

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./I.T.A. No.1783/Chny/2019
निर्धारण वर्ष/Assessment Year: 2013-14

&

C.O. No. 84/Chny/2019 [In I.T.A. No. 1783/Chny/2019]

The Income Tax Officer,
Corporate Ward 6(1),
Chennai.

Vs. M/s. SPI Technologies India Pvt. Ltd.,
R.S. No. 4/5 & 4/6, Gothi Industrial
Estate, Kurumbapet,
Puducherry 605 009.
[PAN:AAACS6707R]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent/Cross Objector)

Department by : Shri AR V Sreenivasan, Addl. CIT

Assessee by : Shri N.V. Balaji, Advocate

सुनवाई की तारीख/ Date of hearing : 05.04.2023

घोषणा की तारीख /Date of Pronouncement : 21.04.2023

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the Revenue and the Cross Objections filed by the assessee are directed against the order of the Id. Commissioner of Income Tax (Appeals) 15, Chennai, dated 28.03.2019 relevant to the assessment year 2013-14.

2. The assessee has raised cross objections by stating that the reopening of assessment under section 147 of the Income Tax Act, 1961

["Act" in short] is invalid and the Id. CIT(A) failed to adjudicate the issue properly. Since this issue goes to the root of the matter, we proceed to decide the issue of reopening of assessment first.

3. Facts are, in brief, that the assessee is engaged in the business of providing services related to back office and furnished its return of income for the assessment year 2013-14 on 25.09.2014 declaring total income of ₹.55,08,43,260/-. The assessee also declared book profit at ₹.77,28,18,938/-. The case of the assessee was selected for scrutiny and after following due procedure, the assessment was completed under section 143(3) of the Act dated 25.03.2016 assessing an income of ₹.55,27,07,431/- and book profit as ₹.77,38,61,913/-.

3.1 Subsequently, the Assessing Officer has noted that the MTM gains as on 31.03.2013 of ₹.3,91,85,765/- have neither been credited in the profit & loss account nor offered as income in the statement of computation. Since the gains are required to be taxed as income, the Assessing Officer issued notice under section 148 of the Act on 02.08.2017 followed by statutory notices. The assessee filed the details called for vide letter dated 24.12.2016 as under:

- The company has been consistent in the method of accounting over the years. The taxability of transaction is based consistent in the method of accounting regularly employed by the assessee. Hence, MTM gain cannot be subject to tax given the accounting policy of prudence consistently followed

- by the Company.
- MTM gain cannot be taxed based on the CBDT Instruction No. 03/2010 dated 23 March 2010 which is binding on the tax department.
 - Actual gain/loss has been factored at the time of maturity of contract.

The Assessing Officer has considered the explanation of the assessee and noted that the assessee company has conveniently recognises the MTM losses in the P&L account, but also reverses the same whenever there is a MTM gain, while at the same time not recognizing the MTM gain as revenue, which is not the correct method. Moreover, reversing earlier years MTM losses is also claimed as a deduction in the current year income computation on the grounds that the same was offered as income in the earlier year. The above treatment was not in consonance with the decision of the Hon'ble Supreme Court in the case of CIT Vs. Woodward Governor India P. Ltd. (312 ITR 254) and in view of the above, the MTM gain of ₹.3,91,85,765/- as on 31.03.2013 was added to the total income of the assessee.

4. On appeal, the Id. CIT(A) has upheld the reopening of assessment and so far as merits of the case is concerned, the Assessing Officer was directed to delete the addition.

5. Against the confirmation of reopening of assessment, the assessee filed Cross Objections and so far as merits are concerned, the Department is in appeal before the Tribunal.

6. The Id. Counsel for the assessee has submitted that the assessee, neither claimed the loss nor the gains offered for taxation and the Assessing Officer has considered the same in the original assessment order dated 25.03.2016 and passed the assessment order and therefore, issuing a notice under section 148 of the Act again on the same issue is amounting to change of opinion, which is not valid. The Id. Counsel for the assessee has relied on the decisions in the case of Bapalal & Co. & Exports v. JCIT 289 ITR 37 (Madras HC), CIT v. Kelvinator of India Ltd. 320 ITR 561 (SC), CIT v. Lucas T.V.S. Ltd. 234 ITR 296 (Madras HC) and Sahakari Khand Udyog Mandal Ltd. v. ACIT 370 ITR 107 (Gujarat HC).

7. On the other hand, the Id. DR has submitted that so far as MTM gain is concerned, the assessing Officer has not applied his mind and therefore, the change of opinion does not arise.

8. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including paper books filed by the assessee. The Assessing Officer originally completed the assessment under section 143(3) of the Act and subsequently reopened the assessment on the ground that the assessee has conveniently recognizes the MTM losses in the P&L account but also

reverses the same whenever there is a MTM gain, while at the same time not recognizing the MTM gain as revenue, which is not a correct method and therefore, according to the Assessing Officer there is an escapement of income. The case of the assessee is that whenever there is MTM loss, debited to P & L account and no claim was made. So far as MTM gain is concerned, the same was not brought into P & L account and submitted that neither the assessee claimed the loss in the return of income nor gain was shown in the income computation. Thus, the Assessing Officer has reopened the assessment under section 147 of the Act within four years. The reasons recorded for reopening are extracted as under:

“The reasons for reopening the assessment under section 147 of the IT Act in your case for the assessment year 2013-14 are communicated as under:

“Scrutiny assessment for A.Y. 2013-14 was completed u/s 1443(3) of the IT Act, 1961 on 25/09/2014 assessing total income of Rs.55,27,07,431/-.

It is observed that MTM gains as on 31/03/2013, Rs.3,91,85,765/- have neither been credited in the Profit & Loss Account nor offered as income in the statement of computation. The gains are required to be taxed as income, in view of the Hon'ble Supreme Court decision in the case of Woodward Governor India.”

In this regard, your case is posted for hearing on 05/12/2018 at 11:100 am on which date you are requested to furnish your submissions, if any.”

The reasons recorded were challenged before the Id. CIT(A). The Id. CIT(A) has observed that the reopening was on the basis of audit objection and therefore, there is no independent application of mind by

the Assessing Officer. However, section 148 of the Act cannot vitiate the proceedings unless the assessee was able to show that there has been repeated attempts on its part to seek the reasons which were not given any heed by the Assessing Officer thereby proving that the non-furnishing of reasons by the Assessing Officer resulted in loss of time in adequately defending itself before the Assessing Officer. On perusal of the appellate order, we, prima facie, came to a conclusion that the reasons recorded by the Assessing Officer vide letter dated 30.11.2016 and the observations made by the Id. CIT(A) are quite different. In our opinion, the Id. CIT(A) has not properly considered the issue of reopening of assessment. In this case, the assessment was completed under section 143(3) of the Act dated 25.03.2016 and subsequently, the assessment was reopened on the ground that MTM gains have neither been credited in the profit and loss account nor offered as income in the statement of computation is the main reasons for reopening.

9. Under these facts and circumstances, when the assessee was treating the loss in different method and gains in another method, the assessee should have been explained it before the Assessing Officer during the course of scrutiny assessment proceedings under section 143(3) of the Act. However, there is nothing on record that the assessee

has put up a note to the Assessing Officer with regard to treatment of losses as well as gains. Under these facts and circumstances of the case, we are of the opinion that when the Assessing Officer passed the assessment under section 143(3) of the Act, there was no material placed before him with regard to MTM gains. When there is no material before the Assessing Officer with regard to MTM gains, there was no occasion for him to apply his mind. Therefore, change of opinion does not arise in this case. In our opinion, the Assessing Officer has not examined the issue of MTM gains and therefore, the Assessing Officer has rightly issued notice under section 148 of the Act and completed the assessment order under section 143(3) r.w.s. 147 of the Act dated 27.12.2018, which is a valid assessment order. So far as case law relied on by the assessee is concerned, we have gone through each and every case law and find no application to the facts of the present case and all are distinguishable.

10. So far as merits of the case is concerned, the case of the assessee is that the assessee was not claiming MTM loss and therefore, taxation of MTM gain is amounting to double taxation, which is not in accordance with law. The case of the Department is that the assessee was claiming MTM loss in P & L account, but also reversing the same whenever there is MTM gain. In the appellate order, the Id. CIT(A) has not discussed the

facts properly and simply deleted the addition made by the Assessing Officer without giving any reason on the basis of any supporting evidence. Under the above facts and circumstances, we set aside the order of the Id. CIT(A) on this issue and direct the Assessing Officer to consider the issue de novo in accordance with law.

11. The assessee has raised in its Cross Objections that in case of MTM gain is taxed, the same may be allowed under section 10AA of the Act and also raised the issue of book profits. We direct the assessee to raise these issues before the Assessing Officer for consideration and pass order in accordance with law.

12. In the result, both the appeal filed by the Revenue and the Cross Objections filed by the assessee are allowed for statistical purposes.

Order pronounced on the 21st April, 2023 at Chennai.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, the 21.04.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/
Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय
प्रतिनिधि/DR & 6. गार्ड फाईल/GF.