

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

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

**I.T.A. No. 2125/KOL/ 2013
Assessment Year: 2006-2007**

**Deputy Commissioner of Income Tax,.....Appellant
Circle-10, Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069**

-Vs.-

**M/s. Bridge & Roof Co. (India) Limited,.....Respondent
2/1, Russel Street,
Kolkata-700 071
[PAN :AABCB 3166 E]**

Appearances by:

*Smt. Ranu Biswas, JCIT, Sr. D.R., for the Department
Shri P.K. Agarwal, FCA, for the assessee*

Date of concluding the hearing : June 01, 2016

Date of pronouncing the order : July 29, 2016

O R D E R

Per Shri P.M. Jagtap :-

This appeal is preferred by the Revenue against the order of the Id. Commissioner of Income Tax (Appeals)-XII, Kolkata dated 12.03.2013.

2. Ground No. 1 raised by the Revenue in this appeal reads as under:-

"1. Whether Ld CIT(A)-XII, Kolkata, was justified in holding that Rs.3,02,197/- was to be capitalized out of Rs. 11,49,000/- as Excise Duty to capital asset on the basis of fresh evidence submitted before him during appellate proceedings which is against the Rule 46A of the I.T. Rule, 1962"?

3. The assessee in the present case is a Government of India Undertaking, which is engaged in the business of Civil and Mechanical

Construction. The return of income for the year under consideration was filed by it on 23.11.2006 declaring total income of Rs.4,00,59,115/-. In the profit & loss account filed along with the said return, a sum of Rs.11.49 lakhs was debited by the assessee on account of net excise duty. In this regard, the explanation offered by the assessee before the Assessing Officer was that the major portion of unrecovered excise duty was on account of Bunk House and structural for lin house used at project site which were treated as production and excise duty was charged. It was submitted that the excise duty so charged, however, could not be recovered from any of the customers and the same, therefore, was debited to the Profit & Loss Account as business expenditure. According to the Assessing Officer, the expenditure in question on account of excise duty, going by the explanation of the assessee, was incurred in respect of capital assets and the same, therefore, was not allowable as revenue expenditure. He, therefore, disallowed the excise duty of Rs.11,49,000/- treating the same as capital expenditure.

4. The disallowance made by the Assessing Officer by treating the excise duty of 11.49 lakhs as capital expenditure was challenged by the assessee in the appeal filed before the Id CIT(Appeals) and after considering the submissions made by the assessee, the Id. CIT(Appeals) deleted the said disallowance for the following reasons given in paragraph no. 6 of the impugned order:-

"6. Appeal on ground no. 6 is against the disallowance of Rs.1149000/- being net excise duty on expenditure for capital asset. The A.R. during the appellate proceeding has produced a chart from which it is clear that Rs.302197/- is to be capitalized (the A.R. has also agreed on it) and rest of the amount is to be allowed as revenue expenditure. In the assessment order the A.O. has disallowed the entire amount treating capital in nature. I have considered the finding of the A.O., and the written submission and details filed by the A.R. I find that the expenditure to be capitalized is to tune of Rs.3,02,197/- only. Accordingly, assessee's appeal on this ground is restricted to Rs.846803/-. Thus, assessee's appeal on ground no. 6 is partly allowed".

5. The ld. D.R. pointed out from the relevant portion of the ld. CIT(Appeals)'s impugned order that the chart was filed by the assessee for the first time before the ld. CIT(Appeals) and relying on this additional evidence, relief of Rs.8,46,806/- was allowed by the ld. CIT(Appeals) treating the excise duty in question to that extent as revenue expenditure without giving any opportunity to the Assessing Officer to verify the same. He contended that there is thus a clear violation of Rule 46A of the Income Tax Rules by the ld. CIT(Appeals).

6. The ld. counsel for the assessee, on the other hand, submitted that there was no such chart filed by the assessee before the ld. CIT(Appeals) as mentioned in the impugned order. He submitted that a letter dated 19.04.2012, in fact, was filed by the assessee before the ld. CIT(Appeals) and the relief was allowed by him on the basis of the submissions made by the assessee in the said letter. He also invited our attention to the copy of the said letter placed at page nos. 126 & 127 of the paper book.

7. We have considered the rival submissions and also perused the relevant material available on record. As submitted by the ld. counsel for the assessee, the relief on this issue has been allowed by the ld. CIT(Appeals) to the assessee not on the basis of a chart as mentioned in the impugned order, but on the basis of a letter dated 19.04.2012. He has also invited our attention to the copy of the said letter at page nos. 126 & 127 of his paper book and perusal of the same shows that new facts and figures were furnished by the assessee before the ld. CIT(Appeals) and the same placed on record by the assessee for the first time before him were relied upon by the ld. CIT(Appeals) to give relief to the assessee without giving any opportunity to the Assessing Officer to verify the same. We, therefore, find merit in the contention of the ld. D.R. that there was a clear violation of Rule 46A of the Income Tax Rules by the ld. CIT(Appeals) and his impugned order on this issue is, therefore, liable to be set aside. Accordingly, we set aside the impugned order of the ld. CIT(Appeals) on this issue and restore the matter to the file of the Assessing Officer with a

direction to decide the same afresh after verifying the facts and figures as furnished by the assessee vide letter dated 19.04.2012. Ground No. 1 of the Revenue's appeal is accordingly treated as allowed for statistical purposes.

8. In Ground No. 2, the Revenue has challenged the action of the Id. CIT(Appeals) in deleting the disallowance of Rs.1,01,00,000/- and Rs.90,71,400/- made by the Assessing Officer out of hire charges and repairs and maintenance expenses respectively.

9. In the Profit & Loss Account filed along with the return of income, the assessee company had debited hire charges of Rs.10.16 crores paid on equipments. In this regard, the Assessing Officer noted that the hire charges claimed by the assessee were substantially higher than the hire charges of Rs.6.66 crores claimed by the assessee in the immediately preceding year. He also noted that the increase in sales during the year under consideration, however, was only marginal to the extent of 5%. Although the assessee furnished site-wise details of hire charges paid during the year under consideration, the Assessing Officer was of the view that the assessee could neither explain the more utilization of the machinery and equipment nor prove with reference to the nature of job executed such utilization in different sites. He, therefore, considered 10% of the hire charges as excessive and made a disallowance to that extent. Similarly the expenses of 4.54 crores claimed to be incurred by the assessee on repairs and maintenance of plant and machinery were found to be substantially higher by the Assessing Officer as compared to the similar expenditure of Rs.3.34 crores incurred by the assessee in the immediately preceding year. In order to verify the claim of the assessee for repairs and maintenance expenses, details regarding two projects executed by the assessee were called for. On examination of the said details, the Assessing Officer found that part of the expenses were accounted for by the assessee in the form of journal entries, but the corresponding other party involved in the transaction was neither

evident nor confirmed. He also noted that some of the expenses claimed by the assessee on account of repairs and maintenance were not duly supported by the relevant documentary evidence in the form of bills, etc. and even the nature of the said expenses being revenue could not be established by the assessee. Keeping in view of these adverse observations, the Assessing Officer held that the claim of the assessee on account of repairs and maintenance was not fully verifiable and the disallowance of Rs.90,71,400/- was made by him being 20% of the total repairs and maintenance claimed by the assessee.

10. The disallowance made by the Assessing Officer out of hire charges and repairs and maintenance expenses was challenged by the assessee in the appeal filed before the Id. CIT(Appeals) and following the decision of the Tribunal in assessee's own case for A.Y. 2008-09 rendered vide its order dated 08.08.2012 in ITA No. 556/KOL/2012, the Id. CIT(Appeals) deleted the disallowance made by the Assessing Officer out of hire charges and repairs and maintenance expenses made by the Assessing Officer.

11. We have heard the arguments of both the sides and also perused the relevant material available on record. Although the Id. D.R. has contended before us that the facts involved in the case of the assessee for AY 2008-09 were different from the facts involved in the present case in the year under consideration and the reliance of the Id. CIT(Appeals) on the decision of the Tribunal for AY 2008-09 to give relief to the assessee on this issue in the year under consideration is clearly misplaced, we find from the perusal of the order of the Tribunal dated 08.08.2012 passed for AY 2008-09 that a similar issue involved in AY 2008-09 in assessee's own case was decided by the Tribunal in favour of the assessee by following its appellate order dated 20.01.2012 passed in assessee's case for AY 2005-06 in ITA No.647/KOL/2010. A copy of the said order is also placed on record before us at pages no. 136 & 137 of the paper book and perusal of the same shows that the material facts relevant to the issue under

consideration as involved in AY 2005-06 were similar to that of the year under consideration as is evident from para nos. 4 & 5 of the Tribunal's order for AY 2005-06, which are reproduced hereunder:-

"4. Brief facts apropos this issue are that the Assessing Officer noticed that hire charges of equipment was Rs.665.61 lacs in comparison to earlier year of Rs.428.34 lacs. He further noted that sales in the current year was Rs.44,289 lacs in comparison to earlier year of Rs.36,776 lacs and, therefore, there was increase of about 20 per cent, whereas hire charges of machinery and equipments showed abnormal increase of about 55%. The assessee filed details of hire charges payment. However, Assessing Officer disallowed 10% of hire charges, inter alia, observing that the assessee neither explained mode of utilization of machinery and equipment nor proved with reference to nature of jobs executed in different sites. Ld. CIT(Appeals) deleted the addition, inter alia, observing that the assessee had engaged in civil and mechanical construction at various sites all over India. Each site was supervised and managed by a senior officer of the assessee. The accounts of the assessee were subjected to internal control, internal audit, statutory audit by two Joint Auditors appointed by CAG and final comments by Comptroller and Auditor General of India under section 619(4) of the Companies Act, 1956. He, therefore, deleted the ad hoc disallowance made by the Assessing Officer.

5. We have considered the submissions of both the parties and do not find any reason to interfere with the order of Ld. CIT(Appeals) because there was no direct correlation between the sales made by assessee and hire charges paid by it. There could be several reasons for hire charges being paid for machinery but the machinery kept ideal. There was no basis to establish that hire charges were directly proportional to sales. Ld. CIT(Appeals) has rightly pointed out that the assessee-company was under the supervision and control of Senior Officer of Government of India and accounts were duly audited by auditors appointed by CAG. We find no basis for making any disallowance under these circumstances. Therefore, this ground of appeal is dismissed".

12. It is also observed that while deleting the similar disallowance made in the assessee's case for AY 2008-09, independent reasons were also given by the Tribunal in Paragraph no. 5 of its order dated 08.08.2012 (supra), which reads as under:-

"5. We have heard the parties and perused the material on record, and more particularly the impugned order. The assessee is a Government of India undertaking, under the administrative control of the Ministry of Heavy Industries, with regular checks and balances on all receipts and expenses. The Ld. CIT(A) has given definite findings with regard to this, i.e., of the assessee being subject to controls at various levels, including audit by the internal as well as external auditors, and which have not been controverted by the Revenue. We have also perused the audited financial statements for the relevant year, to find no adverse comment with regard to the maintenance of books of account and documentation, with the auditors, rather, certifying to have obtained all the information and explanations as relevant and

necessary for the purposes of their audit. There is also no charge of any disproportionate increase in any of the impugned expenditures. The assessee has also been able to exhibit similar inability by the Revenue for the earlier years, taking cognizance of which the assessee's working results as declared have been finally upheld. Under the circumstances, we find no basis to interfere with the findings by the first appellate authority and, accordingly, uphold the same. We decide accordingly".

13. In our opinion, the issue involved in the year under consideration as well as all the material facts relevant thereto thus are similar to that of AY 2005-06 and 2008-09 and respectfully following the order of the Tribunal for AY 2005-06 and 2008-09, we uphold the impugned order of the Id. CIT(Appeals) deleting the disallowance made by the Assessing Officer out of hire charges and repairs and maintenance expenses. Ground No. 2 of the Revenue's appeal is accordingly dismissed.

14. In the result, the appeal of the Revenue is treated as partly allowed for statistical purposes.

Order pronounced in the open Court on July 29, 2016.

Sd/-

Sd/-

(S.S. Viswanethra Ravi)
Judicial Member

(P.M. Jagtap)
Accountant Member

Kolkata, the 29th day of July, 2016

Copies to : (1) **Deputy Commissioner of Income Tax,
Circle-10, Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069**

(2) **M/s. Bridge & Roof Co. (India) Limited,
2/1, Russel Street,
Kolkata-700 071**

(3) **CIT(Appeals)-XII, 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.