that all the conditions have been complied with.
- 3.(i) Whether the CIT(A) erred in increasing the value of closing stock by Rs.57,00,000/- as against the valuation done at cost amounting to Rs. 57,000/-
- (ii) Whether CIT(A) went wrong in adopting the closing stock of intangible software at the market value of Rs. 57,00,000/-over and above the cost adopted at Rs.57,000/-.
- (iii) Whether CIT(A) ought to have appreciated that in the IT assessment of the successor company depreciation on Rs. 57,00,000/- was not allowed by the ITAT for the reason that its developmental cost is allowed in the IT assessment of the Firm and if Rs. 57,00,000/- is taken as closing stock the appellant will neither get it allowed in the hands of the Firm or the successor Company (Copy of ITAT order enclosed).
4. Whether the Learned CIT(A) is right in denying proportionate depreciation claimed by appellant in terms of 5th proviso to Sec.32 of the Act. The AO/ CIT(A) ought to have found on facts that the depreciation reckoned as per the statement furnished before the AO/CIT-A was only upto the period of transfer as is evident from the said statement itself and hence is in compliance with the proviso 5 to Sec. 32(1) of the Act.

5. For these and other grounds that may be further adduced at the time of hearing, the order of the CIT(A) requires to be modified.”
3. The brief facts of the case show that assessee is engaged in the business of development and sale of software as partnership firm, whose assessment was completed u/s. 143(3) r.w.s. 147 of the Act on 26.12.2008 at a net loss of Rs.22,90,188. The above assessment was revised by the CIT-II, Kochi by order u/s. 263 of the Act dated 03.3.2011 setting aside assessment already passed u/s. 143(3) r.w.s. 147 dated 26.12.2008 for redoing the same. Subsequently notices were issued u/s. 143(2) on 27.11.2011.
4. During the assessment proceedings it was found that assessee firm over the years had developed a software called ‘Quadra software’ and for this AY this was valued at Rs.57 lakhs. Such valuation was divided by the partners, credited to their capital account by debiting the software account. As the assessee has incurred entire expenses for development of software which has been debited to P&L account for various years and claimed as an expenditure, the value of software of Rs.57 lakhs was charged to tax by the ld. AO as income of the firm.
5. As the assessee has incurred expenditure for development of software and has claimed expenditure as revenue item and ultimately the software was revalued, capitalised and transferred to another company, the expenses claimed by assessee as software development work-in-progress of Rs.21,03,579 was disallowed. Further depreciation amounting to Rs.94,086 was disallowed, as the assessee failed to show

the applicability of 5th proviso to section 32(1) of the Act. Consequently, assessment order was passed on 26.12.2011 determining total income of assessee at Rs.56,07,477.

6. The assessee preferred appeal before the Id. CIT(A), who passed order on 16.2.2023 partly allowing the appeal of assessee. He confirmed the addition of Rs.57 lakhs, deleted disallowance of software development expenses of Rs.21,03,579 and confirmed disallowance of depreciation of Rs.94,086. Therefore, assessee is in appeal before us.
7. The Id. AR contesting the appeal of the assessee filed a PB containing 105 pages and written submissions placed at page 1-5 of PB.
8. The Id. DR vehemently supported the orders of Id. lower authorities.
9. Ground nos. 1 & 2 are general in nature and therefore dismissed.
10. Ground 3 is with regard to addition of Rs.57 lakhs. The facts show that assessee has developed a software inhouse by the name 'Quadra' software which is used in building construction by builders & real estate developers. Assessee developed it 'in – house' and expenditure for such development was recovered from the customer for whom it was developed. AS the software found acceptance, the assessee revalued the software at a value of Rs.57 lakhs which was credited to the capital account of the partners. The Id. AO added the same to the total income of assessee. Same was also confirmed by the Id. CIT(A). We find that there is neither transfer of software nor any sale of the same. It is merely a book entry wherein software is accounted for in

the books of account by assigning an estimated value of Rs.57 lakhs and to match the balance sheet, capital account of the partners were credited to this extent in that profit sharing ratio. There is neither reorganisation nor reconstitution of the partnership firm for the impugned assessment year. A person cannot make a profit by revaluing his assets without any real income accruing to him. The provisions of transfer do not attract the above transaction, the provisions of section 47 also do not apply to the facts of the case. It is also important that the income of the assessee is chargeable to tax under the provision of section 4 & 5 of The Act. Whether the assessee has received, or any income accrued to the assessee is not shown by the lower authorities, it is also not shown that there is any transfer of assets in the form of software. It is also not the case of revenue that when the assessee has sold that software it has claimed Rs 57 lakhs as cost of the software. Thus, we reverse the orders of the Id. lower authorities and direct the Id. AO to delete the addition of Rs 57 lakhs. In view of this, ground no.3 of the appeal is allowed.

11. Ground no.4 is with respect to disallowance of depreciation of Rs.94,086. The only reason why the depreciation allowance was confirmed by the Id. lower authorities is failure on the part of assessee to submit the requisite details. The Id. AR has categorically stated that in this case depreciation is considered till the date of transfer i.e., upto 31.12.2004 and such details are furnished to the Id. lower authorities. Before us also at page 105 assessee has furnished such details. On verification of the same, it is found that allowance of depreciation is

claimed only for part of the year in terms of 5th proviso to section 32(1) of the Act. The Id. AO is directed to verify the same and grant depreciation in accordance with law. Accordingly ground no. 4 of assessee is allowed with above direction.

12. Thus, ITA No.268/Coch/2023 for AY 2005-06 is partly allowed.
13. ITA No.269/Coch/2023 is filed by assessee against the appellate order passed by the Id. CIT(A) dated 16.2.2023 wherein appeal filed by assessee against the reassessment order passed u/s. 143(3) r.w.s. 147 of the Act dated 26.12.2008 passed by DCIT, Circle 2(2), Ernakulam was dismissed.
14. Assessee is aggrieved with the same and has preferred the appeal challenging the reopening of the assessment and disallowance u/s. 43B.
15. The brief facts of the case show that assessee is a partnership firm whose assessment on returned income of total loss of Rs.29,22,630 was reopened. In reassessment it was found that assessee has outstanding gratuity of Rs.2,26,052, sales tax of Rs.3,65,230 and leave encashment of Rs.41,160 which were not paid before the due date of filing of return of income and hence the same are not allowable in terms of provisions of section 43B of the Act. The reassessment order was passed on 26.12.2018 by making addition of Rs.6,32,442 determining total loss of assessee at Rs.22,90,188.
16. The assessee aggrieved with the reassessment order preferred appeal before Id. CIT(A) wherein it challenged the reopening of the

assessment on account of gratuity of Rs.2,26,052 and leave encashment expenditure of Rs.41,160. The Id. CIT(A) upheld the reopening of assessment and confirmed the addition/disallowance u/s. 43B of the Act. The assessee is aggrieved and is in appeal before us.

17. The Id. AR challenged the action of reopening of assessment as well as on merits, filed a paperbook containing 25 pages which also include detailed written submissions. It was contested that reopening is invalid.
18. The Id. DR supported the order of lower authorities.
19. We have carefully considered the rival contentions and perused the orders of Id. lower authorities. The impugned assessment year is 2005-06. The assessee filed its return of income on 26.5.2006. Subsequently vide notice u/s. 148 of the Act dated 10.7.2007 reopening of the assessment was made for the reason that the balance sheet and P&L account did not comply with generally accepted accounting principles and further these accounts have neither been audited or reviewed by the auditor. All these were communicated to the assessee on 21.11.2008. Notice u/s. 143(2) was also issued. Based on these reasons, no addition was made on account of the reason recorded by the Id. AO but disallowance was made u/s. 43B of the Act. As per the reasons recorded, we do not find any mention of or reference to the provisions of section 43B of the Act. Therefore, apparently the reasons recorded do not show any escapement of income in pursuance of provisions of section 43B of the Act. Further reasons have contradictions that in

para 2 reference to the audit report is made and further in para 3 it is categorically stated that accounts have not been audited or reviewed by the auditor. Thus, We do not find any reason to uphold the reopening of assessment. The Id. CIT(A) has not given any finding on these issues, but has confirmed the reopening without giving any reasons. The appellate order passed without reasons is not an order. Even otherwise, there is no addition made on the grounds on which reopening of assessment is made and further the addition in the reassessment order is made on the issues for which reasons of reopening does not mention. Accordingly, we quash the reassessment order passed by the Id. AO. Accordingly ground no.2 of the appeal is allowed.

20. As we have already quashed the reassessment proceedings, the other grounds on merits are not required to be adjudicated and hence these are dismissed.
21. There is also another aspect to both the appeals. Even subsequent appeal in ITA No.269/Coch/2023 is against reopening of assessment u/s. 147 of the Act. Chronology of events show as under:-

Return of income filed on	26.05.2006
Notice u/s. 148 issued on	10.07.2007
Reassessment order passed u/s. 143(3) r.w.s. 147 of the Act	26.12.2008
Revisionary proceedings u/s. 263 resulted into order setting aside order u/s. 147 dated 26.12.2008	03.03.2011
Order u/s. 143(3) r.w.s. 263 passed by AO	26.12.2011

Whether issues involved in 263 order are connected to reassessment proceedings	No.
Order which could have been revised is order u/s. 143(3) r.w.s. 147 of the Act dated	26.12.2008
If reassessment is quashed, revisionary proceedings will also become infructuous	Yes.

22. Hence, as reassessment order is quashed, subsequent order u/s. 143(3) r.w.s. 263 of the Act is also quashed.

23. In the result, both the appeals of the assessee are allowed.

Pronounced in the open court on this 03rd day of January, 2025.

Sd/-

(KESHAV DUBEY)
JUDICIAL MEMBER

Bangalore,
Dated, the 03rd January, 2025.

/Desai S Murthy /

Sd/-

(PRASHANT MAHARISHI)
VICE PRESIDENT

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT

By order

Assistant Registrar
ITAT, Cochin.