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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/43/2025
IA NO: GA/1/2025, GA/2/2025
PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-2, KOLKATA
VS
M/S. SEVEN STAR STEELS LTD.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Date : 5th May, 2025

Appearance :
Mr. Aryak Dutt, Adv.
Mr. Soumen Bhattacharjee, Adv.
Mr. Ankan Das, Adv.
Ms. Riya Kundu, Adv.
Ms. Shradhya Ghosh, Adv.
...for appellant
Mr. Abhratosh Majumdar, Sr. Adv.
Mr. Pratyush Jhunjhunwalla, Adv.
Ms. Sretapa Sinha, Adv.
Mr. Gaurav Gupta, Adv.
...for respondent

The Court : We have heard Mr. Aryak Dutt, learned standing counsel for the appellant/revenue and Mr. Abhratosh Majumder, learned senior counsel for the respondent/assessee.

There is a delay of 138 days in filing the present appeal. As the explanation offered is acceptable, the delay is condoned. The application for condonation of delay being IA No: GA/1/2025 is allowed.

This appeal is filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) challenging the order dated 5.3.2024 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata (Tribunal) in I.T.(SS)A No. 118/Kol/2023, C.O. No.15/Kol/2023 for the assessment year 2015-16.

The revenue has raised the following substantial questions of law for consideration :

- A. Whether the Learned Tribunal has committed substantial error in law in allowing carry forward of assessed loss when the return of income was filed under Section 139(4) of the IT Act, and not under Section 139(1) of the Act ?
- B. Whether the Learned Tribunal has committed substantial error in law in allowing carry forward of assessed loss when assessee filed its return for the A.Y. 2015-16 under Section 139(4) of the Act, 1961 on 17.10.2016 declaring current year business income Rs.61,12,960/- ?
- C. Whether the Learned Tribunal (ITAT) has erred in law by allowing the appeal of the assessee despite of assessee not claiming the loss to be carried forward in its return of income, in contravention of the

ratio laid down by the Hon'ble Supreme Court in Goetze (India) Vs. CIT 284 ITR 323(SC) ?

- D. Whether the Learned Tribunal erred in law in not appreciating that the loss can only be allowed to be carried forward if the ROI is filed within the date specified under Section 139(1). The proposition of company not existing at that point of time has a remedy in terms of filing application (for condonation of delay) under Section 119(2)(b). However, the assessee chose not to avail this remedy.

We have elaborately heard the learned Advocates for the parties and carefully perused the materials placed on record. The revenue is before us challenging the correctness of the order passed by the learned Tribunal in dismissing the revenue's appeal and allowing the cross-objection filed by the assessee. The following list of dates and events would suffice to take a decision in the instant appeal. The assessee was merged with M/s. Penguin Trading & Agencies Ltd. along with other five concerns of the Group by order of merger passed by this Court on 24.12.2024 and the merger was to take effect from 1.4.2013. Subsequently this Court passed another order of revised merger on 19.3.2016 by which the assessee was demerged from M/s. Penguin Trading & Agencies Ltd. again with effect from 1.4.2013. After receiving the demerger order which was effective from 1.4.2013, the assessee filed its return of income for the assessment year

2015-16 on 17.10.2016. Subsequently, intimation under Section 143(1) of the Act was issued on 24.10.2016 for the return of income filed on 17.10.2016. Subsequently, on 27.4.2017 a search/seizure and survey proceedings was carried on various businesses and residential businesses of Batwal Group and the assessee was one of the Group concerns of the said Group. Pursuant thereto notices under Section 143A was issued on 2.11.2017 and in response to the same the assessee filed their return of income on 2.12.2017. M/s. Penguin Trading & Agencies Ltd. applied before the Settlement Commission on 27.7.2018 and the Settlement Commission has passed an order on 25.6.2019 under Section 245B(4) of the Act and it was held that the losses and expenses of the assessee for the assessment year 2015-16 are allowable in the hands of the assessee and a particular sum of money towards item debited in the books of M/s. Penguin Trading & Agencies Ltd. included in their return where added back and direction was issued to the Assessing Officer to consider the said losses and expenses in the hands of the assessee as the assessment of the assessee under Section 153A was pending as on date. The Appellate authority namely, the Commissioner of Income Tax (Appeals) while passing the order dated 6.3.2023 noted the above factual position and held as follows :-

“In the instant case, it is undisputed that the said losses pertained to a period when the appellate did not exist. The revenues and expenses of the appellant were –during this period- inextricably

merged with PTAL. A return had undeniably been appropriately filed, within time, in the case of PTAL – the amalgamated company. It was only after the demerger that separate returns were filed: In the case of the appellant, u/s. 139 and later u/s. 153A; and in the case of PTAL u/s. 153A of the Act. In the case of all these returns-whether of the appellant company or in that of PTAL, it is undisputed that the entire expenses on account of which the loss finally became crystallized – were claimed only and only by PTAL, and never by the appellant. In fact PTAL, in going before the Hon'ble ITSC, continued to claim these expenses-and hence the losses-on account of various reasons-like the losses being on account of the management of PTAL etc. The fact that these reasons were not accepted by either the Department or the ITSC does not negate the fact that these losses were never claimed by the appellant in his ROI and that was PTAL that had been claiming these losses.”

After coming to the above conclusion, the CIT(A) held that the Assessing Officer was asking the assessee to do something that was legally impossible and therefore the same cannot be approved. The CIT(A) took note of the decision in the case of *Pentamedia Graphics Ltd. Vs. Income-tax Officer, (2012) 20 taxmann.com 755 (Madras)* in which the Court took into consideration the decision of the Hon'ble Supreme Court in *C.I.T. vs. Sun Engineering Works Pvt. Ltd., (1992) 198 ITR 297 (SC)* and also the decision of the Hon'ble Supreme Court in the case of *Marshall Sons & Co. (India) Ltd. vs. I.T.O, (1997)138CTR (SC)(1)* which dealt with the case of amalgamation, particularly with reference to the effective date

from which the amalgamation is to take place. Therefore, the CIT(A) held that the only course open to the revenue would be to act as per the scheme of amalgamation approved by the High Court effective from the appointed date and the Taxing authorities are bound to take note of the state of affairs of the assessee as on the appointed date and the return filed beyond the due date of filing of the revised return of income cannot be ignored on the strength of Section 139(5) of the Act.

With the above reasoning the appeal filed by the assessee was allowed. The revenue carried the matter on appeal before the Tribunal, which took note of the reasoning given by the CIT(A) and approved the same. In this regard, it would be relevant to take note of the decision of the Hon'ble Supreme Court in *Dalmia Power Ltd. & Anr. Vs. Assistant Commissioner of Income-Tax*, (2020) 420 ITR 339 (SC), wherein the appeal filed by the assessee was allowed and the order passed by the Learned Single Bench was affirmed wherein direction was issued to complete assessment in respect of the said assessee for the relevant assessment year after taking into account the Scheme of Arrangement and Amalgamation as sanctioned by the NCLT (in the said case). At this juncture, it would be relevant to take note of the observation of the Hon'ble Supreme Court qua the effect of Section 139(3) and Section 153A(1).

“The counsel appearing for the Department relied on sections 139(5) and 119(2)(b) of the Income-tax Act read with Circular No. 9 of 2015 issued by the Central Board of Direct Taxes to contend that the appellant ought to have made an application for condonation of delay, and sought permission from the Central Board of Direct Taxes, before filing the revised returns beyond the statutory period of March 31, 2018. The appellants having belatedly filed their revised returns on November 27, 2018, which was beyond the due date of March 31, 2018 for the assessment year 2016-17, the assessment could only be done on the basis of the original returns filed by the appellants.

Section 139(5) of the Income-tax Act, as it stood at the relevant time, makes it clear that where an assessee furnishes a return under sub-section (1) or sub-section (4) of section 139, and later discovers an omission or mistake therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

Section 139(5) of the Income-tax Act is set out hereinunder for ready reference:

"139(5). If any person, having furnished a return under sub-section (1) or sub-section (4) of section 139, discovers any omission or wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier."

In our view, this provision is not applicable to the facts and circum-stances of the present case since the revised returns were not filed on account of any omission or wrong statement or omission contained therein. The delay occurred on account of the time taken to

obtain sanction of the schemes of arrangement and amalgamation from the NCLT.

In the facts of the present case, it was an impossibility for the assessee-companies to have filed the revised returns of income for the assessment year 2016-17 before the due date of March 31, 2018, since the NCLT had passed the last orders granting approval and sanction of the Schemes only on April 22, 2018 and May 1, 2018.”

Identical issue was considered by the Hon’ble Division Bench of this Court in the case of Shrikant Mohta vs. Commissioner of Income-Tax, (2019) 414 ITR 270 (Cal), wherein it was held as follows :-

“It goes without saying that since the search operations in this case were initiated on September 2, 2004, it was no longer necessary for this assessee to file his regular return by October 31, 2004 notwithstanding the mandate of section 139(1) of the Act. The obligation to file the return remained suspended, in view of the clear opening words of section 153A(1) of the Act, till such time that a notice was issued to him under clause (a) of such sub-section. If such is the meaning of section 153A(1) of the Act, the operation of section 139(3) of the Act qua the time available for filing a return in order to avail of the benefit of carrying forward any loss stands extended till a return is called for under section 153A(1)(a) of the Act and such return is filed, provided the return is filed within the time indicated in the relevant notice under section 153A(1)(a) of the Act. There can be no dispute to such being the effect of section 153A(1)(a) of the Act.”

In the light of the above stated legal position, we find that the learned Tribunal was fully justified in dismissing the revenue's appeal.

For the above reason, this appeal stands dismissed and the substantial questions of law are answered against the revenue.

The application stay application, GA/2/2025, also stands dismissed.

(T.S. SIVAGNANAM, C.J.)

(CHAITALI CHATTERJEE (DAS), J.)