

आयकर अपीलिय अधिकरण "J" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एम बालगणेश, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VP AND SRI M BALAGANESH, AM

आयकर अपील सं./ ITA No. 2358/Mum/2017

(निर्धारण वर्ष / Assessment Year 2012-13)

M/s Tiger Steel Engineering India Private Limited 203-204, 4 th Floor, Building No.5, Millennium Business Park, MHAPE, Navi Mumbai-400710	बनाम/ Vs.	The Dy. Commissioner of Income Tax, Circle 15(3)(1) Room No. 473, Aayakar Bhawan, M.K. Road, Mumbai-400 020
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAAC2537J		

अपीलार्थी की ओर से / Appellant by	:	Shri Dr. Akshay Kumar Hota, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Udal Raj Singh, DR

सुनवाई की तारीख / Date of hearing:	06.01.2020
घोषणा की तारीख / Date of pronouncement:	04.02.2020

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष /

PER MAHAVIR SINGH, VP:

This appeal of assessee is arising out of the order of Dispute Resolution Panel-2, Mumbai [in short 'DRP'] vide order dated 29.11.2016. The Assessment was framed by the Deputy Commissioner of Income Tax, Circle-15(3)(3) Mumbai (in short 'ITO/DCIT/AO') for the assessment year 2012-13 vide order dated 30.01.2017 under section 143(3) read with section 144C (13) of the Income Tax Act, 1961 (hereinafter 'the Act').



2. The first issue in this appeal of assessee is against the order of Dispute Resolution Panel, setting aside the issue to the file of the Assessing Officer with regard to disallowance of bad debts claimed for an amount of Rs.10,25,192/-. For this assessee has raised the following ground No.1: -

"1. The Ld. AO erred in making the disallowance of Bad Debts claim for Rs. 10,25,192/- after the DRP set aside the issue to the file of the AO without appreciating the facts of the case."

3. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that the assessee has submitted the payment of ₹10,28,152/- made to M/s Greenply Industries Ltd. which pertains to refund of excess money received from the said party. In this regard, drew our attention to the copy of Email communication, the Ledger Account Copy, the bank statement as a proof of refunding the amount, letter of intent and statement of order value on payment received against assessee's billing and eligible for refund. The assessee submitted that this sum of ₹10,28,152/- has been duly recognized as revenue in terms of section 36(2) of the Act. We find that assessee has duly recognized revenue in the respective year of billing while raising the tax invoices. Hence, at the time of refund of payment, assessee has claimed deduction. In our consideration, this sum deserves to be allowed and is hereby allowed.



4. The next issue in this appeal of the assessee is as regards to the order of Dispute Resolution Panel, confirming the action of the Assessing Officer in regard to disallowance of provision for creditors amounting to ₹15,10,910/-. For this, assessee has raised the following ground No.2: -

"2. The LA AO erred in disallowance of Rs.15,10,910/- made u/s 68 in respect of creditors after the DRP set aside the issue to the file of the AO without appreciating the facts of the case."

5. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that assessee at the end of the year in accordance with mercantile system of accounting had made provision for transportation expenses on the basis of per Metric Ton of Goods transported. In other words, this provision for transport expenses has been made by the assessee in respect of transportation where work has been provided or performed by the transporter but for which invoices has not been furnished by them to the assessee as on 31.3.2012. We find that subsequently the concerned transporters while raising the invoices on the assessee for the services rendered during the year under consideration had also submitted their PAN along with invoices. We find pursuant to the amendment brought in under section 194C(6) of the Act with effect from 01.04.2010, once PAN of the transporter is furnished, there is no requirement on the part of the assessee to deduct tax at source. We hold that this provision for



transportation expenses has been made by following the rate mentioned in the purchase order on the basis of per Metric Ton of goods transported which is on a scientific basis. Merely because the transporters account is not credited by mentioning his name, the said liability does not become contingent in nature in the facts and circumstances of the instant case. Hence, the addition made by the Assessing Officer under section 68 of the Act towards provision for creditors of ₹15,10,910/- is hereby directed to be deleted.

6. The next issue in this appeal of assessee is as regards to the order of Dispute Resolution Panel, in disallowing the interest expenses amounting to ₹20,10,346/-. For this, assessee has raised the following grounds: -

"3. The Ld DRP 2/AO erred in disallowing the interest for Rs. 20,10,346/- without appreciating the facts of the case.

4. The Ld DRP 2/AO ought to have allowed Rs. 18,00,082/- u/s 43B being Sales Tax Interest which was actually paid in subsequent year."

7. We have heard rival contentions and gone through the facts and circumstances of the case. We find from the observation of the learned Dispute Resolution Panel which are enclosed in page 84 of the paper book filed before us that a sum of ₹18,00,082/- being interest on CST/ VAT payable by the assessee vide order dated 24.04.2012 was finally paid by the



assessee on 08.01.2013 falling in Assessment Year 2013-14. Since, the same was paid beyond the due date of the filing of return of income for Assessment Year 2012-13, the same cannot be allowed as deduction under section 43B of the Act in the Assessment Year 2012-13. However, we hold that the assessee would be eligible for deduction of the same in Assessment Year 2013-14 in the sum of ₹18,00,082/-. Accordingly, the ground Nos. 3 & 4 raised by the assessee are dismissed.

8. The last issue to be decided with regard to disallowance of prior period expenses in the sum of 19,78,890/-. For this, assessee has raised the following ground No.5: -

"5. The DRY 2/ AO erred in Disallowing Rs. 19,78,890/- as prior period expenses."

9. We have heard rival contentions and gone through the facts and circumstances of the case. We find that the assessee has claimed that amount of ₹19,78,890/- was reversed towards sales tax liability. We find that the Assessing Officer had mixed up the issue of VAT order, where adjustment of VAT payable for interest issued against the VAT refund of different years which are already been dealt by us in ground Nos.3&4 above. We find that this VAT order has nothing to do with the disallowance of Prior Period Expenses made by the Assessing Officer. We find that assessee has filed an elaborate reconciliation year wise with regard to this issue, which is enclosed in page 10 of the assessee's paper book. The learned Assessing Officer fairly



pleaded that let this issue be verified afresh by the Assessing Officer with the complete reconciliation filed by the assessee. Per contra, the learned Departmental Representative also agreed to the said proposition. Accordingly, we deem it fit and appropriate to remand this issue back to the file of the Assessing Officer for denovo adjudication in accordance with law. The assessee is directed to file before the learned Assessing Officer the reconciliation statements which were filed before us. Accordingly, this ground No.5 is allowed for statistical purposes.

10. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 04.02.2020

Sd/-

(एम बालगणेश / M BALAGANESH)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated:04.02.2020

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai