

IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM AND SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 1168/Mum/2021

(Assessment Year 2016-17)

Timblo Shipyards Private Limited 64 Bajaj Bhavan Nariman Point, Mumbai-400 021	Vs.	Assessing Officer, National e-Assessment Centre, Delhi Income Tax Department, National E-Assessment Centre, New Delhi, Delhi-110003
(Appellant)		(Respondent)
PAN No. AADCT4852B		

Assessee by	:	None
Revenue by	:	Shri Tejinder Pal Singh, DR

Date of hearing:	09.02.2022
Date of pronouncement :	25.02.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the assessee against the order passed by the National E-Assessment Centre, Delhi on 16.04.2021 for Assessment Year 2016-17. The assessee is aggrieved with the fact that incorrect amount of brought forward losses is mentioned at ₹5,82,56,268/- against correct figure of ₹6,80,42,669/-. Thereby, the assessee is assed at ₹97,76,400/- against ₹ Nil.

02. Grounds: -

"1. On the facts and in the circumstances of the case and in law, the Ld. Assessing officer erred in raising high pitched demand of Rs. 45,40,760/-, which is illegal and not in conformity with the Assessment Order passed under Section 143(3) r.w.s 144C(13) read with sections 143(3A) & 143(3B) of the Income-tax Act.

2. On the facts and in the circumstances of the case and in law the Ld. Assessing officer erred in taking wrong figure of the brought forward losses in its computation sheet at Rs. 5,82,56,268/- as against the correct figure as per Assessment Order at Rs.6,80,32,669/-.

3. On the facts and in the circumstances of the case and in law, the Ld. Assessing officer erred in taking wrong figure of the total income of the appellant in its computation sheet at Rs. 97,76,400/- as against the correct figure as per the Assessment Order at NIL.

4. On the facts and in the circumstances of the case and in law the demand raised as per demand notice under Section 156 of the Act dated 16/04/2021 is illegal and ought to be quashed."

03. Brief facts of the case shows that assessee filed its return of income on 14.10.2016 and draft order was passed on 30.10.2019, wherein the transfer pricing adjustment of ₹73,74,174/- was made. The assessee filed objection

before the Dispute Resolution Panel (in short DRP). However, the assessee withdrew its objection submitting **that assessee would be availing benefit of 'Vivad se Vishwas Scheme'**. Therefore, Dispute Resolution Panel dismissed the objection on 18.02.2021. Thus, the draft assessment order became final.

04. As per return of income, the assessee has shown business **losses of ₹4,86,52,631/-**, short term capital gain of **₹10,11,320/-** and income from other sources of **₹58,08,579/-**. The assessment order mentions that assessee has set off brought forward business losses of **₹5,82,56,268/-** and filed returned income at **₹nil**.
05. The learned Transfer Pricing Officer (in short TPO) **proposed an addition of ₹73,74,174/-** to the international transaction of providing interest free loans on USD 40,93,000/- to its foreign subsidiary. Further, the learned Assessing Officer noted that the assessee has claimed **other expenses of ₹2,40,22,273/-** and disallowed 10% thereof for want of details. Accordingly, the total addition of **₹97,76,401/-** was made. The gross total income was **computed at ₹80,32,669/-** and brought forward losses of **₹6,80,32,669/-** was set up. Accordingly, total income of **the assessee was computed at ₹nil by the National e-assessment Centre** by order dated 16.04.2021. Along with the assessment order, the assessee was served with the **demand notice of ₹45,40,760/-** and therefore assessee is

aggrieved. The computation sheet shows that the net tax liability of ₹30,20,908/- arose an interest thereon of ₹14,94,134/- which resulted into the above demand. The assessee aggrieved with the above order and therefore has preferred this appeal.

06. Despite the notice none appeared on behalf of the assessee and therefore issue is decided on the merits of the case as per information available on record.
07. The learned Departmental Representative Shri Tejinder Pal Singh heard.
08. We have carefully considered the contention of the learned Departmental Representative and also grounds of appeal raised by the assessee. We find that total income of the assessee is computed at ₹ Nil as per assessment order passed under section 143(3) read with section 144C(13), 143 (3) of the Act. The returned income of the assessee is determined as ₹nil. But income from other sources as per the assessment order is accepted as per return of income at ₹58,08,579/- but in the computation sheet it has been taken at ₹1,55,84,980/-. Therefore, there is a difference of ₹97,76,401/- in taking the income from other sources i.e. it is taken higher by this amount. Therefore, there is an error apparent in the computation sheet and therefore demand of ₹45 lacs has arisen. In the present case, if the correct income under the head income from other sources is taken, the resultant demand would be nil.



In view of the above facts, we direct the learned Assessing Officer to take into account correct amount of income from other sources and thereafter compute the tax payable by the assessee, which should be nil. Accordingly, the appeal filed by the assessee is allowed.

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

Order pronounced in the open court on 25.02.2022.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 25. 02.2022

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai