

**IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA**

**BEFORE SHRI A. T. VARKEY, JM & DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA No.1980/Kol/2013**  
**(निर्धारणवर्ष / Assessment Year: 2005-06)**

<b>West Bengal Electronic Industries Development Corporation Limited</b>  WEBEL Bhawan, Block EP & JP, Sector V, Salt Lake City, Kolkata – 700 091.	<b>Vs.</b>	<b>ACIT, Circle-1, Kolkata</b>  P-7, Chowringhee Square, Aayakar Bhawan, Kolkata – 700 069.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : <b>AAACW 2411 Q</b>		
<b>(Assessee)</b>	<b>..</b>	<b>(Revenue/Department)</b>

**&**

**आयकरअपीलसं./ITA No.1163/Kol/2014**  
**(निर्धारणवर्ष / Assessment Year: 2006-07)**

<b>West Bengal Electronic Industries Development Corporation Limited</b>  WEBEL Bhawan, Block EP & JP, Sector V, Salt Lake City, Kolkata – 700 091.	<b>Vs.</b>	<b>DCIT, Circle-1, Kolkata</b>  P-7, Chowringhee Square, Aayakar Bhawan, Kolkata – 700 069.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : <b>AAACW 2411 Q</b>		
<b>(Assessee)</b>	<b>..</b>	<b>(Revenue/Department)</b>

**&**

**आयकरअपीलसं./ITA No.606/Kol/2014**  
**(निर्धारणवर्ष / Assessment Year: 2007-08)**

<b>West Bengal Electronic Industries Development Corporation Limited</b>  WEBEL Bhawan, Block EP & JP, Sector V, Salt Lake City, Kolkata – 700 091.	<b>Vs.</b>	<b>DCIT, Circle-1, Kolkata</b>  P-7, Chowringhee Square, Aayakar Bhawan, Kolkata – 700 069.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : <b>AAACW 2411 Q</b>		
<b>(Assessee)</b>	<b>..</b>	<b>(Revenue/Department)</b>

West Bengal Electronic Industries Development Corporation Limited  
ITA No.1980/Kol/2013  
Assessment Year: 2005-06  
&  
ITA No.1163/Kol/2014  
Assessment Year: 2006-07  
&  
ITA No.606/Kol/2014  
Assessment Year: 2007-08  
&  
ITA No.515/Kol/2014  
Assessment Year: 2007-08

&  
**आयकरअपीलसं./ITA No.515/Kol/2014**  
**(निर्धारणवर्ष / Assessment Year: 2007-08)**

DCIT, Circle-1, Kolkata  P-7, Chowringhee Square, Aayakar Bhawan, Kolkata – 700 069.	Vs.	<b>West Bengal Electronic Industries Development Corporation Limited</b>  WEBEL Bhawan, Block EP & JP, Sector V, Salt Lake City, Kolkata – 700 091.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : <b>AAACW 2411 Q</b>		
<b>(Revenue/Department)</b>	..	<b>(Assessee)</b>

Assessee by : Shri Pratyush Jhunjunwala, Advocate  
Revenue by : Shri G. Hangshing, CIT(DR) & Shri S. Dasgupta, Addl. CIT(DR)

सुनवाईकीतारीख/ **Date of Hearing** : **03/05/2018**  
घोषणाकीतारीख/**Date of Pronouncement** : **31/05/2018**

**आदेश / ORDER**

**Per Dr. A. L. Saini:**

The captioned three appeals filed by the assessee pertaining to Assessment Year 2005-06(ITA No.1980/Kol/2013), 2006-07(ITA No.1163/Kol/2014), 2007-08(ITA No.606/Kol/2014) and an appeal filed by the Revenue pertaining to Assessment Year 2007-08(ITA No.515/Kol/2014) are directed against orders passed by the Ld. Commissioner of Income Tax (Appeals) - XX, Kolkata, which in turn

*West Bengal Electronic Industries Development Corporation Limited*  
*ITA No.1980/Kol/2013*  
*Assessment Year: 2005-06*  
*&*  
*ITA No.1163/Kol/2014*  
*Assessment Year: 2006-07*  
*&*  
*ITA No.606/Kol/2014*  
*Assessment Year: 2007-08*  
*&*  
*ITA No.515/Kol/2014*  
*Assessment Year: 2007-08*

ariseout of assessment orders passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. Since these three appeals filed by the assessee and an appeal filed by the Revenue relate to one assessee, identical and common issues are involved, therefore, these have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. During the course of hearing, the Id. Counsel for the assessee has submitted before us the additional evidences pertaining to Assessment Years 2005-06, 2006-07 and 2007-08, which were not submitted by the assessee neither before the Assessing Officer nor before the Id. CIT(A). A statement showing year-wise issue of additional evidences, as submitted by the Id. counsel before the Bench is reproduced below for ready reference:

**“BEFORE THE HON’BLE INCOME TAX APPELLATE TRIBUNAL, ‘B’ BENCH KOLKATA**

In the matter of : IT Appeal Nos.1945 and 1980-82 (Kol) of 2013 and 515, 606 and 1163(Kol) of 2014  
West Bengal Electronic Industry Development Corporation Limited  
(Assessment Years 2005-06 to 2009-10)

**Issues with Additional Evidence**

<b><u>Assessment Year</u></b>	<b><u>Issue</u></b>	<b><u>Remark</u></b>
2005-06	Building sanction fees	Additional evidence provided
	Project expenses	Additional evidence provided
	Irrecoverable expenses	Additional evidence provided
	ITS Details	Additional evidence provided
	Section 14A	<u>Not pressed</u>
	Repairs and maintenance	<u>Not pressed</u>
2006-07	Project expenses	Additional evidence provided
	Irrecoverable claim written off	Additional evidence provided
	14A	<u>Covered 1%</u>
	Repairs and maintenance	<u>Not pressed</u>
2007-08	TDS & Service charges	<u>To be argued</u>
	Stamp duty charges	<u>Additional evidence provided</u>
	40(a)(ia)	Additional evidence provided
	Provision for leave encashment and gratuity	Covered
	Investments written off	To be argued
	Municipal taxes, watch & ward and gardening expenses	To be argued
	Loans written off	Covered

4.Learned counsel for the assessee begins by pointing out that assessee is a nodal agency of Government of West Bengal for development of IT and ITES sectors in the state of West Bengal. The ld. counsel submitted before the Bench that these additional evidences, pertaining to Assessment Years 2005-06, 2006-07 and 2007-08 were not submitted

before the Lower Authorities, as the assessee was prevented by sufficient cause from producing these additional evidences. During the assessment proceedings, as well as appellate proceedings, the assessee had not been guided by the Professionals/Accountants therefore, these evidences could not be produced before lower authorities. The assessee should not suffer because of the mistake or negligence committed by the Professionals/Accountants of the assessee and, therefore, the Id. Counsel prayed before the Bench that these additional evidences should be admitted to adjudicate the issue.

5. On the other hand, the Id. DR for the Revenue vehemently submitted that rules does not enable the assessee to submit the additional evidences whether oral or documentary before the Bench without explaining the proper reason, why the same could not be produced before Assessing Officer / CIT(A). The Id. DR also submitted that negligence of law is not an excuse and the additional evidences submitted by the Id. Counsel before the Bench should not be admitted.

6. We have given a careful consideration to the rival submissions and perused the materials available on record. We note that assessee is a nodal agency of Government of West Bengal for development of IT and ITES sectors in the state of West Bengal. Due to non-furnishing of relevant material and evidences before the lower authorities, has resulted into addition to the taxable income of the assessee. We note that the assessee should not be penalized for the mistake of Authorized Representative (AR) who represented the assessee before the authorities below. We note that

now assessee has produced relevant material/evidences before us to support their claim, which we find essential to adjudicate the issue on which the authorities below made addition to the taxable income of the assessee.

7. We note that the assessee may produce additional evidences before the Tribunal in terms of Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 which is reproduced below:

*“29. The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or, if the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them, the Tribunal, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced.”*

We note that admissibility of additional evidence under Rule 29 of the Appellate Tribunal Rules depends upon whether or not the Tribunal requires the evidence to enable it to pass order or for any other substantial cause. The Tribunal may admit the additional evidence, if the Assessing Officer has decided the case without giving a sufficient opportunity to the assessee to adduce evidences on the points specified by him. Whether it is permissible for a party to file the application for adducing additional evidence having regard to the language of Rule 29 of the Income Tax (Appellate Tribunal) Rules 1963. As per the language of this rule, parties are not entitled to produce additional evidence. It is only when the Tribunal requires such additional evidence in the form of any document or affidavit

or examination of a witness or through a witness it would call for the same or direct any affidavit to be filed, that too in the following circumstances :

(a) when the Tribunal feels that it is necessary to enable it to pass orders;  
or

**(b) for any substantial cause; or**

(c) where the IT authorities did not provide sufficient opportunity to the assessee to adduce evidence.

In the present case, it is the assessee who moved application for production of additional evidence. He had the opportunity to file evidence before the AO or even the CIT(A) but he could not file because he was not guided by the authorized representative (AR) and this is a substantial cause which **falls in (b) above.**

Since, these additional evidences are being submitted before the Bench first time therefore, keeping in mind the principle of natural justice and fair play, we are of the view that Assessing Officer should be allowed a reasonable opportunity to examine them because this ensures full, fair and detailed enquiry and verification.

8. We note that a neat principle of law that discretion lies with the Tribunal to admit additional evidence in the interest of justice once the Tribunal affirms the opinion that doing so would be necessary for proper adjudication of the matter. This can be done even when application is filed by one of the parties to the appeal and it need not to be a suo motu action

of the Tribunal. The aforesaid rule is made enabling the Tribunal to admit the additional evidence in its discretion if the Tribunal holds the view that such additional evidence would be necessary to do substantial justice in the matter. For that we rely on the judgment of the Hon`ble Delhi High Court, in the case of Text Hundred India (P) Limited, 239 CTR 263 (Del-H.C), wherein it was held that: **“It is well-settled that the procedure is handmaid of justice and justice should not be allowed to be choked only because of some inadvertent error or omission on the part of one of the parties to lead evidence at the appropriate stage.”** Once it is found that the party intending to lead evidence before the Tribunal for the first time was prevented by sufficient cause to lead such an evidence and that this evidence would have material bearing on the issue which needs to be decided by the Tribunal and ends of justice demand admission of such an evidence, the Tribunal can pass an order to that effect to admit the additional evidence.

In the light of the facts and circumstances explained above, we admit the additional evidence filed before us and therefore, we set aside the order of the Id CIT(A) and remand the issues back to the file of the Assessing Officer for *de- novo* adjudication. Needless to say that assessee should be provided adequate opportunity of being heard and assessee is at liberty to produce documents and evidences which are necessary for adjudicating the issues. Therefore, we allow these appeals for statistical purposes.

9. In the result, the appeals filed by the assessee for Assessment Years: 2005-06(ITA No.1980/Kol/2013), 2006-07(ITA No.1163/Kol/2014),

West Bengal Electronic Industries Development Corporation Limited  
ITA No.1980/Kol/2013  
Assessment Year: 2005-06  
&  
ITA No.1163/Kol/2014  
Assessment Year: 2006-07  
&  
ITA No.606/Kol/2014  
Assessment Year: 2007-08  
&  
ITA No.515/Kol/2014  
Assessment Year: 2007-08

2007-08(ITA No.606/Kol/2014) and an appeal filed by the Revenue pertaining to Assessment Year 2007-08(ITA No.515/Kol/2014),are allowed for statistical purposes.

Order is pronounced in the open court on 31.05.2018.

**Sd/-**  
**(A. T. VARKEY)**

**न्यायिक सदस्य / JUDICIAL MEMBER**

कोलकाता /Kolkata;

दिनांक/ Date: 31/05/2018

(RS, SPS)

**Sd/-**  
**(A. L. SAINI)**

**लेखा सदस्य / ACCOUNTANT MEMBER**

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/The Assessee- West Bengal Electronic Industries Development Corporation Limited
2. प्रत्यर्थी/ The Revenue- DCIT, Circle-1, Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.  
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,  
Head of Office/D.D.O,  
I.T.A.T, Kolkata Benches,  
Kolkata.