

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
BEFORE SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM

आयकर अपील सं./ITA No.45/CTK/2015

(निर्धारण वर्ष / Assessment Year :2008-2009)

M/s B&A Multiwall Packaging Limited, (formerly B&A Multiwall Packaging Limited), C/o Mr.. Shyam Sundar Patri, Chartered Accountant, 1185/1186, Tankapani Road, Bhubaneswar-751018	Vs.	DCIT, Circle-1(1), Bhubaneswar-751007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACB 2140 C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

आयकर अपील सं./ITA No.59/CTK/2015

(निर्धारण वर्ष / Assessment Year :2008-2009)

DCIT, Circle-1(1), Bhubaneswar-751007	Vs.	M/s B&A Multiwall Packaging Limited, (formerly B&A Multiwall Packaging Limited), C/o Mr.. Shyam Sundar Patri, Chartered Accountant, 1185/1186, Tankapani Road, Bhubaneswar-751018
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACB 2140 C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Partha Mukhopadhyay, AR

राजस्व की ओर से /Revenue by : Shri A.K.Mohapatra, CITDR

सुनवाई की तारीख / Date of Hearing : **02/08/2017**

घोषणा की तारीख/Date of Pronouncement **04/08/2017**

आदेश / O R D E R

Per Shri Pavan Kumar Gadale, JM:

These are the cross appeals filed by the assessee and revenue against the order dated 3.11.2014, passed by the CIT(A)-1, Bhubaneswar for the assessment year 2008-2009.

2. For the sake of convenience, we shall take into consideration the facts narrated in ITA No.45/CTK/2015 in assessee's appeal, for deciding the appeals.

3. The assessee has raised the grounds No.1 to 7 in respect of additions sustained by the CIT(A), where the closing stock was already disclosed by the assessee in the financial statements and addition of closing stock of stores and spares has to be deleted.

4. Brief facts of the case are that the assessee is a company and is engaged in the business of purchasing raw materials by way of import in the form of craft papers of various thickness and aluminium foil laminates from various foreign companies and filed the return of income on 01.10.2008 with total income at Nil and MAT was computed on book profit u/s.115JB at Rs.44,64,297/- and the assessment was completed u/s.143(3) dated 30.11.2010, subsequently, the CIT, Bhubaneswar found that the order passed by the AO u/s.143(3) of the Act is erroneous and prejudicial to the interest of revenue and passed the revision order after considering the facts and submission on the disputed issue and gave directions to the AO to do the fresh assessment vide order dated 3.1.2013. Accordingly, as per the directions the AO issued notice u/s.142(1) and Id. AR of the assessee appeared and produced the documents and written submission along with explanations to questionnaires. The AO dealt on the directions of CIT in respect of disallowance u/s.40(a)(i) of the Act. The AO found that the assessee has imported raw materials amounting to Rs.8,30,57,659/- and has not

deducted tax u/s.195(1) of the Act and discussed at page 4 of the order and also dealt on the judicial decisions and submission of the assessee and finally concluded that the assessee is liable to deduction u/s.195(1) and observed as under :-

“From the above judgments of the both courts that either assessee has to make an application u/s. 195(2) of the I.T.Act, 1961 or deduct tax at source while making any payment u/s.195 to a non-resident. It is seen from the assessment record that there is nothing to establish that the assessee has made application u/s.195(2) to the Assessing Officer for non-deduction or deduction at lower rate. Also there is nothing on record to establish that certificate was issued in favour of non-resident recipient by AO to receive the sum without deduction of tax u/s.195(1). It is also found that undertaking and CA’s certificate as envisaged in CBDT’s circular no.10/2002 are not available with the assessee. Hence, it is concluded that assessee has not deducted tax while making payments to non-resident. Moreover, CA has not mentioned anything regarding deduction of tax source from value of imported raw materials in S.No.27(a)[Schedule-xi] form no.-3CD.

Therefore, value of imported raw materials worth of Rs.8,30,57,659/- is required to be disallowed for non-deduction of TDS while computing profits & gains of business for the AY 2008-09 and added to the total in income.”

On the second disputed issue of addition of closing stock on stores and spares of Rs.17,39,258/-, the AO found that the assessee has disclosed the stocks of spares and they are was not credited to the profit and loss account and also not part of the financial statements, therefore, the AO was of the opinion that there is understatement of income and made addition of Rs.17,39,258/-.

5. Aggrieved by the assessment order of the AO, the assessee has filed an appeal before the CIT(A). The Id. CIT(A) on the first disputed issue of addition u/s.40(a)(i) of the Act has deleted the addition and on the second disputed issue the CIT(A) sustained the addition in respect of closing stock and partly allowed the appeal.

6. Aggrieved with the order of CIT(A) on sustenance of addition of closing stock, the assessee has filed an appeal before the Tribunal.

7. Ld. AR submitted before us that the CIT(A) has erred in confirming the addition of Rs.17,39,258/- made by the AO in the assessment order passed u/s.143(3) r.w.s263 of the Act on 18.2.2014. The assessee has already included the value of stocks in the financial statements and submitted the relevant documents. Further, Id.AR referred to various papers in the paper book and prayed for allowing the appeal. Contra, Id. DR relied on the orders of CIT(A) on this ground.

8. We have heard the submissions and perused the material on record. Prima facie, Id. AR's contention that closing stock of stores amounting to Rs.17,38,258/- was already considered in the books of accounts and the Id. AR drew our attention to the paper book and referred to at page 120 & 121 of the paper book where the fact of purchase of engineering stores stock and consumable & engineering spares have been dealt in trial balance. Similarly, Id. AR also referred to the annual report of the assessee at page 88 where the value of stores and spares disclosed as opening balance as on 31.3.2007. The fact that being the assessee has given net calculations in his stock statements and filed voluminous information on the system of inclusion of closing stock in the goods consumed. Ld. AR further substantiate his arguments with supporting evidence of stocks and spares. We find strength in the arguments of assessee as the assessee has applied accounting system adopted from the earlier years and the revenue has been accepting the

same, further documents filed in the paper book needs to be verified by the AO. Accordingly, we in the interest of justice remit the disputed issue to the file of AO for examination and verification of inclusion of closing stock with supporting evidence and the assessee be provided adequate opportunity of being heard before passing the order on merits.

9. Thus, appeal of the assessee is allowed for statistical purposes.

10. Now, we shall take up appeal filed by the revenue in ITA No.59/CTK/2015, wherein the revenue has raised the following grounds :-

"1. On the facts and in the circumstances of the case, the Id. CIT(A) is not justified in law as well as on facts in deleting the addition of Rs.8,30,57,659/- made u/s.40(a)(ia) of the Act.

"2. On the facts and in the circumstances of the case, the Id. CIT(A) is not justified in not accepting the examination of findings made by the AO on the issues.

11. Before us, Id. DR submitted that the CIT(A) has erred in deleting the addition in respect of non-deduction of TDS u/s.40(a)(i) of the Act. The contention of Id. DR that the assessee has availed services from the non-resident along with material, which is inclusive, therefore, provisions of Section 40(a)(i) shall apply and the raw material cost also includes profit element.

12. Contra, the Id.AR submitted that the assessee has only imported raw material from the abroad and filed paper book with invoice copies raised by the suppliers and the transaction is on principal to principal basis and since the assessee has explained that the raw material sold by the non-resident from outside the country, therefore, no income accrues

to the non-resident from Indian territory and prayed for allowing the appeal.

13. We heard the rival submissions, perused the material on record and the judicial decisions. Prima facie, the contention of Id. DR that the assessee should have deducted TDS in respect of import of raw material where the profit element is also included and also the provisions of Section 195(1) shall apply and the CBDT Circular. The assessee has not deducted TDS as it was out of the purview of TDS provisions, we find the Id. CIT(A) has discussed at length on the provisions at page 3 to 11 of the order and considered the findings of AO and submissions of the assessee and judicial decisions and the facts and dealt independently on the judicial decisions and finally concluded relying on the decision of Hon'ble Supreme Court in the case of G.E.India Technology Cen. (P) Ltd., 327 ITR 456 (SC) and observed at page 12 of the order as under :-

"In the instant case, the amounts have been paid towards purchase of raw material on principal to principal basis and the appellant has procured the goods from the non-resident seller. The raw material is sold by the non-resident seller in foreign soil, hence, no income accrues to the non-resident seller in the Indian territory. The AO has not brought any facts on record nor it is apparent that income in respect of transactions arises in favour of the non-resident sellers in the Indian territory or that the income of such non-residents in respect of transactions is assessable under the Indian Income Tax Law.

3.2.3 In view of the judgment of the Apex Court in the case of G.E. India Technology Cen.(P) Ltd. V. CIT(supra), it is the clear that if the payment is made to a non-resident, which is not a taxable income in India, then no tax is required to be deducted u/s.195. Accordingly, the addition of Rs.8,30,57,659/- made by the AO u/s.40(a)(i) is hereby deleted. Ground Nos. 3 to 5 are thus allowed.

Further, Id. AR drew our attention to the invoice raised by one seller and also the amount involved in respect of invoices. In one instance the

assessee submitted that the commercial invoice was raised and correspondence payments was made in foreign currency by bank and never any payment was made to non-residents for any business connection in India except for supply of raw material from abroad and also drew our attention to the bank statements, invoices as referred in the paper book. We found that the CIT(A) has not called for any remand report on the submissions made by the assessee from the AO. The Id. AR has filed voluminous documents in support of transaction based on the principal to principal basis and non-resident is only a supplier and no business connection or place of business available in India. Therefore, we, in the interest of justice, are of the view that the AO has to verify the documents filed in respect of transactions before us. Accordingly, the disputed issue is remitted to the file of Assessing Officer for verification and examination for limited purpose and the assessee shall also be provided adequate opportunity of hearing before passing the order on merits. Accordingly, appeal of the revenue is allowed for statistical purposes

14 . Thus, appeal of the assessee i.e ITA No.45/CTK/2015 and appeal of the revenue in ITA No.59/CTK/2015 are allowed for statistical purposes.

Order pronounced in the open court on this 04/08/2017.

Sd/-

(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 04/08/2017

प्र.कु.मि/PKM, Senior Private Secretary

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
M/s B&A Multiwall Packaging Limited,
(formerly B&A Multiwall Packaging Limited),
C/o Mr.. Shyam Sundar Patri,
Chartered Accountant, 1185/1186,
Tankapani Road, Bhubaneswar-751018
2. प्रत्यर्थी / The Respondent-
DCIT, Circle-1(1), Bhubaneswar-751007
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**(Senior Private
Secretary)**

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack