

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA 'A' BENCH, KOLKATA  
(Virtual Court Hearing)**

**Before Shri P.M. Jagtap, Vice-President  
and Shri Satbeer Singh Godara, Judicial Member**

**I.T.A. No. 162/KOL/2020  
Assessment Year: 2013-2014**

***Deputy Commissioner of Income Tax,.....Appellant  
Central Circle-3(3),Kolkata,  
Aayakar Bhawan Poorva, 4<sup>th</sup> Floor, Room No. 416,  
110, Shanti Pally, Kolkata-700107***

**-Vs.-**

***Shri Loknath Prasad Gupta,.....Respondent  
31, B.P. Road, Ramkrishna Dev Path,  
Titagar, North 24-Parganas,  
Kolkata-700119  
[PAN:ADUPG5810F]***

**Appearances by:**

*Shri Ram Bilash Meena, CIT, D.R., for the Appellant  
Shri Ashok Tulsyan, A.R., for the Respondent*

Date of concluding the hearing : August 03, 2020  
Date of pronouncing the order : August 19, 2020

**O R D E R**

**Per Shri P.M. Jagtap, Vice-President:**

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-21, Kolkata dated 11.11.2019, whereby he deleted the disallowance of Rs.12,96,62,086/- made by the Assessing Officer on account of assessee's claim for deduction towards interest on excise duty pertaining to earlier years.

2. The assessee in the present case is an individual, who filed his return of income for the year under consideration originally under section 139 of the Income Tax Act, 1961 on 28.09.2016 declaring a loss of

Rs.4,76,64,751/-. The said return was selected for scrutiny by the Assessing Officer and a notice under section 143(2) of the Act was issued by him on 04.09.2014. In assessee's case, an order dated 10.06.2015 in ITA No. 645/KOL/2014 was passed by the Tribunal for A.Y. 2009-10 confirming the disallowance of Rs.12,93,62,086/- made by the Assessing Officer on account of interest on excise duty pertaining to earlier years and claimed for A.Y. 2009-10 on payment basis observing that the same was liable to be allowed either in A.Y. 2008-09 or A.Y. 2013-14 in which the matter relating to central excise had reached finality. Since the assessment proceedings initiated by the Assessing Officer under section 147/148 for A.Y. 2008-09 were open, a petition dated 01.09.2015 was filed by the assessee requesting the Assessing Officer to allow the deduction of Rs.12,93,62,086/- in A.Y. 2008-09. The assessee also filed a revised computation of income for A.Y. 2013-14 on 04.09.2015 as the regular assessment proceedings for the said year were initiated by the Assessing Officer vide notice issued under section 143(2) of the Act on 04.09.2014. The assessment for A.Y. 2008-09 under section 147/143(3) of the Act was completed by the Assessing Officer vide an order dated 15.01.2016, wherein the deduction of Rs.12,93,62,086/- claimed by the assessee on account of interest on excise duty was disallowed by the Assessing Officer observing that the same would be considered in A.Y. 2013-14. Meanwhile a search and seizure operation was conducted in the cases belonging to Raja Group including the case of the assessee on 22.09.2015. As a result of the said action, proceedings under section 153A were initiated by the Assessing Officer and consequently the regular assessment proceedings initiated by the Assessing Officer for A.Y. 2013-14 by issuing notice under section 143(2) on 04.09.2014, which were pending on the date of search, got abated and merged with the proceedings under section 153A initiated for A.Y. 2013-14 in pursuant to the search. In response to the notice issued under section 153A of the Act, the return for A.Y. 2013-14 was filed by the assessee on 28.09.2016 declaring a loss of Rs.17,70,26,837/- after claiming the deduction of

Rs.12,93,62,086/- on account of interest on excise duty pertaining to earlier years as per the direction given by the Tribunal in the appellate order dated 10.06.2015 for A.Y. 2009-10. In the assessment completed under section 153A/143(3) of the Act vide an order dated 31.12.2017, the income declared by the assessee in the return was wrongly taken by the Assessing Officer as Rs.5,77,80,260/- and after making additions/disallowances of Rs.1,42,899/-, the total income of the assessee was determined by him at Rs.5,78,92,590/-. He thus did not consider the claim of the assessee for deduction of Rs. 12,93,62,086/- on account of interest paid on central excise pertaining to earlier years. The assessee, therefore, moved a petition under section 154 before the Assessing Officer on 05.03.2018 seeking rectification of the said mistake. The Assessing Officer passed rectification order on 19.06.2019 determining the total income of the assessee at a loss of Rs.4,75,52,490/- thereby taking the returned income of the assessee at a loss of Rs.4,76,64,751/- but not allowing the claim of the assessee for deduction on account of interest paid on central excise amounting to Rs.12,93,62,086/-.

3. Meanwhile the assessee filed an appeal against the order dated 31.12.2017 passed by the Assessing Officer for the year under consideration, i.e. A.Y.2013-14 under section 153A/143(3) of the Act challenging, inter alia, the disallowance made by the Assessing Officer on account of his claim for deduction on account of interest on excise duty pertaining to earlier years. During the course of appellate proceedings before the Id. CIT(Appeals), the following submissions were made on behalf of the assessee in support of his case on this issue:-

*"The claim is made pursuance to the ITA T order for allowing the claim in AY 2008-09 or 2013-14 when the matter reached finality;*

*(ii) Before the date of search, assessment proceedings for 2013-14 was initiated vide notice u/s 143(2) dated 04.09.2014;*

*(iii) Claim was made before the AO in the course of regular assessment proceedings along with revise computation of income on 04.09.2015;*

*(iv) A search & seizure took place against the assessee and his group on 22.09.2015;*

*(v) As per section 153A, the assessment proceedings for 2013-14 gets abated and merged with 153A proceedings. Assessee has intimated the AO about the search and abatement of assessment proceedings vide letter dated 30.11.2015;*

*(vi) The order for AY 2008-09 was passed u/s 1471143(3) on 15.01.2016 in which the said claim of Interest paid on excise duty was not allowed and held as under:*

*"14. The submission of the assessee were examined in the light of records and submissions of the assessee filed in the course of the assessment proceedings as above. In view of the Order dated 10.06.2015 by the Hon'ble ITAT in ITA No 645/KOL/2014 (discussed above) the assessee claims the entire amount of interest of Rs.19,58,89,924/-, in AY 2008-09 (i.e, in the year in which the order of the Excise Settlement Commission was passed) However, since the liability towards interest was finally determined by the Hon'ble Delhi High Court vide order dated 13.04.2012 ( in AY 2013-14) the same may be allowed in the year of the pronouncement of the order given by Hon'ble Delhi High Court as adjudicated by the Hon'ble ITAT Kolkata subject to verification of the facts. Further, the department had filed an appeal before Hon'ble Calcutta High Court for the A. Y.-2009-10 against the order of ITAT, Kolkata in I.T.A. No. 1096/KOL/2014 dt. 10.06.2015 in respect of disallowance of Excise duty and interest thereon, which is yet to be disposed off. "*

*The said issue was not disputed by the assessee as evident from the order of Id. CIT(A) and Hon'ble ITAT passed against this order of AO (copy enclosed).*

*Hence, considering the above facts, the AO was wrong in holding that it is a fresh claim u/s 153A which is factually wrong and incorrect. The claim was already there prior to search and only due to merger of abated proceedings with the proceedings u/s 153A, the same cannot be treated as a fresh claim made by the assessee and be disallowed. The said fact has been held by Hon'ble Delhi High Court in the case of CIT vs Kabul Chawla in 380 ITR 573 as under:*

*"37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:*

*i. Once a search takes place under Section 132 of the Act, notice under Section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the A Y in which the search takes place.*

*ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.*

*iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant A Y in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be one assessment order in respect of each of the six AYs "in which both the disclosed and undisclosed income would be brought to tax".*

*iv. Although Section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post- search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this section only on the basis of seized material.*

*v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i. e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.*

*vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.*

*vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.*

*3.9.2 In view of the above facts, we would like to submit that the claim should be allowed to the assessee since the same is a genuine claim made by the assessee in accordance with the*

*direction of the Hon'ble ITAT. Since the claim was not allowed to the assessee in AY 2008-09, the assessee claimed the same is AY 2013-14 in the return filed u/s 153A. However, the AO did not allow the claim of the assessee.*

*3.10. In this regard, we would like to submit that the claim made by the assessee is a genuine claim and has to be allowed to the assessee by the AO himself since the same is as per the direction of the order of the Hon'ble ITAT. Therefore, the assessee should not be denied the benefit of deduction/exemption under the Act for which the assessee is eligible legally. On this issue the assessee seeks reliance from the various judicial pronouncements”.*

4. In support of the above contentions, reliance was placed on behalf of the assessee on the following judicial pronouncements:-

*(i) SAIL, DSP -vs.- Employees Association (1998)-vs.- Union of India & Ors [2003] 262 ITR 638 (Cal.);*

*(ii) In Maynak Poddar (HUF) -vs.- Wealth Tax Officer [2003] 262 ITR 633 (Cal.)*

*(iii) CIT -vs.- Bhaskar Mitter (1994) 73 Taxman 437 (Cal.);*

*(iv) DCIT -vs.- Sanmukhdas Wadhwani (2003) 85 ITD 734 (Nag.).*

5. The Id. CIT(Appeals) found merit in the contentions raised on behalf of the assessee and allowed the claim of the assessee for deduction of Rs. 12,93,62,086/- on account of interest on excise duty pertaining to earlier years by observing as under:-

*“Many important legal issues emerged out of submission made by the assessee read with direction of Hon'ble ITAT in ITA No. 645/KOL/2014:-*

*1<sup>st</sup> Question: Whether in proceedings u/s 153A a fresh claim can be allowed or not.*

*The assessee has stated that at the time of search, it was a pending assessment as notice u/s 143(2) was already issued. Therefore, in my opinion the assessee's claim can be entertained as it is a case of pending assessment and not of completed assessment.*

*2<sup>nd</sup> Question: For consideration is whether interest would be allowable in the AY 2013-14.*

*Since the interest expenditure has crystallized in AY 2013-14 as per Delhi High Court Order, therefore, interest expenditure will be allowable in AY 2013-14. Therefore, the AO is directed to allow interest expenditure in AY 2013-14”.*

6. Aggrieved by the order of the Id. CIT(Appeals), the Revenue has preferred this appeal before the Tribunal on the following grounds:-

*“(1) That on the facts and in the circumstances of the case, Id. CIT(A) has erred in allowing appeal of the assessee by holding that the interest expenditure on central excise has crystallized in AY 2013-14.*

*(2) That on the facts and in the circumstances of the case, Id. CIT(A) has erred by violating the order of the Hon’ble ITAT, Kolkata in ITA No. 645/KOL/2014 dated 10.06.2015 wherein it has been clearly mentioned that liability accrued during assessment year 2008-09”.*

7. We have heard the arguments of both the sides and also perused the relevant material available on record. The only contention raised by the Id. CIT(D.R.) is that the Id. CIT(Appeals) has passed a very cryptic order, wherein he has allowed a substantial relief to the assessee on the issue under consideration without giving any cogent or convincing reason. In support of this contention, he has relied on the provision of sub-section 6 of section 250, whereby it was incumbent upon by the Id. CIT(Appeals) to dispose of the appeal of the assessee by an order in writing stating the points for determination, the decision thereon and the reason for the decision. He has contended that the impugned order passed by the Id. CIT(Appeals) does not satisfy these statutory requirements and urged that the matter may be remitted back to the Id. CIT(Appeals) for disposing of the appeal of the assessee afresh by passing a well discussed and well reasoned order in accordance with the sub-section 6 of section 250. We find some merit in the contention of the Id. CIT(D.R.). In our opinion, the Id. CIT(Appeals) would have been right to entertain the claim of the assessee for deduction on account of interest on excise duty pertaining to earlier years in the year under consideration keeping in

view the observations made by the Tribunal in its order dated 10.06.2015 (supra) passed in assessee's case for A.Y. 2009-10 and the fact that the assessment proceedings initiated by the Assessing Officer for the year under consideration under section 143(2) had got merged as a result of search with the proceedings under section 153A, which were open. Moreover, inspite of taking note of the order of the Hon'ble Delhi High Court dated April 13, 2012 on the basis of which the liability of the assessee on account of interest in question was taken as crystallized by him in the year under consideration, the Id. CIT(Appeals) failed to take note of a very relevant and material fact that the interest charged by Customs and Central Excise Settlement Commission (in short 'CCESC') at Rs.25.87 crores was reduced by the Hon'ble Delhi High Court to Rs.19.56 crores and the liability of the assessee on account of the said interest after adjusting the amount of Rs.13 crores already paid by the assessee was reduced to Rs.6.56 crores as against Rs.12.87 crores. This clearly shows the non-application of his mind by the Id. CIT(Appeals) to the relevant and material facts having a direct bearing on the quantum of liability of the assessee on account of interest in question. We, therefore, set aside the impugned order passed by the Id. CIT(Appeals) on this limited issue only and remit the matter back to him for deciding the same afresh by passing a well discussed and well reasoned order after giving the assessee a proper and sufficient opportunity of being heard.

**8. In the result, the appeal filed by the Revenue is treated as allowed for statistical purposes.**

Order pronounced in the open Court on August 19, 2020.

**Sd/-  
(Satbeer Singh Godara)  
Judicial Member**

**Sd/-  
(P.M. Jagtap)  
Vice-President**

***Kolkata, the 19<sup>th</sup> day of August, 2020***

*Copies to : (1) Deputy Commissioner of Income Tax,  
Central Circle-3(3), Kolkata,*



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31, B.P. Road, Ramkrishna Dev Path,  
Titagar, North 24-Parganas, Kolkata-700119***  
(3) *Commissioner of Income Tax (Appeals)-21, Kolkata,*  
(4) *Commissioner of Income Tax ,*  
(5) *The Departmental Representative*  
(6) *Guard File*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

***Laha/Sr. P.S.***