

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E', NEW DELHI  
BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.170 /Del./2016  
(ASSESSMENT YEAR : 2011-12)**

Assistant Commissioner of Income Tax Vs. Veekay General Industries Circle 55(1), New Delhi	B-46, Jhilmil Industrial Area, Shahdara Delhi <b>PAN : AAAFV1849E</b>
<b>Appellant</b>	<b>Respondent</b>

ASSESSEE BY : Sh. V.P.Bansal, CA  
REVENUE BY : Smt. Rinku Singh, Sr.DR

Date of Hearing : 12 .03.2019  
Date of Order : 27.03.2019

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

The appellant Assistant Commissioner of Income Tax, New Delhi (hereinafter referred to as 'the revenue') by filing the aforesaid appeal, sought to set aside the impugned order dated 27/10/2015 passed by Ld. Commissioner of Income Tax(Appeals)-19, New Delhi qua the Assessment Year 2011-12 on the grounds inter alia that :

*“1. On the facts and in the circumstances of the case, the order of the Ld. CIT(A) is bad in law and not in consonance with the facts of the case.*

*2. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in accepting the additional evidences under rule 46A and thus granting relief to the assessee. In this case reliance is placed on the case of CIT vs. Manish Buildwell Pvt. Ltd. of the Hon’ble Delhi High Court.*

*3. The Ld. CIT(A) has erred in law and also on facts by deleting the addition of Rs. 1,37,16,403/- u/s 68 on account of un-reconciled balances.*

*4. The CIT(A) has erred in law and also on facts by deleting the addition of Rs. 42,90,700/- on account of under statement of income accrued on interest.*

*5. The Ld. CIT(A) has erred in law in deleting the addition made at Rs. 7,30,084/- on account of interest expenses on borrowed funds used for investment in margin money reliance is placed on the case of Abhishek Industries, 286 ITR 1 (P&H), High Court.*

*6. The appellant craves leave to add, allow or amend any/all the grounds of appeal before or during the course of hearing of the appeal.”*

2. Briefly stated that facts necessary for adjudication of the controversy at hand are : assessee is engaged in the business of

manufacturing of copper and aluminium alloys wires and conductors and supplies its products to Indian Railway or to the parties who are suppliers to Railways. AO noticed balance outstanding in the account of M/s. ECI Engineering Construction Company Ltd. is not matching with balance outstanding in L/C discounted account with HDFC Bank Ltd. Declining the explanation made by the assessee AO made addition of Rs. 1,37,16,403/-. AO also noticed from the ledger account of M/s. ECI Engineering that no such interest amount of Rs. 42,90,700/- was debited in the party ledger and as such proceeded to hold that income of Rs. 42,90,700/- was internally set-off in a veiled manner and consequentially made addition to the total income of the assessee. AO also made addition of Rs. 7,30,084/- out of expenditure incurred by the assessee on interest paid on funds borrowed for the purposes of business. On the ground that the assessee was engaged in the purchase of sale of copper futures on the multi commodity exchange. AO thereby assessed the total income of Rs. 2,09,65,330/-.

3. Assessee carried the matter before Ld. CIT(A) by way of filing the appeal who has deleted the addition by partly allowing the appeal. Feeling aggrieved the revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the ld. DR for the revenue and gone through the order passed by the lower revenue authorities.

5. Ld. DR for the revenue challenging the impugned order passed by Ld. CIT(A) relied upon the assessment order. However, on the other hand the Ld. AR for the assessee relied upon the order passed by Ld. CIT(A) and contended that accounts have been duly reconciled

**Ground no. 1**

6. During the course of appellant proceedings, assessee has filed bill wise details of L/Cs and their discounting on maturity and tabulated the same at page 6. It is also not in dispute that the assessee had received the advance of Rs. 3 crore from M/s. ECI Engineering construction out of which Rs. 1 crore was paid and the amount of Rs. 2 crore was balance outstanding. It is also explained by assessee that invoices dated 11.03.2011 of interest amounting to Rs. 4,63,913/- and bill no. 245 amounting to Rs. 65,68,138/- where L/C was short by Rs. 15,28,977/-.

7. Assessee has brought on record balance sheet, P & L Account, list of debtors and creditors, copy of account of LC discounted with HDFC Bank, copy of account of ECI

Engineering and construction company. From the letter dated 20.02.2014 written to AO available at page 22 to 26 of the paper book along with reconciliation statement available at page 27 duly explains the fact but the AO could not locate the difference and verify that the difference occurred between two accounts because of security deposit.

8. Ld. CIT(A) has rightly reached the conclusion that since the difference on the account of interest and recovery of the sale have been duly accounted in the books of accounts nothing left to show escapement of income and thereby deleted the addition. The Ld. DR for the revenue has not specifically pointed out if the reconciliation made in para 8 of the impugned order passed by Ld. CIT(A) is not tallying with book of accounts otherwise accepted by the AO. So we find no illegality or perversity in deleting the addition of Rs. 1,37,16,403/- by Ld. CIT(A), hence, ground no. 1 determined against the revenue.

**Ground no. 2**

8. AO noticed from the ledger account of the assessee that there was an amount of interest accrued to the tune of Rs. 42,90,700/- which has not been debited to the ledger account of M/s. ECI Engineering Construction Company Ltd. and

reached the conclusion that the amount of debtor namely M/s. ECI Engineering Construction Company was understated and as such income of the assessee has been internally set-off in a veiled manner to the tune of Rs. 42,90,700/-.

9. The Ld. CIT(A) deleted the addition by after verifying the fact that the interest receivable has been duly shown under the head 'loan and advances' as per accounting the entry given below :-

Interest accrued debit	42,90,700/-	
To interest received	42,90,700/-	
Interest received account debit		42,90,700/-
To P & L Account		42,90,700/-

So, when the entire amount of interest has already been offered to tax, there is no question of understating the amount of Rs. 42,90,700/- by the assessee. So, Ld. CIT(A) has rightly deleted this addition, hence, grounds no. 2 is also determined against the assessee.

### **Ground no. 3**

10. Assessing Officer made addition of Rs. 7,30,084/- out of expenditure incurred by the assessee on interest paid on borrowed funds on the ground that the same were used for

future trading as the assessee is found to have purchased futures to the tune of Rs. 52.00 lacs. However, it is the case of the assessee that since copper was the main raw material and to safe guard price fluctuation for the raw material he was hedging in the future market.

11. The Ld. CIT(A) has rightly reached the conclusion that since the assessee company is a cash rich company with substantial bank deposit and the assessing officer has failed to bring on record any nexus between the funds borrowed and investment made in the margin money in the future market, the business expediency of discounting L/C bills is proved when sufficient working capital is there with the assessee. The AO is not to decide the business expediency of the assessee qua discounting L/C bills, when there was sufficient working capital.

12. So the view taken by the CIT(A) that hedge was carried out to safeguard the fluctuation in the price of copper, which is certainly for the purpose of business as the copper was the main raw material in the business of the assessee, is sustainable and needs no interference. Hence, Ld. CIT(A) has rightly deleted the addition, resultantly ground no. 3 is determined in against the assessee.

12. In view of what has been discussed above present appeal filed by the revenue is hereby dismissed.

**Order pronounced in open court on this 27<sup>th</sup> March, 2019.**

**Sd/-  
(R.K.PANDA)  
ACCOUNTANT MEMBER**

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

**Dated: 27<sup>th</sup> /03/ 2019  
BR**

Copy forwarded to:

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

AR, ITAT  
NEW DELHI

Date of dictation	12.03.2019
Date on which the typed draft is placed before the dictating Member	
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	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

