

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

Before Shri A. T. Varkey, JM & Shri A.L.Saini, AM

I.T.A. No. 2274/Kol/2017
[Assessment Year: 2014-15]

DCIT, Circle-6(1), P-7, Chowringhee Square, Kolkata-110069.	Vs.	M/s. Orient Cement Ltd., 9/1, R.N.Mukherjee Road, Birla Building, Kolkata-700001. PAN-AABCO5420A
Appellant		Respondent

Date of Hearing	26.12.2018
Date of Pronouncement	09.01.2019
For the Appellant	Shri Pinaki Mukherjee, Addl. CIT Sr.DR
For the Respondent	Shri Ashim Choudhury, Advocate & Shri Rohan Poddar, Advocate

PER A.T.VARKEY, JUDICIAL MEMBER

This appeal preferred by the Revenue is against the order of the Ld. CIT(A)-2, Kolkata dated 08.08.2017 for AY 2014-15.

2. The main grievance of the Revenue is against the action of Ld.CIT(A) in deleting the addition of Rs.1,15,21,683/- as claimed by the assessee shown as miscellaneous expenses which was later explained before the AO that it was the amount/fund misappropriated by some employees of the company.

3. Brief facts of the case are that the AO on scrutiny of documents noted that the assessee has claimed an amount of Rs.1,15,21,683/- on account of misappropriation of funds by the employees which was charged to revenue during the year by debiting as miscellaneous expenses under the head "other expenses". On being asked by the AO, the assessee submitted that the loss was due to misappropriation of

funds by the employees who were employed in the normal course of business. According to the assessee, the entrustment of the duty to the employees was in the normal course of the conduct of the business and the loss having been incidental to such employment need to be allowed as business expenditure, which claim was not accepted by the AO and the AO made an addition of Rs.1,15,21,683/-, which decision was challenged before the Ld.CIT(A) who was pleased to delete the same. Aggrieved, the Revenue is in appeal before us.

4. We have heard the rival submissions and perused the material available on record. Ld.DR assailed the decision of the Ld.CIT(A) and drew our attention to the fact that the assessee had been claiming such identical claim of expenditure/loss on account of misappropriation of funds/pilferage consecutively year after year and wondered as to how a company can claim expenditure/loss for misappropriation of funds/pilferage every year. According to the Ld.DR, though the assessee had lodged an FIR with police, it had claimed misappropriation of funds only to the tune of Rs.71,60,495/- and has not lodged any Criminal Complaint/FIR for the balance amount of Rs.43,61,188/- We note that though the Ld.AR does not want us to interfere with the action of Ld.CIT(A), however could not point out the breakup of the miscellaneous expenses claimed inter-alia as to whether it is on account of misappropriation of funds/pilferage of fuel, raw material consumed, trade payables etc. which were the specific items on which in earlier years the assessee company was claiming loss due to misappropriation/pilferage. We note that Ld.CIT(A) has not given the breakup of the misappropriation of funds/pilferage and also has not given any factual finding in respect to the genuineness of the loss/claim made by the assessee and thereafter the question arises as to whether the expenditure/loss has nexus to business. In the light of the above, we are of the considered opinion that Ld.CIT(A)

has not applied his mind while deciding the issue which was a mixed question of fact and law while allowing the expenditure claimed by the assessee. Therefore, we set aside the order of Ld.CIT(A) and remand it back to the Ld.CIT(A) to adjudicate denovo on this issue and to pass a speaking order untrammelled by any observation made supra by us.

5. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order is pronounced in the open court on 9th January, 2019.

Sd/-

Sd/-

(A.L.Saini)
Accountant Member

Dated: 9th January, 2019

Amit Kumar

(A. T. Varkey)
Judicial Member

Copy of the order forwarded to:

- 1 Appellant – DCIT, Circle-6(1), P-7, Chowringhee Square, Kolkata-110069.
- 2 Respondent – M/s. Orient Cement Ltd., 9/1, R.N.Mukherjee Road, Birla Building, Kolkata-700001.
- 3 CIT(A), Kolkata.
- 4 CIT, Kolkata
- 5 DR, Kolkata Benches, Kolkata

True Copy,

By order,

Assistant Registrar