

INCOME TAX APPELLATE TRIBUNAL, MUMBAI- BENCH "G"

BEFORE SH. BR BASKARAN, ACCOUNTANT MEMBER AND SH PAWAN SINGH,  
JUDICIAL MEMBER

ITA No.231/M/2011 for Assessment Year 2003-04

ITA NO.4297/M/2011 for Assessment Year 2004-05

Wimco Ltd. Indian Mercantile Chambers Kamani Marg, Ballard Estate Mumbai -400020	Versus	Income tax Officer Ward -2(3)(4) Mumbai Aayakar Bhavan MK Road, Mumbai-400020
Appellant		Respondent
Appellant represented by		Sh. K.R.Vasudevan & KK Vaid AR
Respondent represented by		Miss Nilu Jaggi DR

ITA NO. 4781/M/2011 for Assessment Year 2004-05

Income tax Officer Ward -2(3)(4) Mumbai Aayakar Bhavan MK Road, Mumbai-400020	Versus	Wimco Ltd. Indian Mercantile Chambers Kamani Marg, Ballard Estate Mumbai -400020
Appellant		Respondent
Appellant represented by		Miss Nilu Jaggi DR
Respondent represented by		Sh. K.R.Vasudevan & KK Ved AR

Date of hearing: 09.07.2016

Date of pronouncement: 05.08.2016

ORDER

PER PAWAN SINGH ,JUDICIAL MEMBER:

1. These three appeals out of which one for assessment year 2003-04 is filed by the assessee against the order of Commissioner of Income Tax Appeals dated 26 October 2010 and two cross appeals by assessee as well as by revenue for AY 2004-05 against the order of Commissioner of income tax appeals dated 3 March 2011. All three appeals were heard together as some of the common grounds are raised in all appeals, thus the same are decided by common order.

In appeal ITA No. 231/M/2011, the assessee has raised the following grounds of appeal:

(1) *Not admitted the additional evidence filed during the course of first appellate stage..*

- (2) *Disallowance of Rs.88.71 lakhs being write off of bed debts.*
- (3) *Disallowance of Rs. 30.21 lakhs. The old unreconciled balance written off.*
- (4) *Disallowance of Rs. 4.52 lakhs being salary/bonus/ sales tax paid in excess.*
- (5) *Disallowance of Rs. 2.58 lakhs been tedious on salary/contactor/interest consultancy fees written off during the year.*
- (6) *Disallowance of Rs. 2.21 lakhs in respect of inventories written off.*
- (7) *Sale tax paid in advance Rs. 13 lakhs.*
- (8) *Disallowance of interest Rs 229.66 lakhs.*

In appeal ITA No. 4297/M/2011 for AY 2004–05, the assessee raised the following grounds of appeal:

1. & 2. *Disallowance of advance sale tax of Rs. 60 lakhs.*
- 3 *Disallowance of loans to related parties of Rs.217.32 lakhs.*
- 4 *Disallowance of Software expenses of Rs. 5000/-*
5. & 6. *Disallowance of software expenses of Rs.3.80 lakhs*
7. *Disallowance of Repair expenses Rs. 8.74 lakhs*
8. *Disallowance of repair expenses of Rs. 24,000/-.*
9. *Disallowance of Rs. 2.50 lakhs for repair expenses.*
10. *Family pension paid after due date Rs. 3.52 lakhs.*
11. *Bad debts written off Rs.17.75 lakhs.*
12. *Confirming the addition under section 68 of Rs 14.78 lakhs.*

In cross appeal ITA No. 4781/M/2011, for AY 2004-05, the Revenue has raised only one ground against the deletion of addition under section 68 of Rs. 1,75,81,359/- (deleted Rs.1,61,03,212/-)

2. First we shall take up appeal ITA No. 231/M/2011, for assessment year 2003–04. Brief facts of the case are that assessee is engaged in the business of manufacture and sales of safety matches, filed return of income on 30 October 2003 for relevant assessment year, declaring nil income. Subsequently assessee filed, revise return on 18<sup>th</sup> March 2004 wherein the assessee offered additional compensation of Rs 12,13,412/-. The return of income was selected for scrutiny. While framing assessment, AO besides the other addition /disallowance of Rs. 88.71 lakhs being write off of bed debts, disallowance of Rs. 30.21 lakhs. The old unreconciled balance written off, disallowance of Rs. 4.52 lakhs being salary/bonus/ sales tax paid in excess, disallowance of Rs. 2.58 lakhs being the TDS on salary/contactor/interest consultancy fees written off during the year, disallowance of Rs. 2.21 lakhs in respect of inventories written off, Sale tax paid in advance Rs. 13 lakhs, disallowance of interest Rs

229.66 lakhs. Aggrieved by the order of AO, assessee filed appeal before Commissioner Appeals, but without any success, thus the present second appeal is filed before us.

3. We have heard Id AR of assessee and Id D R for Revenue and perused the material available on record. First and Second Grounds of present appeal is with regard to non-admission of additional evidence filed during the first appellate stage before CIT(A). The Learned AR of assessee argued that during the first appeal stage the assessee filed an application for admitting additional evidence on record under Rule 46A of Income Tax Rules, 1962, however, the Learned Commissioner Appeals despite showing sufficient cause not allowed the application of assessee. Thus, the assessee suffered irreparable loss and injury, which resulted in to denial of opportunity of and violation of principal of natural Justice. Ld AR for assessee argued that during the assessment, the AO at the last stage of proceedings asked the assessee to file the confirmation of the creditors and other evidence and no sufficient opportunity and time was given to the assessee. Ld. AR for assessee argued that the matter may be restored to the lower authority for reconsideration of the evidence filed by the assessee before the Ld CIT(A). On the other hand Id DR for revenue strongly sported the order of the authority below and opposed for remanding the matter to the lower authority.
4. We have considered the rival contentions of the parties and perused the order of authorities below. During the appellate proceeding, assessee filed additional evidence in the form of paper book being Ledger accounts of parties and photocopy of journal vouchers, which were not furnished before assessing officer during the course of assessment proceeding. When the filing of additional documents were objected by Commissioner Appeals. The assessee submitted that details vis-à-vis inventories written off were not at all called for by the assessing officer, the issue raised in the appeal was not meaningfully discussed by AO, during the course of assessment proceeding, the personnel of the assessee who had represented before AO has left the assessee company and the assessee is not aware of factual discussion, which may took place during

the assessment. It was further submitted that balance standing on account of excess salary, bonus, TDS paid in the earlier years were arise due to excess payment, and not filing of documents were neither contumacious nor deliberate. The Learned CIT(A) observed that the conditions mentioned in rule 46A have not been satisfied, AO allowed specific opportunity to the assessee during the assessment proceeding to establish that income in respect of amounts of written off had been offered for tax in earlier years. But despite the opportunity. AR of assessee could not satisfy the AO or to file any documentary evidence in this regard. Learned CIT (A) concluded that the contention of AR of assessee that issue was not meaningfully discussed by the AO has no merit and the additional evidence filed by AR of assessee was not admitted. We have seen that the Learned Commissioner of Income Tax Appeals neither considered the additional evidence filed before him, not sought any remand report from the AO nor discussed the relevancy and admissibility of the evidence filed before him. Considering the fact and circumstances of the case, we deem it appropriate to restore the case to the file of AO to consider the all issue raised in the present appeal afresh, Except Ground no. (6) with regard to addition/disallowance of Sale Tax which is covered against the assessee by the decision of Kerala High Court in CIT Vs Kerala Solvent Extractions Ltd. (2008) 306 ITR 54 (Ker). The assessing officer is further directed to consider the documentary evidence placed before first appellate authority. Since the matter is very old and pertaining to assessment year 2003-04, the assessee is directed to fully cooperate during the fresh assessment proceeding/remand proceeding and not to seek any adjournment without any bonafide reasons. However, it is made clear that the all issues raised before us (except sales tax addition) are remanded for reconsideration; the AO shall pass appropriate order in accordance with law. As the grounds raised except sales tax issue, in the present appeal are restored to the file of AO, for fresh finding, thus the present appeal is allowed for statistical purpose.

5. Now we shall take up appeal filed by both the parties for assessment year 2004 – 05, being **ITA No. 4297/M/2011** and **ITA No. 4781/M/2011**.

6. In ITA No 4297/M/2011, during the course of submission Id AR of assessee made the statement that he is not pressing ground no 4, 5 and 6. Thus, the ground no. 4, 5 and 6 are dismissed as not pressed.
7. With regards to other grounds, we may note that we have restored the appeal of assessee for assessment year 2003-04 to the file of AO for reconsideration. We have further noticed that the additional evidence filed by assessee was not considered by Id CIT(A), which the assessee has agitated during the first appellate proceeding. Moreover, some of the grounds of appeal are common. We have considered the contention of Id AR of assessee and Id DR for revenue. Ld DR for Revenue argued that she would not oppose to the remand of case, if all grounds of appeals and revenue's cross appeal are restore to the file of AO. Ld AR for Assessee argued that it would be the discretion of the Tribunal. Considering the peculiarity of the appeal all the grounds (except ground no 4to 6) of the appeals are restore to the file of AO for fresh consideration in accordance with law as per direction in para 3(supa).
8. With the above observation both the appeal filed by assessee as well as by revenue for AY 2004-05 are partly allowed for statistical purpose.

Announced in open court on 5<sup>th</sup> August 2016.

Sd/-  
**(B.R.BASKARAN)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Mumbai; Dated 05/08/2016  
S.K.PS

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

By ORDER,

(Asstt.Registrar)  
ITAT, Mumbai