



**IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH MUMBAI**

**BEFORE SHRI R.C.SHARMA, AM**

**&**

**SHRI SANDEEP GOSAIN, JM**

**ITA No.4434/Mum/2016**

**(Assessment Year :2011-12)**

DCIT 1(1)(2) 579, Aayakar Bhawan M.K. Road Mumbai – 400 020	Vs.	M/s. Firestorm Electronics Pvt. Ltd., 5 <sup>th</sup> Floor, The International 16 New Marine Lines Cross Road, No.1, Churchgate, Mumbai – 400 020
<b>PAN/GIR No.</b>		<b>AAACF4730D</b>
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Assessee by	Shri Divyesh I Shah & Shri Kewal Shah
Revenue by	Shri M.C. Omi Ningshen
<b>Date of Hearing</b>	<b>16/04/2018</b>
<b>Date of Pronouncement</b>	<b>31/05/2018</b>

**आदेश / ORDER**

**PER R.C.SHARMA (A.M):**

This is an appeal filed by the Revenue against the order of CIT(A)-2, Mumbai dated 23/03/2015 for A.Y.2011-12 in the matter of order passed u/s.143(3) of the IT Act.

2. Following ground has been taken by the Revenue:-

1. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the sum of Rs.7,01,46,841/- u/s.41(1) as this was voluntarily declared by the assessee in his revised return of income and no addition was made by the Assessing Officer in this regard."

3. Rival contentions have been heard and record perused. Facts in brief are that assessee is engaged in the business of investment, filed its original return of income on 27/09/2011 for A.Y.2011-12 declaring total income of Rs.90,39,740/- under the normal provisions of the Income-tax Act, 1961. Subsequently, the assessee company filed a revised return on 22.02.2013 returning an income at Rs.7,91,86,220/-. The reason for revising the return was to offer the amount due to M/s Koel Manufacturing & Investment P. Ltd. for taxation, on account of cessation of liability. Thereafter, an assessment order u/s. 143(3) of the Income-tax Act, 1961 was passed on 31.01.2014 and total income was determined at Rs.7,96,87,583/-. During the assessment proceedings, the AO has taxed the said amount on the alleged ground that there was cessation of liability ignoring the fact that the said credit liability has already been taxed in the A.Y. 2009-10 in the hands of the assessee Company u/s 41(1) of the Act.
4. By the impugned order, CIT(A) deleted the addition after having the following observation:-

*"As I have gone through the assessment order and argument given by the AR of , the appellant company. Since the income had already considered for the A.Y. 2009-10 and also the Ld.CIT(A) has upheld the addition of Rs.7,01,46,481, the addition for the A.Y.2011-12 for the same issue is not justifiable as the income will amount to double addition of the same income. Hence, I hereby direct the AO to delete the addition of Rs.7,01,46,481/- for the year under consideration. The Appellant filed appeal before Hon'ble ITAT against the CIT(A)'s Order for A.Y. 2009-10 which is pending for adjudication. In case ITAT decided this case in favour of the appellant, then addition made in the A.Y. 2011-12 will be binding on the appellant. Accordingly, n the appeal is allowed."*

5. Revenue is in further appeal before us.
6. We have considered rival contentions and carefully gone through the orders of the authorities below and found from record that the assessee company had owed a sum of Rs.7,01,46,481/- to M/s Koel Manufacturing & Investment P. Ltd. and had continuously acknowledged the same as payable in the books of account since the A.Y. 2004-05 upto A.Y.2010-11 as well as in the balance sheet of the assessee Company as on March 31, 2010. During the year ended 31<sup>st</sup> March 2011 relevant to the captioned assessment year, the assessee company written back the said liability in the books based on the information that M/s Koel Manufacturing and Investments P. Ltd. had applied for "Strikeoff to the company Law Board in the relevant assessment year. The assessee Company revised the return of income on February 22, 2013 for the A.Y. 2011-12 declaring income of Rs,7,91,86,220/- after offering the said credit liability of Rs.7,01,46,481/- u/s 41 of the Act, since the name of M/s Koel Manufacturing and Investment P. Ltd. was "Stuck off in the records of the Registrar of the Companies and as a result the liability had ceased to *exist*. The AO treated the sum of Rs.7,01,46,481/- as income of the assessee u/s 41(1] of the Act on the alleged ground that the liability has ceased to exist. The assessee company submits that the said amount was taxed twice and as such there a double taxation of income in the hands of the assessee company in the A.Y. 2011-12. While passing the assessment order for A.Y.2009-10, the said sum of Rs.7,01,46,481/- as income of the

assessee u/s 41(1) of the Act on the alleged ground that the liability has ceased to exist. The Ld. CIT(A) has also upheld the addition for the A.Y.2009-10.

7. In view of the finding recorded by the CIT(A), amount has already been taxed in the A.Y.2009-10, therefore, if the same is added u/s.41(1) for the year under consideration, it amounts to be double addition. Accordingly, we do not find any infirmity in the order of CIT(A) for deleting addition so made.

8. As an abandoned caution, we direct the AO to keep watch on the appeal filed by assessee before the Tribunal for A.Y.2009-10. If the appeal is allowed by the Tribunal then the addition so made by AO will be upheld. We direct accordingly.

**8. In the result, appeal of the Revenue is disposed of in terms indicated hereinabove.**

Order pronounced in the open court on this 31/05/2018

**Sd/-**  
**(SANDEEP GOSAIN)**  
JUDICIAL MEMBER

**Sd/-**  
**(R.C.SHARMA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 31/05/2018

Karuna Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)  
ITAT, Mumbai