

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B', NEW DELHI**

**BEFORE SH. R.K.PANDA, ACCOUNTANT MEMBER  
AND SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

**ITA No. 6763/Del/2014 : Asstt. Year : 2008-09**

Cear India Multitronics Pvt. Ltd. K-15, South Extension, Part-I New Delhi 110 049 PAN : AAACC0212B <b>(APPELLANT)</b>	Vs	ITO Ward-3(2)  New Delhi <b>(RESPONDENT)</b>
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**Assessee by : Sh. Sachin Jain, CA**

**Revenue by : Sh. Vijay Kr. Jiwani, Sr. DR**

Date of Hearing : 24/07/2018	Date of Pronouncement : 06/09/2018
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**ORDER**

**Per Beena A. Pillai, Judicial Member**

Present appeal has been filed by assessee against order dated 14/10/14 passed by Ld. CIT (A)-6, New Delhi for assessment year 2008-09 on the following grounds of appeal:

*"1. The ld. CIT(Appeals) has erred in confirming that the Rental Income received from letting out of factory Premises situated in government notified industrial area of the appellant is subject to assessment as per the provisions of section 22 of IT Act 1961 under the head Income from House Property, whereas the income of the appellant is subject to tax as per the provisions of section 28 of IT Act*

1961 under the head Income from Business & Profession as Appellant is engaged in the business of letting out of commercial & Industrial premises.

2. The Ld. CIT(Appeals) has erred in confirming addition of Rs. 15,23,025/- on account of Income from House Property which is taxable at Rs. 21,75,750/- as per provisions of section 28 of IT Act 1961 under the head Income from Business & Profession i.e. on gross basis without 30% standard deduction under section 24 of IT Act 1961 as Appellant is engaged in the business of letting out of commercial & industrial premises, the same may please be taxed under appropriate head of income.

3. The Ld. CIT(Appeals) has erred in confirming that the job work receipts amounting to Rs. 2,50,000/- earned by the appellant are subject to tax u/s 68 of IT Act 1961 as Appellant is a registered SSI Unit in Gurgaon, Haryana and engaged in the business of manufacturing & job Work of plastic moulding components & electrical assemblies since 1991, the same may be taxed under appropriate head of income.

4. The learned Assessing Officer erred by disallowing whole of the business expenditure claimed by the assessee without rejecting the books of accounts but the ld. CIT(Appeals) has erred in presuming that books of accounts had been rejected by the concerned assessing officer in his assessment order and on the basis of her presumption restricted the allowability of business expenses to the extent of 50% without any justification or reasonable grounds, the deduction for remaining 50% of business expenditure may kindly be allowed to the appellant.

5. The ld. CIT (Appeals) has erred in confirming the disallowance of interest paid on loans amounting to Rs. 3,46,693/- claimed by the appellant as business

*expenditure on the ground that loan funds were not utilized for enhancing the business interest, the same may kindly be allowed to the appellant.*

*6. The ld. CIT(Appeals) had erred in confirming the addition of Rs. 7,862/- computed under section 14A of IT Act, 1961 read with Rule 8D of Income Tax Rules, 1962, the same may kindly be deleted.*

*7. The ld. CIT(Appeals) has erred in not appreciating the evidences furnished by the appellant in support of its case.”*

**2. Brief facts of the case are as under:**

Assessee filed its return of income on 30/09/08 declaring 'nil' income. Subsequently case was selected for scrutiny and notice under section 143 (2) of the Act was issued. In response to statutory notices, Representatives of assessee attended from time to time and case was discussed with Ld.A.O. Ld.AO observed that Assessee was involved in the business of manufacturing of plastic moulding components since many years, along with giving owned premises on rent. During the year Ld.AO observed that assessee had earned income from job work, dividend and rent. It was observed by Ld.AO that gross receipts amounting to Rs.24,43,250/, was declared under the head "Income from Business". Ld.AO called upon assessee to clarify, as to why rental income has been treated as business income. In reply to show cause notice, assessee submitted vide letter dated 22/11/10, that rental income was earned from factory, which was given on rent on commercial basis. It was submitted by assessee that as per Memorandum of Association of assessee, main objects consists of renting of

property. It was submitted by assessee that in preceding assessment years, rental income received by assessee was consistently assessed under the head "Income from Business".

**3.** After considering submissions advanced by assessee, Ld.AO was of the opinion that rental income from property has to be treated and taxed under the head "Income from House Property". Ld.AO therefore rejected submissions of assessee and considered rental income under the head "Income from House Property".

**4.** Further Ld.AO observed that assessee claimed to have received receipts on account of job work, which was declared as income from business. On a show cause notice issued by Ld.AO, assessee submitted that entire income from job work was received in cash. It was submitted by assessee that job work receipt were booked by assessee in 2 months at Rs.25,000/-and Rs.20,000/-for remaining 10 months totaling to Rs.2,50,000/-. Ld.AO considered job work receipts in cash as income from undisclosed sources, since none of the 12 parties revealed their identity to assessee for purposes of raising bills. Ld.AO also observed that assessee did not furnish any evidence to establish that job work activity was actually carried out.

**5.** Ld.AO further observed that assessee paid a sum of Rs.3,46,693/- on account of interest paid on loans. He called for various details, and on examining the same, Ld.AO found that such payments were made on loans raised from either directors or sister concerns. Assessee was called upon to explain purpose of such advances. In response to notice, assessee submitted that advance given to Reema Gupta was towards purchase of land. Further

assessed submitted that two separate advances given to Vinemadhav Commodities Pvt. Ltd., was towards share application money. Ld.AO during assessment proceedings noted that all three parties were related to assessee. Assessee submitted that advance to Reema Gupta and advance to Vinemadhav Commodities Pvt. Ltd amounting to Rs.9,20,000/- still stands, as on date of assessment. Ld.AO disallowed interest on the ground that advances were not used for purpose for which it was taken. Ld.AO also observed that assessee had borrowed funds on which interest was payable, which was not utilised for enhancing its own business but was given away to sister concerns interest-free.

**6.** Assessing Officer further observed that assessee had earned dividend of Rs.17,500/- from its investments in shares. Ld.AO computed disallowance in accordance with Rule 8D at Rs.7,862/- being 0.5% of average investment.

**7.** Aggrieved by the additions made by Ld. AO assessee preferred appeal before Ld. CIT (A). Ld.CIT (A) confirmed the additions made by Ld. AO.

**8.** Aggrieved by the order of Ld. CIT (A) assessee is in appeal before us now.

**9.** At the outset Ld.AR submitted that **Ground No.6** is in respect of disallowance under section 14 A read with Rule 8D of the Act. He submitted that assessee does not wish to press this ground. **Accordingly this ground raised by assessee stands dismissed as not pressed.**

**10. Ground No. 1-2** is against treatment of rental income earned by assessee as Income from House Property *vis-à-vis* "Income from Business" as alleged by assessee.

**11.** Ld.AR submitted that assessee has been carrying on with activities of job work of plastic mouldings components from factory building constructed on land allotted by Haryana Government, situated in a notified industrial area. It was submitted that during the year, assessee engaged skilled workers, required machineries within the area of 5766 ft. It was submitted that assessee owned factory building having total area of 20,000 ft. Ld.AR submitted that out of total area, area of factory building admeasuring 14,234 ft. was let out to M/s.ALP Plastics Pvt. Ltd., and M/s.Standard Gold Electricals Pvt. Ltd. It was further submitted that in preceding years, factory rental income has been assessed as business income, and all expenses incurred by assessee were allowed as business expenses in connection with rental income. Ld.AR further submitted that as per Memorandum of Association, one of the main activity of assessee was letting out of owned commercial premises. Ld.AR submitted that out of total area of 20,000 ft., more than 75% was let out to two parties along with machinery, since assessment year 1992-93 onwards to various parties.

**12.** On the contrary Ld.DR relying upon order of Ld.CIT (A) submitted that assessee is owner of entire property, which is being used by assessee itself, and therefore any income generated from such property used by assessee, would constitute "Income from House Property" and computation of such income has to be as per

section 22. Ld.DR at this juncture submitted that principle of *res judicata* do not apply to taxing laws.

**13.** We have perused submissions advanced by both the sides in the light of the records placed before us.

**14.** Admittedly, assessee in preceding assessment years offered rental income under head 'Income from Business', which has been accepted by authorities below in scrutiny assessments. It is observed that assessee has placed in paper book before us, assessment orders/1<sup>st</sup> appellate orders of preceding assessment years. We have also perused lease agreement placed at page 80-99 of paper book, executed by assessee with M/s.ALP Plastics Pvt. Ltd., and M/s.Standard Gold Electricals Pvt. Ltd. The lease agreement very clearly indicates that lessee's have been given on lease, part of factory premises in the rear portion on ground floor for fixed monthly lease. From correspondence placed at page 78-79 of paper book between Haryana State Industrial and Infrastructure Development Corporation Ltd. and assessee, it is very clear that assessee leased commercial premises with the knowledge of State Government of Haryana for commercial exploitation. Also from Memorandum and Articles of Association, placed at page 123 of paper book Article 125 of Memorandum of Association, clearly indicates that assessee is allowed to carry on business of renting, lease, sublease being of residential and commercial or industrial premises on behalf of assessee itself or on behalf of Central or state government or any local authority in India.

**15.** From these evidences it is clear that assessee has let out on rental basis the portion which is not occupied by assessee for its business purposes. It is also very clear that assessee had received land from State Government of Haryana for commercial use, which has not been disputed by authorities below. Though we agree with Ld.DR that principle of *res judicata* do not apply, but consistency should be maintained and taxing authorities should not deviate from its earlier decision, unless there is justifiable material on record calling for such deviation. Thus in our considered view assessee had granted a portion of the building on lease to M/s.ALP Plastics Pvt. Ltd., and M/s.Standard Gold Electricals Pvt. Ltd to commercially exploit the asset, which has to be assessed as business income.

**16. On the basis of the above discussions we allow Ground No. 1 and 2 raised by assessee.**

**17. Ground No. 3 & 4** are in respect of receipts amounting to Rs.2,50,000/- earned by assessee, which has been taxed under section 68 as received from undisclosed sources. Assessee has also alleged that Ld.CIT (A) erred in restricting allowability of business expenses to the extent of 50%, without any justification.

**18.** Ld.AR submitted that assessee was carrying on its business activity of job work and had earned income of Rs.2,50,000 during the year under consideration. He submitted that assessing officer wrongly invoked provisions of section 68, and has treated receipts of job work under the head "Income from Other Sources", on the ground that money has been received in cash, and that assessee

received job work income of Rs.25,000 for 2 months and Rs.20,000 for rest of 10 months. Assessing officer observed that assessee booked job work income as single monthly entry in its cash book and invoked provisions of section 68 on conjectures. He submitted that section 68 would not be applicable, as assessee had furnished complete details of job work income earned along with bills/vouchers before the Ld.AO at the time of assessment proceedings. Ld.AR submitted that doing job work for 3<sup>rd</sup> parties was one of the core business activity of assessee, which cannot be considered as "Income from Other Sources". Further it was submitted that during preceding assessment years, job work income has been assessed as business income and all expenditure was incurred by assessee were allowed as business expenses in connection with business income. It was submitted that these expenses are not in the nature of capital expenses or personal expenses, but has been incurred by for carrying out assessee's business on regular basis.

Ld.AR submitted that Ld.CIT(A) wrongly presumed that assessing officer rejected books of accounts under section 145(3) of the Act. He submitted that expenditure disallowed by assessing officer has been restricted by Ld.CIT (A) at 50%, by merely holding it to be excessive.

**19.** Ld.DR submitted that assessee failed to give details of parties, for whom job work was executed. He submitted that by placing bills and vouchers, do not establish genuineness of transaction, as parties have made payments in cash to assessee, which has been

booked by assessee as single entry for year under consideration. Ld.DR submitted that onus lies upon assessee to establish genuineness of transaction, by filing particulars of parties, for whom job work was executed. Placing reliance upon orders of Ld.CIT(A), Ld.DR submitted that assessing officer rightly initiated provisions of section 68 as credit entries in books of accounts of assessee remained unexplained.

**20.** We have perused submissions advanced by both sides in light of records placed before us.

**21.** It is observed that assessing officer disallowed amount received by assessee towards job work, since the Principal failed to deduct TDS from payments made to assessee, in view of provisions of section 194C. On one breath, it is observed that assessing officer is holding violation of provisions of section 40 A (3) and 194C in the hands of assessee, and on the other hand invoked provisions of section 68 on such receipts. Ld.CIT (A) upheld action of Ld.AO of section 68 in respect of income earned by assessee by way of job work.

**22.** It is further observed that Ld.CIT (A) for disallowing expenditure, held that assessing officer rejected books of account. On perusal of assessment order, we find that assessing officer had not rejected books of accounts, but had disallowed expenditure as supporting evidences in the form of vouchers were not found to be authentic. Ld.AO observed that no bona fide activity was carried out during the year by assessee.

**23.** It has been submitted by assessee that job work income is disclosed in books of account as “Income from Business”, cannot be changed to “Income from undisclosed sources”. It has been submitted that assessee is continuously engaged in doing job work activity since past many assessment years, which has not been disputed by authorities below.

**24.** He referred to paper book wherein profit and loss account of preceding assessment years have been annexed, showing income received by job work. Further it is observed that income received from job work has been declared by assessee as business income, which has been accepted in preceding years. Admittedly for the year under consideration, amount credited in books of accounts are income in hands of assessee, which has been declared by assessee under the head, “Income from Business”. In fact, view formed by authorities below is based on presumption that assessee is the owner of the said amount credited in cash. Further authorities below rejected submissions of assessee, without making any enquiries in relation to nature of income received on the basis of preceding assessment years. We therefore are of considered opinion that the addition made by Ld.AO which is sustained by Ld. CIT (A) needs proper verification by Ld.AO. Merely on surmises and conjunctures no addition can be made u/s68 of the Act, when assessee himself is declaring the monies received in cash as its Business Income.

**25.** It is observed from Ld.AO’s order that assessing officer has not rejected books of accounts, but has disallowed expenses since

vouchers did not appear to be authentic. No further enquiries were conducted by Ld.A.O. in this regard for rejecting entire expenses claimed by assessee. Ld.CIT (A) did not dispute business activity but restricted disallowance to 50% without any basis. It has been submitted that vouchers/bills were basically in respect of factory renting expenses, remuneration and wages. It is further observed that Assessing Officer in assessment order allowed proportionate depreciation, considering it to be for purposes of business. We have perused audited accounts placed at page 68-77 of paper book. In profit and loss account at page 74, it is observed that expenditure debited are basically, administrative expenses, remuneration expenses, insurance expenses, interest paid on loans, directors sitting fees, audit fees, depreciation, factory running expenses, office repairs and maintenance expenses, legal expenses, telephone expenses, vehicle running and maintenance expenses, and miscellaneous expenses. In our considered opinion there are certain expenses like administrative expenses, directors sitting fees, audit fees, depreciation, office repairs and maintenance expenses, legal expenses, factory running expenses, telephone expenses and miscellaneous expenses which cannot be disallowed as these are necessary to be incurred for the purposes of business. As we have in the preceding paragraph already held the rent received from factory premises to be "Income from Business", factory running expenses and office repairs and maintenance expenses are eligible expenditure in the hands of assessee.

**26.** We accordingly direct Ld.AO to compute the disallowance of expenses in respect of the other items.

Accordingly we set aside the entire issue back to Ld.AO for proper verification of nature of income in the hands of assessee having regards to the evidences placed before him as per law.

**27. In the result ground No.3 stands allowed for statistical purposes and ground no.4 is set aside to compute disallowance of expenses, if any as per law, in the event it is established that no job work activity has been carried out by assessee during the year. It is further directed that expenses relating to rental income and certain statutory expenses should not be disallowed.**

**28. Ground No. 5** has been raised by assessee in respect of the addition amounting to Rs.3,46,693/- made on account of interest paid on loans.

**29.** Ld.AR submitted that assessee had taken following loans from various parties to whom interest amounting to Rs.3,46,693/- was paid.

S. No.	Name	Opening Balance	Fresh Advances	Closing Balance
1.	Reema Gupta	6,50,000/-	6,50,000/-	13,00,000/-
2.	Venimadhav Commodities Pvt. Ltd.	6,50,000/-	2,02,000/-	2,00,000/-
3.	Venimadhav Securities Pvt. Ltd.	----	9,20,000/-	9,20,000/-

It has been submitted by Ld.AR that interest on loans has been paid as per agreed terms. He submitted that loans were taken for

purchase of fixed assets. Ld.AR submitted that allowability of interest on borrowed funds as revenue expenditure, is not based on utilisation of funds, and is an allowable expenditure.

**30.** On the contrary, Ld.DR placing reliance upon observations of Ld.CIT(A) submitted that all parties from whom loans were taken were related with assessee and none of the advances were utilised for purposes of business. It was submitted that assessee has not produced any evidence of any land having purchased, nor any shares being allotted. Ld.DR submitted that on one hand, assessee borrowed funds at a cost, and on the other hand, such funds were given away to sister concerns interest free.

**31.** We have perused the submissions advanced by both sides in the light of records placed before us.

**32.** On perusal of submissions advanced by assessee, placed in the paper book, as well as submissions advanced before authorities below, it is observed that assessee invested in shares, which was not out of loans received. It has been submitted that loans were taken from parties for purposes of business, however assessee has not established utilisation of loan, which enhanced assessee's business. For purposes of allowability of an expenditure under section 37 (1) of the Act, burden lies upon assessee to establish that loans have been expended wholly and exclusively for purposes of business or profession only. In the facts of present case, assessee has not demonstrated in any manner whatsoever, regarding alleged purchase of land out of loans taken from related parties, on which interest of Rs.3,43,693/- has been paid. Merely by submitting that

amount has been utilised for purposes of business, do not support claim of assessee. We therefore do not find any infirmity in decision of Ld. CIT (A) in disallowing interest expenditure.

**Accordingly this ground raised by assessee stands dismissed.**

**33. In the result appeal filed by assessee stands partly allowed.**

Order pronounced in the open court on 6<sup>th</sup> September, 2018.

**Sd/-**

**(R.K. Panda)**  
**ACCOUNTANT MEMBER**

**Sd/-**

**(Beena A. Pillai)**  
**JUDICIAL MEMBER**

**Dated: 06 /09/2018**

\*Binita\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

// True Copy //

By Order:

ASSISTANT REGISTRAR  
ITAT Delhi Benches, New Delhi

S.No.	Details	Date
1	Draft dictated on Dragon	29/08/2018
2	Draft placed before author	31/08/2018
3	Draft proposed & placed before the Second Member	
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6	Kept for pronouncement	06/09/2018
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	
10	Date of Dispatch of order	