

**IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI**  
**BEFORE SHRI PRAMOD KUMAR, VP AND SHRI SAKTIJIT DEY, JM**

ITA No. 937/Mum/2018  
(Assessment Year: 2014-15)

DCIT-9(3)(2) 418, 4 <sup>th</sup> Floor, Aaykar Bhavan, Mumbai-400 020	Vs.	M/s. Gemini Engi-Fab Ltd. 501, Palm Spring, Next to DMART, Above Crome, Malad Link Road, Malad (W), Mumbai-400 064
PAN/GIR No. AAACG 7948 N		
<b>(Appellant)</b>	:	<b>(Respondent)</b>
<b>Appellant by</b>	:	Shri V. Vinod Kumar
<b>Respondent by</b>	:	Shri S. C. Tiwari
<b>Date of Hearing</b>	:	14.11.2019
<b>Date of Pronouncement</b>	:	20.11.2019

ORDER

Per Saktijit Dey, JM:

The Revenue has filed the present appeal challenging the order dated 15.11.2017 passed by the learned Commissioner of Income Tax (Appeals)-16, Mumbai pertaining to the Assessment Year (A.Y. for short) 2014-15.

2. In ground nos. 1 & 2, the Revenue has challenged the deletion of addition made of Rs.1,36,50,917/- representing the interest expenditure attributable to capital work in progress (WIP).

3. Briefly the facts are that the assessee, a resident company, is engaged in the business of manufacturing of engineering goods. For the assessment year under dispute, the assessee filed its return of income on 29.11.2014 declaring total income of

Rs.32,30,680/- under the normal provisions and book profit of Rs.30,05,051/- u/s.115JB of the Income Tax Act, 1961 (the Act for short).

4. In the course of assessment proceedings, the A.O. on examination of the books of accounts as well as the financial statements noticed that the assessee has shown WIP of Rs.9,10,06,113/-. Whereas, it has debited interest expenditure of Rs.2,76,21,996/-. He further noticed that in the balance sheet the assessee has shown long term and short term borrowings of Rs.5,77,97,013/- and Rs.15,53,77,407/- respectively. Therefore, he called upon the assessee to furnish the details and source of WIP and explain why proportionate interest expenses relating to capital WIP should not be disallowed and capitalized. After considering the submission of the assessee, the A.O. ultimately concluded that the interest pertaining to capital WIP has to be capitalized. Hence, it cannot be treated as revenue expenditure. Applying the interest rate of 15% on WIP of Rs.9,10,06,113/-, the A.O. worked out the interest expenditure attributable to WIP at Rs.1,36,50,917/- and disallowed it. The assessee challenged the aforesaid disallowance before Id. CIT(A).

5. After considering the submission of the assessee in the context of the facts and materials on record, Id. CIT(A) found that the assessee had sufficient surplus funds available with it which is much more than the investment in the capital work in progress. Accordingly, following the decision of Hon'ble Jurisdictional High Court in case of *Reliance Utilities and Power Ltd.* (2009) 313 ITR 340 (Bom HC), he deleted the addition made by the A.O.

6. We have considered rival submissions and perused the material on record. As could be seen, the A.O. merely presuming that a part of the borrowed fund has been utilized in WIP, has attributed a part of the interest expenditure to work in progress and capitalized it. Whereas, the facts on record clearly establish that the assessee had sufficient interest free surplus fund by way of shareholders fund amounting to Rs.15,77,20,741/- as against WIP of Rs.9,10,06,113/-. Thus, it is evident that the assessee had sufficient surplus interest free fund available with it to invest in WIP. No material has been brought before us by the Revenue to demonstrate that part of the interest bearing fund has been invested in the WIP. Therefore, in absence of any contrary evidence brought on record, the decision of Id. CIT(A) in deleting the interest disallowance cannot be disturbed, keeping in view the ratio laid down by the Hon'ble Jurisdictional High Court in the case of *Reliance Utilities and Power Ltd.* (supra). These grounds are accordingly dismissed.

7. In ground no. 3, the Revenue has challenged the deletion of disallowance made by the A.O. on account of non reconciliation of sales as per excise record and profit and loss account, bad debt written off and sundry balance written off.

8. Briefly, the facts are, in course of the assessment proceedings, the A.O. on verifying the material on record found difference in the sale turnover as per excise record and as shown in the profit and loss account. Therefore, he called upon the assessee to reconcile the difference. From the details furnished, he found that the sales as per excise record is Rs.16,72,91,036/- and as shown in the profit and loss account

stood at Rs.16,48,47,917/-. Alleging that the assessee failed to reconcile the difference with proper explanation, he added back the differential amount of Rs.24,43,119/-. Further, noticing that the assessee has debited an amount of Rs.14,55,353/- towards, bad debt written off, the A.O. called upon the assessee to furnish various details. Alleging that the assessee failed to prove that the amount claimed towards bad debt was offered as income in the earlier years, he disallowed the amount of Rs.14,55,353/-. As regards the sundry balance written off amounting to Rs.85,08,323/-, the A.O. on perusing the details found that such amount represents various taxes/duties receivable from the Government. Stating that the government dues cannot be written off, the A.O. disallowed the amount of Rs.85,08,323/-. While considering assessee's appeal, contesting the aforesaid disallowances, Id. CIT(A) granted relief to the assessee by deleting the disallowances made by the A.O.

9. We have heard the parties and perused the material on record. The Id. Departmental Representative (Id. DR for short) has submitted before us that in course of hearing before the first appellate authority, the assessee had furnished fresh evidences and upon considering such evidences, Id. CIT(A) has granted relief to the assessee without providing an opportunity to the A.O. to examine such evidences. Thus, he submitted, the issues relating to these disallowances should be restored back to the A.O. for fresh adjudication. The Id. AR submitted, except the issue relating to reconciliation of sales figures, no fresh evidence was furnished in respect of other disallowances. He submitted, the issue relating to disallowances made on account of

non reconciliation of sales figure may be restored back to the A.O. for fresh adjudication.

10. Having considered rival submissions, we find that insofar as the issue relating to reconciliation of difference between the sales figure as per excise record and as shown in the profit and loss account, the assessee has for the first time furnished before Id. CIT(A) a complete reconciliation to explain the difference. Admittedly, such reconciliation was not filed before the A.O. in course of assessment proceedings. That being the case, this issue needs to be restored back to the A.O. for denovo adjudication, as he did not get a proper opportunity to verify assessee's claim. The A.O. is directed to decide the issue afresh after due opportunity of being heard to the assessee and after verifying the reconciliation statement filed before Id. CIT(A). However, insofar as the issue relating to bad debt and sundry balance written off, we find that Id. CIT(A) after verifying the facts on record has recorded a factual finding that the amount representing bad debt written off was offered as income in the earlier assessment years. Therefore, the decision of Id. CIT(A) in deleting the disallowance of bad debt written off has to be upheld. As regards the sundry balance written off, it is noticed from record that the assessee was to receive certain tax refund on account of output tax, excise duty, service tax, etc. However for considerable period of time, the assessee was unable to get refund of the aforesaid amount from the Government. Therefore, ultimately, the assessee having no chance to get the refund due to various reasons, decided to write them off in its books. The aforesaid factual position brought

on record has not been controverted by the Revenue. That being the case, we do not find any infirmity in the order of Id. CIT(A) in deleting the disallowance of sundry balance written off amounting to Rs.85,08,323/-. This ground is partly allowed for statistical purpose.

11. In the result, the Revenue's appeal is partly allowed for statistical purpose.

*Order pronounced in the open court on 20.11.2019*

Sd/-

(Pramod Kumar)  
Vice President

Mumbai; Dated : 20.11.2019

Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

Sd/-

(Saktijit Dey)  
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai