

आयकर अपीलीय अधिकरण, मुंबई "बी" खंडपीठ
Income-tax Appellate Tribunal - "B" Bench Mumbai
सर्वश्री राजेन्द्र, लेखा सदस्य एवं अमरजीत सिंह, न्यायिक सदस्य
Before S/Sh.Rajendra, Accountant Member and Amarjit Singh, Judicial Member
आयकर अपील सं./I.T.A./2380/Mum/2013, **निर्धारण वर्ष** /Assessment Year: 2006-07
आयकर अपील सं./I.T.A./2381/Mum/2013, **निर्धारण वर्ष** /Assessment Year: 2007-08

DCIT-6(1) 5th Floor, R.No.506, Aayakar Bhavan, MK Road Mumbai-20.	Vs.	M/s. Balkrishna Industries Limited BKT House, Trade Wing, "C" Wing 15 th Floor, Kamala Mill Compound, Senapati Bapat Marg, Lower Parel Mumbai-400 013. PAN:AAACB 3333 J
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(अपीलार्थी / Appellant)

(प्रत्यर्थी / Respondent)

राजस्व की ओर से / **Revenue by:** Shri Saurabh Rai-DR

अपीलार्थी की ओर से / **Assessee by:** Ms. Ruchita Jain -AR

सुनवाई की तारीख / **Date of Hearing:** 01.12.2016

घोषणा की तारीख / **Date of Pronouncement:** 01.12.2016

आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश

Order u/s.254(1) of the Income-tax Act, 1961 (Act)

लेखा सदस्य, राजेन्द्र के अनुसार/ PER Rajendra A.M.-

Challenging the orders dated 31.12.2012 of CIT(A)-14, Mumbai the Assessing Officer (AO) has filed the appeals for the above mentioned two AY.s. Assessee-Company, is engaged in the business of manufacturing of tyres. The details of returned incomes, assessed incomes can be summarised as under :-

A.Y.	Returned Income(Rs.)	Assessment dt.	Assessed Income(Rs.)
2006-07	90,34,55,520/-	31.12.2008	6,88,48,190/-
2007-08	111,41,60,846/-	26.12.2011	114,47,52,990/-

ITA/2380/Mum/13-AY.2006-07:

2. During the assessment proceedings, the AO made an addition of Rs.1.05 crores to the income of the assessee on account of interest and other income for not offering the same for taxation. The assessee preferred an appeal before the First Appellate Authority (FAA). Before him, it was argued that the AO had made the addition by referring the notes on account, that he had not appreciated the fact that disputed amount had been already been offered for taxation, that it was a case of double addition.

2.1. The FAA directed the AO to verify the position as to whether the said amount was offered for taxes or not. The AO, while giving effect to the order of the FAA made the identical additions to the income of the assessee.

In the second round of appeal before the FAA, the assessee argued that interest amount in question was capitalised by assessee and that it was net of interest income, that corresponding expenses had been charged to P&L account to the extent of interest income, that the AO had made disallowance of Rs.1.05 crores by wrongly interpreting the notes to accounts. After considering the material available, the FAA held that AO had wrongly added the disputed amount to the income of the assessee, while giving effect to the order passed by the then FAA.

2.2. Before us, the Departmental Representative (DR) stated that matter could be decided on merits. The Authorised Representative (AR) contended that it was a simple case of double addition, that the AO had ignored the details submitted by the assessee.

2.3. We have heard the rival submissions and perused the available material. We find that during the original appellate proceedings, the FAA directed the AO to verify as to whether it was a case of double addition. While giving effect to the order of the FAA, the AO ignored the submissions of the assessee and did not take into cognisance the fact that the assessee had already offered the disputed amount for taxation. As the FAA has deleted the double addition, so, in our opinion his order does not suffer from any legal or factual infirmity. Confirming his order we decide the effective Ground of appeal against the Assessing Officer.

ITA /2381/M/13 AY.2007-08:

3. The effective Ground of appeal raised by the Assessing Officer is about quashing the reopening of the assessment. In this case the original assessment was made u/s.143(3) of the Act on 31.12.2009 assessing the total income of the assessee at Rs.111.41 crores. Subsequently, the AO issued a notice u/s. 148 and completed the assessment, u/s.143(3) r.w.s.147 of the Act, determining the income of assessee at Rs.114.47 crores. While issuing the notice u/s. 148 of the Act, the AO recorded the following reasons:-

"From the records, it is found that the assessee had claimed additional depreciation on "power distribution heavy duty cable", Transformer, Fire Extinguisher, Laboratory equipment, DG set. As these are not machinery or plant related to manufacturing activity, additional depreciation on these items are not allowable. As per section 32(1)(ii) of the IT Act, 1961, additional depreciation at the rate of twenty percent of actual cost of new machinery or plant acquired and installed after 31.03.2005 by an assessee engaged in the business of manufacture or production of any article or things, is allowed.

Therefore, I have reason to believe that at least an amount of income of Rs.2,95,25,439/- claimed as additional depreciation over the assets mentioned in the above para has escaped assessment for the A.Y.2007-08.

(ii) As per section 37 of the Act, any expenditure not being expenditure of nature described in section 30 to 36 and being in the nature of capital or personal expenditure of assessee laid out or expended wholly and exclusively for the purpose of business shall be allowed in computing income chargeable under profits and gains of business or profession.

In respect of Legal and Profession Fees debited to Profit & Loss account, it is further found from the records that the following expenditure were capital in nature and same were not admissible for deduction:

1. Consultancy for ISO registration	:	Rs. 145000/-
2. Liasoning work for Transformer	:	Rs. 164016/-
3. Trade Mark registration	:	Rs. 20000/-
4. Marketing consultancy	:	Rs 10146110/-
5. Consultancy towards machine procurement	:	Rs. 6552904/-
6. preparing and finalizing opinion on parking of FCCB fund		
		<u>:Rs.1000/-</u>
Total	:	Rs. 1,72,42,502/
Less:	:	<u>Rs.4310625/-</u>
Depreciation allowable @25% (intangible assets):		Rs.12931876/-

Therefore I have reason to believe that at least an amount of income of Rs. 1,29,31,876/ on this account has escaped assessment for the A. Y. 2007-08.

(iii) As per section 14A of the Income Tax Act, 1961, any expenditure incurred for earning the exempt income is not an allowable expenditure and Rule 8D of the Income Tax Rule provides for mode for computing such expenditure.

The assessee has debited in P&L account an amount of Rs. 170169594/- on account of interest expenditure on borrowed fund. The assessee is using own funds as well as borrowed funds for its activity including the investment. The assessee had claimed the income earned from such investment as exempt income. Therefore, the expenditure attributable to exempt income was disallowed applying section 14A r. w. Rule 8D. It is found from the records that the expenditure under rule 8D (ii) was computed incorrectly at Rs. Nil as against the correct amount of Rs. 8,77,786/- as under:

Interest expenditure: Rs. 170169594/

(As per P&LA/c)

Average investment: Rs. (21827821 + 51167647)/2 = Rs. 36497734/

(As per Balance Sheet)

Average total Assets = (7933075187 + 6217998895)/2 = Rs. 7075537041/

Expenditure disallowable under rule 8D(ii)

$A \times B / C = 170169594 \times 36497734 / 7075537041 = Rs. 877786/-$

Therefore, I have reason to believe that at least an amount of income of Rs.8,77,786/- on this count has escaped assessment for the A.Y.2007-08.”

While completing the re-assessment order, the AO made additions on all the three counts i.e. additional depreciation on machinery (Rs.2.95crores); wrong claim of capital expenditure (Rs. 1.29crores) and disallowance u/s. 14A (Rs.8.77 lakhs).

3.1. Aggrieved by the order of the Assessing Officer the assessee preferred an appeal before the FAA and challenged the re-opening as well as the additions made. Before him, the assessee

contended that the issue of additional depreciation was raised by the AO during the original assessment proceedings vide his questionnaire dt.28.8.2009,that the assessee had filed its reply in that regard vide its letter dt.27.10.2009, that the AO had specifically made enquiries about the legal and professional fee, that he was satisfied that the expenditure was not of capital nature, that he had also made enquiries about disallowance,if any,to be made u/s. 14A of the Act,while completing the original assessment, that no new material was brought on record by the Assessing Officer for reopening the completed scrutiny assessment, that it was a case of mere change of opinion.The assessee relied upon several case laws.

After considering the submissions of the assessee and the assessment order the FAA held that the AO had called for and examined the details/submissions /clarifications on all the three issues,that he was not justified to re-open the assessment on the basis of same issues and the same material,that it was a simple case of change of opinion.Accordingly, he quashed the order passed by the AO.

3.2.The DR left the issue to the discretion of the Bench. The AR referred to the questionnaire issued by the AO,while completing the original assessment proceedings and various replies filed by assessee before him.

3.3.We have perused the material available and heard both the side.We find that the AO had issued a detailed questionnaire on 28.9.2009, that in his four page-questionnaire he had asked the assessee to file the details and basis for claiming additional depreciation (Q.No.9, about details of computation of expenses attributable u/s.14A of the Act (Q.16) and details of legal and professional charges(Q.27(ii)). We further fund that the assessee had filed the details called for by the AO about all the three queries, hat he had completed the assessment u/s. 143(3) of the Act after considering the submissions of the assessee. In these circumstances, we are of the opinion that the AO was not justified in re-opening the assessment on the basis of same material.We would like to refer to the case of Kelvinator of India Ltd (320ITR561) of the Hon'ble Supreme Court and it reads as under :-

The concept of “change of opinion” on the part of the Assessing Officer to reopen an assessment does not stand obliterated after the substitution of section 147 of the Income-tax Act, 1961, by the Direct Tax Laws (Amendment) Acts, 1987 and 1989. After the amendment, the Assessing Officer has to have reason to believe that income has escaped assessment, but this does not imply that the Assessing Officer can reopen an assessment on mere change of opinion. The concept of “change of opinion” must be treated as an in-built test to check the abuse of power. Hence after April 1, 1989, the Assessing Officer has power to reopen an assessment, provided there is “tangible material” to come to the conclusion that there was

escapement of income from assessment. Reason must have a link with the formation of the belief. “

From the above it is clear that the assessment reopened by an AO without any tangible material or on the basis of change of opinion has to be quashed. In the case under consideration there was no tangible material to invoke the provisions of section 147 of the Act. In these circumstances, we are of the opinion that the order of FAA does not suffer from any legal infirmity. So, confirming his order, we decide the effective ground of appeal against the AO.

As a result, appeals filed by the Assessing Officer for both the AY.s stand dismissed.

फलतः निर्धारित अधिकारी द्वारा दोनों ति.व.के लिए दाखिल की गई अपीलें नामंजूर की जाती हैं।

Order pronounced in the open court on 1st December, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 1 दिसंबर, 2016 को की गई।

Sd/-

(अमरजीत सिंह / Amarjit Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(राजेन्द्र / Rajendra)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 01.12.2016.

Jv.Sr.PS.

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

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR “B ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ, आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.