

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

**BEFORE SH. R.K PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.2587/Del/2015
Assessment Year: 2010-11

ACIT Circle – 22 (1) New Delhi	Vs	M/s. Samtel Glass Ltd., 501, Copia Corporate Suites, Distt. Centre Jasola, New Delhi -110025
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. P. V. Gupta, Sr. DR
Respondent by	Sh. D. K. Garg, C. A.

Date of hearing:	26/03/2019
Date of Pronouncement:	29/05/2019

ORDER

PER R.K. PANDA, AM:

1. This appeal filed by the revenue is directed against the order dated 17.02.2015 of the CIT(A)-8, New Delhi relating to A. Y. 2010-11.
2. Ground of appeal No.1 by the revenue reads as under :-

“The Ld. CIT(A) has erred in deleting the disallowances on excess depreciation claimed by assessee as no capital expenditure was incurred by assessee on factory building.”

3. Facts of the case, in brief, are that assessee is a company engaged in business of glass shell part comprising of glass panel and

glass funnels for Black and White television picture tubes, glass funnels for colour picture tubes etc. It filed its return of income on 24.09.2012 declaring total income of Rs.21,31,28,460/-. The Assessing Officer during the course of assessment proceedings observed that while completing the assessment proceedings for A. Y. 2001-02 it was noticed that the assessee company has claimed expenditure of Rs.7,09,96,652/- on the construction / addition of its factory building. The assessee company filed a valuation report regarding the construction of factory building, wherein the factory building was valued at Rs.5,61,93,308/- and it was held that expenditure to the tune of Rs.1,48,03,344/- were not incurred for the purpose for the said factory building and thus the same could not be allowed to be capitalized. In this way the assessee company claimed excess capitalization by 20.85% and similarly claimed excess depreciation by 20.85%. During the year the assessee company claimed depreciation on factory building amounting to Rs.66,63,223/-. The excess depreciation @ 30.85% comes to Rs.13,89,280/-. The Assessing Officer accordingly made an addition of Rs.13,89,280/- being excess depreciation claimed by the assessee company for this year also.

4. In appeal the Ld. CIT(A) following the order of the Tribunal in assessee's own case for A. Y. 2001-02 deleted the addition made by the Assessing Officer.

5. Aggrieved with such order of the CIT(A), the revenue is in appeal before the Tribunal.

6. After hearing both the sides, we find identical issue had come up before the Tribunal in assessee's own case for A. Y. 2001-02 and 2002-03. We find the Tribunal vide ITA No.4919 and 514 /Del/2009 and 2010 and Co. No. 54 and 66/ Del/2010 has decided the issue by observing as under :-

“11. We have heard the rival submissions and have gone through the material available on record. We find that the addition was made by the Assessing Officer on the basis of difference in the value of addition in factory building as per books of accounts and as per the report of registered valuer. This difference has been properly explained by the assessee being on account of pre-operative expenses capitalized by the assessee to the extent of Rs.161.05 lakhs which was not considered by the registered valuer. Under these facts, we do not find any reason to interfere in the order of the CIT(A) on account of deletion of addition of Rs.148.03 lakhs. The disallowance of depreciation as consequential and hence, the deletion of disallowance of depreciation is also justified. Ground No. 3 & 4 of the revenue's appeal in assessment year 2001-02 are also rejected.”

7. Respectfully following the decision of the Tribunal in assessee's own case cited (supra) and in absence of any contrary material brought to our notice we do not find any infirmity in the order of the CIT(A) on this issue deleting the addition. Accordingly the ground No. 1 raised by the revenue is accordingly dismissed.

8. The ground of appeal No.2 by revenue reads as under :

“The Ld. CIT(A) has erred in deleting the disallowance of Rs.2,32,26000/- made by the assessing officer on interest expenses, not incurred for the purpose of business, since the

assessee company has given interest free loan on one hand and claiming payment of interest on loan taken on the other hand.”

9. Facts of the case, in brief, are that the Assessing Officer during the course of assessment proceedings observed that the assessee company has given interest free advances/ loan to its subsidiary company M/s. Palka Investments Pvt. Ltd. He, therefore, asked the assessee to justify the interest free advances to its subsidiary company and asked the assessee to explain as to why the interest to the extent of interest free advances should not be disallowed. Rejecting the various explanation given by the assessee and following his order for A. Y. 2009-10 the Assessing Officer disallowed an amount of Rs.2,32,26,000/- being interest @14% on the amount advanced to the subsidiary company.

10. In appeal the Ld. CIT(A) deleted the addition by observing as under :-

4.2 I have considered the assessment order, written submission filed by the Ld. AR of the appellant, I agree with the argument of the Ld. AR of the appellant. The interest bearing loan was converted into interest free loan on the conversion of M/s. Palka Investment Pvt. Ltd. into a subsidiary of the appellant company. Loan granted to company is to be treated as business purposes. Hence, I am of the view that the Ld. AO has wrongly taken the view that interest free advances were granted to the subsidiary company from the amount borrowed on interest. Hon'ble Delhi High court of the case of CIT Vs. Dalmia Cement Bharat Ltd. 330 ITR 595 held that “In the absence of anything to show that the interest free loan

given by the assessee company to its subsidiary company was for personal benefit of any director or for any other personal reason, it has to be held that the loan was given for the purpose of business and commercial expediency, therefore, no portion of the interest paid by the assessee on its borrowed funds can be disallowed on the ground that a part thereof has been diverted to the subsidiary company.”

11. Aggrieved with such order of the CIT(A), the revenue is in appeal before the Tribunal.

12. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We find identical issue had come up before the Tribunal in assessee's own case in the immediately preceding assessment year. We find the Tribunal vide ITA No.534/Del/2014 order dated 03.03.2017 for A. Y. 2009-10 has decided the issue in favour of the assessee by observing as under :-

6. *We have heard both the parties and perused the records, especially the impugned order passed by the Ld. CIT(A), Written Synopsis. We find that the assessee is a public limited company engaged in the business of manufacture and sales of glass shells and funnels used in color television picture tubes. This appeal is preferred against confirmation by the CIT(A) of the addition amounting to Rs. 1,60,95,995/- made by the Assessing Officer as notional interest on account of interest free loan given to subsidiary. We note that the assessee company advanced Inter*

Corporate Deposits (ICD) to M/s Palka Investment Pvt Ltd. and charged agreed interest on the ICD. Details of the same are given as under:

<i>Date</i>	<i>Amount Rs.</i>	<i>Rate of Intt</i>	<i>Interest Amt Rs</i>	<i>TPS Rs</i>
<i>23.06.2008</i>	<i>7,48,00,000/-</i>	<i>'</i>	<i>14% 3,15,594</i>	<i>58,511</i>
<i>24.06.2008</i>	<i>5,96,00,000/-</i>		<i>14% 2,28,602</i>	<i>46,498</i>

7.1 We further note that during the year under consideration, M/s Palka investment Pvt. Ltd. became subsidiary of the assessee company which is widen! from the financial statement of the appellant (Schedule - 5 Investments' and copy of 'resolution' dated 18-08-20()8). On becoming of its subsidiary on 04-07-2008, for business considerations the "assessee company converted its existing loan of Rs, 13,44,00,000/- to interest free loan and granted further interest free loan amounting to Rs. 3,15,00,000/- to M/s Palka Investment Pvt. Ltd. The loans given to M/s Palka Investment Pvt Ltd. were out of internal accruals of the assessee company and in accordance with the commercial expediencies of the assessee on 31-03-2009, networth (Capital plus Reserve) of the my was amounting to Rs 79.82 crores as against the ICD granted to subsidiary amounting to Rs. 16.59crores. The Assessing Officer . CIT(A) did not appreciate the fact that the asessee is Dank account with common funds in which all the deposits Is were made. We observe that the Assessing Officer calculated notional interest on presumptions without establishing any the funds procured and given to the subsidiary company. There is no finding in the assessment order that the funds have been used d benefit of the directors.

7.2 We further find that in Assessee's own case, in the next Assessment Year i.e. in A. Y 2010-11, the CIT(A) has deleted the same addition vide order dated 17.02.2015 by holding as under :-

4.2 I have consider the assessment order, written submission filed by the Ld. AR of the appellant, I agree with the argument of the Ld. AR of the appellant. The interest bearing loan was converted into interest free Loan on the conversion of M/s. Palka Investment Pvt. Ltd. into a subsidiary of the appellant company, Loan granted to subsidiary company is to be treated as business purposes. Hence, I am of the view that the ld. AO has wrongly taken the view that interest free advances were granted to the subsidiary company from the amount borrowed on interest. Hon'ble Delhi High Court in the case of CIT Vs. Dalmia Cement Bharat Ltd. 330 ITR 595 held that "In the absence of anything to show that the interest free loan given by the assessee company to its subsidiary company was for personal benefit of any director or for any other personal reasons, it has to be held that the loan was given for the purposes of business and commercial expediency and, therefore, no portion of the interest paid by the assessee on its borrowed funds can be disallowed on the ground that a part thereof has been diverted to the subsidiary company." Respectfully following the above case law, the addition made by the AO is hereby deleted. Ground No.4 is allowed."

7.3 We further note that again in Assessee's own case, in the

Assessment Year i.e in AY 2012-13, the CIT(A) has deleted the same addition vide order dated 20-07-2016 by holding as under:-

“5. Ground no. 4 relates to disallowance of interest expenses of Rs. 2, 32,26, 000/- made by the AO. I find that this issue has also been decided by the then CIT(A)-8 in the appellant’s own case for the AY 2010- 11 in their favour. Therefore, for this year also, on the identical facts, his order is followed. ”

7.4 After perusing the aforesaid decisions of the Ld. CIT(A) for the assessment year 2010-11 and 2012-13, we find the facts and circumstances of the present case are exactly similar and identical to the assessment years 2010-11 & 2012-13, hence, the addition in dispute needs to be deleted. We also find that Hon’ble Delhi High Court in the case of CIT vs. Dalmia Cement Bharat Ltd. 330 ITR 595 has held that “In the absence of anything to show that the interest free loan given by the assessee company to its subsidiary company was for personal benefit of any director or for any other personal reasons/it has to be held that the loan was given for the purposes of business and commercial expediency and, therefore, no portion of the interest paid by the assessee on its borrowed funds can be disallowed on the ground that a part thereof has been diverted to the subsidiary company.”

7.5 In the background of the aforesaid discussions and

respectfully following the precedents, as aforesaid, the addition in dispute is hereby deleted and orders of the authorities below are cancelled.

8. *In the result, the appeal of the assessee is allowed.*

Order pronounced in the open court on 03.03.2017.”

13. Respectfully following the decision of the Tribunal in assessee's own case in the immediately preceding assessment year and in absence of any contrary material brought to our notice against the order of the Tribunal, we do not find any infirmity in the order of the CIT(A) deleting the addition. The ground of appeal No.2 filed by revenue is accordingly dismissed.

14. The ground of appeal No.3 by the revenue reads as under :-

“The Ld. CIT(A) has erred in law in deleting the addition on account of cessation liability of Rs.78,17,820/- which is squarely covered under the ambit of section 41 (1) of I.T. Act”

15. After hearing both the sides we find the Assessing Officer during the course of assessment proceedings noted that there are stagnant creditors amounting to Rs.78,17,820/-. The assessee was required to justify the same. The assessee vide letter dated 29th January 2013 submitted that the assessee company could not make the payment to the suppliers and the balances are the same in both the years. The reply of the assessee company was rejected by the Assessing Officer on the ground that the assessee company has not made the payment to its creditors and it has not been able to file the confirmation of

balances from its creditors. Therefore, case of the assessee falls within the ambit of section 41 (1). Accordingly the amount of Rs.78,17,820/- was disallowed and treated as income of the assessee being cessation of liability u/s 41 (1).

16. In appeal the Ld. CIT(A) deleted the addition by observing as under :-

5.2 I have considered the issue and argument of the Ld. AR of the appellant and find that Ld. Assessing Officer has not considered the full facts and passed a non-speaking order without verifying the facts. From the observation of the balance sheet Schedule III of the Annexures it is clear that the amount of Rs.78.17.820/- is appearing against the suppliers "credited for capital goods." Without appreciating the full facts, it appears that Ld. Assessing Officer has invoked the provision u/s 41 (1) of the IT Act. The liability is also disputed by the creditors in the court of law. It is not final. Hence I hold that Ld. Assessing Officer has wrongly invoked the provision of section 41 (1) of the IT Act. The addition made by the assessing officer amounting to Rs.78,17,820/- is hereby deleted. Ground No.5 is allowed."

17. Aggrieved with such order of the CIT(A), the revenue is in appeal before the Tribunal.

18. After hearing both the sides we do not find any infirmity in the order of the CIT(A) deleting the addition. From the various details furnished by the assessee we find the outstanding amount is due to M/s. Cumins India Limited since April 2007 against supply of

generator sets on hire purchase basis. Due to some technical problems in the generator sets, dispute arose between the assessee company and the supplier i.e. M/s. Cumins India Limited Pune. From the copy of the account filed at paper book page 45 to 50 we find M/s. Cumins India Limited has filed suit against the assessee company on account of bouncing of cheques which were issued to the said company in advance. Therefore, when the liability is shown by the assessee in its books of account, the Assessing Officer in our opinion could not have made addition u/s 41 (1). Accordingly, the order of CIT(A) on this issue is upheld and the ground raised by the revenue is dismissed.

19. The ground of appeal No. 4 by revenue reads as under :-

The Ld. CIT(A) has erred in law in deleting the addition made by the AO on account of detention charges of Rs.15,98,510/- as the expenditure incurred is covered under Explanation (1) to section 37 of the I. T. Act.

20. The facts of the case, in brief, are that the Assessing Officer during the course of assessment proceedings noted that the assessee has debited an amount of Rs.15,98,510/- towards detention charges. In absence of furnishing of any satisfactory reply and considering the same as penal in nature, the Assessing Officer disallowed the above amount and made addition of Rs.15,98,510/- to the total income of the assessee.

21. In appeal the Ld. CIT(A) deleted the addition made by the Assessing Officer by observing as under :-

“6.2. I have considered the issue and I agree with the argument of the Ld. AR of the appellant that detention charges paid to the Custom Department or to the dockyard and ports for getting delayed for clearing goods or delayed due to transportation attracts detention charges by the various authorities. These are compensatory in nature to those authorities. This amount cannot be treated as penal in nature. Hence, the addition / disallowance made by the Ld. Assessing Officer is not justified. Hence, it is deleted. Ground No.6 is allowed.”

22. Aggrieved with such order of the CIT (A), the revenue is in appeal before the Tribunal.

23. After hearing both the sides we do not find any infirmity in the order of the CIT(A) deleting the addition made by the Assessing Officer. In our opinion the detention charges paid to the custom department or to the dock yard and port/ for getting delayed for clearing goods are compensatory in nature and cannot be treated as penal in nature. Therefore, the order of the CIT(A) on this issue is upheld and the ground raised by the revenue is dismissed.

24. The ground of appeal No.5 by revenue reads as under :-

“The ld. CIT(A) has erred in deleting the addition of Rs.1,76,00,477/- on account of Technical Fee made by AO since the expenditure was of capital nature and the TDS was also not deducted on such expenditures.”

25. After hearing both the sides we find that the Assessing Officer during the course of assessment proceedings noted that the assessee had debited a sum of Rs.3,21,35,294/- towards legal and professional charges. The assessee was required to justify the same and furnish reasons for increase in the expenses. Vide letter dated 29.01.2013 the assessee stated that in addition to normal expenses it has incurred Rs.176,00,477/- towards technical fee for design. According to the Assessing Officer, the amount of Rs.1,76,00,477/- spent for technical fee for design cannot be claimed as revenue expenditure as the same falls within the purview of capital expenditure incurred by the assessee.

Further, the assessee failed to furnish evidence of TDS/ withholding of tax u/s 195 on this amount. In view of the failure on the part of the assessee to justify its claim, the amount of Rs.1,76,00,477/- was disallowed and added back to the taxable income of the assessee.

26. In appeal the Ld. CIT(A) Deleted the addition by observing as under :-

“7.2 I have considered the issue and find that Ld. Assessing Officer has passed a non speaking order without mentioning the full facts of the case. From the written submission of Ld. AR of the appellant it appears that amount was paid to a non-resident company for normal maintenance of plant and it is claimed as a technical fee and TDS was also deducted. Ld. AR of the appellant filed a copy of ledger showing TDS payable. Ld. Assessing Officer is directed to verify the TDS deducted and paid by appellant and accordingly allow the expenditure treating it revenue in nature. Since the TDS details were not filed before the Ld. Assessing Officer at the time of assessment proceedings, the same may be verified by the assessing officer at the time of order giving effect to

this order. This ground of appeal is treated as partly allowed subject to the direction given to the assessing officer. The ground is partly allowed.”

27. Aggrieved with such order CIT(A), the revenue is in appeal before the Tribunal.

28. After hearing both the sides we do not find any infirmity in the order of the CIT(A) deleting the addition made by Assessing Officer. We find merit in the arguments advanced by the Ld. Counsel for the assessee that the manufacturing process of the assessee company is highly technology driven. The fees paid to M/s. Fuller Glas technology for regular maintenance of the plant in our opinion is in normal course of business and no capital asset has been created by paying this fee. Therefore, this in our opinion is purely revenue in nature. Further the genuiness of the expenditure has not been doubted and the issue raised by the Assessing Officer is regarding capital in nature. Since the Ld. CIT(A) has deleted the disallowance with a direction to verify the TDS deducted and paid by the assessee company therefore, the same in our opinion is fully justified under the facts and circumstances of the case. We accordingly uphold the order of the CIT(A) on this issue and the ground raised by the revenue is dismissed.

29. Ground of appeal No.6 being general in nature dismissed.

30. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 29.05.2019.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Neha

Date:- 29.05.2019

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
 ITAT NEW DELHI

Date of dictation	02.04.2019
Date on which the typed draft is placed before the dictating 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	29.05.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	