

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

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 26/VIZ/2015
(Asst. Year : 2011-12)**

DCIT, Circle-1(1),
Vijayawada.

vs.

M/s. Kwality Feeds Ltd.,
No.3/57, Ramanapudi,
Gudivada Rural Mandal,
Krishna District.

(Appellant)

PAN No. AAACK 9357 P
(Respondent)

**C.O.NO.17/VIZ/2015
(Arising out of ITA No. 26/VIZ/2015)
(Asst. Year : 2011-12)**

M/s. Kwality Feeds Ltd.,
No.3/57, Ramanapudi,
Gudivada Rural Mandal,
Krishna District.

vs.

DCIT, Circle-1(1),
Vijayawada.

PAN No. AAACK 9357 P
(Appellant)

(Respondent)

Assessee by : Shri K. Siva Ram Kumar, CA.
Department By : Shri Deba Kumar Sonawal, CIT-DR

Date of hearing : 03/07/2018.

Date of pronouncement : 18/07/2018.

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

This appeal by the Revenue and the Cross Objection by the assessee are directed against the order of Commissioner of

Income Tax (Appeals), Vijayawada, dated 27/10/2014 for the Assessment Year 2011-12. Since, the facts are identical and issues are common, they are clubbed, heard together and disposed of by way of this common order for the sake of convenience.

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2. Facts of the case, in brief, are that the assessee-company engaged in the business of manufacturing of feeds and processing of feeds on hire basis, filed its return of income by declaring total income of Rs. 3,52,39,390/- and Rs. 5,09,12,881/- as deemed total income under section 115J of the Income Tax Act, 1961 (hereinafter referred to as "Act"). Return filed by the assessee was processed under section 143(1) of the Act. Later on, Assessing Officer has issued notice under section 143(2) and also 142(1) and called explanation and accordingly assessment was completed under section 143(3) of the Act.

3. During the course of assessment proceedings, the Assessing Officer has noticed that assessee claimed expenditure of Rs.3,84,60,222/- under the head 'power and fuel' in the profit & loss account. However, in the Director's Report (Form-A), it was clearly reported that the expenditure incurred under the power

and fuel consumption was only Rs. 1,80,66,693/-. The Assessing Officer, vide letter dated 16/09/2013, asked the assessee to reconcile the difference with necessary evidence. By letter dated 03/10/2013, the assessee has given reply, which was not accepted by the Assessing Officer. Again, Assessing Officer by issuing a letter dated 28/10/2013 asked the assessee to explain as to why the difference in power consumption shown in the profit & loss account and the Director's report, amounting to Rs. 2,03,93,529/- (Rs. 3,84,60,222 - Rs. 1,80,66,693) should not be disallowed. The relevant portion of the letter is reproduced as under:-

"As seen from the Director's Report (Form A) with respect to conservation of Energy, the details are shown as under:-

1. <u>Electricity:</u>	<u>Units</u>	<u>Cost (Rs.)</u>
(a) Purchased from APSPDCL	42,59,880	1,77,03,840
(b) Diesel Generator	44,613	3,63,153
(c) Coal	NIL	
(d) Others	NIL	
Total	43,04,493	1,80,66,693

As per Annexure D to the profit & loss account under the head Manufacturing Selling & Administrative Expenses, the expenses are claimed as under:-

Power and Fuel Rs. 3,84,60,222/-

Vide this office letter dated 16/09/2013 you were asked to reconcile the difference of expenses claimed as shown above.

For the above, you have replied vide your letter dated 03/10/2013 making the following submissions:-

I. Reconciliation Statement of Power & Fuel:

1. Power purchase from APSPDCL	Rs. 1,77,52,025*
2. Leased godown electricity charges	Rs. 3,98,891
3. Diesel Consumption by generator	Rs. 3,63,153

4.	Generator Maintenance (spares)	Rs. 33,848
5.	Firewood Consumption by Boiler	Rs. 6,84,779
6.	Paddy husk consumption by Boiler	Rs. 1,92,27,526
	<u>TOTAL</u>	<u>Rs. 3,84,60,222</u>

**Power purchase Rs.1,77,03,840 and interest on electricity deposit Rs. 48,185/-*

However, this reply cannot be accepted based on the facts mentioned above. As you have failed to discharge your responsibility of submitting the explanation to the satisfaction of the Assessing Officer, it is decided to disallow the difference amount of the expenditure claimed under the head power and fuel as per the profit & loss account as against the expenditure shown under the same head in the Directors Annual Report which works out to Rs. 2,03,93,529/- (Rs. 3,84,60,222 – Rs. 1,80,66,693). You are hereby directed to explain why the difference amount should not be disallowed. If it is to be allowed, you are hereby directed to explain why it should allowed and under which section it should be allowed. You may file your objections, if any for this proposal with necessary evidences on or before 08/11/2013."

4. The assessee had filed a written explanation on 08/11/2013, wherein he stated that Form-A is required as an Annexure to the Director's Report under the disclosure of particulars in the report of the Board of Directors, Rule, 1988, which is mandatory under the provisions of the Companies Act, 1956. The Form-A is aimed to disclose the energy conservation measures taken by the specified industries with regard to petroleum products i.e. diesel oil, furnace oil and other oils and electricity in view of their impact on economy, due to the reason that, crude oil is imported from other countries and electricity is being purchased from other States. To initiate control measures upon such resources, Form-A

is prescribed by the Ministry of Company Affairs. Whereas, paddy husk is only agro waste generated by rice milling units and it is bulky in nature and it could be used locally, its transportation and labour charges are normally more than its cost. In view of this, assessee submitted that its Directors did not specifically disclose these items in Form-A. The assessee further submitted that after verification of about 1000 husk purchase vouchers along with weighment slips, ledger account copies of 31 husk supplier in its books of account and also verification of cash/cheque payments to the supplies, the need for the boiler in the manufacture process, assessee requested to reconsider/review in the light /weight of the evidence. The Assessing Officer after considering the explanation of the assessee observed that the Director's Report signed by the Executive Chairman & Managing Director clearly shows that coal and others (husk) were not utilized for the purpose of power. There can be no other stock and no conclusion evidence than the signed report of the Executive Chairman & Managing Director to say that coal and husk were not utilized for the purpose of business. Hence, even if the purchase of coal and husk is genuine, the same cannot be allowed as there were not laid out or expended wholly and exclusively for the purpose of business as

certified in the Director's Report. Accordingly, the Assessing Officer by relying upon the Director's Report signed by the Executive Chairman & Managing Director said that electricity, purchased from the grid and the electricity generated by using diesel only, were used and coal and others were not used for the purpose of generating electricity should be taken as a conclusive proof. Accordingly, the Assessing Officer has disallowed an amount of Rs. 2,03,93,529/- (Rs. 3,84,60,222 – Rs. 1,80,66,693) by treating it as not incurred wholly and exclusively for the purpose of business under section 37(1) of the Act and added to the total income of the assessee.

5. On being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A). The assessee has submitted before the Id. CIT(A) that the Director's Report (Form-A) is required to be filed under the Companies Act, therefore, expenses incurred for power and fuel was only Rs. 1,80,66,693/-. Therefore, the Assessing Officer is not correct in disallowing expenditure incurred in respect of husk, coal & diesel etc. It was further submitted that the Director's Report never said that the coal and husk were not utilized for the purpose of business. It is further submitted that the assessee-company has not used coal and husk to generate

power in its company. But that non-mentioning of coal and husk in the report cannot lead to the inference that they were not laid out for our business. It is also submitted that the Assessing Officer has allowed the same in the preceding year. It was also further submitted that all the details in respect of husk purchase vouchers along with weighment slips, ledger copies of husk suppliers in its books of account and also verification of cash/cheque payments to the supplies were placed before the Assessing Officer. The Assessing Officer without examining the same and by relying the Director's Report disallowed the expenditure. Therefore, he submitted that same may be allowed.

6. The Id. CIT(A) basing on the submissions made by the assessee directed the Assessing Officer to allow expenditure of Rs.2,03,93,529/-. The relevant portion of the order is extracted as under:-

"5.1.1. 1 have gone through the Directors' Report and the audited finance statements and noticed that in the Director's Report at Form-A, it was mentioned that the expenditure incurred by the appellant towards Power and Fuel Consumption i.e. electricity purchases from APEPDCL at Rs.1,77,03,840/- and own generation of power through Diesel Generator at Rs.3,63,153/-. However, it is observed from the profit & loss account of the appellant expenditure incurred under the head Power and Fuel was shown at Rs.3,84,60,222/-. The Assessing Officer has therefore concluded that there is a difference of amount to the extent of Rs.20393529/- towards power and fuel expenditure as shown in the profit & loss account and as

per the Directors' Report. In this context, it is noticed that in the Director's Report, the expenditure incurred towards electricity only has been shown by the appellant as part of disclosure with respect to Conservation of Energy, whereas in the profit & loss account there was an expenditure incurred towards Leased Shed Electricity Charges and Boiler Maintenance of Rs.3,98,891/- and Rs.1,99,12,305 respectively, which was claimed under the head Power and Fuel Expenditure. In fact, it is further noticed that the appellant has been using a licensed boiler for many years and the expenditure on Husk for firing the said boiler and the generator maintenance by way of diesel and other connected expenditure has been allowed all along. It is also observed that in the preceding assessment year, such expenditure has been claimed by the appellant and was not subjected to any disallowance by the Assessing Officer. The appellant produced evidences in respect of installation of a new high capacity boiler during the year under consideration with appropriate licences during the course of assessment proceedings as well as during the appeal proceedings before me. It is observed that the Assessing Officer has allowed the depreciation claimed by the appellant on this asset. Further, it is also observed from the comparative statement of sales, G.P. and N.P. submitted by the appellant that the turnover for the year under consideration was Rs.83.65 crores as against 30.82 crores in the preceding year. Similarly, the expenditure towards 'Power and Fuel' increased from Rs.1,31,44,144/- to Rs.3,84,60,222/- during the year on account of expansion and to fuel the new boiler and there is increase in turnover also. In view of the foregoing, I am of the opinion that the Assessing Officer has only relied upon the Directors Report in making the disallowance without considering that there is increase in turnover as compared to the preceding year vis-a-vis increase in the expenditure during the year, increase in gross profit and net profit. The appellant has been claiming the expenditure in respect of Boiler Maintenance during the preceding year and was allowed, by the Assessing Officer and also there is no change in the nature of the business of the appellant. Hence, the Assessing Officer is not justified in disallowing the difference of Power and Fuel Expenditure of Rs.20393529/-. Accordingly, the Assessing Officer is directed to delete the disallowance made in this regard."

7. On being aggrieved, Revenue carried the matter in appeal before this Tribunal.

8. Ld. Departmental Representative has submitted that assessee has not able to substantiate the expenditure incurred in respect of husk and coal of Rs. 2,03,93,529/-, hence Assessing Officer disallowed the same. He further submitted that Id. CIT(A) without examining the details of the expenditure incurred in respect of coal and husk, based on the submissions made by the assessee directed the Assessing Officer to allow the expenditure, is not correct and submitted that issue may be remitted back to the file of the Assessing Officer for fresh consideration.

9. On the other hand, the Authorised Representative for the assessee strongly relied on the order passed by the Id. CIT(A). He also submitted that the Assessing Officer disallowed the expenditure only based on the Director's Annual Report, which is factually incorrect and therefore, the entire expenditure incurred by the assessee has to be allowed and submitted that the order passed by the Id. CIT(A) may be upheld.

10. We have heard both the parties, perused the material available on record and gone through orders of the authorities below.

11. The assessee has claimed expenditure of Rs. 3,84,60,222/- under the head 'power and fuel' in the profit & loss account. The Assessing Officer has noticed from the Director's Report (Form-A) that the expenditure incurred under the head power & fuel consumption was only of Rs. 1,80,66,693/-. Therefore, Assessing Officer asked the assessee to substantiate the entire expenditure claimed in the profit & loss account. The assessee has submitted before the Assessing Officer that the Director's Report (Form-A) is aimed to disclose the energy conservation measures taken by the specified industries with regard to petroleum products i.e. diesel oil, furnace oil and other oils and electricity in view of their impact on economy due to the reason that crude oil is imported from other countries. To initiate control measures upon such resources, Form-A is prescribed by the Ministry of Company Affairs. Whereas, paddy husk is only agro waste generated by rice milling units and it is bulky in nature and it could be used locally, its transportation and labour charges are normally more than its cost. In view of these, Director's report did not specifically disclose these items in Form-A. The Assessing Officer after considering the explanation of the assessee, came to a conclusion that the entire amount of Rs. 3,84,60,222/- is not exclusively incurred for the

purpose of business and only expenditure incurred as per the Director's Report (Form-A) of Rs. 1,80,66,693/-, is allowed by treating it as exclusively incurred for the purpose of business. The remaining balance of Rs. 2,03,93,529/- (Rs. 3,84,60,222 - Rs.1,80,66,693) was disallowed and added back to the total income of the assessee. On appeal, Id. CIT(A) by considering the explanation given by the assessee directed the Assessing Officer to delete the addition. We find that Id. CIT(A) not at all examined the details in respect of Rs. 2,03,93,529/- claimed by the assessee. Even, the Assessing Officer also not examined the details filed by the assessee. The assessee has not filed the Director's Report before us. Under these facts and circumstances of the case, we are of the opinion that the claim of the assessee has to be examined with proper evidence. In view of the above, we set aside the order passed by the Id. CIT(A) and remit the matter back to the file of the Assessing Officer and direct the Assessing Officer to decide the issue *denovo* by considering the details in accordance with law after providing reasonable opportunity of hearing to the assessee. The assessee is also directed to file all the details in respect of expenditure claimed of Rs. 2,03,93,529/- before the Assessing Officer.

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12. At the time of hearing, Id. Authorised Representative for the assessee has submitted that he doesn't want to press this Cross Objection. In view of the statement made by the Authorised Representative for the assessee, this Cross Objection filed by the assessee is dismissed.

13. In the result, appeal filed by the Revenue is allowed for statistical purpose and the Cross objection filed by the assessee is dismissed.

Order Pronounced in open Court on this 18th day of July, 2018.

Sd/-
(D.S. SUNDER SINGH)
Accountant Member

sd/-
(V. DURGA RAO)
Judicial Member

Dated : 18th July, 2018.

vr/-

Copy to:

1. The Assessee-M/s. Kwality Feeds Ltd., No.3/57, Ramanapudi, Gudivada Rural Mandakl, Krishna Dist.
2. The Revenue - DCIT, Circle-1(1), Vijayawada.
3. The CIT, Vijayawada.
4. The CIT(A), Vijayawada.
5. The D.R., Visakhapatnam.
6. Guard file.

By order

(VUKKEM RAMBABU)
 Sr. Private Secretary,
 ITAT, Visakhapatnam.