



**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.208/Rpr/2012
Assessment Year : 2009-2010

Asst. Commissioner of Income Tax, Circle 1(2), Raipur.	Vs.	Vijay Transmission Pvt Ltd., Ring Road No.2, Vill Gondwara, Raipur
PAN/GIR No.AACCV 44676 B		
(Appellant)	..	(Respondent)

Assessee by : Shri Praveen Khandalwal, AR
Revenue by : Mrs Shabana Parveen, DR

Date of Hearing : 09/01/ 2018
Date of Pronouncement : 11 /01/ 2018

ORDER

Per Pavan Kumar Gadale, JM

This is an appeal filed by the revenue against the order of the CIT(A)-
Raipur, dated 3.10.2012 for the assessment year 2009-2010.

2. Ground Nos.1 to 3 are interconnected, which are as under:

"1. Whether in law and on facts & circumstances of the case, the
CIT(A) has erred in deleting the additions of Rs.14,52,189/-
made by the AO on account of undervaluation of raw material-
Steel.

2. Whether in law and on facts & circumstances of the case, the
CIT(A) has erred in deleting the additions of Rs.6628/- made by
the AO on account of undervaluation of raw material-Zinc



3. Whether in law and on facts & circumstances of the case, the CIT(A) has erred in deleting the additions of Rs.73593/- made by the AO on account of undervaluation of raw material- finished goods”.

3. The facts of the case are that the assessee is a private limited company deriving income from fabrication and galvanization of power towers and telecom towers. The return of income was filed on 30.9.2009 declaring Nil income and profit under MAT was disclosed at Rs.44,88,353/-. The Assessing Officer found that the assessee has undervalued the closing stock of various items and has also concealed the value of closing stock of some items and that out of the total closing stock, the assessee has furnished the value of closing of following items alongwith basis as under:

Sl.No.	Items	Qnty.(MT)	Value(Rs.)	Average cost per unit	Cost price	Sale price
1.	Steel	520.483	14921683	28668.92	31459**	
2.	Zinc	16.875	1409100	83502.22	83895	
3.	Tower(FG)	11.700	477711	40830.00	-	53600

Since the assessee is following FIFO method, the Assessing Officer observed that the valuation at average cost per unit is not correct. The assessee also failed to give all particulars to support valuation on FIFO basis, therefore, the Assessing officer adopted the cost price of steel at Rs.31,459/- per M.T.



and after deducting the average cost therefrom and worked the undervaluation of raw material of steel at Rs.14,52,189/-.

Further, in respect of zinc, the Assessing Officer valued at cost price and the undervaluation is worked out after deducting the average cost from the actual, which comes to Rs.6628/-.

Similarly, in respect of value of Tower (finished goods), the Assessing Officer observed that for 11.700 MT of finished goods, the value was shown at Rs.,4,77,711/- by applying the average cost price of Rs.40,830/-. The selling price was shown at Rs.53,600/- per MT. Thus, the assessee has undervalued the closing stock of finished goods. Therefore, after deducting gross profit at 12.09% shown by the assessee, the cost price, including manufacturing expenses and adopted the cost of finished goods at Rs.,47,120/-. Accordingly, the under valuation in tower account was worked at Rs.73,593/-. In view of above, the Assessing Officer worked the addition of undervaluation of closing stock at Rsx.15,32,410/.

4. On appeal, the CIT(A) observed that there is no change in the method of stock valuation in comparison to last year. The method of stock valuation adopted by the assessee is commensurate with the method prescribed u/s I45A r.w.s 145 of the Act and Accounting Standard-2 "Valuation of Inventories" issued by ICAI and notified by the Central Government. The



CIT(A) also found that the Auditor has not made any adverse remark as regards undervaluation of stock. The methodology adopted by the assessee for determination of cost based on FIFO method basically involves valuation of cost with reference to the last purchases and the FIFO method of valuation of closing stock under which the valuation is done on first in first out (FIFO) basis and the closing stock is valued on the basis of last purchase bills. The CIT(A) observed that the method applied by the Assessing Officer is clearly misplaced. Hence, the CIT(A) was in agreement with the submissions of the assessee that the valuation is to be made after considering the cost on bill to bill basis applying FIFO methodology under which the last purchases to the extent it covers the quantity of closing stock, at the end of the financial year is to be considered for valuing the stock. In view of above, the CIT(A) deleted the addition of Rs.14,52,189/- on account of undervaluation of steel.

4.1 For the reasons given in regard to undervaluation of steel, the CIT(A) also deleted the addition of Rs.6628/- made on account of undervaluation of zinc.

4.2 In respect of addition on account of undervaluation of finished goods, the CIT(A) observed that the Assessing Officer has valued the inventory of finished goods by reducing the G.P. rate from the selling price. The CIT(A) observed that it was incumbent upon the Assessing officer to point out



mistakes in the inventory valuation done by the assessee viz any particular head of cost which ought to have considered in determining the cost of production/manufacture but not included by the assessee. He observed that the Assessing Officer without pointing out any such mistake in calculation of cost, applied his own method without substantiating the same with reference to the facts. When there is variation in the selling rate and inputs/raw materials, it is not correct on the part of the Assessing Officer to arrive at the cost by reducing G.P. rate. Accordingly, he deleted the addition of Rs.73,593/-.

5. Being aggrieved by the deletion of above additions by the CIT(A), the revenue is in appeal before us.

6. Before us, Id D.R. vehemently opposed the findings of the CIT(A) in deleting the additions and submitted that the assessee has undervalued the closing stock of above items and concealed the value of closing stock. Therefore, Id D.R. prayed to reverse the order of the CIT(A) and restore that of the Assessing Officer.

7. Contra, Id A.R. supported the order of the CIT(A).

8. We, after hearing the rival submissions and perusing the orders of lower authorities, find that Id D.R. could not point out any specific error in the findings of the CIT(A). We also observe that there is no change in the



method of stock valuation adopted by the assessee in comparison to last year, which is commensurate with the method prescribed u/s.145A and Accounting Standard-2 "valuation of inventories" issued by ICAI. Therefore, we are of the considered view that the CIT(A) is fully justified in deleting the additions made by the Assessing Officer on the above three items. Hence, we confirm the order of the CIT(A) and reject Ground Nos.1 to 3 of the appeal of the revenue.

7. Ground No.4 of appeal relates to deletion of addition of Rs.1,14,18,637/- made by the Assessing Officer on account of unaccounted finished goods.

8. Briefly stated the facts of the case are that the Assessing Officer observed that the assessee has concealed major part of the closing stock from valuation. The Assessing Officer required the assessee to furnish details of shortages year wise, item wise giving particulars of such as quantity of raw material consumed, quantity of finished goods, quantity of shortages and percentage of yield. The assessee submitted the details as required for. The Assessing Officer found that no shortages were reported by the assessee and that the assessee has concealed the quantum of finished products and that the assessee has consumed total quantity of Steel and Zinc at 6335.141 MT (Steel: 6162.178 MT) (Zinc 172.963 MT) whereas



the finished products was shown at 6092.81. He further observed that the assessee has not accounted for the value of finished goods of 242.331 MT. which was lying with him as closing stock and that after taking the value of finished goods of 242.331 MT at @ Rs.47,120/-per MT, the Assessing Officer worked out to Rs. 1,14,18,6377- and added the same to total income of the assessee.

9. Before the CIT(A), the assessee submitted as under:

“The appellant has submitted that the appellant during the year under consideration showed manufacturing loss of 242.331 Mts of raw material in manufacturing of finished goods; that in the course of assessment proceedings, the appellant while furnishing the details of losses incurred by it in manufacturing process mistakenly stated that no losses were incurred in the preceding year; that the nature of mistake committed by the appellant while replying to the query of the assessing authority was that the appellant mentioned the same quantity as input of raw material and quantity manufactured; that on the basis of this mistaken submission the assessing authority disallowed the loss claimed during the year under consideration concluding that the manufacturing process of the appellant does not fortifies any loss; that the tax audit report in Form 3CD specifically requires the auditor to certify the quantitative details of raw material and finished goods; that it is crystal clear that the appellant has incurred losses in the manufacturing process to the extent of 2.97% in the AY 2008-09 and 3.83% in the AY 2009-10; that the finding of the AO that in the preceding year the appellant had not incurred any loss is factually incorrect; that the process of fabrication involves sizing of the raw steel to various sizes by using gas cutter machines and thereafter, welding the same as per the design approved by the customer; that this process of sizing, cutting and welding results in burning losses and also in generation of scrap as end tails and unusable sizes; that the sized steel is galvanized by passing it through molten zinc; that



being a labour oriented semi mechanical manufacturing process losses are bound to occur; that the manufacturing losses has increased from 2.97% to 3.84% for the reason that in the AY 2008-09, the appellant did not manufactured transmission towers and only manufactured poles and flats; that the losses d by the appellant in manufacturing the towers and poles are justified and within the limits ;trial average and therefore, acceptable; that the gross profit ratio of the appellant has improved from 4.13% to 12.09% due to change in the product mix of the finished goods and raw material; that the books of accounts of appellant is under scrutiny and audit of Central Excise Department and they have not pointed out any discrepancy in quantitative details of raw material and finished goods.'

10. After considering the submissions of the assessee, the CIT(A) deleted the addition by observing as under:

1 have carefully gone through the assessment order, and submissions of the appellant. I have gone through the manufacturing process explained by the appellant. The process of fabrication and galvanization of transmission towers is a labour oriented semi mechanical process and manufacturing losses are bound to happen. On perusal of the Tax Audit Report in Form 3CD for the year under consideration and preceding year, it is found that the manufacturing loss for the A.Y 2009-10 is 3.84% as against 2.97% incurred in AY 2008-09 though the book results i.e. gross profit ratio has improved drastically from 4.13% in the preceding year to 12.09% in the year under consideration. The A.O, instead of bringing on record any cogent and conclusive evidence to substantiate the addition, just relied on mistaken submission of the appellant and completely ignored the basic facts of the case and tax audit reports. Such addition, on the basis of incorrect interpretation of facts cannot be sustained. Hence, the addition is deleted."

11. Ld D.R. supported the order of the Assessing officer whereas Id A.R. of the assessee supported the order of the CIT(A).



12. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. The undisputed facts of the case are that the assessee had shown manufacturing loss of Rs.242.331 Mts of raw material in manufacturing of finished goods and during the assessment proceedings, the assessee, mistakenly stated that no losses were incurred in the preceding year. Admittedly, on perusal of tax audit report in Form 3CD for the preceding year, it was found that the manufacturing loss for assessment year 2009-10 was 3.84% as against 2.97% incurred in the assessment year 2008-09. Without considering the past results of the assessee and on the basis of the submissions of the assessee for the year under consideration, the Assessing Officer added the cost price of finished goods of 242.331 MTs @ Rs.47,120/- per MT at Rs.1,14,18,637/-. We find that the CIT(A) has properly appreciated the facts and deleted the addition. No specific error was pointed out by Id D.R. in the order of the CIT(A), which is hereby confirmed and Ground No.4 of appeal of the revenue is dismissed.

13. In Ground No.5 of the appeal, the grievance of the revenue is that the CIT(A) erred in deleting addition of Rs.4,83,927/- made by the Assessing Officer on account of payment of interest u/s.40A(2)(b) of the I.T.Act, 1961.



14. The Assessing Officer found that the assessee has claimed interest payment to related parties i.e. shareholders at Rs.11,29,165/- @ 21% PA. He also noticed that the rate of interest paid is excessive and unreasonable and that the rate of interest paid is certainly higher than the prevailing market rate and, therefore, he restricted the interest rate to 12% and disallowed Rs.4,84,927/- being balance 9% u/s 40A(2)(a) of the Act.

15. Before the CIT(A), it was submitted by the assessee that the figure of Rs.11,29,165/- is verifiable from the books of account of the assessee for the year under consideration. The total interest paid by the assessee on unsecured loan during the year under consideration is Rs.8,46,8727- as stated at schedule "W" of the audited profit and loss account and the total interest paid to specified person i.e. persons as defined under section 40A(2)(b) of the Act is Rs.5,00,274/- as stated by the tax auditor at para '18' of the Form 3CD. It was submitted that the rate of interest in case of unsecured loans from financial institutions and NBFC's is around 18% - 19% and it also requires lot of documentation and personal guarantee's and that in case of secured loan available at the rate of 14% - 16% from banks and financial institutions, the entity is required to mortgage the primae property and also mortgage collateral security apart from personal guarantee. The assessee relied on following judicial pronouncements:-



- (i) *Subash Chancier & Co vs. 1TO (2009) 121 TTJ (Asr) 718;*
- (ii) *ITO vs. MM Textiles (2009) 122 ITD 435 (Mum);*
- (iii) *Cosmat Max Limited vs. DCIT (2009) 124 TTJ (Del) 86;*

16. The CIT(A) deleted the addition observing that the rate of interest in any loan transaction depends upon various factors and bargaining capacity of the borrower and lender. The factors may include periodicity of repayment, security offered, past track of the borrower, 'provision for penal interest, relationship between borrower and lender etc. In the instant case, the Assessing Officer has compared the rate of interest of unsecured loan with secured loan. Therefore, the CIT(A) was of the opinion that the Assessing Officer has made an incorrect comparison between the two unlike things. It is not the case of the Assessing Officer that the rate of interest on unsecured loan was increased during the year under consideration without any reason. The Id CIT(A) relied on the decisions and observed that the Assessing Officer has not brought on record any evidence or argument to substantiate that the rate of interest was excessive in view of the terms of loan. Therefore, he deleted the addition of Rs. Rs.4.83.927/-.

17. Ld D.R. relied on the order of the Assessing Officer, whereas Id A.R. of the assessee supported the order of the CIT(A).



18. After considering the rival submissions and perusing the materials available on record, we find that the Assessing Officer has compared the rate of interest of unsecured loan with secured loan. We find force in the findings of the CIT(A) that the rate of interest in any loan transaction depends upon various factors and bargaining capacity of the borrower and lender. It is upto the borrower to obtain loan from which financial institution depending upon the factors and which is beneficial to him. In this case, the assessee has taken a conscious decision to avail the loan in order to avoid providing multiplicity of documentations and penal interest. Hence, we find no infirmity in the findings of the CIT(A) and uphold the same. Ground No.5 of appeal of the revenue is dismissed.

19. Ground No.6 of the appeal relates to deletion of disallowance of depreciation of Rs.29,18,682/- on account of ETP building.

20. Brief facts of the case are that the Assessing Officer found that the assessee has shown cost of acquisition of ETP Building at Rs.64,85,959/- and claimed depreciation thereon at 100%. The Assessing Officer found that the ETP building was put to use for less than 180 days, it claimed 50% of the amount and claimed Rs.32,42,979/- as depreciation. The Assessing Officer also observed that as per the rates of depreciation applicable to



'Building', rate of 100% depreciation is allowable only in respect of buildings acquired on or after 01.09.2002 for installing P&M forming part of water supply project or water treatment system and put to use for the purpose of providing infrastructure facilities u/s 80IA(4)(I) of the Act. Therefore, the Assessing officer restricted the depreciation as applicable to buildings at 10% and 50% of the admissible amount of at Rs.3,24,2987- and disallowed Rs.29,18,682/-.

21. Before the CIT(A), the assessee submitted as under:

“ The appellant has submitted that the AO disallowed expenses claimed on account of depreciation to the extent of Rs.29,18,682/- out of claim of Rs.32,42,979/- claimed on effluent treatment plant being a water pollution control system machinery; that the AO without enquiring from the appellant about the type and nature of asset and the reason for charging depreciation at the rate of 100% straight away disallowed the claim of appellant concluding that being a building the rate of depreciation allowable is 10%; that though the nomenclature of the asset is described as 'ETP Building' but factually it is a plant for treatment of waste and polluted water generated in the course of galvanizing process; that the plant comprises of machineries and equipments and it is not a building/factory building; that as per the Appendix T to IT Rules, the rate of depreciation prescribed for water pollution control equipment in entry no.III 3 (ix)(f) is 100%; that the plant installed by the appellant is a mechanically aerated activated sludge system and therefore, it qualifies for depreciation at the rate of 100%; that merely because the appellant inadvertently mentioned the word building in-front effluent treatment plant cannot deprive the appellant from its ate claim of depreciation; that the AO should have atleast afforded an opportunity to the appellant to explain its case before coming to conclusion on the basis of nomenclature of the fixed asset which otherwise did not reflect the correct nature and type of the asset, that the books of account of appellant were audited under section 44AB of the Act



and the auditor has after due verification of the details of fixed asset calculated and certified the claim of depreciation allowable to the appellant.”

22. On careful consideration of the submissions of the assessee, the CIT(A) deleted the disallowance on the ground that the depreciation is in respect of effluent treatment plant i.e. pollution control equipment.

23. Having heard the rival submissions and perusing the orders of the lower authorities, we find that the depreciation claimed by the assessee is in respect of effluent treatment plan i.e. pollution control equipment. Before us, it was not controverted by Id D.R that the assessee has claimed depreciation for other plant and machinery. Therefore, we concur with the view taken by the CIT(A) and dismiss this ground of appeal of the revenue.

24. Ground No.7 of appeal is that the CIT(A) was not justified in admitting additional evidence in violation of Rule 46A of I.T.Rules, 1962.

25. Ld Departmental Representative contended that the CIT(Appeals) had not given any opportunity to the Assessing Officer when he decided to accept the assessee's case and that, therefore, it was in violation of Rule 46A of the Income Tax Rules. He, therefore, submitted that the order of the CIT(Appeals) on this issue should be set aside and the matter should be sent back to him for complying with the requirements of Rule 46A.



26. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. From the above ground of appeal, it is clear that the grievance of the Revenue is that the additional documents/ evidences have been accepted by the Id. CIT(A) against the provision of Rule 46A of Income tax rule. In this regard on specific query from the Bench, the Ld. DR has not pointed out any specific document amounting to as an additional evidence which was admitted by the Ld. CIT(A) in contravention to the provision of Rule 46A of the Income Tax Rule, 1962. We find that the documents which were furnished before the CIT(A) were also furnished before the Assessing Officer. Therefore, the order of the CIT(Appeals) cannot be faulted on the ground of contravention of Rule 46A. We, therefore, find no merit in the objection raised by the Revenue. Accordingly, this ground is rejected.

27. In the result, appeal filed by the revenue is dismissed.

Order pronounced on 11 /01/2018.

SD/-

(N.S Saini)
ACCOUNTANT MEMBER

SD/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

Raipur; Dated 11 /01/2018
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1.	The Appellant : Asst. Commissioner of Income Tax, Circle 1(2), Raipur
2.	The Respondent. Vijay Transmission Pvt Ltd., Ring Road No.2, Vill Gondwara, Raipur
3.	The CIT(A)- rAIPUR
4.	Pr.CIT- rAIPUR
5.	DR, ITAT, Raipur
6.	Guard file. //True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Raipur