

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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.4373/Del./2017  
Assessment Year: 2009-10

**And**

ITA No.4374/Del./2017  
Assessment Year: 2010-11

DCIT, Circle-2, Noida	<b>Vs.</b>	M/s. Phoenix Lamps Ltd. (Formerly Known as Hallonix Ltd.), 59A, NSEZ, Phase-III, Noida
<b>PAN :AABCP7718G</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Smt. Sushma Singh, CIT(DR)
Respondent by	Ms. Swati Rana, Adv.

Date of hearing	25.02.2020
Date of pronouncement	28.02.2020

**ORDER**

**PER O.P. KANT, AM:**

These two appeals by the Revenue are directed against two separate orders, both dated 28/03/2017, passed by the learned CIT(Appeals)-1, Noida [in short 'the Ld. CIT(A)'] for assessment years 2009-10 and 2010-11. In both the appeals, identical grounds have been raised by the Revenue in same set of facts and circumstances, accordingly, both these appeals were heard

together and disposed of by way of this consolidated order for the sake of convenience. The grounds of the appeal in ITA No. 4373/Del./2017 for assessment year 2009-10 are reproduced as under:

1. *That the CIT(Appeals)-I has erred in law and on facts by passing a non-speaking order without going into the merits of each of the issues involved.*
2. *That the order of CIT(Appeals)-I may be set aside with direction to pass speaking order elaborating the facts and reasons.*
3. *That the appellant craves to leave, add, alter and amend any of the grounds of appeal on or before hearing.*

**2.** Briefly stated facts of the case are that the assessee filed return of income on 26/09/2009 for assessment year 2009-10 declaring loss of ₹ 6,92,02,587/- and on 25/09/2010 for assessment year 2010-11 declaring loss of ₹ 10,18,82,447/-. The assessment under section 143(3) of the Income-tax Act, 1961 (in short 'the Act') were completed for assessment year 2009-10 and 2010-11 on 23/12/2011 and 28/03/2013 respectively after making certain additions/disallowances. Aggrieved, the assessee filed appeals for both the assessment years before the learned CIT(A). The Ld. CIT(A) in assessment year 2009-10 allowed the appeal of the assessee observing as under:

*"3. In view of the dispute between the appellant and Revenue my Id. predecessor called for a report from the Id. A.O. and whereafter the Id. A.O. vide his report dated 08/07/2015 which was duly forwarded by the Id. JCTI, Range-2, Noida by his letter dated 11/09/2015, the Id. A.O. accepted the claims of the appellant to the extent disallowance on account of shifting of expenses and in respect of disallowance on account of capital expenses claimed as revenue expenses to the extent of Rs. 47,40,024/- out of total expenditure so claimed of Rs. 3,74,25,725/-. A copy of the report was provided to the appellant for its necessary response and by its*

*letter dated 10/03/2016 the appellant submitted that the remand report is acceptable to the appellant.*

*In view of there being no dispute remaining between the parties the present appeal is disposed in terms of the recommendations of the id. A.O, by its remand report, The addition of Rs. 12,76,45,322/- is therefore, deleted. The appellant gets relief to that extent. Regarding the disallowance of Rs. 3,74,25,725/- the appellant gets relief to the extent of Rs. 47,40,024/-. The appeal is disposed in terms of the above.”*

**2.1** Similarly, in assessment year 2010-11, the Ld. CIT(A) allowed the appeal observing as under:

*“3. In view of the dispute between the appellant and Revenue my learned predecessor called for a report from the learned A.O. and where after the learned A.O. vide his report dated 29.06.2015 the learned A.O. accepted the claims of the appellant. A copy of the report was provided to the appellant for its necessary response and by its letter dated 10.03.2016 the appellant submitted that the remand report is acceptable to the appellant. In view of there being no dispute between the parties the appeal is disposed in terms of the recommendations of the learned AO. The impugned assessment order is annulled. The appeal of the appellant succeeds and is allowed.”*

**2.2** Aggrieved, the Revenue filed appeals before the Tribunal raising the grounds as reproduced above.

**3.** At the time of the hearing, the learned counsel of the assessee sought adjournment, which was rejected.

**4.** The learned Departmental Representative supported the grounds and submitted that the learned CIT(A) has not passed a speaking order and that too without going into merit of the issues, whereas the learned counsel of the assessee relied on the order of the learned CIT(A) and submitted that in remand report proceedings, the Assessing Officer has accepted the claim of the assessee and did not propose any additions/disallowance and, therefore, the Revenue is not justified in filing the appeal.

**5.** We have heard the rival submission of the parties. It is evident from the Para 3 of the impugned order for assessment year 2009-10 that the Assessing Officer in remand report dated 08/07/2015 proceedings has accepted the claim of the assessee regarding the additions and disallowance made in the assessment order. The said remand report was duly forwarded by the Supervisory Officer, i.e., Joint Commissioner of Income Tax, Range-2, Noida, vide his letter dated 11/09/2015. A copy of the said report was sent to the assessee for his comments. The assessee in his rejoinder duly accepted the finding of the Assessing Officer in the remand report. We find that nothing contrary has been produced before us, which could show that the Ld. CIT(A) has allowed the relief to the assessee in any unreasonable manner. Though, admittedly the learned CIT(A) has not mentioned the brief facts of the addition as well as brief finding of the Assessing Officer in the remand report mentioned, but that does not take away the substantial issue that the Assessing Officer has accepted the claim of the assessee in the remand proceeding. Before us, Revenue has not been able to explain as why the appeal has been filed when the Assessing Officer himself has accepted the claim of the assessee in the remand report, which was endorsed by the Supervisory Officer also.

**6.** We do not find any reason for filing the appeal by the Revenue, once the Revenue has accepted the claim of the assessee during remand proceeding. The Ld. CIT(A) has decided the issue on the basis of the remand report of the Assessing Officer duly forwarded by the Supervisory Officer. In our opinion,

the stand taken by the Assessing Officer and the Supervisory Officer in the remand proceeding is considered to be the stand of the Revenue unless anything malafide is not found in the action of the Assessing Officer in remand report. Since the Ld. CIT(A) has decided the issue in view of the remand report of the Assessing Officer, we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute for assessment year 2009-10 and accordingly, we uphold the same.

**7.** The facts and circumstances for assessment year 2010-11 are identical and, therefore, we uphold the order of the Ld. CIT(A) for assessment year 2010-11 also.

**8.** In the result, both the appeals of the Revenue are dismissed.

***Order pronounced in the open court on 28<sup>th</sup> February, 2020.***

**Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER**

**Sd/-  
(O.P. KANT)  
ACCOUNTANT MEMBER**

Dated: 28<sup>th</sup> February, 2020.

RK/-(D.T.D.S.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi