IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA

[Before Shri Rajpal Yadav, Vice-President & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 1094/Kol/2018
Assessment Year : 2013-14

Maithan Alloys Ltd. (PAN: AABCM 7758 B)	Vs.	PCIT-1, Kolkata
Appellant		Respondent

Date of Hearing	19.04..2022
Date of Pronouncement	09.05.2022
For the Appellant	Shri Sanjay Kumar Kejriwal, FCA Shri Harsh Kejriwal, A.R
For the Respondent	Shri Gourav Kanaujia, CITDR

ORDER

Per Shri Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Principle Commissioner of Income Tax-1, Kolkata [hereinafter referred to as 'PCIT'] passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act) dated 23.03.2018 for the assessment year 2013-14.

2. The assessee has raised following grounds of appeal:

1. That the Ld. PCIT-1, Kolkata's order u/s 263 of the Act dated 23.03.2018 is ab-initio void and bad in law and on facts.

2. That the Ld. PCIT has erred in law in initiating the proceedings u/s 263 of the Act without her own discretion, satisfaction and judgment but on the basis of audit objections and as such, the order u/s 263 of the Act passed by her is invalid and bad in law.

3. That in partly setting aside the assessment order u/s 143(3) dated 25.03.2016 on the two issues, the Ld. PCIT has erred in law and on facts in holding that the assessment order is erroneous and prejudicial to the interest of the revenue.

4. The appellant craves leave to amend/alter any grounds of appeal and to take additional grounds before or at the time of hearing of the appeal.

3. The issue raised in ground no. 1 & 2 is against the revisionary order u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act) being void ab-initio as the jurisdiction was assumed without application of mind based.

4. At the outset, the Ld. Counsel for the assessee brought to our notice the draft moved by DCIT,Circle-3(1), Kolkata, dated 06.02.2018, copy of which is placed at page 131 of PB. However the date mentioned just below the ACIT, Headquarters-1, Kolkata was 08.02.2018. The Ld. A.R. in the previous hearing has raised this issue, that there was no application of mind by the PCIT while initiating the proceedings u/s 263 of the Act . In other words the proposal by the JCIT was singed on 8.8.2012 whereas the notice u/s 263 of the Act was issed on 6.8.2012 . The ld AR argued that in view of this conflict in the dates , the proceedings initiated u/s 263 of the Act are bad in law. Accordingly the Bench directed the ld DR to produce the ld PCIT records to find out the truth.

5. Today at the time of hearing, the Ld. D.R. produced before the Bench the PCIT records and it was examined by the Bench along with dispatch register and found that the plea taken by the ld. Counsel of the assessee has no merit as this was mere a mistake which does not go to the root of the matter and is of clerical nature. Accordingly, ground nos. 1 and 2 are dismissed.

6. The issue raised in ground no. 3 is against the order passed u/s 263 of the Act setting aside the assessment framed u/s 143(3) of the Act dated 25.03.2016 by wrongly upholding the said order is erroneous and prejudicial to the interest of the revenue.

7. The facts in brief are that the assessment in this case was framed u/s 143(3) of the Act vide order dated 25.03.2016 assessing the total income at Rs. 24,84,01,880/- as against the returned income of Rs. 24,47,62,760/-. Thereafter on examination of the assessment folder the PCIT came to the conclusion that the assessment so framed by

the AO u/s 143(3) of the Act dated 25.03.2016 is erroneous and prejudicial to the interest of the revenue as the AO has failed to examine certain issues and accordingly notice u/s 263 of the Act dated 06.02.2018 was issued by giving show cause on the following points:

i) Non-examination of CSR expenses of Rs. 9,35,347/-

ii) Non-examination of interest received from debtors on the delayed payments amounting to Rs. 11,93,007/- and miscellaneous receipt of Rs. 24,63,071/- which do not form part of the profit for the purpose of section 80IE of the Act.

8. The said notice was replied by the assessee vide written submission dated 05.03.2018 by submitting that all the issues as raised by the Ld. PCIT in the show cause notice were duly examined during the course of assessment proceedings and only thereafter a plausible and possible view was taken based by the AO by accepting the contentions/ arguments of the assessee. So far as the CSR expense is concerned, the ld. Counsel submitted by referring to page no. 169 of PB which contained the details of miscellaneous expenses having complete detail of CSR expenses which was filed before the AO in response to notice u/s 142(1) of the Act dated 25.06.2015 issued by the AO to the assessee calling for these details and CSR expense appeared on Sl. No. 5 on the details of miscellaneous expenses a copy of which is placed at page no. 177 of PB. The Ld. A.R. therefore submitted that issue has been raised by the AO and examined during the assessment proceedings and only after examination a plausible view was taken. The ld Counsel of the assessee submitted that the assumption of revisionary jurisdiction on this point is invalid and against the provisions of law as the PCIT has no authority to intervene and disturb the assessment which has been framed after examination/enquiry of evidences filed by the assessee in response to notice issued u/s 142(1) of the Act during the assessment proceedings. On the second issue the Ld. A.R. submitted that the other income comprised of two constituents: i) interest income of Rs. 11,93,007/- and ii) miscellaneous receipts of Rs. 24,63,071/- which were undisputedly part of the eligible income while calculating the deduction u/s 80IE of the Act. The Ld. A.R. submitted that the observations of the PCIT that the interest

income and miscellaneous income have no nexus to the income of the eligible unit u/s 80IE of the Act and should not be allowed as deduction u/s 80IE is wrong and against the provisions of law. The Ld. A.R. submitted that the interest income of Rs. 11,93,007/- has accrued from sundry debtors on delayed payment received from them over and above the credit period allowed to them. The Ld. A.R. submitted that the interest income is directly attributable to the business operation of the assessee and therefore eligible for deduction u/s 80IE of the Act. Similarly the amount of Rs. 24,63,071/- included in the miscellaneous income represented VAT remission in pursuance to Scheme of State Government under Meghalaya Industries (Tax Remission) Scheme, 2006. Under the said scheme the industrial unit under the remission scheme is required to charge tax as per applicable rates of tax to ensure smooth and seamless operation of VAT system and remission of 99% of the tax so charged is allowed to the assessee and thus 1% is required to be paid to the the Government Treasury. The Ld. A.R. submitted that the said remission is arising out the business activity of assessee and therefore eligible for the deduction u/s 80IE. The Ld. A.R. referred the decision of Hon'ble Apex Court in the case of *CIT vs. Meghalaya Steels Ltd. reported in [2016] 67 taxmann.com 158 (SC)* wherein it has been held that the transport subsidy, interest subsidy, power subsidy and insurance subsidy are part of the income derived from business as there was certainly direct nexus of profits of assessee's business and reimbursement of such subsidies. The Ld. A.R. submitted that the similarly applying the same analogy in the present context the remission which is a kind of incentive to the assessee arising from the said Industrial unit by virtue of its manufacturing activity carried on in the backward area is certainly a part of the eligible profit u/s 80IE of the act and thus the finding of the PCIT that there should not form the eligible part u/s 80IE is not contrary to the decision of the Hon'ble Apex Court.

9. The Ld. D.R. on the other hand relied heavily on the order of PCIT by submitting that no prejudice is going to be caused by the order of PCIT to the assessee as the PCIT has not given a direction to add these items to the taxable income but only revised the order by directing the AO to look into these issues and pass the

order de novo on these issues in accordance with the provisions of the Act and therefore the appeal of the assessee on this issue is kindly be dismissed.

10. We have heard rival submissions and perused the material on record placed before us. The PCIT revised the assessment on two issues: one is for non-examination of CSR expenses of Rs. 9,35,347/- which according to the PCIT has wrongly been claimed as deduction unit-II, Byrnihat. The Ld. PCIT observed that the assessment so framed is erroneous in so far as prejudicial to the interest of the revenue on this issue. Similarly the PCIT has held that the interest earned by the assessee from late payment from the sundry debtors and VAT remission of Rs. 24,63,071/- shown as miscellaneous income are not the part of the eligible profit u/s 80IE of the Act and therefore deduction u/s 80IE has been allowed in excess resulting into the mistake in the assessment order which has caused prejudice to the revenue. We note that the issue of CSR expenses has specifically been examined by the AO during the course of assessment proceedings by issuing notice u/s 142(1) dated 25.06.2015 which was replied by the assessee by submitting complete and comprehensive details of miscellaneous expenses which contained CSR expenses also. The copy of reply is filed at page no. 169 to 198 of PB. On the basis of this, we are of the view that the AO has examined the issue and has taken a plausible view and therefore the conclusion of PCIT that issue has not been examined by the AO at the time of scrutiny assessment is not tenable and accordingly cannot be sustained. So far as the issue of interest from sundry debtors is concerned, we find that the same is arising from business activity of the assessee and has been treated as part of the profit for the purpose of deduction u/s 80IE of the Act as the interest earned from the sundry debtors who has not made the payment during the credit period allowed them. Similarly the VAT remission is also part of and arising because the business activity of the assessee. The assessee has collected sales on the applicable rates on the sales made by it availed 99% of VAT remission under the scheme of Meghalaya State Government in pursuance of Meghalaya Industries (Tax Remission) Scheme, 2006 and paid only 1% to the tax to the Govt. In our view, the said remission has direct nexus with the business of the assessee and therefore has to form a part of eligible unit and deduction u/s 80IE of the

Act has to be allowed. The case of the assessee is squarely covered by the decision of Hon'ble Supreme Court in the case of CIT vs. Meghalaya Steel Ltd. wherein the similar issue was laid down in the said case. The Hon'ble Supreme Court held that the transport subsidy, interest subsidy, power subsidy and insurance subsidy has direct nexus with the business of assessee and therefore has to be treated as the part of the eligible profit for the business of deduction u/s 80IB read with Section 80IC of the Act. We therefore following the same, hold that the exercise of revisionary jurisdiction is not valid. In view of the above facts and circumstances we are inclined to quash the order passed u/s 263 of the Act.

11. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 9th May, 2022

Sd/-	Sd/-
(Rajpal Yadav)	(Rajesh Kumar)
Vice-President	Accountant Member

Dated: 9th May, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Maithan Alloys Ltd., 9, A.J.C. Bose Road, 4th Floor, Kolkata-700017.
2. Respondent – PCIT-1, Kolkata
3. Pr. CIT- Kolkata
4. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata