IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH, NEW DELHI

BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER, AND SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 431/DEL/2016
[Assessment Year: 2011-12]

The D.C.I.T Circle 2 Ghaziabad	Vs.	M/s Supreme Ceramics Ltd C – 154, B.S. Road, Bulandshahar Road, Industrial Area Ghaziabad PAN : AACCS 6095 C

ITA No. 414/DEL/2016
[Assessment Year: 2011-12]

M/s Supreme Ceramics Ltd C – 154, B.S. Road, Bulandshahar Road, Industrial Area Ghaziabad PAN : AACCS 6095 C	Vs.	The D.C.I.T Circle 2 Ghaziabad
[Appellant]		[Respondent]

Date of Hearing : 06.11.2017

Date of Pronouncement : 21.11.2017

Assessee by : Shri Ashwani Tanena, Adv
Shri Acrhit Rehan, Adv

Revenue by : Shri S.K. Jain, Sr. DR

ORDER

PER B.P. JAIN, ACCOUNTANT MEMBER,

The above two cross appeals have been filed by the Revenue and assessee respectively against the order dated 20.11.2015 for AY 2011-12.

2. First, we shall take up the appeal filed by the assessee in ITA No. 414/ DEL/ 2016 on the following grounds:

> *"1. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in making addition Rs.2,60,00,000/- as short term capital gain on sale of shares and that too by recording incorrect facts and findings.*
>
> *2. That in any case and in any view of the matter, action of Ld. C1T (A) in confirming the action of Ld. AO in making addition of Rs.2,60,00,000/- as short term capital gain on account of sale of shares is bad in law and against the facts and circumstances of the case and without following the principles of natural justice.*
>
> *3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in not allowing the benefit*

of carry forward of losses of Rs. 1,63,84,566/- while passing the impugned assessment order.

4. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other. "

3. During the course of hearing, detailed arguments were made by both the sides and after hearing both the parties and perusing the orders passed by the lower authorities and having gone through the material placed before us, we proceed to decide the appeal ground wise hereunder.

Ground Nos.1 & 2:

4. In these grounds, the assessee has challenged the action of lower authorities in making addition of Rs. 2.60 Crores as short term capital gain on sale of shares of M/s Dudheshwar Steel and Alloys Ltd. The brief background of the impugned addition is that during the course of assessment proceedings, it was noted by the Assessing Officer (in short referred to as 'AO') that assessee has received advance of Rs. 25 Lakhs against the sale of shares of aforesaid company, however no capital

gain has been shown in the income tax return on sale of these shares. Therefore, the AO computed the value of sale consideration by making his own calculations and also computed the amount of capital gain in the similar fashion and made the addition of Rs. 2.60 Crores by making following observations in the assessment order:

> *"In point No. 8 of the notes on accounts in the Tax Audit Report, it has been mentioned by the Auditor that shares worth Rs.2,50,00.000/- of Dudheshwar Steel & Alloys Ltd. held by the assessee company have been sold during the year. Vide specific query No. 9 in the notice dated 10/02/2014, the assessee was required to furnish computation of capital gains on sale of these shares. The assessee has furnished reply to this query vide point No. 3 & 4 of reply dated 21/02/2014 explaining that the assessee held shares worth Rs.2, 50, 00,000/- of Dudheshwar Steel & Alloys Ltd... The said company was in the process of sale but, after the settlement of the terms and conditions for sale and also after giving possession of the entire business of the said company, there was some dispute amongst the purchasers and the company which not mutually settled were taken to police and FIR was lodged by one of the directors of the said company, Shri Ashish Tapadia who happens to be one of the directors of the assessee company also. On going through the copy of FIR, the facts emerge that final sale consideration of Rs.30 Crores was settled between the parties and advance of Rs. 1,45,55,250/- was*

received by the sellers and possession of/the factory was delivered to the purchasers. The sale consideration of Rs.30 Crores was settled- for entire assets and liabilities of the company. The assessee company held 17% shareholding in that company. Therefore, the assessee company was entitled for the amount of sale consideration to the extent of 17% of the sale consideration negotiated between the parties. The claim of the assessee that the sale has not been effected due to dispute and also due to the fact that full value of consideration has not passed to the sellers does not hold good in view of the clear provisions of section 2(47) of the I.T. Act read with section 53 A of the Transfer of Property Act because where an agreement is arrived at between the parties and possession is delivered, such transaction is deemed to be transfer. Hence the capital gain arising on transfer of shares will be charged to tax. Further, since the date of acquisition of the shares is not ascertainable as the same has not been provided by the assessee despite specific query to furnish computation of capital gains, the shares will be treated as short term capital asset and capital gain will be computed accordingly. Action u/s 271(1) (c) is being taken".

5. Thereafter, the AO computed the taxable amount of capital gain in the assessment order as under:-

INCOME FROM CAPITAL GAINS:

Short term capital gains:		
Deemed sale consideration being 17% of Rs.30 Crores	5,10,00,000	
Less: Cost of acquisition as per books	2,50,00,000	2,60,00,000

6. Being aggrieved, assessee carried the matter before the CIT (A). However, no relief was given by him and findings of the AO were confirmed without making any further discussion on the issue. Still being aggrieved, assessee brought the matter before the Tribunal.

7. During the course of hearing before us, it was argued by the Ld. Counsel of the assessee that the addition made by the AO and confirmed by the CIT (A) is totally baseless. The AO has made the addition in a hypothetical manner. The amount of advance was received in contemplation of sale, but the transaction did not materialize and even sale consideration was not fixed. The AO did not completely go through the Point No.8 of Notes to Accounts and jumped to the wrong conclusion that sale has taken place that too without any evidence in this regard in the possession of AO. Further, AO has wrongly invoked the provisions of Section 2(47) of the Income tax Act, 1961 r.w.s. 53A of Transfer of Property Act which is applicable in the case of immovable property only. Further, the lower authorities also

overlooked the copy of FIR filed by Director of the said company against the persons who were proposing to buy the said company, which clearly shows that transactions of sale did not materialize at all as there was strong litigation with respect to the proposed transaction. Ld. Counsel relied upon the judgment of Hon'ble Supreme Court in the case of CIT vs. Balbir Singh Maini dated 04.10.2017 in Civil Appeal No. 15619 of 2017 wherein it has been held by Hon'ble Supreme Court that there should be de-facto transfer for attracting provisions of Section 2(47)(vi). It was also held in there that no tax can be collected from the assessee on a hypothetical income. Thus, addition made by the AO is purely notional and wrongly confirmed by the CIT (A) and therefore it should be deleted.

8. Per contra, Ld. Senior DR strongly argued the case on behalf of the revenue. He relied upon the order of AO. It was submitted by him that the burden was upon the assessee to show that no sale has taken place which could not be proved by the assessee. Therefore, AO rightly made the addition and the same should be confirmed.

9. We have gone through the entire material placed before us as well as submissions made by both the sides. It is noted by us at the outset that the AO did not go through the facts and documents brought

before him by the assessee and assumed that transaction of sale has been completed by the assessee without bringing any material whatsoever on record. It is further noted that the AO made half reading of the Note No.8 of Notes to Account appended to the Balance Sheet of the assessee. The said Note No.8 has been provided at the page no.11 of the Paper Book which reads as under:

> *'The company has made investment of Rs. 2,50,00,000/- in earlier years in Shares of M/s Dudheshwar Steels & Alloys Private Limited. Net Assets Value of these shares as on 31.03.2010 (as per audited Balance Sheet of M/s Dudheshwar Steels & Alloys Private Limited) is Rs. 10192405/-(the value as on 31.3.2011 not available). During the year these shares were sold & Rs. 2500000/- received against it but as per explanation & information provided by the management the sale consideration amount is under dispute & case is pending in court. Pending said decision/dispute, the investments have been shown at book value after deducting Rs. 2500000/-in the financial statements. The consequential effect on the profit/ (loss) of the company has neither been ascertained nor disclosed in the financial statement of the company'.*
>
> ***8**. The perusal of the above shows that the assessee had received as advance a sum of Rs. 25 Lakhs. However disputes took place and transaction of sale did not take place. Under*

these circumstances, there was no basis at all to draw inference from this note that the impugned transaction of sale has been completed by the assessee. In addition to the above, our attention was drawn upon the FIR filed by Shri Ashish Tapadia who happens to be director of M/s Dudheshwar Steel and Alloys Ltd. with Kavi Nagar Police Station, Ghaziabad. The perusal of this FIR reveals complete facts. From the perusal of this FIR, it transpires that the said company namely Dudheshwar Steels and Alloys Ltd. was proposed to be acquired by one Shri Praveen Agrawal and Shri ManishYadav. However, some severe dispute arose with them and therefore transaction did not materialize. It is further alleged in the FIR that these persons fraudently and forcibly took over possession of factory and stock of goods lying therein as well as share certificates and share transfer deeds.

10. Thus, the facts as emerged before us are that the proposed transaction of sale of shares did not materialize at all. No agreement or MOU or any sale bill etc. with respect to sale of these shares has been brought on record. It is contended that no such document was entered into and therefore there was no question of bringing on record any such document. Further, even sale consideration of the impugned share has not been determined. Only an advance of Rs. 25 Lakhs is stated to have been received which has been deducted by the assessee from the cost of Investment in the Balance Sheet. No further amount is reported to have been received by the assessee. Thus, under these

circumstances it is not justified at all to presume that sale of shares has taken place. We find support in this regard from judgment of Hon'ble Supreme Court in the case of CIT vs. Balbir Singh Maini, supra. Para 22 of this Judgment reads as under:

> *"The object of Section 2(47) (vi) appears to be to bring within the tax net a de facto transfer of any immovable property. The expression "enabling the enjoyment of takes color from the earlier expression "transferring", so that it is clear that any transaction which enables the enjoyment of immovable property must be enjoyment as a purported owner thereof. The idea is to bring within the tax net, transactions, where, though title may not be transferred in law, there is, in substance, a transfer of title in fact."*

11. It has also been held in the judgment that Income Tax cannot be levied on hypothetical Income. Relevant part of this Judgment is reproduced hereunder for the sake of ready reference:

> "This Court, in Commissioner of Income Tax v. Excel Industries, (2014) 13 SCC 459 at 463-464 referred to various judgments on the expression "accrues", and then held:
>
> > "First of all, it is now well settled that income tax cannot be levied on hypothetical income".

In CIT v. Shoorji Vallabhdas and Co. [CIT v. Shoorji Vallabhdas and Co., (1962) 46 ITR 144 (SC)] it was held as follows: (ITR p. 148)

> *"... Income tax is a levy on income. No doubt, the Income Tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in bookkeeping, an entry is made about a 'hypothetical income', which does not materialize. Where income has, in fact, been received and is subsequently given up in such circumstances that it remains the income of the recipient, even though given up, the tax may be payable. Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account."*

12. The above passage was cited with approval in Morvi Industries Ltd. v. CIT [Morvi Industries Ltd. v. CIT, (1972) 4 SCC 451 : 1974 SCC (Tax) 140 : (1971) 82 ITR 835] in which this Court also considered the dictionary meaning of the word "accrue" and held that income can be said to accrue when it becomes due. It was then observed that: (SCC p. 454. Para 11) "11. ... The date of payment ….. does not affect the accrual of income. The moment

the income accrues, the assessee gets vested with the right to claim that amount even though it may not be immediately."

13. This Court further held, and in our opinion more importantly, that income accrues when there "arises a corresponding liability of the other party from whom the income becomes due to pay that amount".

14. It follows from these decisions that income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. Only then can it be said that for the purposes of taxability that the income is not hypothetical and it has really accrued to the assessee. Insofar as the present case is concerned, even if it is assumed that the assessee was entitled to the benefits under the advance licenses as well as under the duty entitlement passbook, there was no corresponding liability on the Customs Authorities to pass on the benefit of duty-free imports to the assessee until the goods are actually imported and made available for clearance. The benefits represent, at best, a hypothetical income which may or may not materialize and its money value is, therefore, not the income of the assessee."

15. In the facts of the present case, it is clear that the income from capital gain on a transaction which never materialized is, at best, a hypothetical income. It is admitted that, for want of permissions, the entire transaction of development envisaged in the JDA fell through. In point of fact, income did not result at all for the aforesaid reason. This being the case, it is clear that there is no profit or gain which arises from the transfer of a capital asset, which could be brought to tax under Section 45 read with Section 48 of the Income Tax Act.

16. In the present case, the assessee did not acquire any right to receive income, in as much as such alleged right was dependent upon the necessary permissions being obtained. This being the case, in the circumstances, there was no debt owed to the assessee by the developers and therefore, the assessee have not acquired any right to receive income under the JDA. This being so, no profits or gains "arose" from the transfer of a capital asset so as to attract Sections 45 and 48 of the Income Tax Act."

17. Coming back to the facts of this case, nothing has been brought before us to show that there was in substance of transfer of shares. In the case before us, there is neither ‘de jure’ nor ‘de facto’ transfer of impugned shares. No income has accrued in the favor of assessee. Apparently, the proposed transaction of sale fell through and did not materialize. Under these circumstances, it cannot be held at all that any capital gain was earned by the assessee on sale of impugned shares. Thus, addition made by the AO is illegal and factually incorrect and the same is here by directed to be deleted. As a result, Ground No. 1 & 2 are allowed.

Ground No. 3

18. In this ground, the assessee is aggrieved with the action of lower authorities in not allowing benefit of carry forward of losses and depreciation aggregating to Rs. 1, 63, 84,566/-. During the course of hearing, both the parties fairly agreed that this ground may go back to the file of AO with appropriate directions. With the assistance of parties, it was noted by us that the assessee made in the return filed claim about business loss and unabsorbed depreciation for Rs. 7,80,76,253/- and Rs. 46,19,425/- respectively. However in the

assessment order, the AO has not mentioned anything as to why the benefit of carry forward of losses and depreciation has not been granted. There appears to be omission on the part of AO in this regard. Therefore, in the interest of justice and fair play we remit the issue back to the file of AO to consider the claim of the assessee in proper manner and pass a speaking order on allow ability or otherwise of this claim. Undoubtedly, the AO shall give adequate opportunity of hearing to the assessee before passing a fresh order on this issue. As a result, this ground may be treated as allowed for statistical purposes.

19. Now we shall take up appeal filed by the revenue in ITA No. 431/DEL/2016 on the following grounds:

> *"1. The Ld.CIT (A) has erred in law as well as on facts in ignoring the provisions of section 145 of I.T. Act, 1961 which are mandatory for the assessee.*
>
> *2. The Ld.CIT(A) has erred in law as well as on facts of the case ignoring the decision of Hon'ble ITAT, E-Bench, Mumbai in the case of Sulzer India Ltd., decided on 7th September, 2012 in ITA No.2871 /Mum/2007.*
>
> *Therefore, the order of the Ld.CIT (A) may be set-a-side and that of the AO be restored."*

20. The grounds raised by the revenue involved a common issue with respect to addition for deviation u/s 145A amounting to Rs.1, 29, 39,052/-.

21. The brief background of the addition is that it was noted by the AO in the Tax Audit report that assessee did not include amount of Excise duty and VAT while making valuation of the closing stock. Accordingly, he gave a show cause to assessee for deviating from the provisions of the Section 145A. The assessee responded that assessee was following exclusive method of accounting in view of Accounting Standard -2 (AS-2) issued by the Institute of Chartered Accountant of India. However, if the accounts are re-casted on inclusive method, no further adjustment would be required since corresponding adjustment would be required to be made not only in closing stock and sales but also in opening stock and purchases. Further, no amount of Excise duty is pending to be paid, therefore, no further adjustment at all would be needed. Detailed working was submitted to the AO showing the effect of adjustment at NIL amount. However, AO was not satisfied and therefore he made the addition.

22. Being aggrieved, assessee carried the matter before CIT (A) and submitted detailed working that NIL adjustment is required to be made. The CIT (A) was satisfied with the submissions of the assessee and therefore, he deleted the addition. Still Being aggrieved, Revenue carried the matter before the Tribunal.

23. During the course of hearing before us, detailed arguments were made by both the sides. It was submitted by Ld. DR that compliance of provisions of Section 145A is mandatory. Therefore, AO has rightly made the addition and therefore, he heavily relied upon the order of the AO.

24. Per Contra, Ld. Counsel of the assessee vehemently relied upon the order of the Ld. CIT (A) and it was submitted by him that there is no denial to the fact that provisions of Section 145A are mandatory. However, the fact is that assessee has demonstrated before both the lower authorities that no adjustment would be needed even if the accounts are converted into inclusive method. Thus, compliance of Section 145A has been in effect made by the assessee. Our attention was also drawn on the guidance note of ICAI explaining provisions of Section 145A wherein it was clarified that whenever adjustment is

made in valuation of inventories, then effect will be given to both i.e. Opening as well as Closing stock. Further, Excise duty paid on sale of finished goods would also require adjustment. Reliance was also placed on the judgment of Hon'ble Delhi High Court in the case of CIT vs. Mahavir Aluminium Ltd. 297 ITR 77 (Delhi).

25. We have carefully gone through submissions made and material brought before us by both the sides. It is firstly noted that assessee has clarified complete facts with detailed working before AO as well as CIT(A) showing that no further adjustment would be needed u/s 145A even if accounts are prepared on Inclusive basis. We find it convenient and useful to reproduce the relevant part of the submissions made by the assessee before the CIT (A):

> *"The first ground of appeal pertains to addition of Rs. 12939052/- to the income of the assessee by observing that due to deviation from the provisions of section 145A, the profit of the assessee company has been short computed by Rs. 12939052/-.*
>
> *The Ld. AO stated in the assessment order that the assessee has shown value of closing stock at Rs. 48165270/- & it has been mentioned by C.A. in form no. 3CD that the amount of excise duty & VAT has not been considered in valuation of closing stock. In response to the specific query, assessee*

submitted that there is deviation from the provisions of section 145A but that this deviation has no effect on the financial results of the assessee & in support a working sheet has also been attached. Ld. AO further submitted that as per the calculation made by the assessee, there is no effect in the profit due to deviation from the provisions of section 145A. Thereafter, Ld. AO while referring to the provisions of section 145A & stating that the same is mandatory observed that while giving effect to the provisions of section 145A, no effect is to be given on the opening stock and that the amount of excise duty paid out of cash/bank not debited to the P & L account has first to be added against sales and then to be debited to P & L account leaving no effect on the net profit. Thus the Ld. AO by ignoring the effects of decrease in the profits by inclusion of excise & VAT in the opening stock & excise duty & VAT paid out of cash/bank not debited in P & L account made an addition of Rs. 12939052/- to the income of the assessee considering the same as deviation from the provisions of section 145A.

In this regard, your goodself will appreciate that in present, assessee is a limited company. The financial statements are therefore required to be prepared as per provisions of Companies Act and accordingly valuation of inventories for Balance Sheet purposes are required to be made as per AS-2 (Accounting Standard-2) issued by the ICAI. Further, as per AS-2, the valuation of inventory should be made at lower of

cost and net realizable value & the method of valuation should be consistently applied from year to year. Your goodself will appreciate that "inclusive method" (i.e. valuation of inventory as per provisions of section 145A) is not permitted by AS-2 and therefore assessee is bound to follow the "Exclusive method" in the financial statements and the fact is accordingly disclosed by the Tax-auditor at point no. 12(b) of form no. 3CD that assessee has deviated from the provisions of section 145A with the fact that there is no impact on net profit due to this deviation. The detailed working chart in support was submitted to the Ld. AO during the course of assessment proceedings and your goodself will appreciate that the Ld. AO has not found any arithmetical mistake in the said working. He simply stated that benefit of excise & VAT in opening stock and that the excise duty & VAT paid out of cash/bank not debited in P & L account is not admissible. Your goodself will appreciate that the observation of the Ld. AO is not correct and in this regard please find enclosed herewith the entire working of the relevant clause 12(b) from the Guidance note of the ICAI (refer page no. 1-10 of paper book), which automatically justify the stand of the assessee, as stated above as well as during assessment proceedings.

Thus, in view of above, your goodself will appreciate that there is no justification for making any addition as per provisions of section 145A in the present and therefore it is prayed that the addition of Rs. 12939052/- made by the ld. AO may please be deleted."

26. Thus, from the above it is clear that assessee is not refraining from the compliance of provisions of Section 145A. Rather the claim of the assessee is that provisions of Section 145A are duly complied with and no further adjustment is required to be made as has been wrongly made by the AO. Further, our attention is drawn on the working submitted by the assessee before the AO which shows that no adjustment will be required to be made in this case. The worksheet submitted by the assessee as is reproduced in the assessment order reads as under:-

	"A. INCREASE IN PROFITS:	Amount (Rs.)
i)	Increase in sales due to inclusion of Excise Duty & Vat	1,85,99,125
ii)	Increase in value of Closing stock due to Inclusion of Excise Duty and Vat	64,85,914
	Sub Total (A)	2,50,85,039
	B. DECREASE IN PROFIT	
i)	Increase in value of opening stock by Inclusion of Excise Duty & Vat	1,11,65,317
ii)	Excise Duty and VAT on the purchases	1,21,45,987
iii)	Excise Duty & Vat paid out of cash/bank not Debited to P&L account	17,73,735
	Sub Total (B)	2,50.85.039

Increase/Decrease in profit (A-B)	NIL

Thus, according to the calculation made by the assessee, there is no effect in the profit due to deviation from the provisions of section 145A. "

27. However, the AO disregarded the working and made the addition by giving his own working. It is noted by us that the difference in working of the assessee and working made by the AO is mainly due to the reason that AO has not given the benefit of corresponding adjustment in the value of opening stock by the amount of Excise duty and VAT and also did not give the adjustment on account of Excise duty and VAT paid out of cash/ Bank but not debited to the P & L Account. **It is noted that Hon'ble Delhi High Court in case of CIT vs. Mahavir Aluminium Ltd.,** supra, it was held that if there is change in closing stock to give effect to Section 145A, there must necessarily be a corresponding adjustment in the opening stock of the year. Similar view has been expressed by the ICAI in the Guidance Note explaining the provisions of Section 145A. Further, on the basis of sense of justice and equity also same inference can be drawn that if Trading and P & L Account is to be converted from 'Exclusive' method to 'Inclusive' method, then corresponding adjustment will be required to be made in

all relevant heads of Income and Expenditure including the opening stock.

28. Further, the adjustment on account of Payment of Excise duty and VAT out of Cash/Bank but not debited in P & L Account would also be required to be given. It is noted that assessee has submitted detailed submissions and evidences to demonstrate the fact of payment of Excise duty as well as amount of Excise duty and VAT embedded in the value of opening stock. No dispute on facts has been raised by the Ld. DR before us. Further, assessee has also submitted before the lower authorities both sets of Trading and P & L Account prepared on both 'inclusive' and 'exclusive' method showing that amount of net loss in both the situation remains the same at Rs. 48,716,531/- . Thus, viewed from any angle no case is made out by the revenue before us for sustaining the addition.

29. Under these circumstances, we find that the CIT (A) has rightly deleted the addition by observing as under:

> *"In this ground the appellant agitated against addition of Rs. 1,29,39,052/-made due to deviation from the provisions of section 145A".*

30 Having considered facts and circumstances of the case, I find that to comply with provisions of section I45A, the assessee was required to make adjustment with respect to tax, duties in the work in progress, closing stock opening stock and purchases etc. The claim of assessee is that it had made such adjustments. The AO accepted claim of such adjustment having been made by the AO in respect of sales, closing stock and purchases on account of excise duty and VAT. However, the AO rejected the claim of the assessee that it had made adjustments with respect to opening stock and excise duty and VAT already paid. In the assessment order, the AO has not elaborated on why these adjustments have not been accepted. Having examined the financial statements and working of assessee, I find that when the sales and closing of assessee have been enhanced by element of excise duty and VAT, the claim of assessee for enhancement of opening stock and the allowance of duties already paid is perfectly legal and valid to arrive at true profit. Finding merit in contention of the appellant, I delete the addition of Rs. 1,29,39,052/-. Ground of appeal no. 1 is allowed."

25. Thus, in view of the discussion made by us in our order, we find that no interference is called for in the order of the CIT(A). Thus, the

action of the ld. CIT(A) is confirmed and this ground of the revenue is dismissed.

26. As a result appeal of the Revenue is dismissed and that of assessee is partly allowed.

The order is pronounced in the open court on 21.11.2017.

Sd/-	**Sd/-**
[SUDHANSHU SRIVASTAVA]	**[B.P. JAIN]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 21st November, 2017

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar
New Delhi