

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

(THROUGH VIRTUAL COURT),

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No.117/ALLD/2011

Assessment Year: 2007-08

Bharat Pumps & Compressors Ltd., Naini, Allahabad, U.P.	v.	ACIT, Range-II, Allahabad,U.P.
PAN: AAACB 9309A		
(Appellant)		(Respondent)

Appellant by:	Ms. Tanu Singhal, CA
Respondent by:	Shri Shantanu Dhamija, CIT (DR)
Date of hearing:	23.03. 2021
Date of pronouncement:	13.04.2021

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

The appeal of the assessee in ITA no. 117/Alld/2011 for assessment year(ay): 2007-08 was decided by Income Tax Appellate Tribunal, Allahabad Bench, Allahabad(hereinafter called “ the tribunal”) vide appellate order dated 28.07.2016 passed by tribunal. The assessee , thereafter, filed Miscellaneous Application bearing number 53/Alld./2016 arising out of ITA No. 117/Alld./2011 for assessment year 2007-08 with

tribunal on 05.12.2016 , on the grounds that two mistakes have crept in the aforesaid appellate order dated 28.07.2016 passed by the tribunal, which MA filed by the assessee stood allowed by tribunal vide orders dated 07th January 2021, wherein tribunal held as under:

“6. We have considered rival contentions and have perused the material available on record. We have observed that the assessee is a Public Sector Enterprise being a Government of India Undertaking. We have observed that the assessee has raised grounds of appeal with respect to enhancement to income made by Id. CIT(A) with respect to write back of depreciation by the assessee which was enhanced by learned CIT(A) to Rs. 292.92 lacs, as against addition to the income of Rs. 43.95 lacs originally made by the AO while framing assessment against the assessee.. The AO had made additions to income of the assessee to the tune of 15% of the total depreciation written back by the assessee by adding Rs. 43.95 lacs to income of the assessee, which was later enhanced by Id. CIT(A) to entire write back of depreciation to the tune of Rs. 292.92 lacs. The fundamental purpose and duties of tribunal is to grant justice to both the parties with an objective so that rightful and legitimate income-tax within provisions of the 1961 Act which is rightfully due and payable by tax-payer for an assessment year be computed and collected under the authority of law . We have observed that finding was given by the Tribunal in Para-7 of its appellate order dated 28.07.2016, which is as under:

“7. After hearing the rival submissions and going through the orders of the tax authorities below, we noted that the excess depreciation amounting to Rs.292.92 lacs written back and shown negative under the head prior period expenses in the annual account at page No.34 does not affect the claim of depreciation of the assessee under the I.T. Act. The assessee had made such adjustment in the books of account but has not increased the WDV of the assets on which the depreciation has been claimed by the assessee in accordance with the I.T. Act. The said fact is apparent from the revised computation of statement, the copy of which was also filed before us at page No.39 of the paper book. Since the assessee has not changed the WDV for the purpose of computation of depreciation as was being brought forward from the earlier year therefore, in our opinion the Assessing Officer was not correct in law in disallowing the depreciation amounting to the sum of Rs.43.95 lacs. We accordingly delete the said addition and allow ground no.4 taken by the assessee.”

The tribunal in para 7 had given finding that excess depreciation amounting to Rs.292.92 lacs was written back and shown negative under the head prior period expenses in the annual account at Page No. 34 which does not affect claim of depreciation of assessee under the Income-tax Act,1961. The assessee had made such adjustment in the books of account but has not increased the WDV of the assets on which the depreciation has been claimed by the assessee in accordance with the Income-tax Act,1961. It is stated in the aforesaid order that the said fact is apparent from the revised computation of statement, the copy of which is also filed before the tribunal at Page No. 39 of the paper book. It was observed by the Tribunal in its order dated 28.07.2016 , since the assessee has not changed the WDV for the purpose of computation of depreciation as was being brought forward from the earlier year therefore, it was held by the Tribunal that the AO was not correct in law in disallowing the depreciation amounting to Rs.43.95 lacs. Thus, the tribunal restricted its finding and conclusions to grant of relief to the tune of Rs. 43.95 lacs as against relief of Rs. 292.92 lacs claimed by the assessee. We have observed that learned CIT(A) has given elaborate finding and reasoning in para 3.10 at page 12 wherein it is stated that the assessee has computed its Brought forwards losses and unabsorbed depreciation in an incorrect manner and further elaborations were made by learned CIT(A) while enhancing the income of the assessee on this issue. The tribunal has not dwelt upon /adjudicated this issue of enhancement of income by learned CIT(A) , which may require detailed arguments. The tribunal has dismissed the said ground of appeal raised by assessee on the grounds as being not pressed. The assessee is prejudiced by said dismissal in limine. Since Tribunal has restricted its finding to 43.95 lacs, it will be in the interest of justice that the Grounds No.5 and 6 which were not adjudicated completely by tribunal are restored back to the file of Tribunal for fresh adjudication and to this extent the MA filed by the assessee on this issue is partly allowed for statistical purposes, as indicated above. We order accordingly.

7.The second issue raised by the assessee in MA is with respect to the restricting of the relief by tribunal u/s. 145A of the Act to the tune 48.33 lacs as was relatable to income enhanced by learned CIT(A) , while Tribunal has not adjudicated on the additions to the tune of Rs. 16.4 lacs made by the AO , on the grounds that the AR of the assessee has made amendment in Ground No. 7 which was made post hearing of the appeal by taking file by AR from Bench Clerk, which move by the learned AR was not appreciated by the Tribunal. Now the assessee, who is Government of India undertaking being Public Sector Enterprises has come out with three affidavits, two by the counsel namely, CA Ms. Tanu Singhal and CA Mr. Amitava Ray, who have categorically denied and averred that they did not made any amendment in Ground No.7 in the memo of appeal filed with tribunal, and further stated that the aforesaid amendments were made by Mr. Sanjay B. Gupta, Manager(Finance) of the assessee who was authorized and competent to make such additions.It is further averred in

the affidavit that the said amendment in grounds of appeal was made under instructions from the Bench. They have also given specimen signatures/initials in the affidavit filed with the tribunal, which is placed on record in file. Further, Mr. Sanjay B. Gupta, Manager (Finance) has also given affidavit in which he has stated that he made amendment in Ground No.7 under the instructions of the Bench and he was present at the time of hearing on 10.05.2016. He has also averred that he is duly authorized by management of the assessee company to sign and submit any documents relating to ITA no. 117/Alld/2011 for ay: 2007-08. All the three affidavits are placed in file. Without going into the dispute as to who instructed to amend the Ground No.7, we are of the considered view that the fundamental purpose and duties of tribunal is to grant justice to both the parties with an objective so that rightful and legitimate income-tax within provisions of the 1961 Act which is rightfully due and payable by tax-payer for an assessment year be computed and collected under the authority of law, and with a view to subserve interest of justice, we are inclined to restore Ground No.7 back to the file of Tribunal for fresh adjudication and to this extent the MA filed by the assessee on this issue is allowed. We order accordingly.

8. The Registry is directed to issue fresh notice to both the parties in regular course notifying date for fresh hearing of the matter as indicated above in ITA no. 117/Alld/2011 for ay: 2007-08, and MA is accordingly partly allowed for statistical purposes by us on this issue, as indicated above."

1.2 That's how the assessee is now before us after its aforesaid MA was allowed by tribunal vide order dated 07th January 2021, now seeking adjudication of its ground number 5, 6 and 7 raised by it in memo of appeal filed with the tribunal in ITA No. 117/Alld/2011 for ay: 2007-08, which stood restored back to the file of the tribunal for fresh adjudication by tribunal, vide tribunal order dated 07th January 2021 in MA No. 53/Alld/2016. The Ground No. 5,6 and 7 raised by assessee in memo of its appeal in ITA No. 117/Alld/2011 for ay:2007-08 filed with tribunal, are reproduced as hereunder:

5. Because the learned C.I.T.(A) erred in further enhancing the addition by Rs. 2,48,97,000/- on account of depreciation of earlier years charged as per Companies Act in audited accounts written back in the books of Account during the assessment year 2007-08.

6. Because the learned C.I.T.(A) failed to appreciate the fact that write back of earlier years depreciation in the books of account does not affect the computation of current years total income as, in the past every year the

depreciation debited in the books has always been added back and depreciation as per Income Tax Act 1961 has been claimed in the Income Tax Return, which is also a standard and regular practice and as per law for computing the total income of any year.

7. Because the learned C.I.T.(A) erred in enhancing the total income of the year by Rs. 48.33 lakhs(Corrected to Rs. 64.73 lakhs) on account of excise duty on the closing stock of finished goods at the factory premises as on 31-3-2007, without appreciating the fact that excise duty on the finished goods was payable only at the point of their removal from the factory premises.”

2. The brief facts of the case are that the assessee is a Public Sector Enterprise being Government of India undertaking . The assessee has claimed to have written back depreciation in its books of accounts to the tune of Rs. 292.92 lacs which it claimed was an excess depreciation charged over a period of 1979-80 to 2005-06 using straight line method in its books of accounts without adjusting written down value method and now in the year under consideration, the said excess amount of depreciation to the tune of Rs. 292.92 lacs for the entire period 1979-80 to 2005-06 were written back and credited to prior period expenses in its books of accounts. It is claimed that said write back of depreciation was for the purposes of Companies Act, 1956 for reflecting correct depreciation and written down value of assets in its books of accounts , and It is claimed that there is no impact on the depreciation claimed under the Income-Tax Act, 1961 as written down value was adjusted while computing depreciation under the provisions of the 1961 Act for the said period 1979-80 to 2005-06. The authorities below have observed that incorrect claim of unabsorbed losses as well unabsorbed depreciation has been made by the assessee. It is also observed by authorities below that the assessee has also claimed depreciation on the assets which were not in use. The AO in the first round of litigation has made addition to the income of the assessee to the tune of 15% of the depreciation of Rs. 292.92 lacs, which led to the additions to the income of the assessee to the tune of Rs.43.95 lacs, which stood enhanced to the additions to the income of the assessee to the tune of entire depreciation write back of Rs. 292.92 lacs by ld. CIT(A). The tribunal in first round

of litigation gave relief to the assessee to the tune of Rs. 43.95 lacs and the assessee being aggrieved filed MA . The tribunal allowed the MA by restoring the issue back to its file for fresh adjudication of ground number 5 & 6. During the course of hearing before tribunal which was conducted pursuant to its order in MA through videoconferencing through virtual court, the counsel of the assessee and ld. CIT-DR have put in their arguments before the Bench to support their contentions . Both the ld. Counsel for the assessee as well ld. CIT-DR agreed that the matter need to go back to the file of the AO for fresh adjudication, as verifications are required to be made by AO as to the claim of depreciation made by the assessee in preceding years and impact of this reversal of depreciation of earlier years on tax liability of the assessee under the provisions of the 1961 Act for the impugned ay. Thus, keeping in view the entire factual matrix of the case and after hearing both the parties, we are of the considered view that this issue needs to go back to the file of the AO for fresh adjudication on merit in accordance with law. The assessee is directed to produce relevant evidences that it is claiming correct depreciation and written down value of assets for earlier years under the provisions of the 1961 Act while filing return of income with Revenue , and no prejudice is caused to Revenue by this reversal of depreciation and to demonstrate that this reversal of depreciation is tax neutral. Needless to say that the AO shall provide proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law , in set aside proceedings . The evidences filed by assessee in its defense in set aside proceedings shall be admitted by AO and adjudicated on merits in accordance with law. Thus, in nutshell, the grounds of appeal number(s) 5 and 6 filed by assessee in memo of appeal filed with tribunal are allowed for statistical purposes. We order accordingly.

3. The next ground number 7 concerns itself with valuation of closing stock of finished goods . The assessee has not included excise duty payable on closing stock of finished goods to the tune of Rs. 64.73 lacs, while valuing its closing stock of finished goods, which as per Revenue infringes on Section 145A(ii) of the 1961 Act. The AO made additions to

the income of the assessee to the tune of Rs. 16.40 lacs by invoking provisions of Section 145A(ii) of the 1961 Act , which additions were enhanced by Id. CIT(A) by Rs. 48.33 lacs to make additions to the income to the tune of Rs. 64.73 lacs as this is the amount of excise duty payable on closing stock of finished goods which was not added to the value of closing stock of finished goods by the assessee . The tribunal in first round of litigation granted relief to the assessee to the tune of Rs. 48.33 lacs, which was infact by way of enhancement by Id. CIT(A). The assessee filed MA with tribunal which was allowed by tribunal and ground number 7 was restored to the file of tribunal for fresh adjudication. Both the Id. Counsel for the assessee as well Id. CIT-DR made their submissions to support their contentions. The dispute is in very narrow compass. The assessee has not included excise duty component while valuing closing inventory of finished goods as at year end which it is required to do so keeping in view provisions of Section 145A(ii) as claim is made by assessee that the same are lying in its warehouse situated in factory premises and the same were not removed from the factory/warehouse by the end of the year. The claim of the assessee is that the excise duty although is leviable on manufacturing of goods but is payable when the goods are removed from factory. We have observed that the auditors have given qualifying adverse remark on the valuation of finished goods as at year end in the audited balance sheet for the year 2006-07(placed in file), without including excise duty to the tune of Rs. 64.73 lacs. The qualifying note read as under:

“2(v)(e) No provision has been made for the unpaid amount of excise duty of Rs. 64.73 lacs towards the stock of finished goods lying at the Warehouse of the Company. This has resulted in understatement of stock by Rs. 64.73 lacs(Sch 11.1 Note No. 7(ii) and to that extent liability is also understated.”

Similarly in Note 7(ii) to notes to accounts to audited financial statements for the financial year 2006-07, it is stated that no provision has been made towards excise duty on finished goods in warehouse amounting to Rs. 64.73 lacs (previous year Rs. 4.60 lacs)

We have observed that the issue is no more res-integra keeping in view decision of Hon'ble Apex Court in the case of CCE v. Polyset Corporation 2000 (67) ECC 607 , 2000(115) ELT 41. The decision of Hon'ble Karnataka High Court in the case of CIT v. SPR Group Holdings Private Limited reported in (2020) 120 taxmann.com 432(Karnataka) is relevant. The decision of Hon'ble Bombay High Court in the case of CIT v. Loknete Balasaheb Desai S.S.K. Limited in ITA no. 4297 of 2009 , dated 22.06.2011 is equally relevant. We hold that for computing valuation of finished goods as at year end in the case of the assessee, excise duty shall not be included if the said finished goods are lying in the factory premises or are lying in the bonded warehouse within the factory premises, and provided that the bonded warehouse was set up by assessee with the permission of excise department to transfer manufactured goods to bonded warehouse without firstly paying excise duty . The assessee is claiming that its finished goods are lying in warehouse , but the complete facts as to status /location of warehouse are not emerging from records. Thus, it is not clear from the records before us as to the location of the warehouse and whether the same is located within factory premises or is at some other location outside factory premises. Similarly, it is also not emerging from the records whether the said warehouse is a bonded warehouse which was set up by assessee within factory premises with the permission from excise department to shift finished goods from manufacturing site to said bonded warehouse without firstly paying excise duties. These facts need verification by the AO and the assessee is directed to produce records before AO to prove its stand , including producing excise records as well permission from excise department to set up bonded warehouse within factory premises and to shift finished goods to bonded warehouse without firstly paying excise duties. In case it is found by AO after verification that the finished goods are lying in the bonded warehouse within factory premises and the finished goods are allowed to be shifted by excise department to bonded warehouse without firstly paying excise duty , then obviously the liability for excise duty incidence has not occurred and the same cannot be included for the purposes of Section 145A(ii). Thus, we are restoring this issue back to the file of the AO for fresh determination of the issue in

accordance with ratio of decision of Hon'ble Supreme Court in the case of Polyset(supra) and other decisions cited by us in this order, and after making necessary verifications as are referred to in above. Needless to say that the AO shall provide proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law , in set aside proceedings . The evidences filed by assessee in its defense in set aside proceedings shall be admitted by AO and adjudicated on merits in accordance with law. Thus,in nutshell, the grounds of appeal number 7 filed by assessee in memo of appeal filed with tribunal are allowed for statistical purposes. We order accordingly.

4. In the result, the ground numbers 5,6 and 7 in ITA no. 117/Alld/2011 for ay: 2007-08 are allowed for statistical purposes , in the manner as indicated above.

Order pronounced on 13/04/2021 at Allahabad in the open court.

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

Sd/-
[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 13/04/2021

Copy forwarded to:

1. Appellant – Bharat Pumps & Compressors Limited, Naini, Prayagraj , U.P.
2. Respondent – ACIT, Range-II, Allahabad, U.P.
3. CIT(A) , Allahabad
4. CIT
5. DR