IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI

BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A. No. 1710/DEL/2015 (A.Y 2011-12)

ACIT Central Circle-17, Room No. 356, ARA Centre, E-2, Jhandewalan New Delhi **(APPELLANT)**	Vs	Deepali Design & Exhibits (P) Ltd. 34, North Avenue Road New Delhi AABCD5680K **(RESPONDENT)**

I.T.A. No. 1827/DEL/2015 (A.Y 2011-12)

Deepali Design & Exhibits (P) Ltd. 34, North Avenue Road Punjabi Bagh New Delhi AABCD5680K **(APPELLANT)**	Vs	DCIT Central Circle-8 New Delhi **(RESPONDENT)**

S.A No. 913/Del/2018
(Arising Out of I.T.A. No. 1827/DEL/2015 (A.Y 2011-12)

Deepali Design & Exhibits (P) Ltd. 34, North Avenue Road Punjabi Bagh New Delhi AABCD5680K **(APPELLANT)**	Vs	ACIT Central Circle-17 New Delhi **(RESPONDENT)**

Appellant by	**Sh. Salil Kapoor, Adv Smt. Pallavi Saigal, Sh. Sumit Lal Chandani**
Respondent by	**Ms. Nidhi Srivastava, CIT DR, Smt. Ashia Neb, Sr. DRs**

Date of Hearing	**09.01.2019**
Date of Pronouncement	**14.03.2019**

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the Revenue as well as the assessee against the order dated 26/12/2014 passed by CIT(A)-XXVII, New Delhi for Assessment Year 2011-12.

2. The grounds of appeal are as under:-

I.T.A. No. 1710/DEL/2015 (Revenue's appeal)

1. *The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in deleting Rs. 15,50,903/- disallowed by the AO on account of interest and penalty on service tax.*
2. *The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in deleting Rs.6,488/- disallowed by the AO on account of disallowance of additional service tax.*
3. *The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in deleting Rs.79,084/- disallowed by the Assessing Officer on account of disallowance of amount debited under the head 'short and excess'.*
4. *The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in deleting Rs.76,92,840/- made by the AO on account of disallowance of unexplained expenditure.*
5. *The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in restricting the addition to Rs.3,68,580/- (being 1/10^{lh} of Rs.36,85,792/-) from Rs.7,37,158/- (being 1 /5th of Rs.36,85,792/-) made by the AO on account of expenses claimed in P&L account.*
6. *(a) The order of the CIT (A) is erroneous and not tenable in law and on facts,*

(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.

I.T.A. No. 1827/DEL/2015 (Assessee's appeal)

1. *"That the Commissioner of Income-tax (Appeals) [in short "CIT(A)"] erred on facts and in law in confirming the addition of Rs.6,99,24,861 made by the assessing officer, being the alleged amount of contract revenue receivable from M/s. Pico Deepali Overlays Consortium, not declared as income by the appellant.*

1.1. *That the CIT(A) erred on facts and in law in not appreciating that in the absence of vested right being accruing in favour of the appellant to receive the aforesaid contract amount, there was no question of recognizing the same as part of its taxable income.*

1.2. *That the CIT(A) erred on facts and in law in not appreciating that the appellant alternatively claimed that there was no bar in recognizing income in respect of a new line of business on "cash basis".*

1.3. *That the CIT(A) further erred in not appreciating that since there was hardly any probability of very recovery/ realization of the aforesaid amount and therefore, taxation of the aforesaid amount tantamount to taxable of notional amount as "income".*

1.4. *Without prejudice, that the CIT(A) also failed to appreciate even if the aforesaid amount of Rs.6,99,24,861, not recognized in the books, were to be taxed as income, then, equivalent amount ought to be allowed as deduction under section 36(l)(vii) of the Income Tax Act, 1961 ('the Act').*

2. *That the CIT(A) erred on facts and in law in confirming the addition of Rs.27,72,354 made by the assessing officer, being the alleged amount of contract revenue receivable by the appellant from Central Public Works Department ('CPWD').*

2.1. *That the CIT(A) erred on facts and in law in not appreciating that the appellant had followed a consistent method of recognizing income from the aforesaid contract, which was always accepted by the Revenue Department in the past assessment years.*

2.2. *That the CIT(A) erred on facts and in law in not appreciating that the entire*

exercise of seeking to disturb the year of taxability of income from the aforesaid contract, which was offered to tax in the subsequent assessment year(s), was revenue neutral.

3. *That the CIT(A) erred on facts and in law in confirming the action of the assessing officer in disallowing an amount of Rs. 15,50,000 incurred by the appellant on account of business promotion.*

3.1. *That the CIT(A) erred on facts and in law in holding that the aforesaid business promotion expenditure was not allowable as deduction since the appellant was not carrying on any activity relating to CWG, 2010.*

4. *That the CIT(A) erred on facts and in law in confirming notional addition of Rs.3,35,58,732 on account of income from alleged sale of scrap.*

4.1. *That the CIT(A) erred on facts and in law in confirming the aforesaid addition, without appreciating that the assessing officer had failed to bring on record any evidence to prove that the appellant had received any amount in excess of the declared value of scrap.*

4.2. *That the GIT(A) erred on facts and in law in disregarding the contemporaneous documentary evidences filed by the appellant, supporting the actual value of scrap sold in the assessment year under consideration.*

5. *That the CIT(A) erred on facts and in law in confirming the disallowance of Rs.62,33,080 on account of hire charges paid by the appellant.*

5.1. *That the CIT(A) erred on facts and in law in not admitting additional documents/evidences filed during the course of appellate proceedings, which were extremely critical for judicious disposal of the appeal.*

5.2. *That the CIT(A) erred on facts and in law in affirming the action of the assessing officer in conducting and relying upon ex-parte enquires under section 133(6) of the Act.*

5.3. *That the CIT(A) erred on facts and in law in not appreciating that the aforesaid hire charges were paid by the appellant on a regular basis, which was consistently allowed as a deductible expense in the past assessment years.*

6. That the CIT(A) erred on facts and in law in confirming the ad-hoc

disallowance to the extent of Rs.3,68,579 (i.e., 1/10th of Rs.36,85,792) made by the assessing officer on account of various expenses incurred by the appellant in the regular course of business.

7. That the CIT(A) erred in confirming levy of interest under sections 234B and 234D of the Act.

3. The assessee is a Private Limited Company and is engaged in the business of providing temporary infrastructure facility for events and exhibitions. A search and seizure operation u/s 132 of the IT Act, 1961 was conducted at the business premises of the assessee on 19.10.2010. The assessee company belonged to M/s PICO Deepali Overlays Consortium Group. The assessee filed its return of income declaring a total income of Rs.2,03,93,170/- on 25.10.2011. The case of the assessee was taken up for scrutiny and notices u/s 143(2) and 142(1) along with a detailed questionnaire were issued and served upon the assessee. In response to the notices issued, the AR of the assessee attended the assessment proceedings from time to time and filed the required details and information. Thereupon, the assessment was competed in terms of order u/s 143(3) of the IT Act, 1961 dated 21.03.2013 at a total income of Rs. 13,84,78,070/- as against the returned income of Rs.2,03,93,170/- wherein in the Assessing Officer made the following additions:

1.	Addition on account of interest on late payment o/TDS	Rs.71,993/-
2.	Addition on account of interest and penalty on service tax	Rs.15,50,903/-
3.	Addition on account of additional sale tax debited to P&L Account	Rs.6,488/-
4.	Addition on account of disallowance of short and excess recoveries debited to P&L account	Rs.79,084/-
5.	Addition on account of disallowance of donation	Rs.1,40,550/-
6.	Addition on account of low declaration contract amount	Rs.6,99,24,861/-
7.	Addition on account of low declaration contract amount	Rs.27,72,354/-
8.	Addition on account of unexplained expenditure	Rs.76,92,840/-
9.	Addition on account of disallowance of business promotion expenses	Rs.15,50,000/-
10.	Addition on account of scrap sale of electrical items	Rs.1,42,48,577/-

11.	Addition on account of scrap sale aluminium, carpets, Floorings and awnings, iron rods and sheets and tenting material fabric	Rs.1,91,90,514/-
12.	Addition on account of disallowance of capital expenses	Rs.1,19,90,514/-
13.	Addition on account of 1/5th disallowance out of expenses	Rs.7,37,158/-
14.	Addition on account of disallowance of hire charges	Rs. 62,33,080/-

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. Firstly we are taking up the Revenue's appeal. The Ld. DR in respect of Revenues' appeal submitted that there are 5 grounds agitated by the Revenue in the present appeal. The assessee debited an amount of Rs.15,50,903/- as interest on late payment of service tax under the head interest which is Ground No. 1 of Revenue's appeal. The Ld. DR submitted that the Assessing Officer has rightly rejected the said claim as it is the duty of the assessee to deposit the service tax deducted within the time allowed as per the provision of the Income Tax Act. The Ld. DR further submitted that the CIT(A) deleted this amount on the sole ground that interest charge for deleted payment of Sales Tax does not have the correct of penalty for an offence and hence allowable as deduction as its is merely compensation for money withheld.

6. The Ld. AR submitted that the CIT(A) has rightly deleted this addition as the Service Tax is a permissible deduction and the interest payment of late deposit of the same is also a permissible deduction and thus rightly allowed by the CIT(A).

7. We have heard both the parties and perused the material available on record. The CIT(A) held as under:-

"9. I have considered the facts of the case and written submissions of the appellant. Whenever any statutory impost is paid by the appellant by way of damages or penalty or interest, notwithstanding the nomenclature of impost as given by statute, one has to find out as to whether it is

compensatory or penal in nature. If such impost is found to be of composite nature, the said impost has to be bifurcated into two components and give deduction to that component which is compensatory in nature and reject the deduction to that component which is penal in nature. Interest charged for delayed payment to sale tax does not have the character of penalty for an offence and hence allowable as deduction as it is merely compensation for money with held. Therefore, in the instant case, the payment of interest on late deposit of service tax with the Government account was compensatory in nature and has the same character as that of service tax. Since the service tax is permissible deduction, the interest paid for late deposit of the same is also a permissible deduction and should be allowed in the same manner. Reliance in this respect is placed on the decision of the Hon'ble Supreme Court in the case of Mahalaxmi Sugar Mills Co. v. CIT (1980) 123 ITR 429. Considering these facts, the impugned addition made by the Assessing Officer was unjustified and cannot be sustained. Accordingly, the addition of Rs. 15,50,903/- made by the Assessing Officer on account of disallowance of interest paid on service tax is deleted."

The payment of interest on late deposit of service tax with the government account was compensatory in nature and as the same character i.e. of service tax. This aspect was rightly taken into account by the CIT(A) in its finding. Since, the service tax is permissible deduction the interest paid for late deposit of the same is also a permissible deduction and should be allowed in the same manner. Ground No. 1 of Revenue's appeal is dismissed.

8. As relates Ground No. 2 relating to the addition of Rs.6,488/- on account of disallowance of additional service tax. The Ld. DR relied upon the order of the Assessing Officer and submitted that the CIT(A) erred in deleting this addition. The Ld. AR relied upon the order of the CIT(A).

9. We have heard both the parties and perused the material available on record. The amount of service tax paid by the assessee was not in the nature of

penalty but represented the tax which was not collected by the assessee from its customers and was paid out of its own debited and was thus allowable u/s 37(1) of the Income Tax Act, 1961. The amount was expanded by the assessee during the course of its business and it was wholly and exclusively for the business purposes. The expenses cannot be said that the same was not related to business of the assessee as it was the duty of the assessee to deduct service tax while providing service to the customers. Therefore, it comes under the purview of business expenses and hence is rightly deleted by the CIT (A). Ground No. 2 of Revenue's appeal is dismissed.

10. As related to Ground No. 3 relating to addition of Rs. 79,084/- on account of disallowance of the amount debited under the head short and excess. The Ld. DR submitted that the Assessing Officer has rightly made addition as the expenses debited to profit and loss account to balance the debited and credited as the expenses not related to the business of the assessee and, therefore, not allowable as per the provisions of the Income Tax Act, 1961. The Assessing Officer has observed that there was no explanation on the nature of expenses given by the assessee during the assessment proceedings.

11. The Ld. AR relied upon the order of the CIT(A).

12. We have heard both the parties and perused the material available on record. The amounts debited under this head represented the pity difference in the balances of the debtors either on account of rounding off the balances or under recovery of such amount from debtors which were allowable as business expenditure u/s 36(1)(vii) of the Income Tax Act, 1961. Thus, the CIT(A) rightly deleted this addition. Ground No. 3 of Revenue's appeal is dismissed.

13. As relates to Ground No. 4 relating to deletion of Rs.76,92,840/- on account of disallowance of unexplained expenditure. The Ld. DR submitted that the Assessing Officer after analysis of the evidence gathered during the

course of survey come to the conclusion that the purchase of disposal from M/s Garg Road Lines is bogus. The Assessing Officer has rightly held ha the assessee has only provided the estimate of the disposal consumed which is not to over right the facts mentioned in the assessment order. Thus, the CIT(A) erred in deleting this addition.

14. The Ld. AR submitted that the CIT(A) has verified all the details and after verifying the evidence has deleted this addition rightly. Thus, the Ld. AR relied upon the order of the CIT(A).

15. We have heard both the parties and perused the material available on record. The assessee before the Assessing Officer filed complete bill vise details along with copies of invoices received from the factory at the time of delivery of diesel as well as filed confirmed copy of its ledger account in the books of M/s Garg Road Lines along with copy of bank statement/duly reflect the payments made by the assessee on various dates of M/s Garg Road Lines for supply of diesels. All these relevant evidences were ignored by the Assessing Officer during the assessment proceeding. The CIT(A) has rightly taken into account all the details filed by the assessee before the Assessing Officer and after verifying the same arrived at the right conclusion that the claim of the assessee is right as the purchase of diesel from the said party was genuine. The assessee has satisfied all the three elements of genuineness creditworthiness and identity of the parties, as per the provisions of the Income Tax Act. Therefore, there is no need to interfere with the findings of the CIT(A). Ground No. 4 of the Revenue's appeal is dismissed.

16. As regards Ground No. 5 of the Revenue's appeal relating to restricting the addition of Rs.3,68,580/- (being 1/10th of Rs. 36,85,792/-) from Rs. 7, 37,158/- (being 1/5th of Rs. 36,85,792/-) made by the Assessing Officer on account of expenses claimed in profit and loss account. The Ld. DR submitted that the Assessing Officer has rightly made 1/5th addition on account of expenses claim being profit and loss account. The Ld. DR further submitted

that the assessee could not provide the name and address of the person to whom cash payments were made during the assessment proceedings. Therefore, the Assessing Officer rightly held that the claim of the assessee that the above expenses incurred fully and wholly for the purposes of its business is not correct.

17. The Ld. AR submitted that the assessee also has challenged this addition as the same is an ad-hoc disallowance and there is no basis on which the CIT(A) restricted the disallowance to 1/10th of the total motor car expenses including depreciation and telephone expenses claimed by the assessee.

18. We have heard both the parties and perused the material available on record. The CIT(A) held as under:-

"34. I have considered the facts of the case and written submissions of the appellant and find that the Assessing Officer made the impugned disallowance on the ground that the expenses booked under the above heads were not fully and exclusively incurred for the business of the appellant. It is well settled that whenever an appellant claims an expenditure to have been incurred for the purpose of business, the onus is on the appellant to prove the genuineness of the expenses. For this purpose, the appellant was bound to produce the log book for running of the car and the details of the telephone calls. In the instant case, I find that the appellant failed to do so. The appellant did not maintain any log book for running of the motor car and details of telephone calls. It is a fact of life that people owning the assets like motor car and telephone for business purpose use them for the personal purposes as well. The appellant could have maintained some record to prove that there was not personal use of the motor car and the telephone. The appellant failed to produce any such evidence to substantiate that the assets in question were used for business purpose only. In such circumstances, the Assessing Officer was justified in disallowing a portion of the motor car expenses and telephone expenses towards the personal use of the appellant.

However, considering the facts of the case, the disallowance made by the Assessing Officer at 1/5th appears to be on the higher side. Therefore, considering these facts of the case, I restrict the disallowance to 1/10th of the total motor car expenses including depreciation and telephone expenses claimed by the appellant. Hence, the Assessing Officer is directed to modify the disallowance accordingly, while giving effect to this order."

The CIT(A) has rightly observed that the assessee fail to produce evidence to substantiate the assets in questions were exclusively use for business purpose only. There was no explanation given to cash as well but after considering the overall effect. The CIT(A) has rightly disallowed 1/10th of the total motor car expenses including depreciation and telephone expenses claim by the assessee. Hence, Ground No. 5 of the Revenue's appeal is dismissed as well as Ground No. 6 of the assessee's appeal is dismissed.

19. Now we are taking up the assessee's appeal. As regards to Ground No. 1 relating to low declaration of contract amount in the contract with M/s Pico Deepali Overlays Consortium group amounting to Rs. 6,99,24,861/-, the Ld. AR submitted that in respect of M/s Deepali Design & Exhibits Private Limited (DDEPL) was a part of the consortium known as 'PICO Deepali Overlays Consortium' which was formed by an agreement dated 19.12.2009 for the purpose of obtaining contract from Organizing Committee - Common Wealth Games 2010. However, on 01.06.2010 an addendum agreement was entered between same parties and it was agreed that DDEPL will have independent scope of work and will execute the same on its own. It was also agreed that profit/loss in respect of scope of work of DDEPL will be responsibility of DDEPL. It was provided in the addendum agreement dated 01.06.2010 as well as in the original agreement that the Assessee entitlement to receive the payment was dependent upon the receipt of the payment by consortium from OCCWG 2010 by PICO Deepali Overlays Consortium (for short 'PICO Consortium'). [Clause 2.3 of the Addendum agreement dated 01.06.2010

Clause 2.1(3), Clause 2.4(2) and Clause 3.3 of the Addendum agreement dated 01.06.2010]. As the Consortium was an intermediary between the Assessee and the OCCWG- 2010, the payment of money to the Assessee was contingent on the receipt of money by the PICO Consortium from the OCCWG-2010 and the Assessee possessed no power/authority to deal with the OCCWG-2010 under the addendum agreement. Prior to the receipt of the money by the consortium in its bank account no legal right vested with any of the constituent member to claim or receive amount towards the work executed by the respected members in relation to its part of allocated work by all the constituent members collectively. It is thus clear that under no circumstances the constituent members have the right to claim the amount from the consortium unless the amount actually reaches the bank account of the consortium after receiving the same from OCCWG. During the year under consideration, the Assessee had undertaken a new and distinct line of business activity and it was for the first time that it had not only ventured into the business of overlaying of cables for electrification but also functioned as a sub-contractor. The Assessee during the year under consideration has entered in its books of accounts only those payments during the year under reference which were received by it. In regard to the remaining amount payable, the Assessee wrote numerous letters to the Consortium asking them to render the accounts for the ascertainment of the quantum of amounts received by the Consortium against the work executed by the Assessee. However, the Consortium did not render any accounts to the Assessee. The Assessee also wrote a number of letters to the OCCWG-2010 to ascertain the amount paid to the Consortium in relation to the work executed by the Assessee. Thereafter the Assessee instituted a suit in the Hon'ble High Court of Delhi against the consortium for the rendition of accounts of the Consortium and for the recovery of Rs. 6,99,24,861 /- as per the contract with the Consortium. Pursuant to the abovementioned suit filed, assessee was granted a preliminary decree in the money suit for Rs. 4,19,05,956/- with interest at 9% per annum vide order dated 18.07.2017 passed by the Hon'ble High Court of Delhi (the claimed

amount was Rs. 6,99,24,861/-). Thereafter, Assessee company received Rs. 4,19,05,956 during F.Y. 2017-18 which was accounted for in the books of account of the Assessee as it income for AY 2018-19. Copy of income tax return, computation of income, balance sheet, Profit & Loss account along with ledger account for AY 2018-19 as well as party wise details of hire charges was submitted before the Assessing Officer. While passing the Assessment order dated 21.03.2013, the AO observed that by filing the suit as well as by raising bills and rendering services against the consortium, the Assessee had claimed a right to receive the income. The AO made the addition on the basis that the Assessee by filing a suit for recovery in Delhi High Court, recognizes that the said amount was due to the Assessee. Thus, the AO made an addition of Rs. Rs. 6,99,24,861/- to the income of the Assessee. The CIT (A) upheld the order of the AO and held that the Assessee had a vested right to receive the income for its services which accrued to it during the financial year relevant to assessment year ('AY') under consideration.

20. The Ld. AR submitted that there was no direct interaction between the Assessee and OCCWG-2010. The Ld. AR submitted that as per addendum agreement dated 01.06.2010 that the Assessee entitlement to receive the payment was dependent upon the receipt of the payment by consortium from OCCWG 2010 by PICO Deepali Overlays Consortium (for short 'PICO Consortium'). Clause 2.3 of the Addendum agreement dated 01.06.2010 clearly provides for the payment terms. The Agreement states that payment to the assessee shall be subject to payment being received by the JV with respect to the same. Reference herein is also drawn to Clause 2.1(3), Clause 2.4(2) and Clause 3.3 of the Addendum agreement dated 01.06.2010] by the Ld. AR. Therefore, the Ld. AR submitted that the Assessee had no direct dealing with OCCWG-2010, it was only after the consortium receive money, will the same be given to the Assessee. PICO Consortium denied its liability to pay the Assessee. The Ld. AR submitted that during the proceedings of the suit filed before the Hon'ble Delhi High court by the Assessee against PICO Deepali Overlays

Consortium, PICO Deepali Overlays Consortium vide written statement filed on 16.10.2017 and denied that the total amount due to the Assessee amounts to Rs. 6,99,24,861/-. On the contrary, PICO Deepali Overlays Consortium has categorically stated that they have paid a sum of Rs. 2 cr over and above what was actually to be paid. In the instance, as PICO Deepali Overlays Consortium denied its liability to pay, no income could have accrued to the Assessee. There exists no corresponding liability is admitted by the other party to pay the amount. The Ld. AR submitted that no enforceable legal right has arisen in favour of Assessee against the consortium nor there was any corresponding liability during the year under consideration. Income accrues to the Assessee and become includible in his hands when the legal right to receive the same vests with the Assessee whereby the payer of the income become lawful debtor of the Assessee. The Hon'ble Supreme Court in the case of CIT v. Excel Industries Ltd. [2013] 358 ITR 295/219 has even held that "An income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. Only then it can be said that for the purposes of taxability said income is not hypothetical and it has really accrued to the assessee". The Hon'ble Supreme Court in the case of CIT Vs. Balbir Singh Maini [2017] 398 ITR 531 (SC) have observed that the income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. Only then it be said that the purposed of taxability that the income is not hypothetical and it has really accrued to the assessee. The Ld. AR relied upon the following decisions:-

S.No.	Judgment	Citation
1	CIT(A) Vs. Shoorji Vallabhdas & Co. (Page NO. 19-21 of CLC)	[1962] 46 ITR 144)S.C)
2	CIT(A) Vs. Mathulal Baldeo Prasad	[1961]42 ITR 517 (ALL.)

The Ld. AR further submitted that reliance placed on Morvi Industries Ltd.

by the Ao is misplaced. The Ld. AR further submitted that the AO while passing the assessment order dated 21.03.2013, has relied on the judgment of Morvi Industries Ltd. Vs. CIT (1971) 82 ITR 835 (SC). However, a subsequent judgment of the Supreme Court in the case of CIT Vs. Excel Industries Ltd. [2013] 358 ITR 295 (SC) after discussing the judgment of Morvi Industries Ltd. has held that income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. Mere filing of the suit for recovery will not in law make it an income which has accrued. AO while passing the Assessment order dated 21.03.2013 and CIT(A) while passing the appellate order dated 26.12.2014 observed that by filing the suit against the consortium the Assessee had claimed a right to receive the income. It is submitted that the observation made by AO and CIT(A) is against the settled legal position. Both the lower authorities have ignored the fact that PICO Consortium had denied the liability of 6.99cr and other rather said that they have paid 2cr more than what is due to the Assessee. The Hon'ble Calcutta High Court in the case of CIT Vs. Burlop Commercial (P.) Ltd. has clearly held that filing of a suit for recovery, will not in law make it an income which has accrued to be year in question. Similar observations have been made in the following judgment:-

S.No.	Particulars	Citation
1	CIT(A) Vs. Kerala State Drugs & Pharmaceuticals Ltd.	[1991]59 Taxman 515 (Ker)
2	Hope (India) Ltd. Vs. CIT(A)	[1999]238 ITR 740 (Cal)
3	National Handloom Development Corpn. Ltd. Vs. DCIT	[2004] 266 ITR 647 (Allahabad)
4.	ITO Vs. Prakash Road lines Corpn	ITA No. 2070 of 1988 (Cal)

21. The Ld. AR submitted that the assessee has upon receiving the amount during AY 2018-19 has paid the tax thereon and has disclosed the same in the

return of income for AY 2018-19. The only dispute is in regard to the subject assessment year in which tax is payable. However, this stand of the Revenue needs to be considered with the fact that in the succeeding assessment year, the return of income filed by the assessee (in which the amounts forming a part of the present addition were offered to tax) tax stands already paid. The Ld. AR submitted that assessee was granted a part decree in the money suit for Rs. 4,19,05,956/- with interest at 9 Percent per annum (the claimed amount was Rs. 6,99,24,861/-). The said judgment and decree was partly executed on 08.03.2018 pursuant to which assessee company has received Rs. 6,60,02,809/-. The Ld. AR submitted that assessee Company has disclosed the said receipt in the income tax return for AY 2018-19 and paid tax thereon. The Ld. AR also submitted that as per Accounting Standard 9 on revenue recognition issued by the ICAI, the main principle inter alia states "... if at the time of raising of any claim it is unreasonable to expect ultimate collection, revenue recognition should be postponed." Therefore, the Ld. AR submitted that the Revenue cannot be permitted to tax the same income twice. The Ld. AR relied upon the decision of Hon'ble Supreme Court in the case of CIT Vs. M/s Excel Industries Ltd. [2013] 358 ITR 295/219. The Ld. AR further submitted that Assessee was primarily involved in the business of erection of temporary structures on rental basis to various corporate/government agencies. Further, this line of business was carried on by the Assessee in the form of main supplier i.e. as a principal and the order from the business were received by the Assessee in the capacity of a principal from various government agencies/corporate. Adverting to the addendum executed on 10 June 2010, there were substantial changes compared to certain terms and conditions of the original consortium agreement dated 9 January 2009. During the year under consideration the execution of the work as laid down in the Appendix 2 to the Addendum was predominantly a new activity and that to being in the capacity of the sub-contractor being first time. The terms of the addendum clearly demonstrates that the status of the Assessee was considerably downsized to a status of subcontractor in the consortium. Assessee had never

executed such contract in the past. It is further submitted that the receipt of the dues by the Assessee was quite cumbersome and wholly dependable on the receipt by the consortium from OCCWG 2010. In these circumstances, as a prudent approach the Assessee Company thought it is wise to enter only payments during the year under reference which were received by it. The approach of the Assessee in respect of the new line of business undertaken by Assessee namely, acting as a sub-contractor in different business is justified under the provision of Income Tax Act. It is important to refer to the judgment in the case CIT vs EAET Sundarjan [1975] 99 ITR 226(Mad) wherein it was observed that the Assessee may employ different method of accounting for different types of business. Accordingly, as per clause 1 of Section 145, the assessee had followed cash system of accounting for CWG related projects and Mercantile system of accounting for rest of the regular business. The aforesaid two method of accounting for different types business has been followed in succeeding years. Further, without prejudice, it is prerogative of the Assessee to choose a method of accounting for a particular business. Reliance is placed on the judgment of Maruti Securities Ltd. Vs. ACIT (ITA No. 468/Hyd/2009) the tribunal in the said case has held that where the assessee is following the mercantile system of accounting, it is only accrual of income that is chargeable to tax. When certain uncertainties exist regarding determination of amount or is collectability, revenue shall not treat it as accrued until collection. Strictly, without prejudice to the above submission, the Ld. AR submitted that entire contract value is treated as income under the mercantile system, then the amount of Rs. 6.99 not recoverable under the current disputes and exigencies (which is pending before judicial forum) could be treated as bad debt under section 36(1)(vii) of the Act. The cash system adopted for CWG project is cash neutral and not detrimental to the revenue. The Ld. AR further submitted that Assessee company has upon receiving the amount during AY 2018-19 has paid the tax thereon and has disclosed the same in the return of income for AY 2018-19.

22. In the assessment order dated 2 March 2013 and appellate order passed by Commissioner of Income Tax Appeal dated 26 December 2014, the Ld. AR pointed out that Deepali Design & Exhibits has raised bills to M/s PICO Deepali Overlays Consortium. The Ld. AR further submitted that bills were issued only for the amount which is received and accounted for. Bill were not raised for Rs. 6,99,24,861/- for which the addition is made by Assessing Officer. This fact was never submitted before the lower Authorities nor there exist any evidence that bills are raised by Deepali Design & Exhibits in this regard during the year under consideration and in subsequent years. The fact recorded by the Authorities is incorrect, contrary to record and is purely based on surmises and presumptions. Further, without prejudice, the Ld. AR submitted that the Assessing Officer has acted arbitrarily without applying his mind in making addition in contravention to the provision of Section 145. The books of account have been duly accepted as it is. Hence, the addition could not have been made.

23. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

24. We have heard both the parties and perused all the relevant material available on record. The Revenue never disputed the fact that prior to the receipt of the money by the consortium in its bank account no legal right vested with any of the constituent member to claim or receive amount towards the work executed by the respected members in relation to its part of allocated work by all the constituent members collectively. Thus, it is clear that under no circumstances the constituent members have the right to claim the amount from the consortium unless the amount actually reaches the bank account of the consortium after receiving the same from OCCWG. During the year under consideration, the Assessee had undertaken a new and distinct line of business activity and it was for the first time that it had not only ventured into the business of overlaying of cables for electrification but also functioned as a sub-

contractor. The Assessee during the year under consideration has entered in its books of accounts only those payments during the year under reference which were received by it. In regard to the remaining amount payable, the Assessee wrote numerous letters to the Consortium asking them to render the accounts for the ascertainment of the quantum of amounts received by the Consortium against the work executed by the Assessee. However, the Consortium did not render any accounts to the Assessee. The Assessee also wrote a number of letters to the OCCWG-2010 to ascertain the amount paid to the Consortium in relation to the work executed by the Assessee. Thereafter the Assessee instituted a suit in the Hon'ble High Court of Delhi against the consortium for the rendition of accounts of the Consortium and for the recovery of Rs. 6,99,24,861 /- as per the contract with the Consortium. Pursuant to the abovementioned suit filed, assessee was granted a preliminary decree in the money suit for Rs. 4,19,05,956/- with interest at 9% per annum vide order dated 18.07.2017 passed by the Hon'ble High Court of Delhi (the claimed amount was Rs. 6,99,24,861/-). Thereafter, Assessee company received Rs. 4,19,05,956 during F.Y. 2017-18 which was accounted for in the books of account of the Assessee as it income for AY 2018-19. From the records and the agreements it can be seen that these facts narrated by the assessee are correct and Revenue could not point out the new facts in the present case. The Hon'ble Supreme Court in the case of CIT v. Excel Industries Ltd. [2013] 358 ITR 295/219 has even held that "An income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. Only then it can be said that for the purposes of taxability said income is not hypothetical and it has really accrued to the assessee". The Hon'ble Supreme Court in the case of CIT Vs. Balbir Singh Maini [2017] 398 ITR 531 (SC) have observed that the income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. Only then it be said that the purposed of taxability that the income is not hypothetical and it has really accrued to the assessee. Mere filing of the suit for recovery will not in law make it an income which has accrued.

AO while passing the Assessment order dated 21.03.2013 and CIT(A) while passing the appellate order dated 26.12.2014 observed that by filing the suit against the consortium the Assessee had claimed a right to receive the income. This findings of the Revenue authorities are contrary to the decision of the Hon'ble Apex Court in case of Excel Industries (supra). Thus, Ground No. 1 of the assessee's appeal is allowed.

25. As regards to Ground No. 2 relating to addition of Rs. 27,72,354/- in respect of low declaration of contract amount in the contract with Central Public Works Department (CPWD), the Ld. AR submitted that the Assessee was awarded certain contracts by the Central Public Words Department ('CPWD') regarding a project related to CWG-2010. The engineers in charge of the project followed the practice of maintaining a Measurement Book ('MB') and all assessments are done on the basis of the entries and not the invoices of the contractors. It is on the basis of the MB, a running account bill summary ('R/A Bill') was prepared by the CPWD personnel for release of milestone contract value to the contract as per the percentage of work completed by the contractors. No payment by the CPWD were released either in advance or before the work is executed. The tenth R/A Bill dated 13.11.2011 was approved in the AY 2012-13. As per this R/A Bill, an amount of Rs. 27,72,354/-was credited as income during the subsequent year i.e. AY 2012-13 by following the consistent method of accounting. Taking into account that:

- the assessment was done as per the MB,
- the payments were released on the basis of the R/A Bills, and
- the amount payable to the Assessee was ascertained as per the percentage of work completed

The Ld. AR submitted that the Assessee could only determine the exact amount payable to it when the R/A Bills were provided to it to, in turn, include it as income in its books of accounts. As per Accounting Standard 9 on revenue recognition issued by the ICAI, para 11 of the main principle inter-alia

states if at the time of raising of any claim it is unreasonable to expect ultimate collection, revenue recognition should be postponed." The Ld. AR further submitted that the payment (Rs. 27,72,354/-) for the work done in the contracts with CPWD was made through the tenth RA Bill dated 13.11.2011. Thus, the Assessee included the income in its books of accounts as income credited for the AY 2012-13. The AO, based on the fact that the Assessee followed the Mercantile System of Accounting, used the same approach which was taken by him to make addition on the basis of the income arising out of the contract with the Consortium and concluded that the amount of Rs. 27,72,354/- would be recognized in the Assessee's books of accounts in the AY 2011-12. Thus, the AO made an addition of Rs. 27,72,354/- to the income of the Assessee. The CIT (A) also upheld the addition made by the AO deploying the same reasoning it referred to in respect to the low declaration of the contract amount in the contract with the Consortium. Therefore, the Assessee submits that the Revenue cannot be permitted to tax the same income twice. The Ld. AR relied upon the decision of Hon'ble Supreme Court in the case of CIT Vs. M/s Excel Industries Ltd. [2013] 358 ITR 295/219. Addition in this regard in AY 2011-12 would be absolutely arbitrary and unreasonable as the amount itself was uncertain in the financial year 2010-11 and it will also result in double taxation.

26. The Ld. DR relied upon the Assessment Order and the order of the CIT(A). Further, the Ld. DR submitted the Income-tax Act permits two methods of accounting - mercantile (accrual) and cash. Under the mercantile method, income and expenses are accounted as and when the right to receive or the right to pay arises. Under the cash method, income and expenses are accounted on actual receipt or payment. The Income Tax clearly lays down the scope of total income which includes both-income received as well income accrued. From a conjoint reading of section 5 and Section 145(1) it is amply clear that the assessee is bound to follow either the cash system or mercantile system of accounting. In fact, ITAT Delhi Bench in the case of KC Kailash

Associates in ITA 2399/Del/2010 for A.Y prohibits the-use of a mixed system of accounting (from 1997-98 onwards). The assesse follows a mercantile system of accounting where revenue and cost are recognized as they are incurred. Here, a right to receive arose in the hands of the assesse when the assessee concern signed an agreement with Consortium of CWG for providing electrical support for opening and closing ceremony of Common Wealth Games. The Apex Court in the case of CIT(A) Vs. A. Gajapathy Naidu [Equivalent citations: 1964 SCR (7) 767] discussed this issue at length and also discussed the case of Commissioner of Income Tax V. Vazir Sultan & Sons, [1959] Supp. 2 S.C. R., 375. The Apex Court order also discussed the case of S. D. Sassoon and Co. Ltd. Vs. Commissioner of Income-tax, Bombay City, [1955] 1 S. C. R 313, that followed Rogers Pyatt Shellac & Co. V. Secretary of State (1925) I.L.R 52 Cal 1. The Calcutta High Court in the case of CIT(A) Vs. Simplex Concrete Piles India (P) Ltd. 179 ITR 8. Accounting Standards laid down by ICAI also lays down that when the realization of income is virtually certain- then the related asset is not a contingent asset and its recognition is appropriate. Here again what is true for recognition of a payment is also true for recognition of income under mercantile system of accounting. In the case of CIT(A) Vs. Shrimati Singari Bai In another case on a similar issue the matter was decided in favour of Revenue in the case of Delhi Transco Ltd. in ITA No 2483/Del/2013 for AY 2005-06. Submissions regarding provisions of section 145(2), Section 5 of Income Tax Act, case laws on mercantile method of accounting and accounting principles regarding recognition of revenue. The Ld. DR submitted that these submissions of the Revenue may be considered along with oral submissions in this regard and the grounds of appeal raised by assesse may be dismissed.

27. We have heard both the parties and perused all the relevant material available on record. The Ld. DR submitted that the assesse follows a mercantile system of accounting where revenue and cost are recognized as and when they are incurred. Here, a right to receive arose in the hands of the assesse when the assessee concern signed an agreement with Consortium of

CWG for providing electrical support for opening and closing ceremony of Common Wealth Games. But the facts are that the Assessee could only determine the exact amount payable to it when the R/A Bills were provided to it to, in turn, include it as income in its books of accounts. As per Accounting Standard 9 on revenue recognition issued by the ICAI, para 11 of the main principle inter-alia states if at the time of raising of any claim it is unreasonable to expect ultimate collection, revenue recognition should be postponed." The payment (Rs. 27,72,354/-) for the work done in the contracts with CPWD was made through the tenth RA Bill dated 13.11.2011. Thus, the Assessee included the income in its books of accounts as income credited for the AY 2012-13. Thus, the assessee has postponed the revenue recognition due to the reason that the exact amount payable was not determined and the expected time for receiving payment was also not definite. Therefore, Ground No. 2 of the assessee's appeal is allowed.

28. As regards to Ground No. 3 in respect of disallowance of business promotion expenses (Addition of Rs. 15,50,000/-) -, the Ld. AR submitted that the Assessee debited its P & L account by Rs. 15,50,000/-on account of business promotion expenses during the year. Assessee has executed the work contract of more than 40 Crore as a consortium partner as well as independent contractor for CPWD. The CWG project was one of the most prestigious events and also one of the major achievements of the Assessee company. It was a showcase for its future contracts, demonstration piece of prospective clients, business associates, and pride moment for its staff. Accordingly, the assessee in order to demonstrate, its execution and work capabilities and also to reward/incentivize its staff who worked relentlessly for execution of such work contract, had purchased the CWG tickets and incurred such expenditure. The assessee provided tickets of the opening ceremony to both the customers and the employees. The expenditure incurred was bona-fide. The ledger account for the said expenses showed that the amount was incurred for the purchase of opening ceremony tickets of the CWG-2010. The AO decided that Assessee

failed to establish that the business purpose in incurring the said expenses. Thus, the AO made an addition of Rs. 15,50,000/- in the income of the Assessee. The CIT (A) upheld the addition made by Assessing Officer. It is therefore, submitted that the aforesaid business expenses were incurred by the Assessee in the normal course of its business, which are allowable deduction under section 37(1) of the Act. The expenditure was necessary for carrying on the business more efficiently and for all future business opportunities. In that view of the matter, the aforesaid expenses are allowable as deduction. It is also humbly submitted that the contract was still in existence even after the opening ceremony concluded as the contract of the assessee included both the opening as well as closing ceremony. In the below mentioned case it was observed that incurring of business promotion/ publicity expenditure wherein the expenditure has been incurred during the existence of a running business is allowable as revenue deduction:-

- Hindustan Commercial Bank Ltd, In re: 21 ITR 353 (All.)
- Praga Tools Ltd. v. CIT: (1980) 123 ITR 773 (AP)
- CIT v. Sakthi Soyas Ltd.: 283 ITR 194 (Mad.)
- ACIT v. Delhi Cloth & General Mills Co. Ltd.: 144 ITR 275
- CIT v. S.L.M. Maneklal Industries Ltd. : 107 ITR 133
- CIT v. Escorts Employees Ancillaries Ltd. : 224 ITR 28
- SCM Maneklal Industries Ltd. v. ITO: 17ITD 515

The Assessing Officer failed to appreciate that it is settled law that the Assessing Officer cannot put himself in the armchair of a businessman to decide the justification of incurring or not incurring any particular expenditure. So long as the expenditure incurred is for business purposes, the same is allowable as business deduction. The Ld. AR relied upon the following decision:

- ❖ CIT v. Dalmia Cement (P.) Ltd: 254 ITR 377 (Del.)
- ❖ CIT V. Bharti Televentures Ltd: 331 ITR 502 (Del.)
- ❖ D & H Secheron Electrodes Pvt. Ltd. vs. CIT: 149 ITR 400 (MP).

29. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

30. We have heard both the parties and perused all the relevant material available on record. The assessee provided tickets of the opening ceremony to both the customers and the employees. The expenditure incurred was bona-fide. The ledger account for the said expenses showed that the amount was incurred for the purchase of opening ceremony tickets of the CWG-2010. The AO decided that Assessee failed to establish that the business purpose in incurring the said expenses. Thus, the AO made an addition of Rs. 15,50,000/- in the income of the Assessee. The CIT (A) upheld the addition made by Assessing Officer. But while determining this addition the Assessing Officer as well as CIT(A) has not looked into the aspect of the business purpose involved in the same. By providing the tickets to the customers and the employees, the assessee promoted its business and has earned a reputation that it is involved in the big events such CWG-2010. This may not yield the immediate business but it impacts the business prospects of the assessee for such large future events. Thus, the Assessing Officer as well as CIT(A) was not correct in disallowing the said expenses. Ground No. 3 is allowed.

31. As regards to Ground No. 4, relating to addition on account of scrap sale of Rs. 3,35,58,732/- (Rs. 1,42,48,577/-, Rs. 1,91,90,514/- and 1,19,641), the Ld. AR submitted that Assessing officer made this addition on estimated basis on account of assumed residential value of the items. During the year under consideration Assessee has claimed expenditure on purchase of the above items and same was duly recorded in profit and loss account. The said material was utilized in executing the contractual work for CWG 2010 at various sites. The material was primarily used as raw material throughout in the process of erecting, constructing, installing/renovating the structures and fittings. Hence, the original form of raw materials purchased underwent complete/substantial change in its form and size as it was cut/modified/altered as per the

requirements of the structure/work. Assessing Officer made the abovementioned addition on the ground that the purchase made by assessee of several items were of such nature that either they have multiple use or have substantial resale value. Assessing Officer arrived at the minimum resale/ scrap value of the above items and made the impugned addition without providing any basis of addition nor confronting the documents on the basis of which addition is made. Assessing Officer has not found iota of evidence to establish that the scrap was sold for a value otherwise as recorded in the books of accounts. Assessing Officer has made addition on estimated basis without even rejecting the books of account. In the relevant assessment year, the Assessee has claimed expenditure of Rs. 13,90,54,863/- crores on purchase of electrical items. Total amount of scrap sale credited to the P/L A/C by the Assessee amounts to Rs. 4,97,16,660/- crores. The AO estimated scrap sales to be 46% of the total expenditure on purchase of electrical cable i.e. 46% of 13,90,54,863 crores which equals to Rs. 6,39,65,237 crores. The total addition on the basis sale of electrical cable amounts to Rs. 6,39,65,237 crores - Rs. 4,97,16,660/- crores (as shown by the assessee) = Rs. 1,42,48,577 crores. With respect to the addition made in respect to electrical items, the Ld. AR submitted that the Assessee vide letter dated 11.03.2013 filed before the AO had given the ledger accounts of the parties to whom copper cables were sold. The said copper cables were sold M/s Trismaee Enterprises and M/s Arshi International India. Copy of ledger accounts of M/s Trismaee Enterprises and M/s Arshi International India along with invoices of Deepali Designs & Exhibits P. Ltd. had also been filed before the AO. The AO with regard to Aluminium estimated the value of scrap sales to be 50% of the expenditure on purchase i.e. Rs. 2,43,83,070/-. The AO observed that aluminium fetches an amount of 50-60% of the actual value. Addition in this regard was made of Rs. 1,22,62,622/- crores. The AO with regard to Flooring, carpets & Awning Tenting Material estimated the value of scrap sales to be 30% of the total expenditure on purchase by the Assessee i.e Rs. 38,69,249/-. The AO observed that these amounts cannot be wholly consumable and made an addition of Rs.

11,60,774/- lacs. The AO with regard to Purchase of pipes, iron sheets, & other misc items estimated the value of scrap to be 60% of the expenditure on purchase by the Assessee i.e. Rs. 44,36,002/- which amounted to Rs. 26,61,601/-. The AO with regard to Tenting Material Fabric estimated the value of scrap to be 50% of the expenditure on purchase by the Assesee i.e Rs. 1,16,34,835/- and made an addition of Rs. Rs. 58,17,417/-. As these electrical items were of a capital nature, their residual value was determined to be 46% like the other electrical items. Thus, the total addition by the AO on the basis of the scrap value of all the aforementioned was of Rs. 3,35,58,732/-. On appeal, the CIT (A) agreed with the reasoning of the AO and confirmed the addition made by the AO. It is humbly submitted that Search and seizure operation u/s 132 of the Act was conducted at the business/residential premises of the Assessee on 19.10.2010. However, no documents were found during the search with respect to scrap sales. Therefore, there was nothing on record to show that sales of scrap outside the books of accounts were made. In this regard, we submit that the AO has not found even iota of evidence to establish that the scrap was sold for a value otherwise as recorded in the books of accounts. Also, no reason has been given for not accepting the value recorded in the books for scrap sale. That there was no evidence that any sale of scrap, over and above what was shown by the Assessee, was ever made by the Company and such sale could not be presumed in absence of any evidence of sale of scrap outside books. Hence, the order is non-speaking order. The Ld. AR relied upon the following decisions:—

(i) Pandit Bros. v. CIT 26 ITR 159 (Puni.)

(ii) Bombay Cycle Stores Co. Ltd. v. CIT 33 ITR 13 (Bom.)

(iii) R.B. Bansilal Abirchand Spg. & Wvg. Mills v. CIT 75 ITR 260 (Bom.)

(iv) International Forest Co. v. CIT 101 ITR 721 (J&K);

(v) Malani Ramjivan Jagannath v. Asstt. CIT (2007) 207 CTR (Raj.) 19.

32. The Ld. AR submitted that on one hand he has accepted the books of

accounts and on the other hand he has made additions on estimated basis disregarding the actual sales; hence, any addition on estimated basis without rejection of books is not justified. The Ld. AR submitted that the expenditure incurred on purchase of the above items was duly recorded in the P&L Account. The said material was utilized in executing the contractual work for CWG 2010 at various sites. This material was primarily used as a raw material/ throughput in the process of erecting, constructing, installing/ renovating the structures and fittings. Hence, the original form of raw materials purchased underwent complete/ substantial change in its form and size as it was cut/modified/altered as per the requirement of the structure/work. The percentage of residual value mentioned in the assessment order is capable of deviation due to host of/actors including lesser realization, more wear & tear, deteriorated quality of the final, recoveries pilferage in the process etc. Further, the Ld. AR submitted that the residual percentage, is a subjective phenomenon and cannot be considered as watertight or infallible mathematical calculation. Final salvage depends upon the nature of each type of material and factual matrix of the work being executed. The contract was awarded to assessee to light up the Jawahar Lal Nehru stadium covering each nook & corner of the stadium during CWG 2010. For this, apart from electric cables a lot of hardware items, earth wires, switch, panels, MCB'S were used. These items were primarily of nature, that once installed, it loses its utility value and can only be sold as scrap after dismantling. Also, the scrap of electrical fitting, items and accessories majorly comprises of plastic material and metal residue, which has little realizable value. The Ld. AR relied upon the judgment of the ITAT, Delhi in the case of ACIT Vs. M/s Sikka Papers Ltd. (ITA No. 899/D/2012) wherein it has been held that addition in relation to sale of scrap would not sustain without pointing out any discrepancy in bills and consumptions as well as estimation of scrap value. The ITAT, Ahmedabad in the case of DCIT Vs. Heavy Metal & Tubes (ITA No. 294/Ahd/2010) has held that the Assessee had given all the details for generation of scrap and parties to which the scrap was sold. And in absence of any enquiry by the AO, the

addition on sale of scrap on estimate basis without pinpointing any defect in the books of accounts of the Assessee cannot be sustained. Further, the ITAT, Delhi in the case of ACIT Vs. M/s Richa & Company (ITA No. 3502 & 3503/Del/09) has also held that adhoc addition on sale of scrap without anything to show that the sale of scrap was outside the books of accounts and any information had been suppressed by the Assessee, in absence of any corroborative piece of evidence the addition is liable to be deleted.

33. Without prejudice CWG project work was peculiar and first of its kind undertaken by the assessee. Though primarily items like Generator sets, Electric cables' etc, were supplied in Jawahar Lal Nehru stadium, numbers of other items were also supplied at various games - venues situated in different parts of the city. It is a known fact that immediately after the conclusion of the games, there was a lot hue and cry in the public and media. Several Government agencies initiated investigation/ probe on the conduct of OCCWG-2010, vendors/suppliers and contractors associated with the conduct of the games. This sudden development immediately after the conclusion of the games heavily impacted the work of dismantling and recovery of installed material from various sites and substantial time was spent in attending to various government agencies involved in probe. Thus, at this juncture the-aspect of the recovery of the entire material/supplies made by the assessee company was superseded by the action of facing the above said various authorities for a length of time has resulted into short recovery of material from site.

34. Without prejudice to the above, most of the material utilized in the work is in the nature of consumables like nails, screws, fevicol, etc which has no scrape value. After the completion of the CWG event, the structures were dismantled/ broken and the remnant was collected in the best possible manner in a very short time frame and under tight schedule, so that some salvage value could be realized out of the said residual scrap. The extracted

residual material substantially lost its usable commercial value and thus could Only be sold on weight basis in its respective category like metal, plastic, paper, fabric, etc. The realized value of scrap has also been duly credited to the P & L account. In this regard, the Ld. AR submitted a letter dated 09.03.2013 before the AO whereby the assessee has clearly provided that the residual value of other items was very less as compared to the residual value as estimated by the AO due to the reasons set out in the Assessment Order in respect of each item. Inspite of all these odds and special circumstances mentioned above, the assessee company was able to sell, whatever quantity it could recover in respect of the used material, at the best of its ability in these stressful circumstances and was able to fetch Rs. 5 crores which has been duly entered in the books of accounts. The Ld. AR submitted that copies of names of the parties to whom scrap material was sold were given during the course of Assessment proceedings vide letter dated 11.03.2013 as mentioned above. The Ld. AR further submitted that the AO while making the addition on account scarp sale stated that the same was due to market value. However, copy of such market report is not available with the assessee neither has the AO reproduced a copy of the same while passing the Assessment order. The market enquires conducted by the AO were never confronted to the assessee. The AO has not conducted any further enquiry on his own, therefore, the addition made on account of scarp sale cannot sustain.

35. As regards the addition made by AO on the basis of deemed residual value, the Ld. AR submit that his action is grossly unjustified. The AO has made the addition on estimated basis whereas the actual realized value of scrap was recorded in the books.

36. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

37. We have heard both the parties and perused all the relevant material available on record. Assessing Officer made the abovementioned addition on

the ground that the purchase made by assessee of several items were of such nature that either they have multiple use or have substantial resale value. Assessing Officer arrived at the minimum resale/ scrap value of the above items and made the impugned addition without providing any basis of addition nor confronting the documents on the basis of which addition is made. Assessing Officer has not found iota of evidence to establish that the scrap was sold for a value otherwise as recorded in the books of accounts. Assessing Officer has made addition on estimated basis without even rejecting the books of account. In the relevant assessment year, the Assessee has claimed expenditure of Rs. 13,90,54,863/- crores on purchase of electrical items. Total amount of scrap sale credited to the P/L A/C by the Assessee amounts to Rs. 4,97,16,660/- crores. The AO estimated scrap sales to be 46% of the total expenditure on purchase of electrical cable i.e. 46% of 13,90,54,863 crores which equals to Rs. 6,39,65,237 crores. The total addition on the basis sale of electrical cable amounts to Rs. 6,39,65,237 crores - Rs. 4,97,16,660/- crores (as shown by the assessee) = Rs. 1,42,48,577 crores. With respect to the addition made in respect to electrical items, the Assessee vide letter dated 11.03.2013 filed before the AO had given the ledger accounts of the parties to whom copper cables were sold. The said copper cables were sold M/s Trismaee Enterprises and M/s Arshi International India. Copy of ledger accounts of M/s Trismaee Enterprises and M/s Arshi International India along with invoices of Deepali Designs & Exhibits P. Ltd. had also been filed before the AO. The AO with regard to Aluminium estimated the value of scrap sales to be 50% of the expenditure on purchase i.e. Rs. 2,43,83,070/-. The AO observed that aluminium fetches an amount of 50-60% of the actual value. Addition in this regard was made of Rs. 1,22,62,622/- crores. The AO with regard to Flooring, carpets & Awning Tenting Material estimated the value of scrap sales to be 30% of the total expenditure on purchase by the Assessee i.e Rs. 38,69,249/-. The AO observed that these amounts cannot be wholly consumable and made an addition of Rs. 11,60,774/- lacs. The AO with regard to Purchase of pipes, iron sheets, & other misc items estimated the value of scrap to be 60% of the

expenditure on purchase by the Assessee i.e. Rs. 44,36,002/- which amounted to Rs. 26,61,601/-. The AO with regard to Tenting Material Fabric estimated the value of scrap to be 50% of the expenditure on purchase by the Assesee i.e Rs. 1,16,34,835/- and made an addition of Rs. Rs. 58,17,417/-. As these electrical items were of a capital nature, their residual value was determined to be 46% like the other electrical items. Thus, the total addition by the AO on the basis of the scrap value of all the aforementioned was of Rs. 3,35,58,732/-. This entire addition though based on evidence produced by the Assessee during the Assessment proceedings, the Assessing Officer has not taken into account all the relevant evidence while determining the addition on the scrap sale. Besides that the Assessing Officer has not given any basis as to estimation of these sale of scrap. Thus, the reasoning to arrive at this addition is not properly given by the Assessing Officer. The CIT(A) also failed to do the same. Therefore, it will be appropriate that the remand back this issue to the file of the Assessing Officer and after verifying all the evidences produced by the assessee take a cogent view and give a proper reason as to whether this addition sustains or not. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Ground No. 4 is partly allowed for statistical purpose.

38. As regards to Ground No. 5 in respect of disallowance of hire charges to the extent of Rs. 62,33,080, the Ld. AR submitted that during the year under consideration, the Assessee has got the stage fabrication work done aggregating to Rs. 62,33,080/- for various venues. In this regard payment was made to M/s Arun Khullar & Co. for the various works executed by M/s Arun Khullar & Co. The same expenses were claimed by the Assessee in the P & L Account. During the course of assessment proceedings, notice u/s 133(6) of the Act was issued to M/s Arun Khullar & Co. However, because of change in the address of M/s Arun Khullar & Co. and the entire shifting process, notice issued was returned back undelivered. In light of the same, Assessing Officer doubted the genuineness of the transaction undertaken between Assessee and

M/s Arun Khullar & Co. No further opportunity was provided by AO to prove the genuineness of the transaction undertaken. The AO passed an assessment order making addition on account of unexplained purchase/ sale with respect to Hire Charges paid to Khullar & Co. During the course of appellate proceedings before CIT(A), Assessee Company submitted the following documents:

- declaration of M/s Arun Khullar & Co. certifying its present address as '22/5 CH Chatur Singh Farm, Jounapur Village (Near Bhawani Nursery), P.O. Mehrauli, New Delhi,
- copy of PAN Card of Mr. Arun Khullar proprietor of M/s Arun Khullar & Co., .
- copy of the ITR and Computation for the concerned year, Balance Sheet and P & L Account
- copy of invoices issued to the Assessee Company for the FY 2010-11,
- confirmation of account copy, and,
- copy of Bank Statement duly reflecting the transactions.

An application under Rule 46A of the Income Tax Rules, 1962, was filed before the CIT(A) since the Assessee was prevented by the sufficient cause from producing the abovementioned documents before the Assessing Officer during assessment proceedings. In his remand report, the Assessing Officer requested for non-admission of additional evidence adduced by the Assessee without appreciating the facts of the case and the documents submitted under the said rule. CIT(A) rejected the application under Rule 46A of the Income Tax Rules, 1962, without commenting on the abovementioned documents submitted to prove the identity, genuineness and creditworthiness of the transaction. The CIT(A) has failed to appreciate that M/s Arun Khullar & Co. is a regular service provider to the Assessee. Arun Khullar & Co. provides services in relation to stage set-up and design, etc. for the various events handled by the Assessee in the normal course of business. In this regard reliance is placed on the decision

of the Tribunal in the case Dhanna Ram Garg v. Income-tax Officer, Ward 25(1), New Delhi (ITA No. 2216/D/2011). The Assessee submitted ledger accounts for AY 2009-10 to 2014-15. It is pertinent to note that such ledger accounts were also submitted during the course of assessment proceedings which were duly accepted by the Assessing Officer in the subsequent year wherein the identity, genuineness and creditworthiness of the transaction was accepted by the department. That with respect to the non-delivery of notice u/s 133(6) of the Act to M/s Arun Khullar & Co., it is submitted that the address of M/s Arun Khullar & Co. at the time of the delivery of notice was in the process of shifting to its new address. Upon the return of the undelivered notice, the AO neither made an effort to issue notice/summons at the old address of M/s Arun Khullar and Co. nor did he resend the notice at the new address of the company. It is further that the AO never confronted the Assessee that the notices u/s 133(6) was not delivered to M/s Arun Khullar & Co. The assessee during the appeal proceedings before CIT(A) has submitted that the assessee was never asked to produce the Mr. Arun Khullar by the AO and if an opportunity would have been given, the assessee would have produced Mr. Arun Khullar or his representatives. It is submitted that the AO committed a breach of the principles of natural justice by not allowing the Assessee Company to produce the Mr. Arun Khullar proprietor of M/s Arun Khullar & Co.

39. Without prejudice to the aforementioned, in the absence of any incriminating material jeopardizing on record that would jeopardize the genuineness of the transaction, the AO disallowed the genuineness of the transaction merely of the basis of the fact that the party transacted with was not produced. No other supporting or circumstantial evidence available to the AO was considered neither by him nor by the CIT (A) in appeal. The Ld. AR relied upon the decision of the Bombay High Court in the case of Commissioner of Income Tax-1, Mumbai v. Nikunj Eximp Enterprises (P.) Ltd.

[2013] 216 taxmann.com 171 (Bombay).

40. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

41. We have heard both the parties and perused all the relevant material available on record. An application under Rule 46A of the Income Tax Rules, 1962, was filed before the CIT(A) since the Assessee was prevented by the sufficient cause from producing the abovementioned documents before the Assessing Officer during assessment proceedings. In his remand report, the Assessing Officer requested for non-admission of additional evidence adduced by the Assessee without appreciating the facts of the case and the documents submitted under the said rule. CIT(A) rejected the application under Rule 46A of the Income Tax Rules, 1962, without commenting on the abovementioned documents submitted to prove the identity, genuineness and creditworthiness of the transaction. Thus, it will be appropriate to remand back this issue to the file of the Assessing Officer and after taking cognizance of the documents in the form of additional evidence, the Assessing Officer should decide this claim accordingly. Needless to say the assessee be given opportunity of hearing by following principles of natural justice. Ground No. 5 is partly allowed for statistical purpose.

42. As regards to Ground No. 6 in respect of general disallowance of Rs. 3,68,579, the Ld. AR submitted that during the year under consideration, Assessee has claimed following expenditure in respect of its business activities:

i. Motor vehicle running -Rs. 14,53,527/-
ii. Telephone expenses -Rs. 18,07,586/-
iii. Depreciation (on cars) - Rs. 4,24,679/-

The AO, on the perusal of the ledger account, observed that the above expenses have not been incurred fully and wholly for the purpose of business. The expenditure claimed by the Assessee has been disallowed on ad hoc basis

disregarding the actual audited books of accounts and record produced to substantiate the above transaction. The AO disallowed 1/5th of the expenses which came to Rs. 7,37,158/- (1/5 of 36,85,792/-). CIT(A) upheld the addition made by the AO, however, it found that the disallowance made by the AO at 1/5th was high and it restricted the disallowance to 1/10th of the total expenditure claimed by the Assessee i.e. Rs. 3,68,579/-. The Ld. AR submitted that the A.O while passing the Assessment Order u/s 143(3) of the Act for AY 2012-13 disallowed 1/5th of Telephone expenses, Repair & Maintenance of motor vehicle & Depreciation expenses etc. However, the CIT (A) u/s 250(6) of the Act while passing an order for AY 2012-13 after examining the book of accounts and the entire voucher produced by the assessee, deleted the addition in this regard. It is noteworthy the department has accepted the stand of CIT(A) and no appeal is made in this regard. The Ld. AR further submitted that the AO while passing an order u/s 143(3) for AY 2013- 14 has not made any addition in this regard. Therefore, the AO in subsequent years has accepted the stance of the assessee and has not made any addition. The Ld. AR relied upon the judgment of Hon'ble Gujrat High Court in the case of Sayaji Iron & Engg. Co. Vs. CIT [2002] 253 ITR 749 (Gujarat) wherein it has been held that no disallowance of car expenses can be made in the hands of the assessee-company on account of personal use of cars by directors. The ITAT, Delhi in the case of DCIT Vs. Sophisticated Marbles and Granite Industries [2010] 3 ITR(T) 220 (Delhi) have been held disallowances of car expenses on account of being personal in nature cannot be merely based on estimate basis or ad hoc basis. Similar observation with respect to Telephone expenses has been made in the judgment of Hon'ble Punjab and Haryana High Court in the case of CIT Vs. S.S.P (P.) Ltd. [2011] 14 taxmann.com 87 (Punj. & Har.) As regards the addition made by AO we submit that his action is grossly unjustified.

43. The Ld. DR relied upon the Assessment Order and the order of CIT(A).

44. We have heard both the parties and perused all the relevant material available on record. This Ground is decided while deciding the appeal filed by the revenue in respect of Ground No. 5. Thus, Ground No. 6 is dismissed.

45. Since we are deciding the appeals, the stay application does not survive, hence dismissed.

46. In result, appeal of the Revenue is dismissed and appeal of the Assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on 14th March, 2019.

Sd/-	Sd/-
(N. K. BILLAIYA)	**(SUCHITRA KAMBLE)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 14 /03/2019
R. Naheed *

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	17.01.2019
Date on which the typed draft is placed before the dictating Member	17.01.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	14.03.2019
Date on which the final order is uploaded on the website of ITAT	14.03.2019
Date on which the file goes to the Bench Clerk	14.03.2019
Date on which the file goes to the Head Clerk	