

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

Before Shri Waseem Ahmed, Accountant Member and
Shri S.S.Viswanethra Ravi, Judicial Member

I.T.A. No. 2547/KOL/2013

A.Y: 2010-11

D.C.I.T.Cen.Cir-XXI,
Kolkata
(Appellant)

Vs

M/s. TCL-MMPL Consortium
PAN: AABAT 6742L
(Respondent)

Appearances by:

Shri Rajat Kumar Kureel, JCIT, Sr. D.R for the revenue

Shri Subash Agarwal, Sr. Advocate, Id.AR for the assessee

Date of concluding the hearing : 27-07- 2016

Date of pronouncement : 23 -09-2016

O R D E R

Shri S.S. Viswanethra Ravi, JM :-

This appeal by the revenue is directed against the order dated 26-08-2013 passed by the Commissioner of Income Tax(Appeals), Asansol for the assessment year 20010-11.

2. The Revenue has raised the following effective grounds:-

1. That on the facts and circumstances of the case, the Id. CIT (A) erred in deleting the addition made on account of disallowance of WIP holding that it was double addition by admitting additional evidence submitted at the time of rebuttal by the assessee in violation to provisions of Rule-46A of IT, Rules, without remanding the matter back to the assessing officer.

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2. *That on the facts and circumstances of the case the Id.CIT(A) erred in deleting the addition made on account of disallowance of WIP without properly describing how the running bill amount on accrual basis treated by the AO as contractual receipt after being disallowed from WIP was a double addition.*

3. The only effective ground to be decided in this appeal is as to whether the CIT-A is justified in deleting the addition made by the AO on account of disallowance on account of WIP [Work-in-Progress] without affording adequate opportunity to the revenue.

4. The facts of the case are that the assessee is an AOP i.e association of Persons engaged in the business of copper mining on contract and sub-contract basis, which spread over to remote places in the state of Rajasthan at Khetri and Kolihan copper mines sites. The assessee filed its return electronically disclosing the total income at Rs. Nil along with Tax Audit Report.

5. Under scrutiny, notices u/s. 143(2) and 142(1) of the Act were issued. Against which the Id.AR of the assessee appeared and furnished required details.

6. During such proceedings the AO found that the assessee claimed Rs.4,55,98,734.86/- towards Work-in-Progress *hereafter as WIP in short* (Rs.1,55,10,359.97 for Khetri site and Rs.3,00,88,374.89 for Kolihan site). The AO on perusal of running account bills as submitted by the assessee, he was of the view that the above amounts were not part of WIP as the assessee was following the mercantile system of accounting, thereby he added

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the said amount to the income of the assessee on the ground that the assessee failed to mention said amounts in its books of account as contract receipts in FY 2009-10 relevant to year under consideration.

7. Aggrieved by such assessment order, the assessee preferred an appeal before the CIT-A and contended before him that the assessee produced the books of account and other relevant documents relating to the impugned addition. The AO did not point out any defect in the books submitted by the assessee and added the said amount to the total income of as the assessee was being following the mercantile / accrual system of accounting. Further, contended that it was a double addition as the assessee already paid the tax on such amount in the FY 2009-10. However, the CIT-A after considering the various submissions of the assessee has deleted the impugned addition by observing as under:-

"7. Upon going through the evidence brought to record, I find that the Assessing Officer has added to income what has already been included in Profit and Loss Account. This is a clear case of double addition. Further the matter of addition of WIP comes when a particular work has been completed but not reported in Profit and Loss Account or when expenditure is booked in Profit and Loss Account of which corresponding WIP is not reported in Profit and Loss Account. The situation here is not either of the two. Hence I direct the Assessing Officer to delete the addition. This ground is allowed."

8. Aggrieved by the order of the CIT-A, the Revenue is in appeal before us challenging the order of the CIT-A by raising the above mentioned grounds of appeal.

9. Before us the Ld. DR submits that ground nos. 1 & 2 of revenue's appeal are inter-linked and argued that the CIT-A has given relief to the assessee while deleting the impugned addition made by the AO on the basis of additional evidence filed by the assessee before the CIT-A without affording any opportunity to the revenue. In support of his contention, he referred to para 7 of the order of the CIT-A and further argued that no finding was recorded by him and it is not a speaking order and urged to remand the issue to the AO for verification of the additional evidence filed by the assessee.

10. In reply, the Ld.AR submits that the AO has made the impugned addition against the fundamental/principles of accounts inspite of having all the running bills before the AO as submitted by the assessee in the assessment proceedings.

11. We have heard the rival submissions and perused the materials available on record. The contention of the revenue was that the assessee filed additional evidence before the CIT-A. Basing on which the CIT-A deleted the impugned addition. On perusal the assessment order, we find that the AO has incorporated/analysed the details of work in progress in Schedule 13 for Khetri Copper Mines and Kolihan Copper Mines sites. After examining the running account bill relating to RA-5 & RA-6 for said two sites the AO added the impugned addition. The AO observed that the assessee should have accounted the total turnover on accrual principle of accounting. Whereas the finding of the CIT-A was that the said amounts were included in the Profit & Loss account for the FY 2009-10 as on 31-03-2010 and it is a double addition. We find from the balance sheet/P & L account as on 31-3-2010, which are placed at pages3-4 of the paper book, where it has been shown

that the assessee has clearly mentioned an amount of Rs. 4,55,98,734.86 towards WIP. This amount was shown in the balance sheet as well as in the P & L account for the FY 2009-10. From the assessment order, we find that the same has not been recorded in the books of account for the FY 2009-10. As discussed above, we find that the AO is not justified on giving finding that the assessee did not mention such amount towards WIP for the FY 2009-10. Thus, we are of the view that the CIT-A has rightly deleted the impugned addition basing on the material available on record which were already part of assessment order and the assessee did not file any additional evidence before CIT-A. Therefore, we find no infirmity in the order of CIT-A and it is justified. We further find that the CIT-A did not mention any new material as contended by the revenue before us. Therefore, the grounds raised by the revenue are dismissed.

12. In the result, the appeal filed by the Revenue is dismissed.

Order Pronounced in the Open Court on 23rd September,2016.

Sd/-
WASEEM AHMED
ACCOUNTANT MEMBER

Sd/-
S.S.VISWANETHRA RAVI
JUDICIAL MEMBER

Dated: 23 /09/2016

Copy of the order forwarded to:-

1. *The Appellant/Department: DCIT, CC-XXI, Aaykar Bhawan Poorva, 5th Floor, 110 Shanti Pally, Kolkata-107.*
2. *The Respondent/Assessee: M/s. TCL-MMPL Consortium 21, C.L.M Lane, P.O Raniganj-713347, Dist Burdwan (WB).*

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3. *CIT*
 4. *CIT(A)*
 5. *The Departmental Representative*
 6. *Guard File*
- True Copy* *By order*

** PRADIP SPS

Assistant Registrar
Income Tax Appellate Tribunal
Kolkata benches, Kolkata