

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
[Before Shri Sanjay Garg, Judicial Member & Shri Rajesh Kumar, Accountant Member]

I.T.A. Nos. 2426, 2427 & 2428/Kol/2019
Assessment Years : 2011-12, 2012-13 & 2013-14

ACIT, Circle-6(2), Kolkata	Vs.	M/s West Bengal Agro Industries Corporation Ltd. (PAN: AAACW 3323 M)
Appellant		Respondent

C.O. Nos. 2, 3 & 4/Kol/2020
(Arising out of I.T.A. Nos. 2426, 2427 & 2428/Kol/2019)
Assessment Years : 2011-12, 2012-13 & 2013-14

M/s West Bengal Agro Industries Corporation Ltd. (PAN: AAACW 3323 M)	Vs.	ACIT, Circle-6(2), Kolkata
Cross-objector		Respondent

Date of Hearing	16.06.2022
Date of Pronouncement	27.06.2022
For the Appellant	Shri Vijyaneshwar Nath Datta, Advocate
For the Respondent	Shri Avijit Kundu, CIT

ORDER

Per Shri Rajesh Kumar, AM:

These three appeals by the revenue and three cross-objections by the assessee are directed against the orders of the Commissioner of Income Tax(Appeals)-2, Kolkata [hereinafter referred to as ‘Ld. CIT(A)’] even dated 30.08.2019 for the assessment years 2011-12, 2012-13 & 2013-14 respectively. These appeals and Cos’ relate to the same assessee and hence are being disposed off by this consolidated order for the sake of convenience. We will first take up AY 2011-12.

I.T.A. Nos. 2426/Kol/2019, CO:02/Kol/2020 Assessment Years : 2011-12:

2. The revenue has challenged the order of Ld.CIT(A) on merit as the ld CIT(A) has partly allowed the appeal of the assessee on merits whereas the assessee has

challenged the order of Ld. CIT(A) on legal issue which was not no clear cut findings were given by Ld. CIT(A). The grounds raised by the assessee primarily relate to wrong assumption of jurisdiction u/s 147 by the AO without there being any substantive material that too reopening beyond four years despite the fact that assessee has fully disclosed all materials facts before the AO and therefore, same is invalid in law and has to be quashed.

3. Since the assessee has raised legal & jurisdictional issue in the cross objections filed by it, we are first adjudicating the same. The grounds taken in the cross objections are reproduced below:

1. *For that the reassessment order is without jurisdiction, void ab initio, opposed to requirement of law and bad in law.*

2. *For that the reopen of the assessment u/s 147 of the Act is opposed to requirement of law, invalid and bad in law since the assessee disclosed truly and fully in the original assessment proceedings as well as the AO had not brought any fresh tangible material records.*

3. *For that the reopen of the assessment on the basis of audit objection is not tenable in law and opposed to requirement of law.*

4. *For that non-supply of the recording of the reasonable belief as well as the satisfaction recorded of the higher authority the reassessment order is opposed to requirement of law, bad in law and liable to be annulled.*

5. *For that the reopen of the assessment is nothing but change of opinion which is not permissible in law resulting in the reassessment order is opposed to requirement of law, not tenable in law and liable to be quashed or annulled.*

6. *For that the disallowance of Rs. 6,24,77,828/- under head prior period of expenses is void ab initio, opposed to requirement of law and bad in law.*

7. *For that the appellant craves leave to amend, alter, add, delete or substitute any other grounds of appeal before or at the time of hearing of the appeal.*

4. The facts in brief are that the assessee filed the return of income u/s 139(1) on 24.09.2011 declaring a total loss of Rs. 11,09,00,437/- . Thereafter, the case of the assessee was selected for scrutiny and the assessment u/s 143(3) was framed vide order dated 11.03.2014 assessing the total loss at Rs. 6,37,04,541/-. Thereafter the

case of the assessee was reopened u/s 147 by issuing notice u/s 148 of the Act dated 24.08.2017 which was duly served on the assessee. The assessee filed its return of income on 30.10.2017 declaring loss of Rs. 12,65,14,909/-. The case of the assessee was reopened on the ground that on the basis of documents furnished by the assessee it is noted by the AO that some interest expenses of Rs. 11,57,07,636/- were debited in the profit and loss account and similarly interest in schedule 3 of Rs. 121,78,23,691/- which represents interest on accumulated interest and interest on Govt Loan is not allowable and accordingly the income has escaped assessment to that extent. During the course of course of assessment proceedings u/s 147 r.w.s. of the Act, the assessee was called upon to furnish various details and evidences to justify these expenses of interest which was duly replied with evidences. Finally the assessment was framed u/s 143(3) r.w.s 147 of the Act by the AO by making an addition on account of interest on accumulated interest of Rs. 11,57,07,636/- and prior period expenses Rs. 6,24,77,828/-.

5. Aggrieved assessee challenged the order of AO before the First Appellant Authority on jurisdictional issue as well as on merits. The First Appellate Authority partly allowed the appeal of the assessee without giving any findings on the legal issue raised by the assessee.

6. The Ld. AR vehemently submitted before us that the Ld. CIT(A) has erred in not giving any clear cut findings on the jurisdictional issue raised by the assessee challenging the reopening the assessment u/s 147 of the Act as invalid. The Ld. AR while drawing the attention of the bench to the reasons recorded u/s 148(2) of the Act submitted that the assessment was reopened without there being any substantive material before the AO. The Ld. AR further argued that the case was reopened after period of 4 years from the relevant assessment year without mentioning in the reasons recorded or without any whisper of failure on the part of the assessee to disclose any material fact relating to the income which has ultimately led to escapement or underassessment. The Ld. AR submitted that under first Proviso

to section 147, the case of the assessee can only be reopened if there is a failure on the part of the assessee to disclose all material facts materially and truly relating to its income and not otherwise. In defense, the Ld. AR relied on the following series of decisions:

- i. New Delhi Television Ltd. vs DCIT (116 taxmann.com 151) (SC)*
- ii. CIT vs Multiplex Trading & Industries Company Ltd. (63 taxmann.com 170) (Delhi HC)*
- iii. Hubtown Ltd. vs DCIT (74 taxmann.com 18) (Bom HC)*
- iv. Dr. Rajivraj Ranbirsingh Choudhary vs ACIT (79 taxmann.com 152) (Guj HC)”*

The Id Counsel of the assessee argued that on this count alone proceedings as well as the assessment framed u/s 143(3) r.w.s. 147 of the Act deserved to be quashed.

7. Per contra, the Ld. DR relied on the order of AO by submitting that the case of the assessee has validly been reopened on the basis of information as supplied by the assessee during original assessment proceedings. On the arguments of the Id AR about absence of any whisper about the assessee failure to disclose any material facts relating to income in terms of 1st proviso to section 147 of the Act, the Id. DR argued that the AO has recorded the reasons that income has escaped assessment and it is not incumbent upon the AO to specify in the reasons recorded that failure of the assessee. The Ld. D.R finally prayed that the cross objection of the assessee may be dismissed.

8. We have heard rival contentions and perused the material on record carefully. The undisputed facts are that the case of the assessee was reopened u/s 147 of the Act after a period of four years from the end of the assessment year. The proviso to section 147 of the Act mandates that the re-opening beyond 4 years from the end of relevant assessment year can only made if underassessment or escapement is by reasons of the failure of the assessee to disclose any material facts in the return of income. Thus reopening of assessment proceedings, assessment after expiry of four years can only be made if the condition as laid down in the proviso to Section 147 of the Act are satisfied i.e. failure on the part of the assessee to truly and fully disclose any material

fact or information which ultimately lead to escapement of income. In the present case before us, the assessment was framed u/s 143(3) of the Act vide order dated 11.03.2014. We note that during the course of assessment proceeding, the assessee furnished before the AO all the documents as desired including the audited annual accounts. and accordingly framed the assessment u/s 143(3) of the Act. Besides the assessee has made full disclosure of these transactions in the books of account which have been examined at length by the AO during the course of original assessment proceeding. Therefore, the reopening of assessment u/s 147 in the present case, without any reference to failure on the part of the assessee to disclose all facts regarding the items in the return of income or books of account during the assessment proceeding, is not justified and is in violation to proviso to section 147 of the Act. The case of the assessee finds support from the *decision of New Delhi Television Ltd. vs DCIT (supra) wherein it has been held that where the assessee has disclosed all material facts qua the issuance of convertible bonds, thus there was no failure on the part of the assessee to disclose material facts and therefore notice issued to the assessee u/s 147 of the Act after a period of 4 years has been quashed. Similarly in the case of CIT vs Multiplex Trading & Industrial (supra), the Hon'ble Delhi High Court has held that since the assessee has disclosed all the material facts at the time of making assessment, initiation of reassessment proceedings after expiry of four years from the end of relevant assessment year on the basis of report of investigation cannot be sustained and has to be set aside. In this case, the assessment was completed u/s 143(3) and thereafter the AO received the information from Investigation Wing that the assessee has received bogus loans in the form of accommodation entries and on that basis the case of the assessee was reopened. In the case of Rajivraj Ranbirsingh Choudhary vs ACIT (supra), the Hon'ble Gujarat High Court as laid down the same ratio. In this case the assessment was framed u/s 143(3) of the Act and the AO accepted the loans taken by the assessee from the family members. The assessment was reopened after a period of more than 4 years on the ground that sources of loan funds were not explained. Considering the facts of the present case before us in the*

light of the aforesaid decisions, we are inclined to hold that the reopening of assessment is invalid and is accordingly quashed. The cross objection is allowed on legal issue .

9. The other ground raised by the assessee on merits is not being adjudicated as the we have quashed the assessment order.

10. Since we have allowed the legal issue raised by the assessee in the cross-objection as stated hereinabove, the appeal of the revenue becomes infructuous and is accordingly dismissed.

I.T.A. Nos. 2427/Kol/2019, CO:03/Kol/2020 Assessment Years : 2012-13:

11. The issues raised in the appeal of the revenue and cross objection of the assessee are same as decided by us in I.T.A. Nos. 2426/Kol/2019, CO:02/Kol/2020 Assessment Years : 2011-12 where have decided the legal issue in CO in favour of the assessee and dismissed the appeal of the revenue. Accordingly our decisions in I.T.A. Nos. 2426/Kol/2019, CO:02/Kol/2020 Assessment Years : 2011-12 would , mutatis mutandis, apply to these appeal of the revenue as well as CO of the assessee. Consequently the CO of the assessee is allowed and appeal of the revenue is dismissed.

I.T.A. Nos. 2428/Kol/2019, CO:04/Kol/2020 Assessment Years : 2013-14:

12. At the outset, the Id counsel of the assessee submitted before the bench that this appeal and cross objections are arising out of the order passed by Id CIT(A) dated 03.08.2019 which in turn arise out of the assessment framed by the AO u/s 143(3)/263 of the Act dated 26.12.2018. The Id Counsel submitted before the bench that the tribunal vide order dated 27.11.2019 has quashed the order passed by the Id

PCIT u/s 263 of the Act dated 28.03.2018 and consequently both the appeal of the revenue and CO of the assessee become infructuous and may be dismissed. The Id DR fairly agreed to the facts as placed by the Id counsel of the assessee before the Bench. Considering these facts, the appeal of the revenue and CO of the assessee are dismissed.

13. In the result the cross objections of the assessee for A.Y. 2011-12 and 2012-13 are allowed whereas the Cross objection for A.Y. 2013-14 are dismissed. All the three appeals of the revenue are dismissed.

Order is pronounced in the open court on 27th June, 2022

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Dated: 27th June, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- ACIT, Circle-6(2), Kolkata
2. Respondent – M/s West Bengal Agro Industries Corporation Ltd., 23B, N.S.Road, Dalhousie-7000001.
3. The CIT(A)- 2, Kolkata (Sent through e-mail)
4. Pr. CIT- Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata