

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

I.T.A. No.1763/Kol/2014
Assessment Year: 2009-10

West Bengal Engineering Co. (PAN:AAAFW2445D)	Vs.	Joint Commissioner of Income-tax, Range-36, Kolkata.
Appellant		Respondent

Date of Hearing	11.07.2017
Date of Pronouncement	14.07.2017
For the Appellant	Shri Soumitra Choudhury, Advocate
For the Respondent	N o n e

ORDER

Per Shri A.T.Varkey, JM

This is an appeal filed by the assessee against the order of Ld. CIT(A)-XX, Kolkata dated 22.08.2014 for AY 2009-10.

2. Neither any one appeared for the revenue nor was any adjournment application submitted before us at the time of hearing. Hence, we dispose of the appeal after hearing the Ld. AR.

3. Ground nos. 1 and 2 are against the action of the Ld. CIT(A) confirming the addition of Rs.17,59,538/-, the interest receivable on the fixed deposit receipts deposited with the Govt. Department, Executive Engineers as per Tender conditions.

4. Brief facts of the case are that the assessee is a firm which is engaged in the business of executing mechanical contract with Govt. of West Bengal under Public Health Engineering Department. As per the tender condition, the assessee firm is supposed to get

bank guarantee and for that fixed deposit was pledged with the Govt. of West Bengal for taking part in different tenders. The AO noted that the assessee in the relevant assessment year had an interest income of Rs.27,98,202/- from Allahabad Bank and he added the same since the assessee did not disclose the said amount in its return of income. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to give partial relief to the assessee after going through the remand report furnished by the AO and thus, confirmed an amount of Rs.17,59,538/-. Aggrieved, the assessee is before us.

5. We have heard Ld. AR and gone through facts and circumstances of the case. We note that the assessee firm is engaged in the execution of mechanical contract with the Govt. of West Bengal under the Public Health Engineering Department. As per the tender condition, the assessee firm is supposed to furnish bank guarantee and accordingly, fixed deposit receipts were pledged with the Govt. of West Bengal for taking part in public tenders and these fixed deposit receipts were pledged with the Govt. of West Bengal. The interest income which gets accrued till the execution of work to the satisfaction of Government did not pass on to the assessee. The Ld. AR drew our attention to the fact that when the Fixed Deposit Receipts are released after the successful completion of work, the interest income for the earlier years also are duly reflected by the assessee in the return of income for the subsequent years. In order to buttress this argument, the Ld. AR drew our attention to the assessment order passed in AY 2012-13 wherein from the Trading and P&L Account for the year ending 31.03.2012 indirect income is shown at Rs.2,51,83,757/- out of which interest for earlier year (bank interest) has been shown at Rs.43,38,804/- and interest on fixed deposit for the year is shown at Rs.10,63,466/-. Thus, the Ld. AR submitted that the AO for the AY 2012-13 which was completed u/s. 143(3) of the Act has accepted the same and, therefore, there will be double taxation on the same amount. We do find force in the argument of the Ld. AR that the interest accrued on the Fixed Deposits pledged with the bank for obtaining the bank guarantee, which was given in the custody of the Govt. of West Bengal though yielded interest was not passed on to the assessee. Although the assessee is following mercantile system of accounting, the assessee consistently reflected the interest accrued in the year when the fixed deposits are released back to the assessee after successful

completion of the contract work given to it. We have noted that in the AY 2012-13 the assessee has shown interest for earlier year i.e. bank interest to the tune of Rs.43,38,804/- and the interest for the assessment year i.e. AY 2012-13 was shown at Rs.10,63,466/-. Since the AO in scrutiny assessment has accepted the interest accrued for earlier year (bank interest), which included the amount added by AO for this assessment year and so in the aforesaid facts and circumstances, the addition of bank interest which was not received by the assessee in this assessment year was not warranted and, therefore, we direct deletion of the said addition of Rs.17, 59,538/-. These grounds of appeals of assessee are allowed.

6. Ground no. 3 is in respect of confirming of Rs.3,29,495/- by the Ld. CIT(A) being the amount spent for purchasing of raw materials.

7. Brief facts of the case are that the AO observed that the assessee has shown purchase amounting to Rs.3,29,495/- vide bill dated 23.08.2008 from M/s. WPIL Ltd. The AO cross checked the said fact with M/s. WPIL Ltd., whose ledger did not have the corresponding entry in its ledger in respect of the said sale. Therefore, according to the AO, the assessee has failed to explain the source of the said purchase so, he added back the said amount as undisclosed purchase of the assessee. In appeal, the Ld. CIT(A) reiterated the aforesaid facts and confirmed the addition. Aggrieved, the assessee is before us.

8. We have heard Ld. AR and gone through the facts and circumstances of the case. We note that the assessee had produced bills of purchase of goods worth Rs.3, 29,495/- vide bill dated 23.08.2008 from M/s. WPIL Ltd. The AO issued notice u/s. 133(6) of the Act to the said M/s. WPIL Ltd. The AO after perusal of the copy of the ledger account of the assessee in the books of M/s. WPIL Ltd., he noted that the corresponding sale of goods worth Rs.3,29,495/- was not appearing in the said ledger. Therefore, he made the addition which was confirmed by the Ld. CIT(A). The main grievance of the assessee is that once the bill for the amount in question has already been filed before the AO, if the AO has made some enquiries behind the back of the assessee and had not confronted the materials adverse with the assessee then the addition is bad in law. According to assessee, the AO should have given an opportunity to the assessee to cross examine M/s. WPIL Ltd. in order to

ascertain which party is telling the truth. Without doing so, the addition is not sustainable in the eyes of law. We find force in the argument of the Ld. AR that on one hand, the AO had cross checked the bill for the purchase through the ledger account of M/s. WPIL Ltd., which did not reflect the sales. To find out whose version is correct, the AO should have made enquiries and if he was satisfied with the books of M/s. WPIL Ltd. and disbelieved the assessee, then he should have given an opportunity to the assessee to cross examine M/s. WPIL Ltd. without which, the addition is bad in law and, therefore, the impugned order cannot be sustained and we are inclined to delete the addition. This ground of appeal of assessee is allowed.

9. In the result, appeal of assessee is allowed.

Order is pronounced in the open court on 14.07.2017

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 14th July, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. West Bengal Engineering Co., 138, Canning Street, Kolkata-700 001.
- 2 Respondent – JCIT, Range-36, Kolkata.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Sr. Pvt. Secretary