

2. Since both the appeals are arising out of the same order of the CIT(A), hence, the same have been heard together and are being disposed of by this common order. First, we will take up appeal of the Revenue in **ITA No. 839/Chd/2017.**

3. The Revenue is aggrieved by the action of the CIT(A) in deleting the addition made of Rs. 34,14,667/- on account of suppressed sale. The assessee is involved in manufacturing of packaging material and plastic products. The Assessing officer observed that assessee had shown less yield for the year under consideration as compared to earlier assessment years. He, therefore, concluded that the assessee might have suppressed its sales. He by taking average of the past years vis-a-vis the production shown by the assessee during the year under consideration, estimated the figure of suppressed sales and made addition to the income of the assessee accordingly.

4. Being aggrieved by the above order of the Assessing officer, the assessee preferred appeal before the CIT(A). The Ld. CIT(A) found that there was no evidence on the file or record about the suppression of sales and considered the submissions of assessee that lower yield was on account of various circumstances including power fluctuation, break down of electricity and that the assessee was involved in manufacturing of various types of products according to demand and that the yield depends upon the variety of products manufacture also. That during the year there was generation of more waste in relation to the products manufactured, etc.

5. The Ld. CIT(A) after considering the overall facts and circumstances of the case observed that merely because the assessee had shown during the

year less yield that itself cannot be a ground for addition. That even otherwise, there was no evidence available of suppression of sales. He therefore, deleted the additions so made by the Assessing officer on this issue. Being aggrieved by the above order, the Revenue has come up in appeal before us.

6. We have considered the rival submissions. In our view, the Ld. CIT(A) has rightly deleted the addition in the absence of any cogent or convincing evidence that the assessee has surpassed its sales. The assessee has explained about various factors contributing for the low yield. Even otherwise, in our view, in the absence of any incriminating evidence, it cannot be assumed that the assessee might have suppressed the sales. We, therefore, do not find any merit in the appeal of the Revenue and the same is accordingly dismissed.

7. Now coming to the appeal of the assessee in **ITA No. 816/Chd/2017**, wherein the assessee has taken following grounds:-

1. That the Ld CIT(A) has erred in confirming the capitalization of interest paid, amounting to Rs.53,157/-, on loan raised for purchase of machinery on the ground that the machinery has not been used during the year under consideration whereas, as per the assessee the trial run has been conducted by the assessee after commissioning of the machinery, therefore, the capitalization made as per explanation 8 under Section 43(1) r.w. section 36(l)(iii) is bad in law and therefore prayed to be set-aside.

2. That the Ld. CIT(A) has erred in confirming the disallowance of depreciation amounting to Rs. 57,474/- on building on the ground that in the month of March the assessee purchased cement and bricks whereas, as per the assessee the meager amount expended on cement and bricks could not challenge the whole

building erected and commissioned by the assessee amounting to Rs. 11,49,474/-, therefore the disallowance of depreciation is being prayed to be set-aside.

- 3. That the Ld. CIT(A) has erred in confirming the disallowance of depreciation amounting to Rs. 10,356/- on machinery on the ground that in the month of March the assessee purchased machineries and there are no erection charges qua those machineries whereas, as per the assessee the employees of the assessee are competent enough to install the said machineries, therefore, the disallowance of depreciation is being prayed to be set-aside.*
- 4. That the Ld CIT(A) has erred in confirming the disallowance of expenditure amounting to Rs. 58,840/- on the ground that the said expenditure relates to service tax penalty and therefore under section 37(1) the said expenditure is not allowable, whereas, as per the assessee these expenses paid towards meeting Statutory obligation, therefore the disallowance made may kindly be set aside.*
- 5. That the Ld. CIT(A) has erred in partially confirming the disallowance of travelling expenditure to the tune of Rs. 3,91,028 (out of Rs.4,66,028/-) on the ground that the family of director accompanied him on the trip whereas, as per the assessee the business exigency of the foreign trip is not in doubt, therefore the disallowance made may kindly be set-aside.*
- 6. That the Ld. CIT(A) has erred in confirming the disallowance @ 50% of sales promotion expenses which comes to Rs.4,52,118/- on the ground that the assessee failed to give the identity of a person to whom the costly gifts have been paid and the some expenditure has been booked on 31.03.2012 whereas, as per the assessee the business exigency and the genuineness of the expenditure is not in doubt, therefore the ad-hoc disallowance made may kindly be set-aside.*

7. That the Ld. CIT(A) has erred in confirming the disallowance of expenditure on consumables amounting to Rs.76,928/- on the ground that the said expenditure is not in commensurate with the earlier year expenditures whereas, as per the assessee the genuineness of the expenditure is not in doubt and consumables may vary year to year which depends upon number of factors, therefore the ad-hoc disallowance made may kindly be set-aside.

8. At the outset, Ld. Counsel for the assessee has invited our attention to the grounds of appeal wherein a noting has been made at ground Nos. 3 & 4, withdrawing the same. The Ld. Counsel for the assessee has also stated at bar that as per withdrawal instructions of his client, he has withdrawn ground Nos. 3 & 4. Therefore, ground Nos. 3 & 4 are dismissed as 'withdrawn'.

9. Ground No.1 is regarding the capitalization of interest of Rs. 53,157/-. The Assessing officer disallowed the capitalization of the above interest on the ground that the machinery was not put to use during the year. The assessee contested this issue unsuccessfully before Ld. CIT(A) also.

Before us, Ld. Counsel for the assessee has submitted that the machinery was put to use as a trial run was done prior to first April, 2012. We find that the above contention of the assessee is not supported with any cogent and convincing evidence. We, therefore, do not find any merit in this ground and accordingly dismiss the same.

10. Ground No. 2 is regarding the depreciation on building amounting to Rs. 57,474/-. The Assessing officer observed from the bills and vouchers of cement and bricks that the bills were of the month of March 2012. He,

therefore, held that the building was not completed at the end of the financial year i.e. by 31st March, 2012. He, accordingly disallowed the depreciation claimed on the building. The said disallowance has been further upheld by the Ld. CIT(A).

We have heard the rival contentions. Admittedly, the bricks and cement was purchased in the month of March itself, which was used for the construction of the aforesaid building. In view of this, in our view, lower authorities have rightly held that the building was not completed at the close of the year i.e 31st march of the relevant year. There is no evidence brought to our knowledge that the building was put to use during the year. In view of this, we do not find any merit in this ground of appeal and the same is accordingly dismissed.

11. Ground No.5 is relating to the disallowance of part of expenditure on foreign trip of the Director on the ground that the family of the director accompanied him. The total expenditure claimed was amounting to Rs. 4,66,028/-, out of which, Assessing officer disallowed a sum of Rs. 3,91,028/- pertaining to the expenses on the family's visit along with the director. Ld. Counsel for the assessee could not explain as to how the family of the director contributed in procuring business for the assessee company. Hence, in our view, the lower authorities have rightly disallowed the expenses relating to the foreign trip of the family of director of the assessee. This ground is accordingly dismissed.

12. Ground No.6 is regarding disallowance of 50% of sales promotion expenses claimed to have been incurred on purchase of costly gifts. The Ld. Assessing officer asked the assessee to give the details of the persons

to whom the costly gifts were given and how the gifts to those persons were beneficial to the business of the assessee. However, the assessee could not give any satisfactory explanation in this regard.

Before us, Ld. Counsel for the assessee could not explain about the justification in incurring of the expenses on the gifts and also could not correlate with evidence that the said expenditure were relating to the business activity of the assessee. In view of this, we do not find any merit in this ground of appeal and the same is accordingly dismissed.

13. Ground No.7 is relating to the disallowance of expenditure incurred on consumables. The Assessing officer found that the assessee has shown expenditure on consumables which was more than expenditure claimed in the earlier assessment years. The assessee explained that the expenditure on consumables vary from year to year and that there cannot be a straight jacket formula to restrict the expenditure on consumable to a particular limit; That it all depends upon the manufacturing activity and various other circumstances and also the types of products manufactured. However, the Assessing officer did not get satisfied with the above explanation and made disallowance of Rs. 76,928/-, out of Rs. 6.15,424/- on ad hoc basis. The above disallowance has further been upheld by the Ld. CIT(A).

We have heard the rival contentions. We find that the lower authorities have not doubted the incurring of expenditure on the basis of any incriminating evidence found against the assessee. The disallowance has been made merely on conjecture and surmises. We agree with the contention of the Ld. Counsel for the assessee that there cannot be an

estimation of a fix amount regarding the consumption of consumables in manufacturing products, which may vary owing to various circumstances as explained by the assessee. The above disallowance has been made by the lower authorities only on a presumption basis which, in our view, is not sustainable in the eyes of law. Ground No.7 is, therefore, allowed and the disallowance made on this account is ordered to be deleted.

14. In view of the above the appeal of the Revenue is dismissed and the appeal of the assessee is treated as partly allowed.

Order pronounced in the Open Court.

Sd/-

(Dr. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Dated : 13.03.2018

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Copy to:

2. *The Appellant*
3. *The Respondent*
4. *The CIT*
5. *The CIT(A)*
6. *The DR*

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER