

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH : KOLKATA

[Before Hon’ble Shri N.V.Vasudevan, JM & Shri M.Balaganesh, AM ]

I.T.A Nos. 948 to 952/Kol/2017

Assessment Years : 2008-09 to 2011-12 & 2013-14

M/s Shalimar Pellet Feeds Ltd. [PAN: AADCS 8617 H] (Appellant)	-vs-	DCIT, CC-2(1), Kolkata  (Respondent)
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For the Appellant : Shri A.K.Tulsyan, AR

For the Respondent : Shri Goulean Hangshing, CIT DR

Date of Hearing : 21.09.2017

Date of Pronouncement : 17.10.2017

**ORDER**

**Per M.Balaganesh, AM**

1. These appeals by the Assessee for the assessment years 2008-09 to 2011-12 arise out of the independent orders of the Learned Principal Commissioner of Income Tax, Central-1, Kolkata [in short the Id CIT] dated 09.03.2017, 27.03.2017, 09.03.2017 and 09.03.2017 respectively passed u/s 263 of the Act against the independent orders passed by the DCIT, Central Circle-2(1), Kolkata [ in short the Id AO] under section 143(3) r.w.s 153A of the Income Tax Act, 1961 (in short “the Act”) dated 27.03.2015 as the issues involved are identical in these appeals the same are taken up together for the sake convenience.

2.The appeal arising out of the order passed by the Ld. Pr. CIT u/s 263 for the assessment year 2013-14 has been dealt separately elsewhere in this appeal.

3. The first preliminary issue to be decided in all these appeals is as to whether the ld CIT had validly invoked his revisionary jurisdiction u/s 263 of the Act in the facts and circumstances of the case.

4. The brief facts of this issue is that the assessee is a limited company belonging to 'Shalimar Group' deriving income from manufacture and selling of poultry feeds. The assessee has been filing its return of income on a regular basis u/s 139(1) of the Act and assessments were duly framed u/s 143(3) of the Act in the normal course. A search u/s 132 of the Act was carried out in the business premises of the assessee at 17B & C, Everest House, 46C, Chowringhee Road, Kolkata – 700071 on 13.12.2012. Panchanamas were drawn in the name of persons including the assessee. The following valuables and documents were found / seized during the course of search :

Address of the premises where search was conducted	Cash		Jewellery		Identification Mark of the documents seized
	Found (Rs.)	Seized (Rs.)	Found (Rs.)	Seized (Rs.)	
17B & C, Everest House, 46C, Chowringhee Road, Kolkata-700071	32,67,500/-	39,00,000	NIL	NIL	SPG/1 to SPG/13 and SPG/HD/1

5. The following assessments fall under the category of unabated assessments (i.e concluded assessments) as on the date of search on 13.12.2012 :-

<u>Asst Year</u>	<u>Remarks</u>
2008-09	Completed u/s 143(3) of the Act on 23.12.2010
2009-10	Completed u/s 143(3) of the Act on 22.11.2011
2010-11	Completed u/s 143(3) of the Act on 30.12.2011

2011-12 Time limit for issuance of notice u/s 143(2) of the Act expired on  
30.9.2012. Hence construed to be completed assessment.

Hence as on the date of search, the original assessment proceedings for the Asst Years 2008-09 to 2011-12 stood unabated i.e completed. Pursuant to the search, the Id AO made the assessment u/s 153A of the Act on 27.3.2015 for the Asst Years 2008-09 to 2011-12 as under:-

	Assessment Years			
	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>
Original Assessed Income	27558140	46641970	74780280	-NA-
Original Returned Income				112511994
Add: Disallowance under Section 80IB of the Act	8597020	10367586	20289380	33278072
Add: Disallowance under Section 14A of the Act				50
Less: B/fd Short Term Capital Loss of AY 09-10 Set off				(5960500)
Assessed Income u/s 153A	36155160	57009556	95069660	139829612

6. The Id CIT sought to revise the assessments framed u/s 153A of the Act on 27.3.2015 for the Asst Years 2008-09 to 2011-12 treating the same as erroneous and prejudicial to the interest of the revenue in as much as the said order did not enquire certain aspects such as (i) eligibility to claim additional depreciation ; (ii) understatement of sales and (iii) rate of depreciation on lorries used for transportation of raw materials and finished goods. Show cause notices to this effect were issued by the Id CIT to the assessee for the Asst Years 2008-09 to 2011-12. The assessee filed detailed written submissions

together with the supporting evidences before the Id CIT both on legal and factual aspects. It was specifically brought to the notice of the Id CIT that no incriminating materials were found in the course of search regarding the aforesaid items and hence the concluded assessments u/s 143(3) of the Act for the Asst Years 2008-09 to 2011-12 cannot be disturbed by the Id CIT. The assessee placed reliance on various decisions in this regard including the decision of the Hon'ble Jurisdictional High Court in the caes of PCIT vvs Salasar Stock Broking Limited (ITAT No. 264 of 2016) dated 24.8.2016 and CIT vs Veerprabhu Marketing Limited reported in 73 taxmann.com 149 (Calcutta) . Accordingly it was pleaded that the order of the Id AO cannot be termed as erroneous warranting revision u/s 263 of the Act.

7. With regard to the show cause notices issued for the Asst Years 2008-09, 2010-11 & 2011-12, they were issued only on the aspect of additional depreciation on plant and machinery and rate of depreciation on lorries, which does not emanate from any of the seized documents found during the course of search. Hence it was pleaded that the order passed by the Id AO could not be termed as erroneous warranting revision u/s 263 of the Act. With regard to the show cause notice issued for the Asst Year 2009-10 on the issue of understatement of sales , apart from the aforesaid two common issues, the Id CIT placed reliance on the seized documents marked as SHLA-4 from pages 2 to 105 and SPG-2 from pages 18 to 20 as the incriminating documents found during the course of search. The assessee replied before the Id CIT that the seized document marked as SHLA -4 from pages 2 to 105 contians only sales bills relating to sales made by the assessee company to M/s Shalimar Hatcheries Limited. The assessee pleaded that such information is already part of regular books of accounts of the assessee and there is nothing incriminating therein.

7.1. The assessee also explained the alleged difference in sales by way of a detailed reconciliation statement filed before the Id CIT and the same did not emanate from the

seized materials. According to Id CIT, the assessee had shown sales made to M/s Shalimar Hatcheries Limited to the tune of Rs 48,78,94,116/-, whereas the said company had shown purchases from the assessee at Rs 86,74,19,300/- thereby leading to the difference in unreported sales of the assessee at Rs 37,95,25,184/-. The assessee explained the alleged difference in sales as under:-

*The sales figure taken by your honours of Rs 48,78,94,116/- does not reflect the entire amount of sales made by the assessee company to Shalimar Hatcheries Limited. This figure is wrong. ....*

*The assessee company through its different units made different amount of sales to M/s Shalimar Hatcheries Limited which in totality is tallying with the amount recorded in the books of the impugned party. The details relating to the same is presented in a tabulated form in the following paras for the convenience of your Honour.*

.....

*The assessee stated that the purchases shown by M/s Shalimar Hatcheries Limited from the assessee are as under:-*

<i>Payment made to</i>	<i>Nature of payment</i>	<i>Amount(Rs.)</i>
<i>Shalimar Pellet Feeds Ltd</i>	<i>Purchase of poultry feeds &amp; feed ingredients</i>	<i>43,90,73,797/-</i>
<i>Shalimar Pellet Feeds Ltd. (Bishnupur)</i>	<i>Purchase of poultry feeds &amp; feed ingredients</i>	<i>42,83,45,504/-</i>
	<b><i>Total Purchase of feed &amp; feed ingredients</i></b>	<b><i>86,74,19,301/-</i></b>
<i>Shalimar Pellet Feeds Ltd. (Kolar)</i>	<i>Purchasing of hatching eggs</i>	<i>1,03,21,815/-</i>
	<b><i>Total purchase</i></b>	<b><i>87,77,41,116/-</i></b>

*The assessee explained that sales were made by the assessee to M/s Shalimar Hatcheries Limited from its various units and divisions as tabulated below:-*

<i>Sl.</i>	<i>Particulars of the Unit</i>	<i>Amount (Rs.)</i>	<i>Amount(Rs.)</i>
<i>1</i>	<i>Shalimar Pellet Feeds Limited (Bishnupur Unit)</i>		<i>42,83,45,504/-</i>
<i>2</i>	<i>Shalimar Pellet Feeds Limited (Bakultala)</i>	<i>30,80,95,547/-</i>	
<i>2</i>	<i>Shalimar Pellet Feeds Limited</i>	<i>10,63,76,670/-</i>	

	<i>(Illambazar Unit)</i>		
3	<i>Shalimar Pellet Feeds Limited (Ranchi Unit)</i>	2,46,01,580/-	43,90,73,797/-
		<b>Total sale of feed &amp; feed ingredients</b>	86,74,19,301/-
4	<i>Shalimar Pellet Feeds Limited (Kolar, Karnataka) Breeding Farm</i>	<i>Sale of hatching eggs</i>	1,03,21,815/-
		<i>Total sales to Shalimar hatcheries Ltd.</i>	87,77,41,116/-

Accordingly it was explained that there is absolutely no difference in sales figure as alleged by the Id CIT.

The assessee replied before the Id CIT that the seized document marked as SPG-2 from pages 18 to 29 contains the trial balance of the assessee .

7.2. The assessee replied before the Id CIT that the seized document marked as SPG-2 pages 18 to 20 contains trial balance for the period from 1.4.2012 to 31.3.2013 which are part of regular books of accounts of the assessee and there is nothing incriminating therein. In any case, this seized document pertains to the Asst Year 2013-14 and cannot be termed as incriminating for the Asst Year 2009-10.

8. The Id CIT however ignored all the explanations and submissions made before him and observed that the Id AO had not made enquiries with regard to these seized documents and treated the order of the Id AO as erroneous and prejudicial to the interest of the revenue and directed the Id AO to pass a fresh assessment order in this regard. Aggrieved, the assessee has preferred appeals before us.

9. We have heard the rival submissions and perused the materials available on record including the paper books filed by the assessee containing the seized documents and explanations given by the assessee thereon before the Id AO and the Id CIT. It is not in dispute that as on the date of search the original assessments for Asst Years 2008-09 to 2011-12 were completed u/s 143(3) of the Act and hence stood unabated. It is now well settled by various high courts including the Hon'ble Jurisdictional High Courts relied upon supra that the concluded assessments could be disturbed only in the event of presence of any incriminating materials found in the course of search. We find that there are no incriminating materials found during the course of search for the Asst Years 2008-09, 2010-11 and 2011-12 as the issues addressed by the Id CIT are only interpretation of law and not based on any materials found in the search. With regard to the Asst Year 2009-10, we find from the above explanation of the assessee, there was absolutely no material much less any incriminating material, so as to disturb the earlier concluded assessment for the Asst Year 2009-10. Hence the Id AO had rightly not considered these aspects in the assessments framed u/s 153A of the Act. Moreover, we find that the assessee had given proper explanations regarding these items before the Id CIT as reproduced above. We find that the assessee had also duly explained the complete contents of the seized documents relied upon by the Id CIT in his order. In our considered opinion, those materials are not incriminating at all and are forming part of regular books of accounts of the assessee. These explanations have been completely ignored by the Id CIT while directing the Id AO to frame the assessment afresh. We hold that when an addition could not be made as per law in section 153A proceedings, then the said order cannot be construed as erroneous warranting revisionary jurisdiction u/s 263 of the Act by the Id CIT. We hold that even on merits, there is no case made out by the Id CIT for making any addition on the issues proposed in the show cause notice of Id CIT. In these facts and circumstances, we find that the order of the Id CIT u/s 263 of the Act for the Asst Years 2008-09 to 2011-12 deserve to be quashed. Accordingly,

the preliminary ground raised by the assessee on the issue of assumption of jurisdiction u/s 263 of the Act for the Asst Years 2008-09 to 2011-12 are allowed.

**ITA No. 952/Kol/2017 – Asst Year 2013-14 – Assessee Appeal**

10. The first preliminary issue to be decided in this appeal is as to whether the Id CIT had validly invoked his revisionary jurisdiction u/s 263 of the Act in the facts and circumstances of the case.

10.1. The brief facts of this issue is that the assessee is a private limited company belonging to 'Shalimar Group' deriving income from manufacture and selling of poultry feeds. A search u/s 132 of the Act was carried out in the business premises of the assessee at 17B & C, Everest House, 46C, Chowringhee Road, Kolkata – 700071 on 13.12.2012. The search took place during the year under appeal. The return of income for the Asst Year 2013-14 was filed by the assessee u/s 139(1) of the Act on 30.11.2013 declaring total income of Rs 16,19,99,710/-. The Id AO completed the assessment u/s 143(3) of the Act on 27.3.2015 determining the total income at Rs 20,27,76,841/-. The Id AO denied the benefit of deduction u/s 80IB of the Act to the tune of Rs 4,04,09,321/- in the assessment framed u/s 143(3) of the Act on 27.3.2015 on the ground that the assessee is not engaged in the manufacturing activity. Apart from this, he also disallowed a sum of Rs 3,67,816/- u/s 14A of the Act. The assessee preferred an appeal against this order before the Learned Commissioner of Income Tax (Appeals) [ in short the Id CITA] who deleted the disallowance u/s 80IB of the Act vide his order dated 11.2.2016. On further appeal by the revenue to this tribunal, the same was dismissed vide order dated 30.11.2016 on the ground that the assessee was indeed engaged in the manufacturing activity and hence eligible for deduction u/s 80IB of the Act. Moreover, it was further held that the assessee has been claiming deduction u/s 80IB of the Act from the earlier years and there is no change in the manufacturing



activity carried out by the assessee. Further the entire manufacturing process has been explained in detail in the said tribunal order.

10.2. The Id CIT sought to revise the assessment framed u/s 143(3) of the Act on 27.3.2015 treating the same as erroneous and prejudicial to the interest of the revenue in as much as the said order did not enquire the aspect of eligibility to claim additional depreciation on plant and machinery u/s 32(1)(ia) of the Act in the sum of Rs 1,64,48,649/-. A show cause notice to this effect was issued by the Id CIT to the assessee on 16.11.2016. The assessee filed a detailed written submissions together with the supporting evidences vide reply dated 3.2.2017 before the Id CIT both on legal and factual aspects. The assessee explained the entire manufacturing process by way of detailed written submission in each of the process (enclosed in pages 123 to 128 of Paper Book). It was specifically brought to the notice of the Id CIT that the tribunal vide its order dated 30.11.2016 had duly held that the assessee is engaged in the business of manufacture and thereby eligible for deduction u/s 80IB of the Act and copy of the order was also filed before the Id CIT. Once it is held that the assessee is engaged in manufacture, the eligibility to claim additional depreciation u/s 32(1)(ia) of the Act on the plant and machinery used in manufacturing process is automatic. Accordingly it was pleaded that the order of the Id AO cannot be termed as erroneous warranting revision u/s 263 of the Act.

10.3. The Id CIT however ignored all the explanations and submissions made before him and observed that the Id AO having held in the assessment proceedings that the assessee is not engaged in manufacturing activity ought to have correspondingly withdrawn the claim of additional depreciation u/s 32(1)(ia) of the Act . Hence non-withdrawal of the same constitutes an error in the order of the Id AO which also caused prejudice to the interest of the revenue. Accordingly he directed the Id AO to pass

afresh assessment order in this regard. Aggrieved, the assessee is in appeal before us on the following grounds:-

- 1. That the Ld. PCIT erred in holding that the order of the AO is erroneous as well as prejudicial to the interest of the revenue on the issue of claim of additional depreciation on Plant & Machinery u/s 32(1)(iia). The Ld. AO has conducted proper enquiry in that respect during the course of assessment proceedings. As such, exercising of the jurisdiction u/s 263 of the I.T. Act is bad in law, and the order passed u/s 263 needs to be quashed. Hence, the addition needs to be deleted.*
- 2. That the Ld. PCIT was wrong in disallowing additional depreciation of Rs. 1,64,48,649/- claimed u/s 32(1)(iia) on Plant & Machinery, alleging that the assessee company was not involved in the process of manufacturing activity. He failed to consider the fact that it has been upheld by various courts including Hon'ble ITAT, Kolkata, in the assessee's own case that the production of poultry feeds amounts to manufacturing. Hence, the assessee was not wrong in claiming additional depreciation on Plant & Machinery u/s 32(1)(iia) of the Act. As such, the misinterpretation of facts by the Ld. PCIT and exercising the jurisdiction u/s 263 is factually wrong and need to be quashed.*
- 3. That the petitioner craves leave to add, alter, amend or withdraw any ground/s of appeal before or at the time of hearing.*

10.4. We have heard the rival submissions and perused the materials available on record including the paper books filed by the assessee. At the outset, we find that this tribunal in assessee's own case vide its order dated 30.11.2016 for the Asst Year 2013-14 in IT(SS)A No. 22/Kol/2016 had categorically held that the assessee is engaged in the manufacturing activity and thereby eligible for deduction u/s 80IB of the Act. Once it is held so, the allowance towards additional depreciation u/s 32(1)(iia) of the Act on plant and machinery is automatic and this was specifically brought to the notice of the Id CIT by the assessee which has been conveniently ignored by the Id CIT while passing the revision order u/s 263 of the Act. In these facts and circumstances, we find that the order of the Id CIT u/s 263 of the Act deserves to be quashed. Accordingly, the grounds raised by the assessee are allowed.

ITA Nos.948-952/Kol/2017  
M/s Shalimar Pallet Feeds Ltd.  
A.Yrs.08-09 to 11-12 & 13-14

11. In the result, the appeals of the assessee in ITA Nos. 948-951 / Kol / 2017 for the Asst Years 2008-09 to 2011-12 are allowed and appeal of the assessee in ITA No. 952/Kol/2017 for the Asst Year 2013-14 is allowed.

**Order pronounced in the Court on 17.10.2017**

Sd/-  
[N.V. Vasudevan]  
Judicial Member

Sd/-  
[ M.Balaganesh ]  
Accountant Member

Dated : 17.10.2017  
SB, Sr. PS

Copy of the order forwarded to:

1. M/s Shalimar Pellet Feeds Ltd., 17B & C, Everest House, 46C, Chowringhee Road, Kolkata- 700071
2. DCIT, CC-2(1), Kolkata, Aayakar Bhawan Poorva, 110, Shantipally, Kolkata-700107.
- 3.P.C.I.T, Central-1, Kolkata
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary  
Head of Office/D.D.O., ITAT, Kolkata Benches