

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'B': NEW DELHI)
(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 5435/Del/2014
(Assessment Year: 2006-07)**

M/s CICO Technotrade Limited, C-44/2, 1 st & 2 nd Floor, Okhla Industrial Area, Phase-II, New Delhi-110020.	Vs.	Income Tax Officer, Ward 3(3), CR Building, New Delhi, 110002.
PAN No: AABCC8852E		
APPELLANT		RESPONDENT

**ITA No:- 3368/Del/2014
(Assessment Year: 2005-06)**

M/s CICO Technologies Limited, C-44/2, Okhla Industrial Area, Phase-II, New Delhi-110020.	Vs.	Assistant Commissioner of Income Tax, Circle 3(1), New Delhi.
PAN No: AABCC2930K		
APPELLANT		RESPONDENT

**ITA No:- 4538/Del/2014
(Assessment Year: 2005-06)**

M/s CICO Technologies Limited, C-44/2, Okhla Industrial Area, Phase-II, New Delhi-110020.	Vs.	Assistant Commissioner of Income Tax, Circle 3(1), New Delhi.
PAN No: AABCC2930K		
APPELLANT		RESPONDENT

ITA No:- 1074/Del/2011
(Assessment Year: 2006-07)

M/s CICO Technologies Limited, S-38, Okhla Industrial Area, Phase-II, New Delhi-110020.	Vs.	Assistant Commissioner of Income Tax, Circle 3(1), New Delhi.
PAN No: AABCC2930K		
APPELLANT		RESPONDENT

ITA No:- 5434/Del/2014
(Assessment Year: 2010-11)

M/s CICO Technologies Limited, C-44/2, 1 st & 2 nd Floor, Okhla Industrial Area, Phase-II, New Delhi-110020.	Vs.	Deputy Commissioner of Income Tax, Circle 3(1), New Delhi.
PAN No: AABCC2930K		
APPELLANT		RESPONDENT

ITA No:- 855/Del/2013
(Assessment Year: 2009-10)

D.C.I.T., Circle-3(1), New Delhi.	Vs.	M/s CICO Technology Ltd., S-44/2, Okhla Indl. Area Phase-II, New Delhi-20.
PAN No: AABCC2930K		
APPELLANT		RESPONDENT

ITA No:- 481/Del/2012
(Assessment Year: 2007-08)

Asstt. Commissioner of Income Tax, Circle-3(1), New Delhi.	Vs.	M/s CICO Technologies Ltd., S-38,Okhla Indl. Area ph-II, New Delhi-20.
PAN No: AABCC2930K		
APPELLANT		RESPONDENT

Assessee By : Shri Ashish Mendiratta , CA
Revenue By : Shri Jagdish Singh, Sr. DR

Per Anadee Nath Misshra, AM

(A) The aforementioned appeals in the case of the Assessee are taken up together for the sake of convenience and brevity; and are hereby disposed off through this Consolidated Order.

(B) First, we take up the ITA Nos.- **5435/Del/2014, 3368/Del/2014, 4538/Del/2014, 1074/Del/2011 and 5434/Del/2014.** Grounds taken in these five appeals of Assessee are as under:

ITA No.- 5435/Del/2014

- "1. *On the facts and circumstances of the case, the penalty order passed by the Ld. CIT(A) is bad in law.*
2. *The Ld. CIT(A) has erred in law and on facts in confirming the penalty of Rs. 27,74,638/- under section 271(1)(c) of the Income Tax Act, 1961.*
3. *The Ld. CIT(A) has erred in law and on facts in not acknowledging the fact that in terms of clause (A) to explanation 1 to Section 171(1), the assessee neither failed to furnish the explanation nor filed any explanation which could be found to be false.*

4. *The Ld. CIT(A) has erred in law and on facts in failing to appreciate that under the clause (B) to explanation 1 to 271(1), the assessee offered necessary explanation under bonafide belief and disclosed all material facts.*
5. *The Ld. CIT(A) has erred in law and on facts in confirming penalty on account of addition made towards cash credit u;/s 68 amounting to Rs. 8175,297/-.*
6. *The Ld. CIT(A) has erred in law on facts, in confirming penalty on account of addition made towards miscellaneous income, amounting to Rs. 67,835/-*
7. *The appellant craves leave to amend, delete or add any grounds of appeal before or during the course of hearing of the appeal."*

ITA No.- 3368/Del/2014

- "1. *On the facts and circumstances of the case, the order passed by the Ld. CIT(A) is bad in law.*
 - 1.1. *Ld. CIT(A) erred both in law and facts in passing an ex-parte order without providing opportunity of hearing to the appellant;*
 - 1.2. *Ld. CIT(A) erred both in law and facts in ignoring the fact that notices sent to the appellant regarding hearing of appeal had been returned unserved on the appellant and has further erred in not getting the notices served at the right address of the appellant.*
2. *The Ld. CIT(A) erred both in law and on the facts of the case in confirming the disallowance of lease rental charges amounting to Rs.6,36,363/-.*
3. *The Ld. CIT(A) erred both in law and on the facts of the case in confirming the disallowance of . Goodwill amounting to Rs.2,00,000/-.*
4. *The Ld. CIT(A) erred both in law and on the facts of the case in confirming the disallowance of loss on sale of Fixed Assets amounting to Rs.2,19,952/-.*
5. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in failing to dispose-off ground raised against disallowance by the Ld. AO of Rs. 1,32,082/- on account of EPF & ESI payments.*
6. *The appellant craves leave to amend, delete or add any grounds of appeal before or during the course of hearing of the appeal."*

ITA No.- 4538/Del/2014

- "1. *On the facts and circumstances of the case, the order passed by the Ld. CIT(A) is bad in law.*
2. *The Ld. CIT(A) erred both in law and on the facts in confirming the levy of penalty on disallowance of lease rental charges amounting to Rs.6,36,364/-.*
3. *The Ld. CIT(A) erred both in law and on the facts of the case in confirming the levy of penalty on disallowance of Goodwill amounting to Rs.2,00,000/-,*

4. *The Ld. CIT(A) erred both in law and on the facts of the case in confirming the levy of penalty on disallowance of loss on sale of Fixed Assets amounting to Rs. 2,19,952/-.*
5. *The appellant craves leave to amend, delete or add any grounds of appeal before or during the course of hearing of the appeal."*

ITA No.- 1074/Del/2011

- "1. *On the facts and circumstances of the fact the order passed by the Ld. CIT(A) is bad in law and on facts.*
2. *The Ld. CIT(A) has erred in law and on facts, of the case in upholding that the apportionment of Freight and Cartage expenses between 80IC and non-80IC units should be made out of Rs. 67,36,134, i.e. the entire expense incurred by the assessee as a whole, instead of Rs. 77,296, i.e. the expenses incurred by the assessee towards its head office despite the fact that expenses pertaining to 80IC unit (Rs. 7,32,218/- out of Rs. 67,36,134) have already been debited in tire books of 80IC unit.*
3. *The Ld. CIT(A) has erred in law and on facts of the case in upholding that the apportionment of Commission expenses between 80IC, and non-80IC units should be made out of Rs. 86,02,494/-, i.e. the entire expense incurred by the assessee as a whole, instead of Rs. 22,57,575, i.e. the expenses incurred by the assessee towards its head office despite the fact that expenses pertaining to 80IC unit (Rs. 11,67,726/- out of Rs. 86,02,494/-) have already been debited in the books of 80IC unit.*
4. *The Ld. CIT(A) has erred in law and on facts of the case in rejecting the contention of the assessee that at the time of apportionment of expenses between 80IC and non-80IC units in respect of the following divisions, the expenses incurred towards Plead Office should not be allocated since the same 'stands already allocated in the ratio of 21:79 while allocating the expenses of freight and cartage and commission:*
 - *Ghaziabad*
 - *Contract Division*
 - *Mumbai*
 - *Gurgaon*
5. *The Ld. CIT(A) has erred in law and on facts of the case in rejecting the contention of the assessee that at the time of apportionment of expenses between 80IC and non-80IC units in respect of the following divisions, the expenses incurred towards sales tax should not be allocated since payments made for sales tax is a recoverable expense:*
 - *Ghaziabad*
 - *Contract Division*
 - *Mumbai*
 - *Gurgaon*

6. *The Ld. CIT(A) has erred in charging interest u/s 234B, 234C and 234D and withdrawing interest u/s 244A of the I. T. Act*
7. *The appellant craves indulgence to amend, delete or add any grounds of appeal before or during the course of hearing of the appeal."*

ITA No.- 5434/Del/2014

- “1. *On the facts and circumstances of the case, the penalty order passed by Ld. CIT(A) is bad in law.*
2. *The Ld.CIT(A) has erred in law and on facts in confirming the penalty imposed by the Ld. AO amounting to Rs, 12,44,000/- under section 271(1)(c) of the Income Tax Act,. 1961.*
3. *The Ld. CIT(A) has erred in law and on facts in not acknowledging the fact that in terms of clause (A) to explanation 1 to section 271(1), the assessee neither failed to furnish the explanation nor filed any explanation which could be found to be false.*
4. *The Ld. CIT(A) has erred in law and on facts in failing to appreciate that under the clause (B) to explanation 1 to 271(1), the assessee offered necessary explanation under bonafide belief and disclosed all material facts.*
5. *The Ld. CIT(A) has erred in not appreciating the fact that the disallowance made u/s 143(3) has neither resulted in any reduction of loss declared in the return of income by the assessee nor resulted in any increase of income of the assessee.*
6. *The appellant craves leave to amend, delete or add any grounds of appeal before or during the course of hearing of the appeal."*

(B.1) At the outset, the Ld. Authorized Representative (“AR”, for short) for the Assessee informed us that the assessee has decided to opt for Vivad Se Vishwas Scheme (“VSVS”, for short) and that the assessee has already filed the relevant forms prescribed under the Direct Tax VSVS Rules, 2020. The Ld. AR for assessee also drew our attention to letter dated November 17th, 2020 and filed in Income Tax Appellate Tribunal (“ITAT”, for short) giving intimation for the same.

(B.2) At the time of hearing before us, the Ld. Counsel for assessee as well as the learned Departmental Representative ("Ld. DR", for short) submitted before us that these appeals may be treated as withdrawn and may be dismissed on account of the aforesaid VSVS Scheme; subject to settlement of the disputes in these appeals, under the aforesaid VSVS Scheme. In view of the foregoing; after due consideration of the matter; and as both sides have agreed to this, we treat these five appeals as withdrawn on account of the aforesaid VSVS Scheme. Accordingly, these appeals are dismissed, subject to settlement of the disputes in the appeals, under the aforesaid VSVS Scheme.

(B.3) Before we part, we hereby clarify by way of abundant caution, that if for some reason the disputes under these five appeals before us are not settled under the aforesaid VSVS Scheme, then the assessee will be at liberty to approach ITAT for restoration of any or all of these appeals, in accordance with law.

(B.4) With these directions, the aforesaid five appeals of the assessee are dismissed, being treated as withdrawn.

(C) Next, we take up **ITA No. 855/Del/2013** for Assessment Year 2009-10. This appeal by Revenue is filed against the order of Learned Commissioner of Income Tax (Appeals)-VI, New Delhi, ["Ld. CIT(A)", for short], dated 07.11.2012 for Assessment Year 2009-10. Grounds taken in this appeal of Revenue are as under:

"1. Whether the Ld. CIT(A) has erred on facts and in law in holding that the stock of the assessee is reconciled based on figures of external purchase ignoring the fact that the assessee is a manufacturer of goods and not a trader as per the Tax Audit Report.

2. Whether the Ld. CIT(A) has erred on facts and in law in holding that the discrepancy as per excise records is reconciled ignoring that the

assessee failed to produce the books of accounts during assessment proceedings and no confirmed copy was submitted during remand report proceedings.

3. *Whether Ld. CIT(A) has erred on facts and in law in deleting, the addition of Rs 72,18,250/- on account of discrepancy as per service tax return ignoring that the assessee only produced unverifiable ledger accounts of transporters and no relief should have been given based on the same.*

4. *Whether the Ld. CIT(A) has erred on facts and in law in deleting the addition of Rs. 6,36,014/- on account of disallowance of lease rental charges ignoring the fact that the same qualifies as capital expenditure as assessee derives enduring benefit from the same and accordingly not allowable as deduction as revenue expenses.*

5. *The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."*

(C.1) At the outset, Learned Authorized Representative("Ld. AR", for short) for the assessee brought to our notice, at the time of hearing, that tax effect in this appeal is below Rs. 50,00,000/-. Both sides, [Representatives of Revenue and the Assessee] were in agreement, at the time of hearing before us, that the tax effect in the present appeal is below Rs. 50,00,000/-. Vide recent CBDT Circular No. 17/2019 dated 08.08.2019 read with earlier CBDT Circular No. 3 of 2018, dated 11.07.2018, minimum threshold limit of tax effect of filing of appeals by Revenue in Income Tax Appellate Tribunal has been enhanced to Rs. 50,00,000/-. In a subsequent clarification issued by CBDT vide F.No. 279/Misc/M-93/2018-ITJ, dated 20/08/2019, it has been clarified by CBDT that the aforesaid revised monetary limit is also applicable to all pending appeals in ITAT. Having regard to the aforesaid, the learned Senior Departmental Representative ("Ld. Sr. DR", for short) for Revenue did not press the appeal. The Ld. AR for the assessee also submitted that the appeal was not maintainable in view of the

aforesaid CBDT Circular dated 08.08.2019 and 11.07.2018; and aforesaid clarification dated 20.08.2019 issued by CBDT. Therefore, this appeal is dismissed being not pressed and also being not maintainable having regard to aforesaid CBDT Circular No. 17/2019 dated 08.08.2019 read with aforesaid CBDT Circular No. 3 of 2018 in the light of aforesaid clarification dated 20/08/2019.

(C.2) Before leaving, we clarify that Revenue will be at liberty to approach Income Tax Appellate Tribunal U/s 254(2) of Income Tax Act, 1961 seeking recall of this order and, for restoration of this appeal if it is found that appeal of Revenue is not covered by aforesaid CBDT Circulars dated 08.08.2019 and 11.07.2018.

(C.3) This appeal by Revenue is dismissed.

(D) Now, we take up **ITA No.- 481/Del/2012** for Assessment Year 2007-08. This appeal by Revenue is filed against the order of Learned Commissioner of Income Tax (Appeals)-VIII, New Delhi, ["Ld. CIT(A)", for short], dated 22.11.2011 for Assessment Year 2007-08. Grounds taken in this appeal of Revenue are as under:

"1. The Ld. CI(A) has erred on facts and in law in deleting the AO to calculate the apportionment of expenses after excluding the sales tax etc. amounting Rs. 2,00,48,775/- for the purpose of deduction u/s 80IC.

2. The Ld. CIT(A) has erred on facts and in law in deleting addition of Rs. 6,36,364/- on account of disallowance of lease rentals.

3. The Ld. CIT(A) has erred on facts and in law in deleting addition of Rs. 46,698/- on account of disallowance of extra depreciation on computer peripherals.

4. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

(D.1) At the outset, Learned Authorized Representative("Ld. AR", for short) for the assessee brought to our notice, at the time of hearing, that tax effect in this appeal is below Rs. 50,00,000/-. Both sides, [Representatives of Revenue and the Assessee] were in agreement, at the time of hearing before us, that the tax effect in the present appeal is below Rs. 50,00,000/-. Vide recent CBDT Circular No. 17/2019 dated 08.08.2019 read with earlier CBDT Circular No. 3 of 2018, dated 11.07.2018, minimum threshold limit of tax effect of filing of appeals by Revenue in Income Tax Appellate Tribunal has been enhanced to Rs. 50,00,000/-. In a subsequent clarification issued by CBDT vide F.No. 279/Misc/M-93/2018-ITJ, dated 20/08/2019, it has been clarified by CBDT that the aforesaid revised monetary limit is also applicable to all pending appeals in ITAT. Having regard to the aforesaid, the learned Senior Departmental Representative ("Ld. Sr. DR", for short) for Revenue did not press the appeal. The Ld. AR for the assessee also submitted that the appeal was not maintainable in view of the aforesaid CBDT Circular dated 08.08.2019 and 11.07.2018; and aforesaid clarification dated 20.08.2019 issued by CBDT. Therefore, this appeal is dismissed being not pressed and also being not maintainable having regard to aforesaid CBDT Circular No. 17/2019 dated 08.08.2019 read with aforesaid CBDT Circular No. 3 of 2018 in the light of aforesaid clarification dated 20/08/2019.

(D.2) Before leaving, we clarify that Revenue will be at liberty to approach Income Tax Appellate Tribunal U/s 254(2) of Income Tax Act, 1961 seeking recall of this order and, for restoration of this appeal if it is found that appeal

of Revenue is not covered by aforesaid CBDT Circulars dated 08.08.2019 and 11.07.2018.

(D.3) This appeal by Revenue is dismissed.

(E) In the result, all the seven appeals are dismissed.

These orders were already pronounced on 23rd November, 2020 in Open Court, in the presence of Representative of both sides; after conclusion of the hearings.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 23/11/20
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	23/11/20
Date on which the typed draft is placed before the dictating Member	23/11/20
Date on which the typed draft is placed before the Other Member	23/11/20
Date on which the approved draft comes to the Sr. PS/PS	23/11/20
Date on which the fair order is placed before the Dictating Member for pronouncement	23/11/20
Date on which the fair order comes back to the Sr. PS/PS	23/11/20
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	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	