

IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

ITA No.875/Mum/2015
(Assessment Year: 2006-07)

JSW Steel Ltd. JSW Centre, BKC Complex Mumbai-400 051	Vs.	DCIT, CC-46 6 th Floor, Aaykar Bhawan M.K.Road, Mumbai-400 020
PAN/GIR No. AAACJ4323N		
(Assessee)	:	(Revenue)

&

ITA No.1338/Mum/2015
(Assessment Year: 2006-07)

DCIT, CC-8(3) [Erstwhile DCIT,CC-46] Room No.659, 6 th Floor, Aaykar Bhawan M.K.Road, Mumbai-400 020	Vs.	JSW Steel Ltd. JSW Centre, BKC Complex Mumbai-400 051
PAN/GIR No. AAACJ4323N		
(Revenue)	:	(Assessee)

Assessee by	:	Shri Gaurav Kabra
Revenue by	:	Shri Rajesh Kumar

Date of Hearing	:	01.06.2021
Date of Pronouncement	:	10 .08.2021

ORDER

Per Shamim Yahya, A. M.:

These cross appeals by the Revenue and the Assessee are directed against the order of the learned Commissioner of Income Tax (Appeals)-47, Mumbai ('ld.CIT(A) for short) dated 01.12.2014 and pertain to the assessment year (A.Y.) 2006-07.

2. The grounds of appeal raised by the assessee read as under:

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in Confirming the action of the DCIT in not allowing the exclusion of the Sales Tax Subsidy of Rs.36,15,49,828/- from the Book Profits for the purpose of MAT Computation.

2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that the Appellant was not permitted to raise a fresh claiming the search assessment proceedings.
3. Brief facts of the issues are that the aforesaid claim of exclusion of the Sales Tax Subsidy of Rs. 36,15,49,828/- from the book profits for the purpose of MAT computation was not made by the assessee under original assessment u/s143(3) of the I.T.Act. During assessment proceedings u/s.153A of the I.T.Act assessee did not make any such claim in the return filed. However, the assessee claimed before the Ld.CIT(A) that this claim was made to the AO during the course of assessment, which is not considered by the AO in his assessment order. Ld.CIT(A) did not find aforesaid claim maintainable. He was of the opinion that firstly the claim has not been made by way of revised return, hence Hon'ble supreme court decision in the case of Goetze(I) Ltd. 284 ITR 323 is applicable. Furthermore, Ld. CIT(A) found that as held by Hon'ble Rajasthan High Court in the case of Jai Steel India vs ACIT 259 CTR 281 that the provisions of Sections 153A to 153C cannot be interpreted to be a further innings for the AO and/or assessee. Hence, he found that the claim was not maintainable hence he dismissed the claim. The order of Ld.CIT(A) in this regard is as under:-

I find that the appellant had never made claim of reduction of sales tax incentive from Book Profit during original assessment or appellate proceedings. The claim has been raised for the first time during the reassessment proceedings u/s 153A. In the case of Goetze(I) Ltd vs CIT 284 ITR 323(SC), it has been held by Hon'ble Supreme Court that claims of deduction before AO can be allowed to be made by filing a revised return. The appellant had opportunity to do so during the original assessment proceedings. Even otherwise, a legal ground could have been raised before appellate authorities, which the appellant failed to exercise and assessment proceedings came to be final. Hon'ble Rajasthan High Court has held in the case of Jai Steel India vs ACIT 259 CTR 281 that the provisions of Sections 153A to 153C cannot be interpreted to be a further innings for the AO and/or assessee beyond provisions of Sections 139 (return of income), 139(5) (revised return of income), 147 (income escaping assessment) and 263 (revision of orders) of the Act. The search assessment proceedings in cases where original assessments have achieved finality cannot be left open to assessee to take advantage of raising fresh claims which would not have been available to it had there been no search action. This ground of appeal is therefore dismissed.

4. Against the above order, the assessee is in appeal before us.

5. We have heard both the parties and perused the record. Ld. Counsel of the assessee pointed out that assessee has also raised an additional grounds read as under:-

1) On the facts and circumstances of the case as well as in Law, the Learned Assessing Officer has erred in making the additions in -Assessment order Passed u/s. 143(3) r.w.s 153A of the Income Tax Act, 1961, which is not an abated assessment, without any incriminating were found during the course of search.

Appellant submits that this ground was not raised before the Ld. Commissioner of Income Tax (Appeal), but since the above ground is purely legal in nature hence appellant is entitle to raise the same first time before the Hon'ble Tribunal as held by the Supreme Court in case of National Thermal Power Co. Ltd. Vs. CIT(229 ITR 383).

6. Referring to the above, Ld. Counsel of the assessee contended that this disallowance is not permissible as this was not an abated assessment and no incriminating material was found on this issue. Furthermore, he submitted that on merits similar issue was decided by the ITAT in favour of the assessee in assessee's own case for AY 2006-07 in the course of appeal against the regular assessment.

7. Per contra Ld. DR submitted that there is no issue of any incriminating material on this issue as this is not something which the AO has added. He submitted that assessee has duly added sales tax subsidy of Rs. 36,15,49,828/- in the profit and loss account and it has been formed part of book profit. He submitted that as per mandate section 115JB, the assessee has correctly not deducted the same from book profit. Now in the course of assessment u/s 153A, the assessee is making a claim that also without any revised return. Furthermore, he submitted that since it is non abated assessment, assesee is not entitled to raise a fresh claim in terms of Hon'ble Rajasthan High Court decision cited above.

8. Upon careful consideration, we note that this issue of claim of the assessee that the sales tax subsidy being a capital receipt should be reduced from book profit computation u/s 115JB was subject matter of assessee's appeal with ITAT in the course of regular assessment for AY 2006-07. The assessee had raised this issue by way of CO and ITAT has duly decided this issue in favour of assessee. However, the

present case before us is assessment u/s 153A of the Act pursuant to search and assessee is himself claiming that this is a case of non abated assessment. It is noted that assessee has not made any such claim in the return filed pursuant to notice u/s 153A of the Act. It has also not filed any revised return in this regard. The claim was rejected by Ld.CIT(A) on the touchstone of Hon'ble Rajasthan High Court decision cited above that in case of non abated assessment fresh claim cannot be allowed. We do not find any infirmity in the order of Ld.CIT(A). Hence, we uphold the same.

9. The grounds of appeal raised by the revenue read as under:

1. "Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in directing the Assessing Officer to delete the additions on the issues on which relief has already been granted by CIT(A) Bangalore in Original Appeal Proceedings."
2. "Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in allowing depreciation to the Assessee Company on the loss incurred on cancellation of foreign currency forward contracts."
3. "Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in allowing consequential depreciation of Rs. 4,47,62,874/- in respect of loss of Rs. 39,78,92,211 /- incurred during FY 2004-05 on cancellation of forward contract considered as Capital Expenditure as per CIT(A)'s order
4. "Whether in the facts and circumstances of the case and in law the Ld. CIT(A) is justified in directing the AO to consider the increased written down value of the assets received from the merged companies thereby allowing the depreciation of Rs. 6,81,27,607/-."
5. "Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in directing the AO to treat the sales tax incentive / concession of Rs. 36,15,49,828/- as capital receipt."
6. "Whether in facts and circumstances of the case and in law, the Ld. CIT(A) is justified in directing the AO to treat the sales tax incentive / concession of Rs. 36,15,49,828/- as Capital Receipt."
7. "Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition made by the Assessing Officer u/s. 14A for the purpose of computing Book Profit u/s. 115JB of the Act"
8. "Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in directing the Assessing Officer to re-compute the Book Profit u/s. 115JB of the Act by reducing the amount transferred to Debenture Redemption Reserve."

9. "Whether in the facts and circumstances of the case and in law, the Ld. CJT(A) is justified in directing the Assessing Officer to re-compute the interest u/s. 234B casted on the Assessee Company due to retrospective amendment relying on the decision of the Hon'ble ITAT, Mumbai in the case of JSW Energy Ltd. for AY 2006-07 ignoring the fact that the department has not accepted the decision and filed appeal with Hon'ble High Court on this issue which is pending."

10. "Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in directing the Assessing officer to re-compute interest u/s. 234C on the basis of returned income instead of the income declared in the return of income filed in response to notice u/s. 153A relying on the decision of Hon'ble ITAT, Mumbai in the case of JSW Energy Ltd. for AY 2006-07 ignoring the fact that the department has not accepted the decision and filed appeal with Hon'ble High Court on this issue which is pending."

10. At the outset, on this issue Ld. Counsel of the assessee submitted that all the issues raised are covered in favour of the assessee by the decision of ITAT in the appeal against CIT(A) order in original proceedings u/s.143(3). He submitted that Ld.CIT(A) has followed earlier appellate order, which has been duly approved by the ITAT.

11. On careful consideration, we note that the AO has specifically made only one addition in the course of present assessment, which relates to computation of book profit which reads as under:-

"One of the adjustments to be made while computing the book profit u/s. 115JB is to increase the net profit as per P & L a/c. by the amount(s) of expenditure relatable to any income to which [sec 10 (other than provisions contained in clause (38 thereof) or section 11 or section 12 apply]. It is observed that while computing the total income under the normal provisions of the Act, assessee has considered expenditure u/s. 14A at Rs.10,06,722/- as relatable to exempt dividend income. However, while computing the book profit u/s. 115JB, the same expenditure is not added back to the book profit. Accordingly, while working out book profit u/s. 115JB, adjustment in respect of expenditure u/s. 14A of Rs, 10,06, 722/- is also being made."

12. Further, we note that he has repeated the additions made in original assessment by observing that the relief allowed by CIT(A) on this issue in subject matter of appeal before ITAT and hence, he is retaining the same. Ld.CIT(A) has granted the

relief on all those issues, on which CIT(A) has granted relief in original assessment order. He has held that he is restoring all the reliefs granted by the CIT(A). On this issue of 14A disallowance, Ld.CIT(A) adjudicated this issue by holding that no incriminating material was found on this issue during search and he has followed jurisdiction High Court decision in the case of CIT vs Murli Agro Products in ITA 36 of 2009 vide order dated 29/10/2010 and special Bench of ITAT in the case of All Cargo Global Logistics 137 ITD 287.

13. We note that the ITAT has duly granted relief on the issues, which were raised in earlier round in the normal assessment u/s 143(3) vide order dated 29/11/2019 [112 taxmann.com 55] in assessee's own case. Hence, on all those issues relief granted by the Ld.CIT(A) does not need to be interfere. Hence, we uphold the same. Moreover, this being an unabated assessment pursuant to notice u/s 153A, hence, addition made by the AO are not with reference to any cogent material found in search. Hence, assessment u/s 153A on those issues is bad on this count too.

14. On the issue of disallowance made u/s 14A for the purpose of 115JB, we note that Ld.CIT(A) is correct in holding that the same is not sustainable as no incriminating material was found during search as this is non abated assessment. Hence, we uphold the order of Ld.CIT(A) of this issue.

15. As regards ground No.9 and 10 above in the grounds itself revenue has accepted that the issues are covered in favour of the assessee by the ITAT decision for AY 2006-07 and that revenue has filed an appeal before the High Court. We do not find any reason to interfere with the order of Ld.CIT(A)'s decision. Accordingly, we uphold the order of Ld.CIT(A) on all issues.

16. In the result, both appeals are dismissed.

Order pronounced in the open court on 10 .08.2021

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 10.08.2021

Thirumalesh, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai