

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'D' : NEW DELHI)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.2070/Del./2009
(ASSESSMENT YEAR : 2004-05)**

ACIT, Circle 22 (1), vs. Mrs. Kusum B. Patel,
New Delhi. Prop. M/s. K.B. Associates,
B – 331, 1st Floor,
New Friends Colony
New Delhi – 110 065.

(PAN : AECPB8567P)

**CO NO.40/Del/2010
(in ITA No.2070/Del./2009)
(ASSESSMENT YEAR : 2004-05)**

Mrs. Kusum B. Patel, vs. ACIT, Circle 22 (1),
B – 331, 1st Floor, New Delhi.
New Friends Colony
New Delhi – 110 065.

(PAN : AECPB8567P)

**ITA No.5873/Del./2011
(ASSESSMENT YEAR : 2007-08)**

ITO, Ward 22 (2), vs. Mrs. Kusum B. Patel,
New Delhi. Prop. M/s. K.B. Associates
D – 85, First Floor,
Khizrabad, New Friends Colony,
New Delhi – 110 065.

(PAN : AECPB8567P)

ITA No.2635/Del./2013
(ASSESSMENT YEAR : 2008-09)

ITO, Ward 22 (2),
New Delhi.

vs. Mrs. Kusum B. Patel,
Prop. M/s. K.B. Associates
227, 1st Floor, Main Market,
Patparganj, Mayur Vihar Phase-1,
New Delhi – 110 091.

(PAN : AECPB8567P)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Sanat Kapoor, Advocate
Shri Kislaya Parashar, Advocate
REVENUE BY : Shri Amit Jain, Senior DR

Date of Hearing : 10.07.2018

Date of Order : 19.07.2018

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The aforesaid appeals filed by the Revenue and cross objections filed by the assessee are being disposed of by way of consolidated order to avoid repetition of discussion.

2. The appellant, Assistant Commissioner of Income-tax, Circle 22 (1), New Delhi (hereinafter referred to as 'the Revenue') in ITA No.2070/Del/2009 by filing the present appeal, sought to set aside the impugned order dated 25.03.2009 passed by Ld. CIT (Appeals)-XXIII, New Delhi qua the assessment year 2004-05 on the grounds inter alia that :-

“1. On the facts and in the circumstances of the case the ld. CIT(A) has erred in law and on facts In directing the A.O. to allow deduction amounting to Rs.55,73,209/- u/s 10B of the Act ignoring the fact that the assessee was engaged in the business of trading of Tin Slag which is not manufacture or production of any articles or thing

2. On the facts and in the circumstances of the case the Ld. CIT(A) has erred in law and on facts restricting the disallowances to Rs.1,11,827/- out of business development expenses amounting to Rs.8.08,631/-.

3. On the facts and in the circumstances of the case the Ld. CIT) has erred in law and on facts restricting the disallowances to Rs.75,000/- out of traveling expenses amounting to Rs.3,75,037/-.

4. On the facts and in the circumstances of the case the Ld. CIT() has erred in law and on facts restricting the disallowances to Rs.46,270/- out of professional charges amounting to Rs.2,79,150/-.”

3. The Objector, Mrs. Kusum B. Patel, by filing the present cross objections challenging the impugned order dated 25.03.2009 passed by the Ld. CIT (Appeals)-XXIII, New Delhi qua the assessment year 2004-05 on the grounds inter alia that :-

“1. The Ld. CIT (A) has erred on facts and in law in sustaining the disallowance of Rs.1,11,000/- on account of rent paid by appellant on the ground that the deduction was covered by explanation to sec 37(1).

2. The CIT (A) has erred on facts and in law in upholding the partial disallowance of Rs.1,11,827/- being 10% of the business development expenses.

3. The CIT(A) has erred on facts and in law in sustaining the disallowance of Rs.41.565/- on account of electricity and water charges on the ground that the deduction was covered by explanation to see 37(1).

4. The CIT(A) has erred on facts and in law in sustaining the disallowance of Rs.3,26.686/- on account of repair and maintenance on the ground that the deduction was covered by explanation to sec 37(1).

5. The CIT (A) has erred on facts and in law in upholding the partial disallowance of Rs.75,007/- on account of traveling expense.

6. The CIT (A) has erred on facts and in law in upholding the partial disallowance of Rs.46,720/- on account of Professional charges.

7. That the disallowance/addition have been wrongly & illegally upheld by the CIT(A). The disallowance/addition are unjust and are highly excessive.

8. That the explanations given, evidence produced, material placed and made available on record has not been properly considered and judicially interpreted and the same do not justify the upholding of partial addition and disallowances made.

9. That the additions and disallowances made are based on mere surmises and conjunctures and the same cannot be justified by any material on record.”

4. The appellant, Income Tax Officer, Circle 22 (2), New Delhi (hereinafter referred to as ‘the Revenue’) in ITA Nos.5875/Del/2011 and 2635/Del/2013 by filing the present appeals, sought to set aside the impugned order dated 11.10.2011

and 28.02.2013 passed by Ld. CIT (Appeals)-XXIII, New Delhi qua the assessment years 2007-08 and 2008-09 respectively on the similar worded ground that :-

“On the facts and on the circumstances of the case the Ld. CIT (A) has erred in allowing deduction u/s 10B of the Income Tax Act amounting to Rs.68,29,701/-.”

5. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee being Proprietor of K.B. Associates has shown two business units, viz., one operating at Delhi and another operating at Chennai. Assessee claimed deduction under section 80HHC of the Income-tax Act, 1961 (for short ‘the Act’) qua units situated at Delhi office and claimed deduction u/s 10B of the Act of the unit situated at Chennai being a 100% Export Oriented Unit (EOU). Assessee claimed deduction of Rs.55,73,209/-, Rs.67,68,521/- and Rs.68,29,701/- u/s 10B of the Act for AYs 2004-05, 2007-08 & 2008-09 respectively. AO disallowed the Income-tax deduction claimed by the assessee u/s 10B being the profit from 100% EOU from a new undertaking at Chennai rather allowed deduction u/s 80HHC of the Act on the ground that the assessee was not in a manufacturing or production activity but was into business and trading of Tin Slag.

6. For AY 2004-05, AO restricted business development expenses of RS.8,08,631/- to Rs.1,11,827/- by treating the same being personal in nature. AO further restricted the travelling expenses of RS.75,000/- out of travelling expenses of Rs.3,75,037/- claimed by the assessee on the ground that assessee has not furnished even a single bill to support its claim. AO further restricted the expenses on account of professional charges to Rs.46,270/- out of professional charges of RS.2,79,150/- claimed by the assessee on the ground that specific details have not been furnished by the assessee.

7. Assessee carried the matter by way of appeals before the Id. CIT (A) who has partly allowed the appeal for AY 2004-05 and allowed the appeals for AYs 2007-08 & 2008-09. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeals for AYs 2004-05, 2007-08 & 2008-09. Assessee also filed cross objection (CO No.40/Del/2010) qua AY 2004-05.

8. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUND NO.1 OF**ITA No.2070,/Del./2009 (AY 2004-05)****ITA No.5873,/Del./2011 (AY 2007-08)****ITA No.2635,/Del./2013 (AY 2008-09)**

9. Undisputedly, the assessee was running two business units, viz., one at Delhi and another at Chennai. It is also not in dispute that the Chennai unit is a 100% EOU and the assessee has claimed deduction u/s 10B of the Act. It is also not in dispute that search proceedings u/s 132A of the Act was conducted in the case of the assessee on 11.02.2003.

10. AO denied the benefit of section 10B of the Act to the assessee on the ground that the assessee was not into any manufacturing or production activity but was into the business of trading of Tin Slag and there was only one business unit at Chennai from where all export activities were controlled.

11. However, when we examined para 9 and 10 of the impugned order passed by the Id. CIT (A), it go to prove that the assessee initially moved an application before MEPZ Special Economic Zone and HEOUZ in Tamil Nadu, Pondicherry, Andaman & Nicobar Islands and assessee was given permission to establish new undertakings at 4/C-5, Mugappair Industrial Estate, Mugappair (West), Chennai for processing of non-ferrous metallic

slag powder with an annual capacity of 1000 ton per annum. Furthermore, the Commissioner of Customs, Chennai also accorded sanction to manufacturing process of non-ferrous metallic like powder and export from the warehouse situated at 43/C-5, Mugappair Industrial Estate, Mugappair (West), Chennai and the assessee unit was also recognised 100% EOU vide letter dated 06.02.2004. The Id. CIT (A) made a requisition u/s 250(4) of the Act and pursuant thereof, the assessee has explained manufacturing process.

12. The Id. CIT (A) has also examined copy of invoice of export to M/s. BTHS, Hamburg for which the goods were loaded at Chennai Port vide purchase order dated 12.01.2004, the clearance of which was made by the Bond Officer, Custom House, Chennai after inspection. Bill of lading was also submitted along with other documents from the customs and certificate relaying to registration by the State Government under the Sales-tax Act was also submitted which shows that the manufacturing of process of goods for sale have been carried out in the unit at Chennai. Moreover, the assessee has established its 100% EOU pursuant to the approval accorded by the Ministry of Commerce u/s 14 of the Industrial Development Act and thereafter, the assessee has

brought on record evidence which was perused and admitted by Id. CIT (A) that the assessee has manufactured the goods and made export thereof as per clearance given by the Customs House. So, in these circumstances, we find no illegality in the findings returned by the Id. CIT (A) allowing deduction to the assessee u/s 10B of the Act. Consequently, Ground No.1 of ITA No.2070,/Del./2009 (AY 2004-05), ITA No.5873,/Del./2011 (AY 2007-08) and ITA No.2635,/Del./2013 (AY 2008-09) is dismissed.

GROUND NO.2, 3 & 4 OF

ITA No.2070,/Del./2009 (AY 2004-05)

FOUNDATIONS NO. 1, 2, 3, 4, 5 & 6 OF

CO NO.40/DEL/2010

13. Undisputedly, the AO has disallowed the expenses claimed by the assessee on account of business development expenses, travelling expenses and professional charges for want of sufficient evidence adduced by the assessee during assessment proceedings. It is also not in dispute that during appellate proceedings, the assessee has moved application u/s 46A of the Act to lead additional evidence which has been dismissed by the Id. CIT (A) on the ground that the assessee was given adequate opportunity by the AO to substantiate its claim.

14. When we examine the factum of dismissing the application moved by the assessee under Rule 46A for leading additional evidence before Id. CIT (A) in the light of the fact that incurrence of expenses claimed by the assessee on account of business development expenses, travelling expenses and professional charges have not been disputed by the AO as well as by the Id. CIT (A) who have restricted the claim of the assessee to 25% purely on the basis of guess work, which is not permissible under law, particularly when the assessee has approached the Id. CIT (A) to substantiate its claim by leading additional evidence.

15. So, we are of the considered view that in case, the assessee was at fault during assessment proceedings in not bringing on record the evidence in support of its claim, it cannot be penalized under the garb of procedural intricacies which are handmaid of justice. So, in these circumstances, we deem it necessary to allow the additional evidence sought to be adduced by the assessee during appellate proceedings. Consequently, Grounds No.2, 3 & 4 of ITA No.2070/Del./2009 (AY 2004-05) are set aside to the file of the AO who shall decide afresh after providing an opportunity of being heard to the assessee to produce additional evidence to substantiate its claim and as such are determined in favour of the

Revenue for statistical purposes. So, Grounds No. 1, 2, 3, 4, 5 & 6 of CO No.40/Del/2010 are determined in favour of the assessee for statistical purposes.

16. Resultantly, the appeal filed by Revenue in ITA No.2070/Del./2009 (AY 2004-05) is partly allowed for statistical purposes, appeals filed by the Revenue in ITA No.5873,/Del./2011 (AY 2007-08) and ITA No.2635,/Del./2013 (AY 2008-09) are dismissed and the CO No.40/Del/2010 filed by the assessee is allowed for statistical purposes

Order pronounced in open court on this 19TH day of July, 2018.

**SD/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

**SD/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 19TH day of July, 2018
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XXIII, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**