

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA
VIRTUAL COURT HEARING**

(Before Sri J. Sudhakar Reddy, Hon'ble Accountant Member & Sri S.S. Godara, Hon'ble Judicial Member)

ITA No. 1156/Kol/2019
Assessment Year: 2013-14

Income Tax Officer, Ward-2(2), Asansol.....Appellant

Vs.

M/s. Maa Liloni Ispat Pvt. Ltd.....Respondent

Vill:- Maheshpur

PO:- Salanpur

Dist:- Paschim Bardhaman

West Bnegal- 713 369

[PAN :AAECM 3066 F]

Appearances by:

Shri A.K. Tibrewal, FCA & Shri Amit Agarwal, appeared on behalf of the assessee.

Shri Dhruvajyoti Ray, JCIT, D/R, appearing on behalf of the Revenue.

Date of concluding the hearing : December 10th, 2020

Date of pronouncing the order : January 5th, 2021

ORDER

Per J. Sudhakar Reddy, AM :-

This appeal filed by the revenue is directed against the order of the Learned Commissioner of Income Tax (Appeals) – Asansol, (hereinafter the “ld. CIT(A)”), passed u/s. 250 of the Income Tax Act, 1961 (the ‘Act’), dt. 11/02/2019, for the Assessment Year 2013-14.

2. The assessee is a company and is engaged in the manufacturing of M S Ingots. The grounds of appeal of the revenue in this case are as follows:-

3. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

“1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A), Asansol is justified in deleting the disallowance of Rs. 5,95,541/-.

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs. 4,81,56,985/- made on account of difference of liability shown in audit report of the assessee and data submitted by DVC on the grounds that during the course of appellate proceedings the assessee-company submitted reconciliation statement, whereas the assessee company failed to substantiate the difference and could not furnish any reliable and convincing material before the AO, despite given sufficient opportunities during the course of scrutiny proceedings.

3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs. 83,40,692/- on the grounds that this amount had already been incorporated in the figure of Rs. 4,81,56,985/-, whereas during the course of scrutiny proceedings the assessee company could not furnish explanation before the AO.

4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition/disallowances made on the above issues in relying entirely on the submission of the assessee and in deleting the additions, without referring these above issues to the AO for submission of remand report and thus violating of the provisions of rule 46A of the I.T. Rules 1962.

5. The appellant craves leave to supplement, substitute, add alter, amend, cancel or otherwise modify all or any of the grounds herein-before or at the time of hearing, if necessary so arises."

4. Ground No. 1 is against the deletion of disallowance of Rs.5,95,541/-. The ld. CIT(A) in his order has dealt with this issue as follows:-

*"The appellant had paid Rs.5,95,541/- as penalty for making late payment of surcharge of electricity charges to DVC. The A.O. held these payments were penal in nature and hence not allowable as expenditure. During the course of the assessment proceedings, the appellant stated that the penalty paid to DVC on account of late payment was not in the nature of any infringement of any law or Act. It is a penal cause arising out of bilateral agreement between two parties and cannot be termed as an offence under any law. It is compensatory in nature. The Hon'ble Supreme Court in the case of Prakash Cotton Mills Pvt. Ltd. vs. CIT Central Bombay had held that notwithstanding the nomenclature, it is necessary to find whether the penalty paid is compensatory or penal in nature. As the expenses incurred are compensatory in nature, the addition of Rs.5,95,541/- is deleted and **appeal is allowed.**"*

4.1. Penalty for making late payment of surcharge of electricity charges to Damodar Valley Corporation (DVC), cannot be disallowed u/s 37 of the Act, on the ground that the payment is for infringement of law. We agree with this finding of the ld. CIT(A) and dismiss this ground of the revenue.

5. Ground No. 2 is against the deletion of an addition of Rs.4,81,56,985/- made on account of difference of liability shown in audit report of the assessee and data submitted by DVC. The ld. CIT(A) dealt with this issue at page 12 to 15 of his order. This factual finding of the ld. CIT(A) that certain amount is payable by the assessee on account of dispute between DVC and that the assessee's current year's profit and loss account is in accordance with the bills raised by the DVC, is not disputed by the ld. D/R. This factual finding of the ld. CIT(A) that the difference, if any, is in respect of earlier year balances and that they do not pertain to this year and that there are certain disputes in Court, is also not controverted on facts by the ld. D/R. When the ld. D/R is not able to factually contradict the findings of the ld. CIT(A), on the above factual reconciliation of accounts, we have not other alternative but to uphold the order of the ld. CIT(A) and dismiss Ground No. 2 of the revenue.

6. Ground No. 3 is against the deletion of an addition of Rs.83,40,692/-. This is part of the reconciliation difference disputed in Ground No. 2. Here also, the factual findings of the Id. CIT(A) could not be disputed by the revenue. Thus, we uphold the same and dismiss Ground No. 3 of the revenue.

7. Ground No. 4 is on the issue of admission of additional evidence by the Id. CIT(A). We find that there is no admission of additional evidence by the Id. CIT(A) and that all the papers, of reconciliation statements etc., considered by the Id. CIT(A), were also before the Assessing Officer, copy of which was placed at page 34 of the paper book. Hence, we dismiss Ground No. 4 of the revenue.

8. Ground No. 5 is general in nature.

9. In the result, appeal of the revenue, is dismissed.

Kolkata, the 5th day of January, 2021.

Sd/-
[S. S. Godara]
 Judicial Member

Dated : 05.01.2021
 {SC SPS}

Copy of the order forwarded to:

1. **M/s. Maa Liloni Ispat Pvt. Ltd**
Vill:- Maheshpur
PO:- Salanpur
Dist:- Paschim Bardhaman
West Bnegal- 713 369

2. **Income Tax Officer, Ward-2(2), Asansol**

3. CIT(A)-
 4. CIT- ,
 5. CIT(DR), Kolkata Benches, Kolkata.

Sd/-
[J. Sudhakar Reddy]
 Accountant Member

True copy
 By order

Assistant Registrar
 ITAT, Kolkata Benches