

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA 'B' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member  
and Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 397/KOL/ 2008  
Assessment Year: 1998-1999**

**Graphite India Limited,.....Appellant**  
**31, Chowringhee Road,**  
**Kolkata-700 016**  
**[PAN : AAACC 0457 C]**

**-Vs.-**

**Additional Commissioner of Income Tax,.....Respondent**  
**Range-II, Kolkata,**  
**Aayakar Bhawan,**  
**P-7, Chowringhee Square,**  
**Kolkata-700 069**

**Appearances by:**

*Shri Vijay Shah, FCA and Ms. Ruchira Kheria, ACA, for the assessee*  
*Shri Niraj Kumar, CIT, D.R., for the Department*

Date of concluding the hearing : December 01, 2015  
Date of pronouncing the order : January 15, 2016

**O R D E R**

**Per Shri P.M. Jagtap:-**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-XI, Kolkata dated 25.01.2008.

2. In Grounds No. 1 to 3 of this appeal, the assessee has disputed the following disallowances made by the Assessing Officer and confirmed by the Id. CIT(Appeals):-

Ground No. 1- Travelling expenses.....Rs.52,902/-;

Ground No. 2- Entertainment expenses.....Rs.50,000/- &

Ground No. 3- Gift & Presentation.....Rs.50,000/-

3. The assessee in the present case is a Company, which is engaged in the business of manufacture of graphite electrodes and other graphite

products. The return of income for the year under consideration was filed by it on 27.11.2000 declaring a loss of Rs.3,31,60,605/-. During the course of assessment proceedings, the claim of the assessee for various expenses was examined by the Assessing Officer, and on such examination he made a disallowance of Rs.52,902/- out of travelling expenses and Rs.50,000/- each out of entertaining expenses and gift and presentation for the following reasons given in the assessment order:-

*“Travelling: (a) S. Takita - The assessee has debited a sum of Rs.18,817/- on account of foreign travel (Tokyo/Ccu) of Sri S. Takita. The assessee submitted a statement giving names of the persons who undertook foreign travel. The Annexure-2 of Tax Audit Report, which gives such details is silent regarding the foreign travel of Shri Takita. Hence this travel is not considered for the purpose of promoting the business interest of the assessee. Therefore, the amount of Rs.18,817/- debited for foreign travel of Shri Takita is disallowed.*

*(b) K.K. Bangur- From the details of travelling submitted it is found that the entries are in the following nature:-*

<i>Ccu/Del</i>	<i>17.11.1997</i>	<i>Rs.7,972/-</i>
<i>Ccu/Del/Ccu</i>	<i>16 to 18.11.97</i>	<i>Rs.200/-</i>
<i>Ccu/Del/Ccu</i>	<i>16 to 18.11.97</i>	<i>Rs.8,072/-</i>

*Which means in the same date assessee debited different amounts against the travelling of same person. It appears that claim for travelling expenses was made twice in the tour of the same person. The visit of Sri K.K. Bangur to Ccu/Del/Ccu from 16.11.97 at Rs.8,072/- appears to have been correctly debited. The other two entries for the travelling of the same person does not corroborated with the facts of the case. Therefore, the expenses claimed at Rs.8,172/- is added to the income of the assessee.*

*(c) K.S. Nagesh - From the details of travelling submitted it is found that the entries are in the following nature:-*

<i>Hyd. Sirpur, Vizag- Madras</i>	<i>18.8 to 25.8.97</i>	<i>Rs.6,716/-</i>
<i>Bir-Hyd &amp; Viz-Maa</i>	<i>18.8 to 25.8.97</i>	<i>Rs.5,142/-</i>

*From the above particulars it appears that Sri Nagesh has made two different tours during the same period against which the above amounts were debited. In the circumstances of the case only 1 expense i.e. 1<sup>st</sup> entry for Rs.6,716/- is considered for allowance of expenditure. The other amount of Rs.5,142/- claimed by the assessee for the same period and to the same place is not considered to have been incurred genuinely and therefore disallowed.*

*(d) O.P. Mishra- From the details of travelling submitted it is found that the entries are in the following nature:-*

Calcutta	23.4 to 25.4.97	Rs.5,612/-
Calcutta	23.4 to 25.4.97	Rs.1,435/-
Calcutta	23.4 to 25.4.97	Rs.1,530/-

*From the above particulars it is evident that expenses was claimed for the tour of Shri O.P. Mishra of 3 different amounts for the same tour. The discrepancy in claim of expenses is very much apparent and abnormal. Considering the amount of expenditure claimed on different expenses the sum of Rs.5,612/- is only considered to have been incurred for the purpose of the business. The other 2 entries for Rs.2,965/- is therefore considered not to have been related to business activities of the assessee and wrongly debited. The amount therefore added to the income of the assessee.*

*(e) O.P. Mishra:- From the details of travelling submitted it is found that the entries are in the following nature:-*

Bom.-Nag	18.12.97	Rs.3,402/-
Nag.-Bom.	19.12.97	Rs.3,403/-
Nagpur & Wardha	18 to 19.12.97	Rs.640/-
Nagpur	18 to 19.12.97	Rs.4,408/-

*Here again, the statement shows that Shri O.P. Mishra claimed expenditure for different tours during the same period and evidently all these expenditures are not related to the business activities of the assessee. The claim of expenditure from Bombay to Nagpur and Nagpur to Bombay on 19.12.97 and 19.12.97 appears to be reasonable. The other expenditure of Rs.4,408/- claimed as tour expense to Nagpur has not been explained. The sum of Rs.4,408/- is therefore, disallowed.*

*(f) S. Mitra :- From the details of travelling submitted it is found that the entries are in the following nature:-*

S. Mitra & Party	Delhi	20.8. to 21.8.97	Rs.3,085/-
	Delhi	21.8 to 29.8.97	Rs.39,895/-
S. Mitra	Delhi-Ccu	29.8.97	Rs.4,857/-
S. Mitra & Party	Delhi	20.8 to 29.8.97	Rs.8,541/-

*It is apparent from the above statement that S. Mitra & Party visited the same place for which 4 different amounts were claimed for the same period. The details of such expenditure are not available. The nature of expenditure incurred and why there are 4 different claims for the same period is also not furnished. Considering the circumstances of the case first 2 entries appears to be in order while the other 2 entries of Rs.4,857/- and Rs.8,541/- has not been justified. The above 2 amounts of Rs.4,857/- & Rs.8,541/- are disallowed.*

*In fine, the expenses under travelling disallowed is aggregate at Rs.52,902/-.*

*Entertainment Expense: In the P&L A/c. the assessee claimed an expenditure of Rs.5,43,558/-. Details of entertainment expenses*

*giving particular of persons to whom entertainment was offered and how the same are related business activities of the assessee has not been furnished. The assessee claimed that as the provision under section 37(2) of the I.T. Act, 1961 has been deleted, no expenditure under entertainment should be disallowed.*

*I have considered the TAR and the contention of the assessee. The fact remains that bonafide of the expenditure towards entertainment is to be established to claim deduction of expenditure in full. But the nature of expenditure and entertainment offered are not available. A sum of Rs.50,000/- is disallowed on this account.*

*Gift and Presentation : A sum of Rs.6,83,468/- was debited under the head. No details of gift and presentation giving particulars of gifts and the persons to whom this gift and presentation was offered and how they relate to the business activities of the assessee has been furnished. The claim of the assessee that the Rule 6B has been omitted does not give the assessee any immunity from establishing tht the expenditure was incurred futty and exclusively for the purpose of the business activities of the assessee. As the nature of expenditure has not been established a sum of Rs.50,000/- is disallowed".*

4. The above disallowances made by the Assessing Officer were challenged by the assessee in the appeal filed before the Id. CIT(Appeals) and although a detailed submission was made by the assessee in support of its case that the disallowances so made by the Assessing Officer were not sustainable, the Id. CIT(Appeals) declined to interfere with the action of the Assessing Officer making the said disallowances on the ground that the amounts disallowed were petty.

5. At the time of hearing before us, the Id. Counsel for the assessee has raised a limited contention that the Id. CIT(Appeals) having not given any decision on merit of these issues, the matter may be remitted back to him for deciding these issues on merit. Although the Id. D.R. has raised objection in this regard by pointing out that these issues have already been examined by the Assessing Officer on merit, the fact remains that there is no decision rendered by the Id. CIT(Appeals) on merit of these issues inspite of the fact that a detailed submission was made by the assessee before him. We, therefore, consider it fair and proper and in the interest of justice to remit the issues relating to these three disallowances back to the Id. CIT(Appeals) for deciding the same on merit

after giving the assessee proper and sufficient opportunity of being heard.

6. The issue raised in Ground No. 4 relates to the assessee's claim for deduction on account of expenditure of Rs.56,274/- incurred on Defence Research Development Laboratory under section 35(1)(i).

7. During the course of assessment proceedings, a letter was filed by the assessee claiming deduction of Rs.56,274/- under section 35(1)(i) on account of expenditure incurred on Defence Research Development Laboratory. Since the said claim was not made by the assessee either in the original return or by filing a revised return, the Assessing Officer did not entertain the same. On appeal, the Id. CIT(Appeals) also did not allow the claim of the assessee on this issue observing that the relevant expenses were not claimed by the assessee in the books of account and the required particulars in respect of the same were not furnished by the assessee.

8. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. As rightly contended by the Id. Counsel for the assessee, even if the claim on this issue was not made by the assessee by filing a revised return, the appellate authorities including the Id. CIT(Appeals) are empowered to consider the same on merit as held, *inter alia*, by the Hon'ble Bombay High Court in the case of CIT -vs.- Pruthvi Brokers & Shareholders Pvt. Limited reported in 349 ITR 336. Moreover, the entries in the books of account are not conclusive for deciding the claim of the assessee for any deduction as held by the Hon'ble Supreme Court in the case of Kedarnath Jute Manufacturing Co. Limited -vs.- CIT reported in 82 ITR 363 and since the relevant details were furnished by the assessee before the Assessing Officer as well as before the Id. CIT(Appeals) in support of its claim on this issue as submitted by the Id. Counsel for the assessee, we are of the view that the Id. CIT(Appeals) ought to have decided this issue on merit.

We, therefore, remit this issue to the Id. CIT(Appeals) for deciding the same on merit after giving the assessee proper and sufficient opportunity of being heard.

9. As regards the issue involved in Ground No. 5 relating to the assessee's claim for depreciation on the basis of modified written down value of assets as per the latest order for the immediately preceding year, it is observed that the Id. CIT(Appeals) has already given a direction to the Assessing Officer vide his impugned order to verify and allow the claim of the assessee on this issue. The assessee, in our opinion, therefore, cannot be said to have any grievance on this issue and accordingly, Ground No. 5, raised by it, is liable to be dismissed.

10. Ground No. 6 raised in the appeal of the assessee is not pressed by the Id. Counsel for the assessee at the time of hearing before us. The same is, accordingly, dismissed as not pressed.

11. Grounds No. 7(a) and 7(b) involve a common issue relating to the allocation of interest in computing profit of the power generating unit eligible for deduction under section 80IA.

12. In the computation of income under section 115JA of the Act, the assessee had claimed deduction of a sum of Rs.4,57,61,320/- under section 80IA being the profit derived from the new Industrial Undertaking engaged in generation of power. Separate financial statements were maintained by the assessee for the power generating unit and from the perusal of the same, the Assessing Officer found that out of the total loans of Rs.15,00,00,000/- availed by the assessee from Exim Bank, a sum of Rs.12,70,99,300/- was utilized for the purpose of power unit, while the remaining amount was utilized by the assessee for other units. He was also of the view that out of the total cost of power plant of Rs.14,69,67,446/-, a sum of Rs.1,98,68,146/- was invested by the assessee from the funds received from the parent Company. He, therefore,

held that interest on loan taken from Exim Bank only to the extent it is attributable to the amount of Rs.12,70,99,300/- was allowable as deduction while computing the profit of the power generating unit and accordingly the balance amount of Rs.14,48,719/- on account of interest attributable to the loan amount utilized for other unit was disallowed by the Assessing Officer while computing the profit of power generation unit. On appeal, the Id. CIT(Appeals) confirmed the disallowance made by the Assessing Officer on this issue observing that when own funds are mixed with borrowed funds, it is quite legitimate to apportion the interest expenses.

13. The Id. Counsel for the assessee took us through the copies of written submission made on this issue before the Assessing Officer as placed at pages no. 11, 12, 15 & 19 to show that the entire amount of loan taken from Exim Bank was meant for the purpose of power generating unit and the same was accordingly utilized for the same unit.

14. The Id. D.R., on the other hand, strongly relied on the orders of authorities below in support of the revenue's case on this issue and submitted that it is being a case of mixed funds, onus was on the assessee to establish the nexus between the borrowed funds and their utilization by filing Fund Flow Statement and/or utilization certificate from Bank. He contended that the assessee, however, has failed to discharge this onus and the authorities below, therefore, were fully justified in allowing the claim of the assessee for interest only on proportionate basis.

15. We have considered the rival submissions and also perused the relevant material available on record. A perusal of the written submission filed by the assessee on this issue before the authorities below (copies placed in the paper book at pages 15 to 26) shows that the entire loan from Exim Bank was availed by the assessee for the purpose of power generating unit. However, in order to establish that the said loan was indeed entirely used for the purpose of power generating unit, the

assessee, in our opinion, should furnish a Fund Flow Statement as well as loan utilization certificate from Bank to prove the point beyond doubt especially when the funds of power generating unit were not maintained separately and it was a case of mixed funds. We, therefore, consider it fair and proper and in the interest of justice to restore this issue to the file of the Assessing Officer for giving the assessee one more opportunity to establish its case regarding utilization of the entire loan taken from Exim Bank for power generating unit. Grounds No. 7(a) & 7(b) are accordingly treated as allowed for statistical purposes.

16. As regards the issue involved in Ground No. 7(c) relating to increase in allocation of interest to power generating unit by Rs.10,20,004/-, it is observed that this issue has arisen as a result of a dispute regarding the method applied for calculating the interest on loan. While the Assessing Officer, according to the Id. Counsel for the assessee, has worked out the interest on daily basis, the assessee has computed the same on monthly basis as done by the Bank. In this regard, the contention raised by the Id. D.R. before us is that there is nothing brought on record by the assessee to show that interest was being charged by the Bank on monthly basis. In this regard, both the sides have agreed that whatever method is followed by the Bank, the same needs to be adopted for the purpose of computing interest allocable to the power generating unit. We, therefore, restore this issue to the file of the Assessing Officer with a direction to compute the interest allocable to the power generating unit on the same basis as adopted by the concerned Bank.

17. The issue involved in Ground No. 8 relates to the assessee's claim for interest under section 244A of the Act on refund of self-assessment tax paid.

18. After considering the rival submissions and perusing the relevant material available on record, it is observed that the claim of the assessee for interest under section 244A on refund of self-assessment tax paid was denied by the Id. CIT(Appeals) relying on the order of his predecessor in

assessee's own case for A.Y. 1993-94. As submitted by the Id. Counsel for the assessee, the decision of the Id. CIT(Appeals) rendered in assessee's own case for A.Y. 1993-94 has been reversed by the Tribunal vide its order dated 14.03.2008 passed in ITA No. 2264/KOL/2007 and C.O. No. 112/KOL/2007. A copy of the said order is placed on record at pages no. 28 to 30 of the paper book and perusal of the same shows that the similar claim of the assessee for interest under section 244A on the refund of self-assessment tax paid has been allowed by the Tribunal. As further submitted by the Id. Counsel for the assessee, this issue is also covered in favour of the assessee by the decision of the Coordinate Bench of this Tribunal in the case of Additional CIT -vs.- Royal Bank of Scotland N.V. [55 DTR 307], wherein it was held that the assessee is entitled to interest under section 244A on the refund granted to it on the excess tax paid on self-assessment. Respectfully following these decisions of the Coordinate Bench of this Tribunal, we direct the Assessing Officer to grant interest under section 244A to the assessee on the refund of excess self-assessment tax paid. Ground No. 8 is accordingly allowed.

19. As regards the issue involved in Ground No. 9 relating to the assessee's claim for interest on delayed payment, the Id. Counsel for the assessee has relied on the decision of the Hon'ble Supreme Court in the case of Sandvik Asia Limited -vs.- CIT (2006) 2 SCC 508. The Id. D.R., on the other hand, has relied on the subsequent decision of the Hon'ble Supreme Court in the case of CIT -vs.- Gujarat Fluoro Chemicals reported in 358 ITR 291, wherein it was held by the Hon'ble Apex Court, after taking into consideration its earlier decision rendered in the case of Sandvik Asia Limited (supra), that the assessee is entitled to claim only that interest from revenue, which is provided for under statute and no other interest on such statutory interest. Since there is no provision in the statute for payment of interest on interest as claimed by the assessee, we respectfully follow the decision of the Hon'ble Supreme Court in the case of Gujarat Fluoro Chemicals (supra) and uphold the impugned order

of the Id. CIT(Appeals) denying the claim of the assessee for interest on interest. Ground No. 9 is accordingly dismissed.

20. In Ground No. 10, the assessee has challenged the action of the Id. CIT(Appeals) in reducing its claim for deduction under section 80IA by Rs.37,61,801/-.

21. While computing deduction under section 80IA in respect of a new power plant installed at Bangalore, the realisable market value of power was taken by the assessee on the basis of the rate of Karnataka Electricity Board. The rate so taken was inclusive of Duty/tax element of Rs.0.20 per unit. As per the decision rendered by the Tribunal in assessee's own case for A.Ys. 1999-2000 and 2001-2002, the rate charged by the State Electricity Board excluding the Duty/tax element was required to be considered as realisable market value. A notice of enhancement, therefore, was issued by the Id. CIT(Appeals) to the assessee and since he did not find merit in the explanation offered by the assessee in response to the said notice, the Id. CIT(Appeals) followed the decision of the Tribunal rendered in assessee's own case for A.Ys. 1999-2000 and 2001-2002 and directed the Assessing Officer to reduce the amount of Rs.37,61,801/- from the amount of value of electricity for the purpose of computing deduction under section 80IA.

22. We have heard the arguments of both the sides on this issue and also perused the relevant material on record. Although the Id. Counsel for the assessee has relied on the unreported decision of the Hon'ble Gujarat High Court in the case of CIT -vs.- Shah Alloys Limited (Tax Appeal No. 2092 of 2010 dated 22/11/2011) in support of the assessee's case, it is observed from the copy of the order of the Hon'ble Gujarat High Court placed on record that this issue is not considered on merit by Their Lordships. The Id. Counsel for the assessee has also relied on the decision of the Mumbai Bench of ITAT in the case of DCW Limited -vs.- Addl. CIT reported in 37 SOT 322 (Mum.) and the decision of the Ahmedabad Bench of ITAT in the case of Garden Silk Mills Limited -vs.- Addl. CIT (ITA No.

220/AHD./2008 dated 15.02.2013) in support of the assessee's case on this issue. However, keeping in view that a similar issue has been decided by the Tribunal in assessee's own case for the earlier years, i.e. A.Ys. 1999-2000 and 2001-02 and the facts involved in the year under consideration are admittedly similar to A.Ys. 1999-2000 and 2001-02, we respectfully follow the decision of the Coordinate Bench of this Tribunal for A.Y. 1999-2000 and 2001-02 and uphold the impugned order of the Id. CIT(Appeals) on this issue. Ground No. 10 is accordingly dismissed.

23. The issue involved in Ground No. 11 relates to the disallowance of Rs.66,72,385/- made by the Id. CIT(Appeals) on account of assessee's claim for foreign exchange loss treating the same as speculative loss.

24. In the Profit & Loss Account, a sum of Rs.1,90,39,518/- was debited by the assessee on account of exchange loss. The said loss was inclusive of a loss of Rs.66,72,385/- arising as a result of change on account of rupee liability due to exchange difference as on the last day of the accounting year. In the assessment completed under section 143(3), the claim of the assessee for entire loss was allowed by the Assessing Officer. The Id. CIT(Appeals), however, issued an enhancement notice on this issue and since the explanation offered by the assessee in reply to the said notice was not found acceptable by him, the Id. CIT(Appeals) enhanced the income of the assessee by Rs.66,72,385/- by disallowing the claim of the assessee for loss to that extent treating the same as speculative loss.

25. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. As rightly contended by the Id. Counsel for the assessee, this issue is squarely covered in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of CIT -vs.- Woodward Governor (P) Limited reported in 312 ITR 254, wherein it was held that the loss suffered by the assessee on account of exchange difference as on the date of the balance-sheet is

allowable under section 37(1) of the Act. Respectfully following the said decision of the Hon'ble Supreme Court, we delete the disallowance made by the ld. CIT(Appeals) on this issue and allow Ground No. 11.

26. During the course of appellate proceedings before the Tribunal, the assessee has moved an application for admission of the additional ground as under:-

*"That on the facts and in the circumstances of the case, necessary directions may be given to the A.O. to compute deduction u/s. 80HHC on the basis of book profits for the purpose of Section 115JA of the Act".*

27. As the issue raised by the assessee in the additional ground is purely a legal one and all the material facts relevant thereto are on record as admitted even by the ld. D.R., we have admitted the additional ground raised by the assessee by relying on the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Limited -vs.- CIT reported in 229 ITR 383.

28. As regards the merit, the ld representatives of both the sides have agreed that the issue raised by the assessee in the additional ground is squarely covered in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of CIT -vs.- Bhari Information Technology Systems (P) Limited reported in 340 ITR 593, wherein it was held that while computing book profit under section 115JA, deduction claimed by the assessee under section 80HHC has to be worked out on the basis of adjusted book profit under section 115JA and not on the basis of the profits computed under regular provisions of law applicable to computation of profits and gains of business. The ld. D.R., however, has contended that this issue may be restored to the file of the Assessing Officer for working out the deduction under section 80HHC on the basis of adjusted book profit in the light of the decision of the Hon'ble Supreme Court in the case of Bhari Information Technology Systems (P) Limited as well as the relevant observations recorded by the ld. CIT(Appeals) at

page 24 of his impugned order. We find merit in this contention of the Id. D.R. and since the Id. Counsel for the assessee has not raised any objection in this regard, we direct the Assessing Officer to consider this issue on merit and decide the same in accordance with law after giving proper and sufficient opportunity of being heard to the assessee. The additional ground is accordingly treated as allowed for statistical purposes.

**29. In the result, the appeal of the assessee is partly allowed as indicated above.**

Order pronounced in the open Court on January 15, 2016.

Sd/-

Sd/-

**(S.S. Viswanethra Ravi)**  
**Judicial Member**

**(P.M. Jagtap)**  
**Accountant Member**

***Kolkata, the 15<sup>th</sup> day of January, 2016***

*Copies to :* (1) ***Graphite India Limited,***  
***31, Chowringhee Road,***  
***Kolkata-700 016***

***(2) Addl. Commissioner of Income Tax,***  
***Range-II, Kolkata,***  
***Aayakar Bhawan,***  
***P-7, Chowringhee Square,***  
***Kolkata-700 069***

(3) *Commissioner of Income-tax (Appeals)-XI, Kolkata*  
(4) *Commissioner of Income Tax, Kolkata*  
(5) *The Departmental Representative*  
(6) *Guard File*

*By order*

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

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