

**आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "आई" मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI**  
**BEFORE S/SHRI B.R.BASKARAN (AM) AND RAMLAL NEGI, (JM)**

आयकर अपील सं./I.T.A. No.1194/Mum/2006  
(निर्धारण वर्ष / Assessment Year :1996-97)

Ring Plus Aqua Limited, (Formerly known as Acqua Bearings Limited) 605, Jagdamba Complex, Link road, Malad (W), Mumbai-400064	<b>बनाम/ Vs.</b>	The Asstt.Commissioner of Income Tax , Circle 9(3), Aayakar Bhavan, M K Road, Mumbai-400020
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN :JT.CIT SR 50/11-A Mumbai

अपीलार्थी ओर से / Appellant by	Shri Nitesh Joshi
प्रत्यर्थी की ओर से/Rspondent by	Shri Vinod Kumar

सुनवाई की तारीख / Date of Hearing : 14.10.2015

घोषणा की तारीख /Date of Pronouncement : 14.10.2015

**आदेश / O R D E R**

**PER B.R. BASKARAN (AM)**

The assessee has filed this appeal challenging the order dated 08-12-2005 passed by Ld CIT(A)-IX, Mumbai and it relates to the assessment year 1996-97.

2. The assessee has filed concise grounds of appeal, wherein it did not press grounds numbered as 2(a), 3 and 6(a). The remaining grounds give rise to the following issues:-

- (a) Addition of Rs.15.00 lakhs to the closing stock value of rejected bearings.
- (b) Disallowance of preliminary expenses claim of Rs.6,900/-

- (c) Disallowance of claim of sales return of Rs.2,16,85,491/-
- (d) Inclusion of excise duty amount of Rs.4,41,352/- to the closing stock value of finished goods.
- (e) Disallowance of reversal of export premium on sale return.

3. The assessee is manufacturing water pump bearings used for automobile industries. The assessing officer completed the assessment by making various addition and the appeal filed by the assessee before Ld CIT(A) was partly allowed. Still aggrieved, the assessee has filed this appeal before us.

4. The first issue relates to the addition of Rs.15.00 lakhs towards undervaluation of rejected bearings. We heard the parties on this issue and perused the record. We notice that the assessee had classified the rejected bearings into two categories, viz., the bearings that could be reconditioned and the bearing which is required to be sold as scrap. At the end of the year, the assessee obtained a valuation report from a Chartered Engineer and accordingly valued the closing stock of rejected bearings. However, the AO called for the details of subsequent sale thereof and noticed that they have been sold at a higher price than that valued by the assessee. Hence, the assessing officer adopted the value of subsequent sale and further making some estimate on the unsold bearings, added a sum of Rs.15.00 lakhs to the closing stock value. The Ld CIT(A) also confirmed the said addition. At the time of hearing the Ld A.R placed heavy reliance on the valuation report given by the Chartered Engineer. He further submitted that the closing stock was valued at the fair market value prevailing at that point of time and the assessee cannot be found fault with the subsequent variation, if any, in the price, when actual sales took place. The Ld A.R also placed reliance on the decision

rendered by Hon'ble Bombay High Court in the case reported in 208 ITR 1017 in support of his contentions. On the contrary, the Ld D.R submitted that the Chartered Engineer did not give any basis for the value arrived at by him and hence his report could not be relied upon.

5. Having heard rival submissions, we find merit in the contentions of the assessee. The closing stock is generally valued at cost or market value whichever is lower. The rejected bearings naturally command lesser value than the cost. We notice that the assessee had obtained a valuation report from a Chartered Engineer and accordingly valued the closing stock of rejected bearings. However, it so turned that the assessee could realize higher value at the time of actual sales. As submitted by Ld A.R, the fair market value of closing stock was arrived on the basis of trends prevailing at the point of time of valuation. It is also known to everyone that the market situation is volatile and the prices of commodities keep changing upon various factors. Hence, the subsequent realization of higher price at the time of actual sale of rejected bearings, in our view, cannot be a ground to disturb the valuation arrived at by the assessee. Even otherwise, the value of closing stock becomes the value of opening stock in the succeeding year. Hence, any variation made in the value of closing stock should be given corresponding effect in the opening stock of succeeding year. Hence, we are of the view that there is no justification in disturbing the value determined by the assessee on the rejected bearings, that too, on the basis of subsequent sales realization. Accordingly, we set aside the order of Ld CIT(A) on this issue and direct the AO to delete this addition.

6. The next issue relates to the claim for deduction of Rs.6,900/- relating to preliminary expenses. It was submitted that the assessee was

allowed the claim of Rs.6900/- relating to preliminary expenses in the earlier years also, since the Income tax Act allows the preliminary expenses over a period of ten/five years in equal instalments. It was submitted that the amount of Rs.6,900/- was part of the instalment that is required to be allowed. We find merit in this submission. Accordingly, we direct the AO to allow the deduction of Rs.6900/- relating to preliminary expenses.

7. The next issue relates to the claim of sales return of rejected bearings amounting to Rs.2.16 crores. We heard the parties on this issue and perused the record. We notice that the AO has disallowed the claim on the reasoning that the assessee could not prove its claim of sales return with conclusive evidences. The Id CIT(A) also confirmed the same.

8. At the time of hearing, the Ld A.R took us through various documents consisting of correspondences between the assessee and its customers, correspondences between the assessee and its bankers, the correspondence between the banker and Reserve Bank of India, certificate of the auditors with regard to the rejected bearings etc. to submit that there were ample evidences available with the assessee to prove the claim of sales return. He further submitted that some of the bearings were not returned by the customers and was not also demanded by the assessee also, since the cost of transportation would add up to the loss already suffered by the assessee. He further submitted that some of the returned goods were lying in the godown of Customs department and they have been auctioned by the Customs authorities. He further submitted that the assessing officer himself has doubted about the valuation of the rejected bearings and has made an addition of Rs.15.00 lakhs. Accordingly he submitted that the assessing officer, having considered the rejected

bearings for the purpose of valuation, should not have doubted about the sales return. He further submitted that the assessee has also reversed the Export premium accounted earlier pertaining to sales return and the said reversal was also disallowed by the AO. He further submitted that the sales return of exported goods is considered as "Re-import" as per sec. 20 of the Customs Act. Accordingly he submitted that the impugned addition should be deleted.

9. The Ld D.R, on the contrary, placed strong reliance on the orders passed by the tax authorities.

10. We have earlier noticed that the claim of sales return was disallowed by the AO on the reasoning that the same was not conclusively proved. However, the documents referred before us including the correspondences made with the banks and Reserve bank of India, in our view, prima facie show that there is merit in the claim of the assessee. The auction made by the Customs authorities further vindicates the claim of the assessee. Hence, in our view, the claim of the assessee should be examined in the light of available evidences, the difficulties faced by the assessee, the commercial expediency involved in not bringing the goods back to India, other circumstantial evidences etc. Under these set of facts and also at this stage, it would also be difficult to submit fool proof evidences. Hence, we are of the view that the various evidences furnished by the assessee needs fresh examination at the end of the AO in the light of above said observations. Accordingly, we set aside the order of Ld CIT(A) on this issue and direct the AO to examine this issue afresh in the light of observations made supra.

11. The next issue relates to the addition of Excise duty to the closing stock value of Finished goods. The Ld A.R submitted that the amendment made in sec. 145A with regard to the inclusion of tax, duty, cess, fee etc. was brought into the Income tax Act by Finance (No.2) Act, 1998 w.e.f. 1.4.1999. Accordingly he submitted that the dispute under consideration is governed by the decision rendered by Hon'ble Supreme Court rendered in the case of Indo Nippon Chemicals Co. Ltd (261 ITR 275). We have gone through the said decision and notice that the Hon'ble Supreme Court has held that the valuation of purchases and unconsumed stock at Net of modvat credit is a proper method. The case of the assessee is that the profit and loss account is prepared net of excise duty and the said method has been consistently followed every year. The Hon'ble Supreme Court has held in the above said case that same treatment should be given to both the raw material purchases and closing stock. Accordingly it held that it was not permissible for the AO to adopt the "gross method" for valuation of raw materials at the time of purchase and the "net method" for valuation of stock on hand. Accordingly, we find merit in the contentions of the assessee, since the AO has made adjustment only to the closing stock of finished goods without making corresponding adjustments to the purchases. Accordingly we set aside the order of Ld CIT(A) on this issue and direct the AO to delete the addition.

12. The next issue relates to the disallowance of reversal of export incentives by way of export premium. The assessee worked out the Export premium by reducing the premium pertaining to sales return by way of export rejections. However, the AO added the same and the Ld CIT(A) also confirmed the same. The Ld A.R submitted that the Hon'ble Supreme Court has resolved this issue in the case of Excel Industries (358 ITR 298) by stating that the export incentives shall accrue only at the time

of receipt/utilisation. Accordingly he submitted that the addition made by the tax authorities is liable to be deleted.

13. We heard the parties on this issue and perused the record. We notice that the assessee has been following the system of accounting for the expected export incentives in its books of account. Since the assessee took the view that the export incentives shall not be available on the sales returns of exported goods, it has reversed the incentive income accounted by it. The accounting system followed by the assessee may be in accordance with the method consistently followed by the assessee. However, in view of the decision of Hon'ble Supreme Court rendered in the case of Excel Industries Ltd, the Export incentives can be considered to have been accrued only in the year in which it was used and not in the year of Export. Hence, under the principle laid down by Hon'ble Supreme Court, the impugned addition is liable to be deleted. Accordingly, we set aside the order of Ld CIT(A) on this issue and direct the AO to delete this addition.

14. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Pronounced accordingly on 14th Oct, 2015.

घोषणा खुले न्यायालय में दिनांक: 14th Oct, 2015 को की गई ।

Sd

sd

(RAMLAL NEGI)

( B.R. BASKARAN)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai: 14th Oct, 2015.

व.नि.स./ SRL , Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

True copy

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai