

आयकर अपीलीय अधिकरण, कोलकाता पीठ "डी", कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH: KOLKATA

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 2493/Kol/2024
Assessment Year: 2019-2020

Satyam Smelters Pvt. Ltd. (PAN: AAICS 3549 K)	Vs.	DCIT, Central Circle-3(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	08.05.2025
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	22 .05.2025
For the assessee / निर्धारिती की ओर से	Shri A. K. Tulsian, FCA Shri Deepak Mundhra, ACA
For the revenue / राजस्व की ओर से	Shri Ashutosh Kumar, Sr. D.R

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

This is the appeal preferred by the assessee against the order of Commissioner of Income Tax (Appeals)- 21, Kolkata (hereinafter referred to as the Ld. CIT(A)] dated 21.11.2024 for AY 2019-20.

2. Brief facts of the case of the assessee is that the assessee being a company filed its return of income declaring total income of Rs. 38,03,23,967/- under normal provision and Rs. 37,69,97,815/- under book profit u/s 115JB of the Act Subsequently the assessee has filed a revised return u/s 139(5) on 26.11.2020 declaring total income of Rs. 38,03,23,967/- under normal provision and Rs. 37,69,97,815/- under book profit u/s 115JB of the Act. Consequence to search and seizure operation, notice u/s 153A of the Act was issued on 28.06.2021. The assessee company has filed a return in response to the said notice on 13.09.2021 declaring total income of Rs. 38,03,23,967/- under normal provision and Rs. 37,69,97,815/- under book profit u/s 115JB of the Act. The assessment has been completed u/s 153A dated 27.09.2021 determining total income of Rs. 38,03,23,970/- (as per ITR) as per normal provision and Rs. 37,69,97,815/- (as per ITR) under book profit u/s 115JB of the Act. However, in the computation sheet attached with the order dated 27.09. 2021, tax has been calculated @ 30% instead of 25% plus surcharge and cess as specified of the Act. The assessee has filed rectification petition u/s 154 dated 25.10.2021 and 13.06.2023 stating that the rate of tax for the assessment year 2019-20 for a domestic company is taxable at 30%, however, the tax rate would be 25% if turnover or gross receipt of the company does not exceed Rs. 250 crores in the previous year 2016-17. The turnover for the FY 2016-17 was Rs. 2,26,49,07,739/-. This fact can be verified from the audited accounts of FY 2016-17. However, the Ld. AO have wrongly charged rate of tax @ 30% in place of 25%. The Ld. AO rejected the rectification petition vide communication letter dated 20.09.2023 DIN No. ITBA/COM/F/17/2023-24/1056340521(1) on the ground that the gross total turnover of the company for FY 2016-17 was Rs. 254,74,76,678/-.

3. Aggrieved by the said order, the assessee preferred an appeal before the Ld. CIT(A) wherein the appeal of the assessee has been dismissed by observing that the excise duty ought to have been excluded in calculation of turnover in pursuance to the provision of Section 145A of the Act.

Being aggrieved and dissatisfied the assessee preferred an appeal before us.

4. The Ld. A.R appeared on behalf of the assessee challenges the very impugned order thereby submitting that the Ld. CIT(A) has erred in confirming the order passed by the AO wherein it has been held that turnover of the assessee for AY 2017-18 is at Rs. 254.74 crores in place of 226.43 crores (net of excise duty amounting to Rs. 24.32 crores). The Ld. Counsel submits that the turnover for AY 2017-18 was below of Rs. 250 crores therefore applicable rate of tax for AY 2019-20 should be 25% in place of 30% as assessed by the AO confirmed by the Ld. CIT(A). The Ld. Counsel submits that the Ld. CIT(A) erred in confirming the order of AO by rejecting the rectification petition dated 13.06.2023 on the wrong observation. The Ld. Counsel cited following decisions:

i) Copy of order passed by Hon'ble ITAT, Bangalore in case of M/s Kluber Lubrication India (P) ltd. vs. DCIT (ITA No. 765/Bang/2023) dated 26.07.2024.

ii) Copy of order passed by Hon'ble High Court of Karnataka in case of CIT vs. Kurlon Ltd. (2011) 15 taxmann.com 116 dated 20.07.2011.

iii) Copy of order passed by Hon'ble Supreme Court of India in case of CIT vs. Laxmi Machine Works (2007) 160 taxmann 404 (SC) dated 25.04.20227.

iv) Copy of order passed by Hon'ble High Court of Madras in case of CIT vs. Wheels India Ltd. (2005) 146 Taxman 442 dated 21.09.2024.

v) Copy of order passed by Hon'ble ITAT, Kolkata in case of ACIT vs. Cathay pacific Airways ltd. (ITA No. 2468/Kol/2018) dated 06.09.2022.

The Ld. A.R submits that the Hon'ble Apex Court has clearly held that the sales tax and excise duty cannot be a form part of total turnover of the assessee.

5. Contrary to that the Ld. D.R supports the impugned order.

6. Upon hearing the submission of the counsel of the respective parties, we have perused the order of AO as well as Ld. CIT(A) and find that in the instant case, the assessee company has its total turnover for the FY 2016-17 was at Rs. 2,26,49,07,739/-

. The said turnover has clearly been reflected in the profit and loss account which is as follows:

SATYAM SMELTERS PRIVATE LIMITED

STATEMENT OF PROFIT & LOSS FOR THE YEAR ENDED 31ST MARCH, 2017.

	Note	Year ended 31.03.2017		Year ended 31.03.2016	
		Rs.	P.	Rs.	P.
1. Revenue from Operations (Gross)	14	2508123742.00		2547476677.50	
Less: Excise Duty		243216003.00		278498986.00	
Revenue from Operations (Net)		2264907739.00		2268977691.50	
2. Other Income	15	32921804.00		28716562.00	
TOTAL REVENUE		2297829543.00		2297694253.50	

7. The Ld. CIT(A) has in its order held that the excise duty ought to have been excluded in calculation of turnover. The turn over exceeds more than 250 crores when excise duty has been excluded. We have gone through the order passed by the Hon'ble Apex Court as cited by the assessee and find that the Hon'ble Apex Court in a decision of CIT vs. Laxmi Machine Works (supra) has held thus:

"Section 80HHC of the Income Tax Act, 1961- Deductions-Exporters- Assessment Year 1993-94- Whether for purpose of computing allowable deduction under Section 80HHC, items of sales and excise duty can form part of total turnover of assessee – Held, no

Words & Phrases – Total turnover as occurring in section 80HHC of the Income Tax Act, 1961.

Interpretation of statutes : Schematic Interpretation; purposeful interpretation."

8. We have also gone through the order passed by Hon'ble Karnataka High Court and find that the Hon'ble High Court has held thus:

"II. Section 80HHC of the Income Tax Act, 1961 – Deductions – Exporters- Assessment year 1996-97- Whether since excise duty and sales tax are indirect taxes, they do not involve any turnover and, therefore, they cannot form part of turnover; such taxes are to be excluded from total turnover under Section 80HHC – Held yes."

9. We have also gone through the order passed by Hon'ble Madras High Court in CIT vs. Wheels India Ltd. (supra) wherein the Hon'ble High court has held thus:

“Section 80HHC of the Income Tax Act, 1961- Deductions- Exporters – Assessment Years 1990-91 and 1992-93 – Whether sales tax and excise duty could be included in total turnover while computing deduction under section 80HHC- Held yes.”

10. Keeping in view, the above cited decision and going over the present case, we find that the present case is squarely covered by the decision of Hon’ble Apex Court as in the instant case also after including the amount of excise duty the turnover of the company exceeds of Rs. 250 crores. When the excise duty has been reduced the turnover the case below of 250 crores. Hence we find substance in the argument of the Ld. Counsel of the assessee. Accordingly, the appeal of the assessee has been allowed. The calculation made by the assessee are found to be substantially correct, order passed by the AO confirmed by the Ld. CIT(A) in which the AO has rejected the rectification petition are hereby set aside.

In the result, the appeal filed by the assessee is allowed.

Order is pronounced in the open court on 22nd May, 2025

Sd/-

Sd/-

(Rajesh Kumar/राजेश कुमार)

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)

Accountant Member/लेखा सदस्य

Judicial Member/न्यायिक सदस्य

Dated: 22nd May, 2025

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Satyam Smelters Pvt. Ltd. , Block-7A, 7th Floor, Abdul Hamid Street, Kolkata-700069
2. Respondent – DCIT, Central Circle-3(2), Kolkata
3. Ld. CIT(A)- 21, Kolkata
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata