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

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

ITA No.4469/Mum/2023
(Assessment Year: 2014-15)

ACIT Room No.545, 5th Floor, Aaykar Bhavan M.K. Road, Mumbai-400 020	Vs.	NRB Bearings Limited 15, Dhannur Mumbai, G.P.O. Mumbai-400 001
(Appellant)		**(Respondent)**

PAN No. AAACN3479P

Assessee by	:	None
Revenue by	:	Shri Anil Sant-Addl.CIT DR

Date of hearing:	06.05.2024
Date of pronouncement :	14.05.2024

O R D E R

PER PRASHANT MAHARISHI, AM:

01. ITA No. 4469/Mum/2023 is filed by the Asst. Commissioner of Income Tax, 2(2)(1), Mumbai (the learned Assessing Officer) for A.Y. 2014-15, against the order of the Commissioner of Income-tax (Appeals), Mumbai [the learned CIT (A)] dated 13th October, 2023, wherein the appeal filed by the assessee against the assessment order passed under Section 143(3) of the Income-tax Act, 1961 (the Act) by Asst. Commissioner of Income Tax, Circle 2(2)(2), Mumbai dated 27th December, 2016, was partly allowed.

02. The learned Assessing Officer is aggrieved with the same and has raised following grounds of appeal:-

"1. Ground no.1. Whether on the facts and circumstances of the case and in law, the learned CIT (A) was correct in deleting the addition on account of annual let out value of the property ₹13,21,000/- ignoring the decision of the Hon'ble Delhi High Court in case of CIT Vs. Moni Kumar Subba (333 ITR 38) wherein it was held that rateable value is not binding on the Assessing Officer if the Assessing Officer shows the rateable value as per municipal value of the property is not represents correct fair rent?

2. Ground no.2. whether on the facts and circumstances of the case and in law, the learned CIT (A) was correct in deleting the addition made by Assessing Officer on account of expenses which were reversed at the beginning of next year and in respect of which no tax was deducted at source as per the provisions of Chapter XVIIB?

3. Ground no.3 whether on the facts and circumstances of the case and in law, the learned CIT (A) was correct in deleting the addition made b Assessing Officer on account of shortage in stock amounting to ₹78,000/- despite the facts that the evidence of shortage of stock brought on record by assessee itself?

4. Ground no.4 whether on the facts and circumstances of the case and in law, the learned CIT (A) was correct in deleting the addition made by Assessing Officer on account of scrap value for 4 days amounting to

₹7,56,000/- despite the facts and the assessee itself brought on record that the scrap accounted till 27th March remains to account for rest 4 days of the F.Y.? "

03. The facts of the case show that the assessee is a company engaged in the manufacturing of ball roller bearings. It filed its return of income on 28thNovember 2014, at total income of ₹43,08,98,940/-. It revised the return of income on 31stMarch 2016, at the same figure. Return was selected for scrutiny and notice under Section 143(2) of the Income-tax Act, 1961 (the Act) was issued on 31stAugust 2015. The assessment under Section 143(3) of the Act was passed on 27thDecember 2016, determining the total income of the assessee at ₹45,63,91,260/-. Against which the assessee preferred the appeal before the learned CIT (A). This order of the learned CIT (A) is challenged before us.

04. The first ground of appeal is with respect to the deletion of addition to the account of annual let out value of the property of ₹13,21,000/-. The brief fact of the case shows that the assessee owns a building by the nameShangri-La at Carmichael Road, Mumbai, out of total building, flats were not covered in the Bombay Rent Control Act. One flat was given to Deutsche Bank earlier and subsequently were given on rent to Tata sky. The learned Assessing Officer found that flat no.5 was earlier given on rent to Deutsche Bank is at monthly rent of ₹3,12,500/- and security deposit of the same amounti.e., one month rent. However, same flat given to Tata Sky subsequently on rent has monthly rent of ₹1,92,500/- and it was revised subsequently to ₹2,10,000/-. The assessee has taken a security deposit of ₹3,85,00,000/- for rent of Rs 192500/- and subsequently security deposit was enhanced of the same flat at ₹4,25,00,000/- of

the same flat and rent was determined at Rs 2,10,000/- p.m. . Therefore, the learned Assessing Officer was of the view that flat no.5 rented out to Tata Sky is given at a reduced rental rate only because of huge security deposit of ₹3.85 crores, which was further enhanced to 4.25 crores. The flat given on rent to Deutsche Bank at a monthly rate of ₹3,12,500/- is only having a security deposit of the same amount. Thus, the learned Assessing Officer was of the view that the flat given on rent to Tata Sky is not proper. When questioned, the assessee submitted that the flat given on rent to Tata Sky is slightly higher because of Municipal Ratable Value of the house property. The assessee has relied upon several judicial precedents. The learned Assessing Officer held that according to the provision of Section 23 of the Act, the annual value of the property is to be determined. According to him, the flat given on rent to Deutsche Bank is deriving the monthly rent of ₹3,12,500/-, whereas the rent charged from the Tata Sky is ₹1,92,500/-. The difference in rent is only because of the security deposit. Therefore, he held that fair market rent of the flat is ₹3,12,500/-. Accordingly, he took the annual value of the flat at rent of ₹3,12,500/- per month. Accordingly, the difference of ₹13,21,000/- was added to the income of the assessee under the head house property determining the fair rate of ₹37,50,000/- against the rent declared by the assessee at ₹24,29,000/-. When the matter reached before the learned CIT (A), he deleted the addition on the basis of the decision of the co-ordinate Bench in assessee's own case in ITA No. 672/Mum/2011, for A.Y. 2007-08. He further held that though for that year, the ITAT has restored the issue back to the file of the learned Assessing Officer to examine and determine the annual retable value as laid down by the

Hon'ble High Court in case of Tip Top Typography, but for this year he deleted the addition.

05. The learned Departmental Representative retreating the ground no.1, submitted that the learned CIT (A) has deleted the addition though in the case of the assessee, ITAT in earlier year has set aside the issue back to the file of the learned Assessing Officer to determine the annual letable value in terms of the decision of the Hon'ble Bombay High Court. It was further stated that though the learned CIT (A) has dealt with this ground no.1 has deleted the addition. In this case, the learned Assessing Officer has not made any addition of notional interest on security deposit as merely considered the annual letable value of identical property. Therefore, he should have restored this issue also back to the file of the learned Assessing Officer.

06. Despite the notice, none appeared on behalf of the assessee and therefore, the case of the assessee was decided on merits as per the information available on record.

07. We have carefully considered the identical issue as arising in the case of the assessee for A.Y. 2007-08. The co-ordinate Bench in that case has restored the matter back to the file of the learned Assessing Officer. The learned CIT (A) also followed that order but instead of restoring matter back to the file of the learned Assessing Officer, deleted the addition. We understand that the learned CIT (A) does not have any power to remand the matter back to the file of the learned Assessing Officer. However, in the present case, the addition made by the learned Assessing Officer with respect to the fact that same flat earlier given to Deutsche Bank from 1st March to 19th June, 2010, was at the monthly rent of ₹3,12,500/-, the same flat rented

out to Tata Sky from 1st April, 2013 to 31st March, 2014, at monthly rent of ₹2,10,000/-, where security deposit is taken of ₹4.25 crores. Form Destch bank assessee did not charge any security deposit but only one month rent. The learned Assessing Officer has compared the rent received from Deutsche Bank and then made the addition. According to Section 23 of the Act, the annual value of let out property is to be determined on the basis of the same for which the property is expected to let out from year to year therefore, it has to be the market rate of the rent. As in case of assessee's own case for earlier years the co-ordinate Bench has resorted the matter back to the file of the learned Assessing Officer to determine the annual letable value, we also restore this matter back to the file of the learned Assessing Officer for reason being that he has compared the rent of F.Y. 2010-11, received from Deutsche Bank with rent received in F.Y. 2013-14 from Tata Sky. The learned Departmental Representative also relied upon the decision of the Hon'ble Delhi High Court in CIT Vs. Moni Kumar Subba (333 ITR 38) to submit that the rateable value is not binding on the learned Assessing Officer if the rateable value as per Municipal record does not represent the correct fair rent. The learned Assessing Officer may consider the same and after giving an opportunity to the assessee decide the issue afresh. Accordingly, ground no.1 of the appeal is allowed with the above direction.

08. Ground no.2 of the appeal is regarding deletion of the addition made by the learned Assessing Officer on account of expenses provided at the end of the year which were reversed at the beginning of the year and no tax is deducted thereon at the time of making provision. The fact shows that the assessee has made a provision for expenses of

₹1,81,15,000/- at the end of the accounting year. There was no tax deducted at source on the same. The assessee was asked to explain why such expenses should not be disallowed under Section 40(a)(ia) of the Act for non deduction of tax at source. The assessee submitted that assessee has deducted tax at source in the subsequent year and deposited same on or before the due date of filing of the return of income. The assessee submitted chart showing the subsequent booking of expenditure and compliance of the TDS provision made by the assessee. Therefore, the claim of the assessee is that though at the time of booking of the expenditure at the end of the year tax has not been deducted on the same but in the subsequent period, the amount was reversed and at the time of booking of expenditure in subsequent year tax is deducted at source which has been deposited before the due date of filing of the return of income for this assessment year. The learned Assessing Officer rejected the contention of the assessee and held that assessee has incurred liability for such expenditure and claimed deduction thereon but has not deducted tax at source on the same and therefore, these amounts are not deductible as allowable expenditure as per provision of Section 40(a)(ia) of the Act. He disallowed ₹1,81,15,000/-. The learned Assessing Officer also held that similar disallowances were made for earlier assessment years from A.Y. 2007-08 to 2010-11, which has been confirmed by the learned CIT (A).

09. It was submitted before the learned CIT (A) that application to deduct tax at source from the account of the specified party arises only at the time of bill was presented by that party and not before that. The assessee relied on the decision of the co-ordinate Bench in assessee's own case in ITA No.3481/Mum/2012, for A.Y. 2008-09,

and also on the decision of the co-ordinate Bench in case of Mahindra & Mahindra Ltd. in ITA No. 8597/Mum/2010, based on this, he deleted the disallowance.

010. The learned Departmental Representative vehemently submitted that the assessee has made provisions in the books of account determining the party, quantum of work, and the actual amount of provision. Therefore, the payee and the amount are identified in this case. Assessee has provided this expenditure in its books of account as assessee has incurred these expenses wholly and exclusively for the purpose of the business. Therefore, the tax should have been deducted at source at the time of making the provision. He otherwise submitted that if the amount of tax due on the whole sum has not been deducted as at the end of the year but subsequently, tax has been deducted and same is deposited on or before the due date of filing of the return of income of the assessment year in which provision is made, disallowance to that extent could not have been made. However, no such fact is available on the record. Therefore, the order of the learned CIT (A) is not sustainable.

011. We have carefully considered the contention of the learned Departmental Representative. We find that the provision has been made by the assessee of ₹1,81,15,000/- at the end of the accounting year as of assessment year 31stMarch 2014. Admittedly, the assessee has reversed the above provision on the first day of the next previous year i.e., 1stApril 2014. As the payer and the payee are identified, the nature of services is also ascertained and the amount of liability is also determined, there is no reason why the tax should not have been deducted thereon. Only inthose circumstances provisions of Section 40a (ia) of the Act applies. However, it is apparent that if the

assessee has paid such tax on or before the due date specified under Section 139(1) of the Act, no disallowance can be made. It is the claim of the assessee before the learned Assessing Officer also that even if it is accepted that the tax should have been deducted, assessee has subsequently deposited the impugned amount of TDs on or before the due date under Section 139 (1) of the Act for the year in which provision is made, so no disallowance should have been made. As the assessee has complied with that condition, for different reasons we hold that the addition cannot be sustained. Accordingly, ground no. 2 of the appeal of the learned Assessing Officer is dismissed.

012. Ground no.3 of the appeal is against the deletion of addition of ₹78,000/- on account of shortage in stock. The fact of the issue shows that during the course of assessment proceedings, the assessee was asked to explain the details of shortage and excess on physical verification of inventory. The assessee explained that during the course of half yearly stock verification there is a shortage of 2.23 lacs and excess of ₹1.46 lacs of this stock. The learned Assessing Officer made an addition of ₹78,000/- on account of such shortage. When the matter reached before the learned CIT (A), it was submitted that assessee has stock of ₹13,284/- lacs and shortage of stock is only 0.01% of the total stock. Such excess or shortage may also arise on account of difference in counting etc. and is negligible; the learned CIT (A) deleted the addition for this reason.

013. The learned Departmental Representative supported the order of the learned Assessing Officer.

014. On careful consideration of the issue, we find that the average stock of the assessee is ₹13,284/- lacs against this shortage of ₹78,000/- has arisen. This too is on account of half yearly physical verification of raw material, chemicals and also finished goods. The assessee's closing stock and opening stock is in the range of Rs. 13,200 lacs. The difference arisen in the stock is only ₹78,000/- hence, this is a normal occurrence in such account of engineering producing company having multi state operations. The learned CIT (A) look to the totality of the facts has deleted the addition. We do not find any infirmity in the same. Even otherwise in absence of any adverse material if on physical verification shortage of stock is found, it is an ordinary loss in case of a manufacturer, same could not have been disallowed by the learned Assessing Officer, accordingly, we dismiss round no.3 of the appeal.

015. Ground no.4 is with respect to the deletion of the addition of ₹7,56,000/-. The learned Assessing Officer found that assessee has shown ₹689,00,000/- as sale of scrap till 27thMarch 2014. The learned Assessing Officer questioned the stock from 27th March 2014 to 31stMarch 2014, and why same is not accounted for. The assessee submitted that scrap is recorded as sale only when it is sold. Generation of scrap is not at all recorded as scrap sale. This is so because there is no certainty about the sale price of this scrap. The learned Assessing Officer rejected the contention and held that as assessee has generated the scrap and sold it up to 27th march, 2014 of ₹689 lacs, an average per day scrap sale is ₹1.89 lacs and scrap sale for 4 days would have been Rs. 7.56 lacs, the addition was made to that extent. When the matter reached before the learned CIT (A) the assessee explained the methodology of scrap sale and also submitted

that the learned Assessing Officer has computed the average sale scrap generation per day and then made the addition. The learned CIT (A) held that identical issue arose in case of ITA No.6384/Mum/2019, and in assessee's own case, where such addition is deleted. Therefore, he deleted the addition. The learned Departmental Representative supported the order of the learned Assessing Officer.

016. We have carefully considered the contention and the orders of the lower authorities. In this case, we find that assessee has hold scrap of ₹689 lacs on 27thMarch 2014, Therefore, the learned Assessing Officer determined the average daily sales and made an addition of ₹7,56,000/- for last four days of scrap sale. We do not find any logic and methodology in making the above addition. Sale of scrap is a continuous process in a manufacturing industry, the sale of scrap is accounted as and when it is sold, therefore, it is unfair and against established trade practices to determine the average sale of scrap per day and make an addition thereof, despite scrap is not sold. Accordingly, we confirm the order of the learned CIT (A) and dismissed ground no.4 of The Appeal.

017. Thus, the appeal of the learned Assessing Officer is partly allowed for statistical purposes.

Order pronounced in the open court on 14.05.2024.

Sd/-	Sd/-
(SANDEEP SINGH KARHAIL)	(PRASHANT MAHARISHI)
(JUDICIAL MEMBER)	(ACCOUNTANT MEMBER)

Mumbai, Dated: 14.05.2024
Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

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

BY ORDER,

True Copy//

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