

आयकर अपीलीय अधीकरण, न्यायपीठ – “B” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
 (समक्ष)Before श्री ऐ. टी. वर्की, न्यायीक सदस्य एवं/and श्री वसीम अहमद, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Shri Waseem Ahmed, AM]

I.T.A. No. 2151/Kol/2014
Assessment Year: 2004-05

Deputy Commissioner of Income-tax, Circle-2(1), Kolkata.	Vs.	M/s. Crystal Cable Industries Ltd. (PAN: AABCC2379N)
Appellant		Respondent

&

C.O. No.112/Kol/2014
In I.T.A. No. 2151/Kol/2014
Assessment Year: 2004-05

M/s. Crystal Cable Industries Ltd.	Vs.	Income-tax Officer, Wd-2(1), Kolkata
Cross Objector		Respondent

Date of Hearing	04.07.2017
Date of Pronouncement	22.09.2017
For the Revenue	Shri Saurabh Kumar, Addl. CIT, DR
For the Assessee/Cross Objector	Shri Subash Agarwal, Advocate

ORDER

Per Shri A.T.Varkey, JM

The appeal preferred by the revenue and the Cross Objection preferred by the assessee are against the order of Ld. CIT(A)-I, Kolkata dated 13.08.2014 for AY 2004-05. Since the appeal and the cross objection have been heard together, we dispose of both the appeal and the Cross Objection by this consolidated order for the sake of brevity and convenience.

2. At the outset, we find that the appeal of revenue is time barred by two days and condonation petition has been filed. In view of the concession given by the Ld. AR and

considering the condonation petition, we condone the delay and admit the appeal for hearing.

3. The first ground of appeal raised by the revenue is against the action of the Ld. CIT(A) to allow the claim of the liquidated damages to the tune of Rs.5,48,012/-. Brief facts of the issue are that the assessee had claimed deduction of the liquidated damages of Rs.5,48,012/- which was debited in the P&L Account which were claimed by the assessee to have been imposed and deducted from the value of goods by the purchasers for delayed delivery of goods to them. The AO observed that despite the assessee being asked to produce documentary evidence in support of the claim, the assessee could only produce some correspondence with the Himachal Pradesh State Electricity Board wherein the assessee pleads to waive off liquidated damages, which according to AO, does not support the claim of the assessee. The AO, therefore, disallowed the claim of the assessee. Aggrieved, the assessee preferred appeal before the Ld. CIT(A), who was pleased to allow the deduction. Aggrieved, revenue is before us.

4. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the assessee is a manufacturer of underground cable and its major customers are State Electricity Boards, large private sector and public sector companies, which follow rigorous procedures for their purchases and the assessee's products are normally made to their specification and not sold through cash or retail counters. Specific orders are given by these public sector companies and govt. and corporate concerns and they have stringent conditions for the product and time bound delivery is strictly specified in the contract. In case of delay in delivery the contract intra parties prescribes liquidated damages. When the delay takes place while delivering the goods, the purchaser of product manufactured by assessee, invokes the liquidated damages clause and deductions are made from agreed value and payments are made only after deducting the same and later the assessee debits the liquidated damages in assessee's P&L Account. It was brought to the notice of the Ld. CIT(A) that even though the liquidated damages are deducted by the customers, the assessee takes up the matter with the customer for waiver of liquidated damages and whenever the customer agrees and waives the liquidated damages then the

assessee credited the same to the P&L Account as has been done in the relevant previous year as well and brought to the notice of the Ld. CIT(A) that Rs.5,95,864/- out of Rs.7,68,775/- for 'provision no longer required written back' in other income and drew our attention to Schedule 10 page 33 of the Annual Report which relates to the liquidated damages deducted in the earlier years as confirmed by the Note no. 2 of Schedule 10. It was brought to the notice of the Ld. CIT(A) that out of total sum of Rs.5,48,012/- being the liquidated damages deducted during the year, the biggest deduction of liquidated damages during the relevant year is Rs.3,70,501/- which was done by Himachal Pradesh State Electricity Board. Taking into consideration all these facts, the Ld. CIT(A) has given relief to the assessee which order we find to be just and reasonable and, therefore, we do not find any reason to interfere with the same. Therefore, we confirm the order of the Ld. CIT(A) and dismiss this ground of appeal of revenue.

5. The next ground of appeal is against the action of the Ld. CIT(A) in deleting the disallowance of interest on unsecured loan amounting to Rs.18,017/- and Rs.,6,26,631/- in violation of Rule 46A of the Income-tax Rules, 1962 (hereinafter referred to as the "Rules"). At the outset itself, the Ld. DR drew our attention to the deletion of Rs.18,017/- and Rs.6,26,631/- as ordered by the Ld. CIT(A), we find that the deletion has been ordered on the basis of evidence produced for the first time before the Ld. CIT(A) that has been referred to by the Ld. CIT(A) without calling for the remand report as required by Rule 46A of the Rules. Since there is a violation of Rule 46A of the Rules, we are inclined to remit the matter back to the file of the AO to adjudicate the same afresh on this issue after affording reasonable opportunity of being heard to the assessee. Therefore, this ground of appeal of revenue is allowed for statistical purposes.

6. The next issue is regarding relief granted by the Ld. CIT(A) on account of suppressed sales amounting to Rs.1,03,17,909/- on reason that the AO has not specifically rejected the books. Brief facts of the case are that the AO noted that the material consumed during the year has increased by Rs. 60 lacs and the stock value has been enhanced by Rs. 37 lacs when compared with the previous year. The AO also took note of the sale figures included scrap sales which has increased by Rs. 19 lacs only. Therefore, according to the AO, when

compared with the previous year quantity wise more products were sold during the year profit was low when compared with earlier year results. The assessee explained that the power cable industry was facing low demand and high competition, which resulted in depleted margins and the assessee, was forced to execute orders with low profitability. However, the AO did not accept the explanation rendered by the assessee to justify the low profitability when compared with the previous year. The AO took note of the ratio of the total sales to the material consumed for the previous assessment year to be 1.324 and he applied the same ratio in the relevant assessment year as well. Thus, the AO arrived at net sales of Rs.23,24,01,464/- as against disclosed sales of Rs.22,20,83,555/-. The AO thereafter, took the difference i.e. Rs.1,03,17,909/- as suppressed sales and he added this amount to the assessee's total income. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), which was pleased to delete the same. Aggrieved, the revenue is before us.

7. We have heard rival submissions and gone through facts and circumstances of the case. We note that the AO has estimated the sales of the assessee company and computed the suppressed sales at Rs.1,03,17,909/- by applying the ratio of total sales of material consumption calculated by him by adopting the previous assessment year 2003-04 at 1.324 and applied the same to the current year and has increased the sale figure to Rs.23,24,01,464/- in place of the disclosed sales of Rs.22,20,83,555/-, and the difference was added as suppressed sales. The Ld. CIT(A) took note of the fact that the AO has not rejected the audited books of account and has not pointed out any defects in the books. Without doing so, according to the Ld. CIT(A) the estimation made for increasing the sales and adding the difference as income of the assessee was not warranted. The Ld. DR could not controvert the fact that the AO did not point out any defect in the books maintained by the assessee and without following the procedure laid u/s. 145 of the Act has made the estimation which cannot be sustained in the facts and circumstances of the case. In any case as held by the Coordinate Bench of this Tribunal in ITA No. 642/Kol/2011, ITO Vs. Sri Surendra Kumar Choudhary, AY 2007-08 dated 15.09.2011, it was observed that it is well settled that even if it is proved that the suppression of sales has taken place, then also the entire suppressed sales cannot be taxed and only the profit component can be taxed. In any event without finding defects in the books of account maintained by the assessee and

without rejecting the books, which is audited, the AO erred in making estimation without giving any credence to the assessee's explanation why the profit margin decreased, so the action of the Ld. CIT (A) is upheld. Therefore, we do not find any infirmity in the action of the Id. CIT(A) in deleting the addition and we uphold the same. This ground of appeal of revenue is dismissed.

8. Now coming to the Cross Objection preferred by the assessee. We note that ground Nos. 1, 4, 5 and 6 stands dismissed as not pressed. The only ground Nos. 2 and 3 remain to be adjudicated with. The ground no. 2 is against the action of the Id. CIT(A) in confirming the addition of Rs.45,21,363/- made by the AO on account of bill discounting charges. The facts of the case are that the assessee claimed bill discounting charges to the tune of Rs.45,21,363/-. During the assessment proceedings, the AO asked for confirmation from the parties which the assessee did not provide, so the AO disallowed the claim of the assessee and made an addition of Rs.52,80,727/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who noted that other than list of 68 parties to whom such payments have been made no other evidence was furnished before him, therefore, he confirmed the disallowance made by the AO to the tune of Rs.45,21,363/-. Aggrieved by the decision of Ld. CIT(A), the assessee is in cross objection before us.

9. We have heard rival submissions and gone through the facts and circumstances of the case. Before us the assessee has filed a paper book along with an application for admission of additional evidence which is placed at page 1 of paper book and the paper book contains confirmation from various parties which relates to payments made towards bill discounting charges which is found placed at pages 2 to 45 of the paper book. According to the Ld. Counsel for the assessee, the assessee could not produce the aforesaid documents because of misplacement of the papers and non-receipt of confirmation from the parties concerned. According to Id. Counsel, the assessee should not be put at a disadvantage when the facts are that the assessee has made claim on payments made towards bill discounting charges. The assessee, therefore, pleads to admit the additional evidence which the Ld. DR opposes. According to Ld. DR, neither the assessee produced any evidence during the assessment proceeding nor during the appellate proceeding before the Ld. CIT(A), therefore, the

assessee should not be allowed to produce additional evidence before the tribunal for the first time. We have given our thoughtful consideration to the plea of the Ld. DR. The assessee is a company which is having business with the PSUs and big corporate and all the transactions are accounted, audited and through banking channels and just because assessee could not produce the confirmation from the parties, its claim for deduction of Rs.45,21,363/- as payment towards bill discounting was not accepted by both the authorities below. Since now the assessee is able to get hold of the confirmation from the parties, albeit late the claim if found to be true cannot be disallowed and therefore in the interest of justice, we are inclined to admit the additional evidence filed before us to substantiate the claim. In the interest of justice and fair play we set aside the order of Ld. CIT(A) and remand the matter along with the entire evidence to the AO to adjudicate this issue afresh. Needless to say sufficient opportunity may be granted to the assessee and assessee is directed to cooperate during the remand proceeding. With this observation, this issue is remanded back to the file of the AO for de novo adjudication. Therefore, this ground of assessee's CO is allowed for statistical purposes.

10. Ground no. 3 of assessee's CO is against the action of the Ld. CIT(A) in confirming the addition to the extent of Rs.88,722/- being 10% of Rs.8,87,244/- incurred on account of car hire charges, car maintenance and fuel expenses. The AO has noted that the assessee company debited Rs.5,28,48,338/- under the head administrative and other expenses which included Rs.23,64,688/- on account of travelling and conveyance expenses. The AO notes that on being asked to furnish evidence supporting the claim, the Ld. AR produced some bills/vouchers out of which a large part consists of self made bills/vouchers which according to the AO, was not verifiable. Under the said circumstances, 10% of such expenses i.e. Rs. 2 lacs was disallowed on estimate basis and added back to the total income of the assessee company. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who was pleased to give partial relief to the assessee. However, the Ld. CIT(A) noted that the expenses claimed out of Rs.23,64,688/- including car hire charges of Rs.5,86,410/- which according to the Ld. CIT(A), was paid to related persons u/s. 40A(2)(b) of the Act, car maintenance and fuel expenses totaling to Rs.8,87,244/-, therefore, he restricted the expenses to 10% of Rs.8,87,224/- which is Rs.88,722/-. The Ld. AR before us could not

bring any evidence to counter the finding made by the Ld. CIT(A) as to the related party transaction which made him disallow 10% and thereby sustaining Rs.88,722/-. We do not find any evidence to contradict the finding made by the Ld. CIT(A) which made him sustain the disallowance. In the light of the above, we dismiss this ground of cross objection of the assessee and confirm the Ld. CIT(A)'s order.

11. In the result, both the appeal of revenue as well as cross objection of assessee is partly allowed for statistical purposes.

12. Order is pronounced in the open court on 22.09.2017

Sd/-

(Waseem Ahmed)
Accountant Member

Sd/-

(Aby. T. Varkey)
Judicial Member

Dated : 22nd September, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – DCIT, Circle-2(1)/ITO, Ward-2(1), Kolkata.
2. Respondent – M/s. Crystal Cable Industries Ltd., 32, Ganesh Chandra Avenue, Kolkata-700 013.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Sr. Pvt. Secretary