

आय अधकरण, श्रीययपीठ, चेनई

PELLATE TRIBUNAL BENCH, CHENNAI

श्री ए. मोहन अलंकामणी, लेखा सदय एवं श्री धुवु आर.एल रेडी, यायक सदय के सम

Before Shri A. Mohan Alankamony, Accountant Member &  
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./ T.A. No. 781/Mds/2017

नधारण वष/Assessment Year:2005-06

The Deputy Commissioner of  
Income Tax, Corporate Circle 2(2),  
Room No.512, 5<sup>th</sup> Floor, Wanaparthy  
Block, 121, M.G. Road,  
Chennai 600 034.

M/s. Indo Tech Transformer Ltd.,  
Vs. No. DP-36, SIDCO Industrial Estate,  
Thirumazhisai, Chennai 602 107.  
[PAN:AAACI5775P]

(अपीलाथ /Appellant)

(यथ/Respondent)

अपीलाथ का ओर से / Appellant by : Shri Asish Tripathi, JCIT

यथ का ओर से/Respondent by : Shri R. Vijayaraghavan, Advocate

सुनवाई का तारख/ Date of hearing : 29.08.2017

घोषणा का तारख /Date of Pronouncement : 31.08.2017

### आदेश / O R D E R

#### PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) 6, Chennai dated 19.01.2017 relevant to the assessment year 2005-06. The only effective ground raised in the appeal of the Revenue is that the Id. CIT(A) has erred in deleting the disallowance made on account of contractual deduction to EB & Bad debts written off by admitting fresh evidence in violation of Rule 46A of the Income Tax Rules.

are that the assessee is engaged in the business of manufacture of transformers and filed its return of income on 31.10.2005 declaring total income of .7,04,07,127/-. The return filed by the assessee was processed under section 143(1) of the Income Tax Act, 1961 [Act+ in short] dated 13.08.2006. Subsequently, on perusal of the details filed along with the return of income, the Assessing Officer has noticed that the assessee has understated the income by way of claiming excess deduction. As there was reason to believe that income chargeable to tax has escaped assessment, notice under section 148 of the Act dated 05.09.2007 was issued and duly served on the assessee. In response thereto, the assessee filed a letter dated 24.12.2007 requesting the Assessing Officer to treat the return filed on 31.10.2005 as return filed in response to the notice under section 148 of the Act. The case of the assessee was selected for scrutiny and notice under section 143(2) of the Act was issued to the assessee on 24.09.2008 and duly served. In response thereto, the assessee filed all details as called for. After verifying the details furnished by the assessee and considering the submissions, the Assessing Officer has completed the assessment under section 143(3) r.w.s. 147 of the Act on 30.12.2008 by assessing the total income of the assessee at .7,61,14,660/- after making various addition/disallowances.

the matter in appeal before the Id. CIT(A) and challenged the disallowance of deduction under section 80IA of the Act as well as disallowance of contractual deduction to EB and bad debts besides raising technical objections on initiation of proceedings under section 147 of the Act. After considering the submissions of the assessee and verifying the copies of inter office memo evidencing the fact about debts [both bad debts and contractual deductions], which cannot be recoverable by assessee's marketing department from the Electricity Board, filed by the assessee, the Id. CIT(A) deleted the disallowance of Rs.31,52,145/-.

4. On being aggrieved, the Revenue is in appeal before the Tribunal and the Id. DR has mainly argued that by accepting fresh evidence in terms of copies of inter office memo evidencing the fact about debts [both bad debts and contractual deductions], the Id. CIT(A) allowed the claim of assessee, which is in violation of Rule 46A and pleaded that the issue may be remitted to the file of the Assessing Officer for verification of the details filed before the Id. CIT(A).

5. On the other hand, the Id. Counsel for the assessee has strongly supported the order passed by the Id. CIT(A) and prayed for its confirmation.

6. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. In this case, the assessee

contractual deductions written off during the year under consideration. In this case, the assessee is engaged in manufacture and sale of transformers. Once tender floated by various Electricity Boards and the contract is awarded, the assessee entered into an agreement with the Electricity Board with various clauses towards supply of transformers, supply schedules and for deduction to be made where the assessee does not adhere to the supply schedule. After the sale is effected, the EB retains 5% of sale value/contractual value for verifying whether the assessee has adhered to all the clauses of the contractual agreements. After protracted discussions with the EB and after submitting the documents by the assessee, the EB may agree and release the balance payment either in full or in part or even reject the claim of the assessee. Thereafter, the assessee writes off the books of accounts the amounts retained and unpaid by the EB. In the instance case the total bad debts and contractual deduction written off during the year under consideration amounts to .31,52,145/-. Before the Id. CIT(A), the assessee filed the details of bad debts and contractual deduction written off along with copies of inter office memo from assessee's marketing wing. After verifying the above particulars and by following the decision of the Tribunal in assessee's own case for the assessment year 2004-05, the Id. CIT(A) deleted the disallowance made on this count. It was the submissions of the Id. DR that the above particulars filed by the assessee before the Id. CIT(A) were not available with the Assessing Officer during the

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ings. While considering the above details filed by the assessee during the course of appellate proceedings, the Id. CIT(A) has not obtained any remand report from the Assessing Officer before accepting the details filed by the assessee, which is clearly in violation of provisions of Rule 46A and pleaded that the issue may be remitted back to the Assessing Officer for verification and deciding the issue afresh. Under the above facts and circumstances, we remit the matter back to the Assessing Officer to verify the details filed before the Id. CIT(A) and decide the issue afresh in accordance with law after allowing an opportunity of being heard to the assessee by keeping in mind the decision of the Tribunal in assessee's own case for the assessment year 2004-05.

7. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on the 31<sup>st</sup> August, 2017 at Chennai.

Sd/-  
(A. MOHAN ALANKAMONY)  
ACCOUNTANT MEMBER

Sd/-  
(DUVVURU RL REDDY)  
JUDICIAL MEMBER

Chennai, Dated, the 31.08.2017

Vm/-

आदेश का प्रतिलिपि अर्पण/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. प्रभागीय प्रशासक/DR & 6. गार्डफाईल/GF.