

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA**

**[Before Sri J. Sudhakar Reddy, Accountant Member & Sri S. S. Viswanethra Ravi, Judicial Member]**

**I.T.A. No. 228/Kol/2015  
Assessment Year: 1999-2000**

**JCT Ltd.....Appellant**  
**18, Monilal Saha Lane**  
**2<sup>nd</sup> Floor**  
**P.S. New Market**  
**Kolkata - 700 013**  
**[PAN : AAACJ 6730 E]**

**DCIT, Circle-12(1), Kolkata.....Respondent**  
**7<sup>th</sup> Floor**  
**P-7, Chowringhee Square**  
**Aayakar Bhawan**  
**Kolkata - 700 069**

**I.T.A. No. 354/Kol/2015  
Assessment Year: 1999-2000**

**DCIT, Circle-12(1), Kolkata.....Appellant**  
**7<sup>th</sup> Floor**  
**P-7, Chowringhee Square**  
**Aayakar Bhawan**  
**Kolkata - 700 069**

**JCT Ltd.....Respondent**  
**18, Monilal Saha Lane**  
**2<sup>nd</sup> Floor**  
**P.S. New Market**  
**Kolkata - 700 013**  
**[PAN : AAACJ 6730 E]**

**Appearances by:**

*Shri A.K. Gupta, FCA, appeared on behalf of the assessee.*

*Shri Goulen Hangshing, CIT, DR appearing on behalf of the Revenue.*

Date of concluding the hearing : January 31<sup>st</sup>, 2018

Date of pronouncing the order : March 9<sup>th</sup>, 2018

**O R D E R**

**Per J. Sudhakar Reddy :-**

These are cross-appeals directed against the order of the Id. Commissioner of Income Tax (Appeals)-4, Kolkata, (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 27/01/2015.

2. The assessee is a company and is a member of Thapar Group and is engaged in the manufacturing and selling of textiles, yarns, polyester chips, staple fiber, steel wire etc. It filed its return of income on 24/12/1999, declaring total loss of Rs.93,62,86,110/-. The Assessing Officer passed the assessment order u/s 143(3) of the Act on 26/03/2002, determining total loss at Rs.(-)21,03,33,020/-.

2.1. Aggrieved, the assessee carried the matter in appeal. The ld. First Appellate Authority, granted part relief.

3. Further aggrieved, both the assessee and the revenue are in appeal before us.

4. We have heard Shri A.K. Gupta, FCA, the ld. Counsel on behalf of the assessee and Shri Goulen Hangshing, the ld. CIT, D/R, on behalf of the revenue. On careful consideration of the facts and circumstances of the case, we hold as follows:-

5. We first take up the assessee appeal in ITA No.228/Kol/2015.

5.1. Ground No. 1, is against the disallowance made of employee's contribution to ESI. The undisputed fact is that the amount has been paid before the due date specified for filing of the return of income. This issue is covered in favour of the assessee by the decision of the Kolkata 'A' Bench of the Tribunal in the case of *Assistant Commissioner of Income-tax v. Phillips Carbon Black Ltd.* [2014] 49 *taxmann.com* 260 (Kolkata - Trib.), wherein at para 7, it has been held as follows:-

*"7. After considering the rival submissions and perusing the relevant materials on record, we find that the hon'ble Supreme Court in the case of CIT v. Alom Extrusions Ltd. [2009] 319 ITR 306/185 Taxman 416 has held that the amendment to the first proviso and the omission of the second proviso to section 43B by the Finance Act, 2003 to be retrospective. It has been held by the hon'ble apex court in the case of CIT v. Vinay Cement Ltd. [2007] 313 ITR (St.) 1 (FRSC) that the amount of employees' provident fund deposited before the due date cannot be disallowed under section 43B of the Act. The hon'ble Delhi High Court in CIT v. AIMIL Ltd. [2010] 321 ITR 508/188 Taxman 265 considered under section 2(24)(x) along with section 36(1) and allowed deduction in respect of the employees' share which was paid before the due date as per section 139(1) of the Act. In view of the aforesaid precedents, we are of the considered opinion that the view*

*taken by the learned Commissioner of Income-tax (Appeals) requires no modification and this ground is not allowed."*

5.2. Consistent with the view taken therein by the Co-ordinate Bench, we allow this ground of the assessee.

6. Ground No.2, is on the issue of liability of the claim of interest of Rs.74,01,05,065/-. This Ground in the assessee's appeal and Ground No. 4 of the revenue appeal are identical.

6.1. The case of the assessee is that the Id. CIT(A) has erred in not giving a decision on merits. The submission is that the loans and advances were given out of the assessee's own funds and not out of borrowed funds. It is further submitted that similar disallowance made of interest, on the ground that advances were given to subsidiary companies or sister concern was deleted by the Appellate Authorities, in the earlier year Assessment Year and that the Assessing Officer himself had allowed such claims in certain Assessment Years. It was also submitted that the Id. CIT(A), failed to allow the following expenditure,

- (a) *Payment of bill collection charges.*
- (b) *Cheque clearance/discounting charges*
- (c) *Letter of credit against supplies.*
- (d) *Interest on packing credit loan*
- (e) *dealers and suppliers hundi.*
- (f) *overdue interest on raw material suppliers.*
- (g) *sales documents*
- (h) *interest paid on fixed deposits and intercorporate deposits*
- (i) *guarantee commission*
- (j) *Interest paid on sales tax, Central Excise etc.*

6.1.1. It is also alleged that the disallowance was more than the actual payment of interest due to a typographical error. The revenue is aggrieved as the Id. CIT(A), chose to follow the decision of the Tribunal for the Assessment Year 1998-99. The fact is that this order of the Tribunal was set aside by the Hon'ble High Court for fresh adjudication by the Tribunal.

7. In our view, the entire issue should go back to the file of the Assessing Officer for fresh adjudication, in accordance with law. The contention of the assessee that it had interest free funds and that the same were advanced to a sister

concern, subsidiaries etc. requires factual verification. The decision of the Tribunal and Hon'ble High Courts on this matter have to be followed by the Assessing Officer. The Assessing Officer should specifically consider the assessee's claim of expenditure on *Payment of bill collection charges, Cheque clearance/discounting charges, Letter of credit against supplies, Interest on packing credit loan, dealers and suppliers hundi, overdue interest on raw material suppliers, sales documents, interest paid on fixed deposits and intercorporate deposits, guarantee commission, Interest paid on sales tax, Central Excise etc.*

8. In view of the above discussion, Ground No.2 of the assessee and Ground No. 4 of the revenue are set aside to the file of the Assessing Officer for fresh adjudication, in accordance with law.

9. Ground No. 3, is on the issue of allowability of prior period expenditure.

9.1. The law on this issue is clear. The expenditure, though relating to earlier years has be allowed in the year in which the liability has crystalized. This is laid down by the Hon'ble Calcutta High Court in the case of *Sutna Stone And Lime Co. Ltd. vs Commissioner Of Income-Tax* 1991 192 ITR 478 Cal. The assessee's contentions is that the liabilities had crystallized during the year and hence should be allowed as an expenditure during the year. The expenditure in question are listed out at page 8 and 9 of the assessment order, which are not extracted for the sake of brevity.

9.2. Before the Id. CIT(A), the assessee pleaded that sufficient opportunity had not been given by the Assessing Officer. The Id. First Appellate Authority had called for the remand report as the assessee had furnished copies of certain documents and made submissions on the issue. After considering these submissions as well as the remand report, the Id. CIT(A) has granted part relief. He deleted the following disallowance 1) discount on sales, 2) LIC Premium in lieu of EDLIS, 3) Excise duty paid, 4) interest paid, 5) raw material consumed, 6) processing charges etc. The assessee submits that the Id. CIT(A) by oversight, confirmed the disallowance of Rs.15,546,502/-, though the Id. DCIT, Circle-10, Kolkata, has opined that this expenditure is allowable on examination of the documents and records. We are of the opinion that this issue is also to be set aside to the file of the Assessing Officer for fresh adjudication, in accordance with law. Normally, we would have set aside

this matter to the file of the Id. First Appellate Authority has a mistake has arisen in his appellate order but as we have set aside Ground No.2, to the file of the Assessing Officer, in our view, it would be appropriate to set aside this matter also to the file of the Assessing Officer. In the result, this ground of the assessee is allowed for statistical purposes.

10. In the result, the appeal of the assessee is allowed in part.

11. ***Now we take up the revenue appeal in ITA No. 354/Kol/2015.***

12. In this revenue appeal, the first issue is as to whether the Id. CIT(A) was right in allowing the claim of the assessee of bad debts written off. This decision of the Id. CIT(A) is in consonance with the propositions of law laid down by the Hon'ble Supreme Court in the case *TRF Ltd. v. CIT [2010] 190 Taxmann 391 [SC]*. Hence, we find no infirmity in the order of the Id. CIT(A) and dismiss this ground of the revenue.

13. Ground No. 2 is on the issue of deletion of addition made on account of foreign exchange loss claimed by the assessee. The undisputed fact is that this loss of foreign exchange is on current account. Under these circumstances, we find that the order of the Id. First Appellate Authority, is in line with the decision of the Hon'ble Supreme Court in the case of *Oil & Natural Gas Corporation Limited Vs. CIT(2010) 322 ITR 180 (SC)*. In the result, we uphold this finding of the Id. CIT(A) and dismiss this ground raised by the revenue.

14. Ground No. 3, is against the deletion of an addition made by the Assessing Officer on account of post production interest on deferred credits.

14.1. The Assessing Officer's contention is that the interest does not relate to the current year and neither the same had got crystalized in the Assessment Year. The assessee submits that he has not claimed this amount as a deduction in his return nor deducted the same to the profit and loss account. Under these circumstances, we find that this ground is mis-conceived. In the result, this ground of the revenue is dismissed.

15. Ground No. 4, has already been adjudicated while dealing with Ground No. 2 of the Assessee's appeal.

16. The last ground of the revenue is on the allowability of prior period expenditure.

16.1. The Assessing Officer alleges that the Id. CIT(A) deleted the addition, without considering the remand report of the Assessing Officer on the issue. We have set aside a similar issue in Ground No. 3 in the assessee's appeal. Consistent with the view taken therein, this ground is also set aside this matter to the file of the Assessing Officer, for fresh adjudication, in accordance with law.

17. In the result, the appeals of the assessee and the revenue are allowed in part.

***Kolkata, the 9<sup>th</sup> day of March, 2018.***

***Sd/-***

**[S.S. Viswanethra Ravi]**  
 Judicial Member

Dated :09.03.2018  
 {SC SPS}

*Copy of the order forwarded to:*

**1. JCT Ltd**  
**18, Monilal Saha Lane**  
**2<sup>nd</sup> Floor**  
**P.S. New Market**  
**Kolkata – 700 013**

**2. DCIT, Circle-12(1), Kolkata**  
**7<sup>th</sup> Floor**  
**P-7, Chowringhee Square**  
**Aayakar Bhawan**  
**Kolkata – 700 069**

3. CIT(A)-  
 4. CIT- ,  
 5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Senior Private Secretary  
 Head of Office/ D.D.O. ITAT, Kolkata Benches

