

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
I.T.A. No. 4145/DEL/2015 (A.Y. 2010-11)**

ACIT Circle-52(1), Room No. 1405, 14 th Floor, E-2 Block, Dr. S.P. Mukherjee Civic Centre New Delhi (APPELLANT)	Vs.	National Cable Industries K-51, Connaught Circus New Delhi PAN : AAAFN5132E (RESPONDENT)
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Appellant by	Sh. Surendra Meena, Sr. DR
Respondent by	Sh. Rakesh Gupta, Adv.

Date of Hearing	05.08.2019
Date of Pronouncement	26.09.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed against the order dated 02.03.2015 passed by CIT(A)-18, New Delhi for Assessment Year 2010-11.

2. The grounds of appeal are as under :

"i. The CIT(A) has erred in deleting the addition of Rs. 2.60.87.240/- made by the AO without appreciating the fact that the assessee himself has accepted the discrepancy in stock during the course of survey and surrendered the excess stock. The surrender was made when confronted with the documentary evidence and discrepancy.

ii. The CIT(A) has erred in deleting the addition of Rs. 9,24,000/- without appreciating the fact that the assessee has given interest free advance of Rs. 77 lakh to sister concern i.e. M/s N. C Cables Ltd without charging any interest whereas on other hand, interest of Rs. 10.08.778 - has been paid.

iii. The CIT(A) has erred in deleting the addition of Rs. 34.79,124/- made by the AO on account of disallowance of damages u/s 37 without appreciating the fact that damages in the form of penalty itself is not an allowable deduction as per explanation to section 37(1) of the income tax Act. 1961.

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

3. Assessee is a manufacturer of domestic, industrial, electrical and telecommunication wires and cables. During the year under consideration, gross income from business has been shown at Rs. 52,38,836.00. The assessee has set off brought forward losses of assessment year 2004-05 and 2005-06 and resultantly Income Tax Return was filed as Nil income. A survey u/s 133A was carried out on 03.02.2010. Stock of the firm was valued by the assessee approximately at Rs. 1,20,00,000/- . The same stock was valued by the Survey team at Rs. 1,70,02,024/- the difference in the two valuations was considered by the survey team as alleged excess stock amounting to Rs. 50,02,024/-. Excess stock was worked out by taking margin and no inventory was taken. The difference in value of stock as on 03.02.2010 was surrendered for taxation by the assessee. Stock was valued at MRP less G.P. percentage by the survey team. Assessee makes sales at MRP less discount as per normal trade practice. Discount offered varies between 30% to 60% as per price list prepared by assessee from time to time. Survey team visited both, factory at Okhla and head office at Connaught Place, New Delhi. Statement on oath was recorded in the factory of Sh. Ram Pal, Production Manager. Statement on oath was also recorded of Sh. Sandeep Choudary partner of the firm at head office in Connaught Place. Survey team inspected the books of accounts including stock register and excise records. These were duly signed by survey team. The assessee's case was selected for scrutiny and assessment was completed vide order u/s 143(3) / 145(3) dated 22.03.2013. An addition of Rs. 3,08,01,015.00 was made to the return income. The net taxable income after setting off

brought forward losses was assessed at Rs. 2,74,31,340.00. Assessee moved an application u/s 154 after which an order u/s 154(3) dated 11.06.2013 was passed for net taxable income of Rs. 2,51,67,900.00. This rectification was on account of brought forward losses. Show cause notice for invoking section 145(3) was issued on 18.02.2013. Assessee replied vide letter dated 25.02.2013. Assessing Officer equated 1 liter of diesel to 1 unit of electric power. This should be approximately 4 unit of electric power. The Assessing Officer observed that interest free advance of Rs. 77,00,000.00 was given to sister concern. The closing balance as on 31.03.2010 was Rs. 34,79,169.00. The debit balance mainly arises from 15.03.2010 and not throughout the year. Generally as per the copy of accounts of NC cables Ltd. in the books of assessee there is a credit balance in the name of NC cables Ltd. The Assessing Officer considered the debit entries to arrive at Rs. 77,00,000/- advance and the amount received back from time to time was not considered as per the assessee. The calculation of the interest on daily outstanding balance at 12% comes to Rs. 49,550.00 payable by the Assessing Officer. Credit limit allowed by Union Bank of India is Rs. 70,00,000.00 vide sanction letter dated 20.05.2009. The limit availed from Union Bank of Indian in actual was Rs. 68,28,893.58 instead of Rs. 90,92,187.00. The amount given to the sister concern was mainly out of the payment received from Railways a customer of the assessee. Ligated damages of Rs. 28,00,410.00 are amount deducted by Railway on late deliveries. Deduction for risk purchase Rs. 6,78,714.00 was stated by railway, assessee's major buyer is done on prices determined in the tenders and railways make payments as per terms of tender. Tenders include terms and conditions of deduction any liable to be made from the invoices of vendor. Rent for Okhla factory was Rs. 2,25,000.00 per annum TDS of Rs. 45,000.00 was deducted on rent u/s 194I and paid into the Government treasury on 04.03.2010. Books of accounts with voucher and stock register etc. were produced for examination of the assessing officer on 27.12.2010. The Assessing Officer made / assessed income of Rs. 2,60,87,240.00.

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. The Ld DR submitted that as regards as ground no. 1 the CIT(A) has erred in deleting the addition of Rs. 2,60,87,240.00 made by the assessing officer without appreciating the fact that the assessee himself has accepted the discrepancy in stock during the course of survey and surrender the excess stock. Surrender was made when confronted with the documentary evidence and discrepancy.

6. The Ld. AR submitted that a survey u/s 133 A of the Act was carried out in the business premises of the assessee on 03.02.2010 wherein it was concluded that assessee has undisclosed/ excess stock amounting to Rs. 50,02,024/- (1,70,02,024- 1,20,00,000). The assessee estimated closing stock at Rs. 1,20,00,000/- in trading account prepared during course of survey, whereas the same has been taken at Rs. 1,70,02,024/- by survey team. The Ld. AR pointed out that in CIT(A)'s order it was affirmed that no physical discrepancy was found/ detected by the survey team and excess value of stock was merely because of difference in valuation of closing stock. Survey team took the valuation applying MRP- GP% whereas as per assessee, since as per normal trade practice sales are generally made after giving discounts @ 30% to 60%, stock was valued at MRP-Discounts-GP%. This discrepancy in valuation method was duly elucidated before the Assessing Officer vide submission dated 25.02.2013. The statement showing valuation of closing stock at actual sale price supported by relevant invoices to prove assessee's claim of overvaluation of stock by the survey team. An affidavit by the partner of the assessee firm stating the above facts was also submitted before the CIT(A). The Ld. AR further submitted that nevertheless, the assessee after immense pressure from survey officers, in order to buy peace of mind surrendered the excess valued stock by Rs. 50,02,024/- as additional income for the impugned assessment year at the time of survey after expressing his reservations on the method of valuation method used by the department. However, during the course of assessment

proceedings the Assessing Officer adopted different approach and made additions on the basis of production of wires by taking electricity and diesel as inputs to produce the wire as mentioned hereinabove. The Ld. AR submitted that the assessee produces a wide variety of cables ranging from single (1) core cable to two hundred core cables. It is undeniable that per unit consumption of inputs say, raw material, electricity, diesel etc. is directly proportional to the no. of cores in the wire i.e. as the no. of cores increases per unit consumption of input increases. In other words, as the no. of cores increases the production in meters will decrease with same quantity of input. To arrive at correct figure of production, total length of multiple core cables shall be converted to single core cable. The Ld. AR further submitted that in simple words a six core cable is nearly equal to six single core cables. The assessee demonstrated the conversion of 5 variety of multiple core wire, which constitute 91% of total production by the assessee, into single core wires which shows that production in meters per unit of electricity consumed has increased in the subject year through a table before the Assessing Officer. The assessee also showed the comparative chart in respect of production of multiple core cable has increased in the subject year as compared to previous years and also demonstrated total production of wires in meters, if the same is converted to single core wires further substantiating assessee's claim that per unit production has increased in subject year to the Assessing Officer. The Ld. AR further submitted that the assessee manufactures various types of cables such as building cables, copper underground industrial cable, railway signaling cable, railway indoor cable, instrumentation cable etc. Overall the assessee manufactures approximately 150- 200 types of cables. The Ld. AR submitted that each of these products consumes inputs in varied proportion. Since, each of the product offered by the company consumes resources in different ratios, it is unambiguously clear that no co-relation can be established between total production in meters and total inputs used for production (i.e. unit of electricity consumed and quantity of diesel). The Ld. AR also submitted that power is not the only input which is necessary for production and power is only one of the many inputs

required. The CIT(A) also affirmed the same in the order that consumption of power (electricity and diesel) constitutes only 0.69% of the total production cost. This further substantiate that there are several other factors which determine the production. Thus, the Ld. AR submitted that the Assessing Officer has followed a wrong approach for estimating the total units produced by the assessee during the year. The Ld. AR submitted that the assessee is maintaining day to day stock register. This fact has been duly acknowledged by the chartered accountant certifying the report u/s 44AB of the Act. The assessee is regularly filing the monthly excise returns and stock records which is verified and signed by the officer at the time of survey. All the purchases, production, closing stock etc. are duly recorded in these books. These books of accounts for production/ stock has also been duly verified and accepted by the excise department while conducting their audit. Audit report of the excise department does not state of any discrepancy and production/ stock details of the assessee has been accepted in totality. Moreover, the turnover of the assessee has also been accepted by the sales tax department in the subject year. During the survey as well as assessment proceedings, all the books of accounts were duly produced before the survey team, which were accepted during survey proceedings. The Ld. AR further submitted that these facts were verified by Counsel of assessee representing the case before Assessing Office through his affidavit before the CIT(A) stating that books of accounts and vouchers have been produced by him before the Assessing Officer during assessment proceedings and no discrepancy was found by the Assessing Officer in books of accounts. Therefore, rejecting the books of accounts of assessee by the Assessing Officer is bad on facts and in Law and the additions made consequent to such rejection of books shall also be quashed. The additions made by the Assessing Officer are solely based on surmises and conjectures as the Assessing Officer failed to produce any evidence to substantiate his contention of undisclosed stock/ production. Neither has the Assessing Officer brought on record any tangible material to support his conclusion nor has he pointed out any comparable company in the same line of business and having similar products as that of the assessee and has

consistent output (in meters) per unit of power consumption. The same fact has been upheld by the CIT(A). The Ld. AR submitted that it is settled law that in the matter of an assessment, presumption however strong cannot take the place of proof. The Ld. AR relied upon judgment of Hon'ble Apex Court in the case of Uma Charan Shaw & Bros. Co. vs. CIT reported in 37 ITR 271. Thus, considering the fact that the Assessing Officer failed to discharge his onus, the additions made by the Assessing Officer are bad in law and contrary to the law laid down by apex court mentioned above. The Ld. AR pointed out that the department has itself been following diverse approaches for calculating the value of closing stock. On one hand the survey team has computed difference in value of closing stock at Rs. 50,02,024/- and on the other hand the Assessing Officer has calculated a discrepancy of Rs. 2,60,87,240/- for the same AY. Thus, the Ld. AR submitted that it is quite ironical that for the same set of facts the department is adopting different modes and closing their eyes to principle of consistency.

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

“ **FINDINGS**

1. *Ground No. 1 to 3 are together:*

1.1 *I have considered the ground raised in appeal and the facts of the case. I have also considered the submission filed by the AR of the appellant.*

1.2 *The appellant has raised ground against the addition of Rs.2,60,87,240/- on account of excess valuation of stock.*

1.3 *The Assessing Officer, as alleged by the appellant has not brought on record any tangible evidence for sales made by the appellant outside the books of accounts. The appellant vehemently submits that the firm maintains;*

1. *Day to day stock register*

2. *Excise Register*

1.4 *There was a survey also under section 133A of the Income Tax*

Act, 1961 on 03.02.2010. In the survey proceedings, no physical discrepancy in stocks was found/ detected by the survey team. The excess value of stock as pointed out by the survey team was on account of difference in mode of valuation of closing stock. This fact is duly stated in the answer to the question no. 22 put to the appellant in the statement recorded by the Department. It is pertinent to note that there was no physical variation in stock as on date of survey i.e. 03.02.2010.

1.5 The appellant has vehemently controverted the methodology of consumption of power as a correct/valid base for arriving at the figure of production. It is a fact that the consumption of power constitutes only 0.69% of the total cost of production. This alone as pleaded by the AR can not be a basis of calculation at production of cables. The appellant has in his support relied on the following citation;

.....

1.6 The appellant has strongly contested the addition being made merely on surmise, guesswork and conjecture.

1.7 I find force in the submissions and contentions of the appellant and in view of the facts and circumstances and legal position, the addition for suppresses production / sales outside the books of accounts Rs. 2,60,87,740.00 is deleted. Ground No. 1 to 3 raised in appeal are allowed.”

From the perusal of the records, it can be seen that no physical discrepancy was found/ detected by the survey team and excess value of stock was merely because of difference in valuation of closing stock. Survey team took the valuation applying MRP- GP% whereas as per assessee, since as per normal trade practice sales are generally made after giving discounts @ 30% to 60%, stock was valued at MRP-Discounts-GP%. This discrepancy in valuation method was duly elucidated before the Assessing Officer vide submission dated 25.02.2013 by the Assessee. The statement showing valuation of closing stock at actual sale price supported by relevant invoices to prove assessee's claim of overvaluation of stock by the survey team. It is undisputed fact that per unit consumption of inputs say, raw material, electricity, diesel etc. is directly proportional to the no. of cores in the wire

i.e. as the no. of cores increases per unit consumption of input increases. A six core cable is nearly equal to six single core cables. The assessee demonstrated the conversion of 5 variety of multiple core wire, which constitute 91% of total production by the assessee, into single core wires which shows that production in meters per unit of electricity consumed has increased in the subject year through a table before the Assessing Officer. The assessee also showed the comparative chart in respect of production of multiple core cable has increased in the subject year as compared to previous years and also demonstrated total production of wires in meters, if the same is converted to single core wires further substantiating assessee's claim that per unit production has increased in subject year to the Assessing Officer. Thus, there is no need to interfere with the findings of the CIT(A). Ground No. 1 of the Revenue's appeal is dismissed.

8. As regards ground no. 2 the Ld. DR submitted that the CIT(A) erred in deleting the addition of Rs. 9,24,000/- without appreciating the fact that the assessee has given interest free advance of Rs. 77,00,000/- of two sister concern i.e. M/s. N C cables Ltd. without charging any interest whereas on the other hand interest of Rs. 10,08,778/- has been paid.

9. The Ld. AR submitted that advance given to M/s N.C. Cables is not 77 lakhs but the same is 34,79,169/- which is evident from 'list of Loans and advances as on 31.03.2010 and also this debit balance arises only after 15.03.2010. Overall, there was a credit balance in the books of accounts of assessee throughout the year which is evident from ledger account of M/s N.C. cables Ltd. in the books of assessee. The Assessing Officer had considered just the debit entries and ignored the entries of amount received back. Therefore, the amount of advance paid considered as Rs. 77 Lakh is wrong on facts. The Ld. AR further submitted that no disallowance u/s 36(1)(iii) can be made due to reasons that advance of Rs. 77 lakhs as mentioned above and considered by the Assessing Officer for making the impugned disallowance, was not made out of any interest bearing borrowed funds but was made out of own funds built up from the interest free funds i.e. capital

and Interest free sundry deposits available with the assessee amounting to Rs.2.64crores (1.34+1.30). Therefore, when there is no expenditure of interest in respect of interest free funds of Rs. 2.64 crores which are more than the amount advanced, there is no justification for charging interest and that too @ 12% on the sum of Rs. 77 lakhs. It has been held in the following judicial decisions that if own funds are more than the advance made for non-business purpose, no disallowance can be made:

- a) Jaguar Intl. Ltd. vs. ITO ITA No. 4371/2016 date of order 27.04.2017
- b) CIT vs. Sharada Erectors (P) Ltd. (2016) 76 taxmann.com 107 (Bom)
- c) CIT vs. Reliance Utilities & Power Ltd. (2009) 313 ITR 340 (Bom)
- d) CIT vs. Gautam Motors (2011) 334 ITR 326
- e) CIT vs. Tin Box Co. (2003) 260 ITR 637 (Del)
- f) CIT vs. Radico Khaitan Ltd. (2005) 274 ITR 354 (All)
- g) Swagat Infrastructure Ltd. vs. JCIT (2013) 37 taxmann.com 83 (Ahmd. – Tri.)
- h) Venus Records & Tapes (P) Ltd. vs. Add. CIT (2013) 33 taxmann.com 49 (Mum. Tri.)

The Ld. AR further submitted that the assessee is having CC limit with only Union Bank of India during impugned assessment year and this is the only bank through which all transactions related to business has been done by the assessee. Assessee deposited any amount received from any party against sale in the same bank account, therefore, this account of assessee consists both own funds and borrowed funds and advance to M/s N. C. Cables was also made out of this account only. The Ld. AR submitted that it has been held in the following judicial decisions that if there is mixed kitty of funds which consists own funds and borrowed funds, there is no presumption that payment is out of borrowed funds only:

- a) Woolcombers of India Ltd. vs. CIT (1982) 134 ITR 219 (Cal)
- b) Reckitt & Colman of India Ltd. vs. CIT (1982) 135 ITR 698 (Cal)
- c) Indian Explosives Ltd. vs. CIT (1984) 147 ITR 392 (Cal)
- d) British Paints India Ltd. vs. CIT (1991) 190 ITR 196 (Cal)
- e) Tata Chemicals Ltd. vs. DCIT (2000) 72 ITD 1

- f) Alkali and Chemical Corporation India Ltd. vs. CIT (1987) 161 ITR 820 (Cal)

Without prejudice to above, the Ld. AR submitted that in fact interest cannot be disallowed unless direct nexus is established between the interest bearing borrowed funds and diversion of such borrowed funds which in the instant case is also missing as can be seen from the plain reading of the assessment order which does not establish any one to one correlation. It is settled law that the Assessing Officer has to establish the nexus and if there is no nexus established, no disallowance can be made in the hands of the assessee. The Ld. AR relied upon the following decisions:

- a) CIT vs. Golden Tobacco Ltd. (2017) 82 taxmann.com 11 (Bom)
- b) CIT vs. Max India Ltd. (2017) 80 taxmann.com 98 (P&H)
- c) CIT vs. Vijay Solvex Ltd. (2015) 59 taxmann.com 294 (Raj.)
- d) Sunil Goel vs. ACIT (2008) 118 TTJ 415 (Del)
- e) CIT vs. Hotel Savera, (1998) 148 CTR 585 (Mad HC)
- f) CIT vs. Coimbatore Salem Transport (P) Ltd. (1966) 61 ITR 480 (Mad HC)
- g) CIT vs. Indian Explosives Ltd. (1991) 192 ITR 144 (Cal HC)
- h) D & H Secheron Electrodes P. Ltd. vs. CIT (1983) 142 ITR 528 (MP HC)

The Ld. AR further submitted that the assessee is having CC limit of Rs. 70 Lakh only which is evident from sanction letter of Union Bank for CC limit. Therefore, when the assessee is having limit of Rs. 70 Lakh only and paying interest for the same, how it can advance 77 lakh to M/s N. C. Cables Ltd. Thus, in view of above, addition made by the Assessing Officer is bad in law which has been correctly deleted by the CIT (A). Therefore, relief given by the CIT(A) has to be sustained.

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

2. *Ground No. 4:*

2.1 *I have considered the ground raised in appeal and the facts of the case. I have also considered the submission filed by the AR of the*

appellant.

2.2 The appellant has raised ground against the addition of Rs. 924,000/- under the head interest u/s 36/37 of the I.T. Act.

2.3 Without going into details of the Assessing Officer and appellant, the moot point of notation is in the appellant's submissions mentioned above, that as per the statement of accounts of M/s N.C. Cable Ltd., in the books of the appellant, the balance as on 31.03.2010 is a debit balance Rs.34,79,169.00 and not Rs.77,00,000.00. As per the appellant, the Assessing Officer has considered only the debit entries and ignored the credit entries in the account. The appellant has placed on records at page no. 195 of the paper book detailed day wise calculation of interest. As per this statement, the appellant has to pay interest of Rs. 49,550.00 to the sister concern M/s N.C. Cable Ltd.

2.4 In view of this fact the addition of Rs. 9,24,000/- is deleted. Ground No. 1 to 3 raised in appeal are allowed."

It is pertinent to note that advance of Rs. 77 lakhs considered by the Assessing Officer for making the disallowance, was not from interest bearing borrowed funds, but was made out of own funds built up from the interest free funds i.e. capital and Interest free sundry deposits available with the assessee amounting to Rs.2.64 crores (1.34+1.30). This emerges from the records produced before the Assessing Officer. Therefore, when there is no expenditure of interest in respect of interest free funds of Rs. 2.64 crores which are more than the amount advanced, there is no justification for charging interest and that too @ 12% on the sum of Rs. 77 lakh. These factual aspects were ignored by the Assessing Officer. Thus, the CIT(A) rightly deleted this addition. There is no need to interfere with the findings of the CIT(A). Ground No. 2 of the Revenue's appeal is dismissed.

11. As regards ground no. 3 the Ld. DR submitted that the CIT(A) erred in deletion of Rs. 34,79,124/- made by the assessing officer on account of disallowance of damages u/s 37 without appreciating the fact that damage in the form of penalty itself is not allowed section 37(1) of the Income Tax Act, 1961.

12. The Ld. AR submitted that during the impugned assessment year an amount of Rs. 28,00,410/- and Rs. 6,78,714/- has been deducted by the Indian Railways due to delay in supplies made by the assessee. The same also explained before the Assessing Officer vide submissions dated 05.03.2013. The Ld. AR submitted that due to some unfavorable market conditions specifically shortage of material, unreasonable prices of inputs, delayed payment by railways etc. the assessee could not made the supplies on time to Railways that is the only reason that railways deducted liquidated damages out of payment due to assessee. Thus, the breach of contract is squarely within the meaning of expression 'commercial expediency' when, seen from the perspective of the assessee's business. It is settled law that only those payments which have been made for infringement of law shall not be allowed as revenue expenditure. Since, the said payment/deduction was not towards any offence or infringement of law therefore the same cannot be disallowed. It has been held in the following judicial decisions that any penalty so termed as penalty for contractual breach is not penalty for infraction of law and therefore, cannot be disallowed on that scope:

- a) Nice Projects Pvt. Ltd. vs. Dept. of Income Tax ITA No. 3950/Del/2013 order dated 19.04.2016
- b) Western Coalfields Ltd. vs. ACIT (2009) 124 TTJ 669 (Nag.)
- c) Master Capital Services Ltd. vs. DCIT (2008) 108 TTJ 389
- d) CIT vs. Industrial Cables India Ltd. 162 Taxman 423 (P&H HC)
- e) Agarwal Road Lines P. Ltd. vs. DCIT 129 TTJ 49
- f) Vishwanath V. Kale vs. ITO ITA 2081/2010 (Mum)
- g) Prakash Cotton Mills Pvt. Ltd. vs. CIT (1993) 201 ITR 684 (SC)
- h) ACIT vs. Taurian Iron and Steel Co. Pvt. Ltd. (ITA No. 1613/Mum/2010)
- i) ITO vs. VRM Share Broking (P) Ltd. (2009) 27 SOT 469 (Mum)

Thus, Explanation to section 37(1) is to be invoked only in those circumstances when there is really a breach of any law like penalty imposed under State VAT Act for non-filing of return, etc. and not in present case.

The above-mentioned decisions lay down the fact that payments which are compensatory in nature should not be disallowed under the Act solely on the basis of nomenclature. If the substance of the payment makes it evident that it is not incurred towards violation of any law, rather it is an expenditure incurred in the course of business then it should be allowed while computing Taxable Income. The same proposition has been rightly accepted by the CIT(A). The Ld. AR submitted that the case laws relied by the Assessing Officer are nowhere close to the facts of the present case and the said case laws are relating to the amount which was paid for violation of enacted law and not against breach of any contract/agreement.

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

“3. Ground No. 5:

3.1 I have considered the ground raised in appeal and the facts of the case. I have also considered the submission filed by the AR of the appellant.

3.2 I appellant has raised ground against the disallowance of damages of Rs. 34,79,124/- u/s 37 of the I. T. Act.

3.3 On going through the facts of the case, submissions and the legal position, I find force in the submissions / contentions of the appellant. I accordingly hold that the said expenditure is not akin to penalty/fine. Rather, this is cost incurred by the appellant in the regular course of business and is out of commercial expediency and therefore allow the expenditure as revenue expenditure incurred for the purpose of business.

3.4 The addition of Rs. 34,79,124.00 is deleted. Ground raised in appeal is allowed.”

It can be seen that during the assessment year an amount of Rs. 28,00,410/- and Rs. 6,78,714/- was deducted by the Indian Railways due to delay in supplies made by the assessee which was explained before the Assessing Officer vide submissions dated 05.03.2013 by the Assessee. From the perusal of the records it can be seen that due to some unfavorable market conditions specifically shortage of material, unreasonable prices of

inputs, delayed payment by railways etc. the assessee could not make the supplies on time to Railways that is the only reason that railways deducted liquidated damages out of payment due to the assessee. Thus, the breach of contract is squarely within the meaning of expression 'commercial expediency' when, seen from the perspective of the assessee's business. Thus it is settled law that only those payments which have been made for infringement of law shall not be allowed as revenue expenditure. Since, the said payment/deduction was not towards any offence or infringement of law therefore the disallowing the same is not tenable on part of the Assessing Officer. Thus, the CIT(A) rightly deleted this addition. Ground No. 3 of the Revenue's appeal is dismissed.

14. In result the appeal of the revenue is dismissed.

Order pronounced in the Open Court on 26th September, 2019.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 26/09/2019

Binita

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT, NEW DELHI

Date of dictation	11.09.2019
Date on which the typed draft is placed before the dictating Member	11.09.2019
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	
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	