

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

**Before Sh. Kul Bharat, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**(Through Video Conferencing)**

**ITA No. 5909/Del/2017 : Asstt. Year : 2010-11**

|   |    |  |
|---|----|--|
| ACIT,<br>Central Circle-19,<br>New Delhi-110055 | Vs | Nilkanth Concast Pvt. Ltd.,<br>Survay No. 221, Village<br>Vadala, Mundra, Kutch,<br>Gujarat-370410 |
| <b>(APPELLANT)</b>                              |    | <b>(RESPONDENT)</b>  |
| <b>PAN No. AABCN8500A</b>                       |    |  |

**Assessee by : Sh. Arvind Kumar, Adv.  
Revenue by : Ms. Rinku Singh, Sr. DR**

**Date of Hearing: 24.06.2021**

**Date of Pronouncement: 06.07.2021**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the revenue against the order of the Id. CIT(A)-25, New Delhi dated 26.05.2017.

2. Following grounds have been raised by the revenue:

*"1. The Id. CIT (A) has erred on facts and in law and on facts in allowing the appeal of the assessee without truly appreciating the factual matrix of the case.*

*2. The Id. CIT (A) has erred in law and on the facts in deleting the addition of Rs.4,25,79,094/- made by the AO on account of sundry creditors.*

*3. The Id. CIT (A) has erred in law and on the facts in deleting the addition of Rs.28,84,000/- made by AO on account of interest paid on borrowed funds*

*from the date of installation of the power plant to the date on which the power plant was commercial started.”*

3. The assessee is a private limited company engaged in manufacturing of Sponge Iron, M.S. Billets and TMT Bars. The return income of the assessee was (-) Rs.12.67 Crores against which the book profit u/s 115JB shown was of Rs.6.47 Crores.

4. During the assessment, the assessee could not furnish any confirmation in details in respect of the following three parties:

- |  |                  |
|--|------------------|
| 1. Concast Exim Ltd.                   | Rs.3,59,06,000/- |
| 2. Fridon Kikalishvili                 | Rs.64,46,557/-   |
| 3. Aggarwal Coal Corporation Pvt. Ltd. | Rs. 4,86,531/-   |

Hence, it was incumbent upon the Assessing Officer to make addition on account of unproved purchases in the absence of any evidence furnished by the assessee before him.

5. During the First Appellate proceedings, the assessee submitted that these three parties were trade creditors from whom the assessee had purchased raw material in the goods were supplied to them and provided all the documentary evidences. The same have been forwarded to the Assessing Officer and remand report have been sought.

6. We have gone through the order of the Id. CIT (A) wherein the entire issue and the reconciliations have been examined. The confirmation, bills, transport receipts and other documents given by creditors were filed by the assessee in the appellate proceedings. The remand report of the Assessing Officer has

been much delayed and the AO has not examined the details given by the assessee before the Id. CIT (A) which have been duly forwarded to the AO on 21.01.2016. The AO has sent a report to the Id. CIT (A) on 01.02.2017 after issuing the notice to the parties (sundry creditors) on 23.01.2017. Thus, effectively, it can be said that the AO failed to avail opportunity given to him by the Id. CIT (A) which necessitated the Id. CIT (A) to adjudicate the matter based on the documents available before him.

7. The reconciliation statements with regard to the three parties are as under:

**a. Reconciliation Statement between balance as on 31.03.2010 as per books of Account of assessee and M/s Concast Exim Limited**

| S. No. | Particulars  | Amount<br>Dr./ (Cr.) |
|--------|--|----------------------|
| 1      | Balance of Appellant in the books of M/s Concast Exim Limited as on 31.03.2010   | 87,770,584           |
| 2      | Custom Duty paid and shown in Ledger of M/s Concast Exim Limited in the books of Appellant   |                      |
|        | (a) 29.12.2009 (Payment made for Custom Duty)  | (2,973,459)          |
|        | (b) 29.12.2009 (Payment made for Custom Duty)  | (1,779,140)          |
|        | (c) 29.12.2009 (Payment made for Custom Duty)  | (1,779,140)          |
| 3      | Difference due to Foreign exchange fluctuation first invoice of 4729.29  | 164,319              |
| 4      | Custom Duty on purchase credited in Ledger of M/s Concast Exim Limited in the books of Appellant on 11.01.2010 (Excise Duty on Purchase) | 8,361,816            |
| 5      | Custom Duty paid and shown in Ledger of M/s Concast Exim Limited in the books of Appellant on 31/03/2010                                 | (5,331,945)          |
| 6      | Custom Duty on purchase shown in Ledger of M/s Concast Exim Limited in the books of Appellant on 31/03/2010 (Excise Duty on Purchase)    | 5,222,350            |

|   |   |              |
|---|---|--------------|
| 7 | Purchase of 3000 MTS of shredded steel scrap (Invoice-001) entered in April 2010: which was entered by concast Exim Limited in Feb 2010 | (54,020,748) |
| 8 | Difference due to Foreign exchange fluctuation Second Invoice of 5000 Mts   | 271,363      |
|   | Balance as per books of Appellant   | 35,906,000   |

**b. Reconciliation Statement between balances as on 31.03.2010 as per books of Account of assessee and M/s Fridon Kikalishvili**

| S. No. | Particulars   | Amount Dr./ (Cr.) | USD                      |
|--------|---|-------------------|--------------------------|
| 1      | Balance of Fridon in the books of Appellant   | 6,446,557         |                          |
| 2      | Custom Duty paid and shown in Ledger of M/s Fridon Kikalishvili in the books of Appellant       |                   |                          |
|        | (a) 13.02.2010 Custom Duly paid by  | 275,614           |                          |
|        | (b) 27.03.2010 Custom Duty paid by  | 816,473           |                          |
| 3      | Custom Duty on purchase credited in Ledger of M/s Fridon Kikalishvili in the books of Appellant |                   |                          |
|        | (a) 3.02.2010, Voucher No. FRK-008 (Excise Duty on Purchase)                                    | (270,302)         |                          |
|        | (b) 31.03.2010, Voucher No. FRK-0013 (Excise Duty on Purchase)                                  | (799,690)         |                          |
|        | Balance as per books of Fridon Kikalishvili (in INR)  | 6,468,652         | Equivalent to USD 138171 |

**c. Reconciliation Statement between balances as on 31.03.2010 as per books of Account of assessee and ACCL/ACCL(s)**

| S. No. | Particulars  | Amount Dr./ (Cr.) |
|--------|--|-------------------|
| 1      | Balance of ACCL as on 31.03.2010 as per books of Appellant     | 486,531           |
| 2      | Difference in Opening balance                                  | 7,816,103         |
| 2      | Balance of Agarwal Transport Corp. Pvt. Ltd. adjusted by party | (167,640)         |

|   |  |                    |
|---|--|--------------------|
| 3 | <i>Amount write off by the party as per ledger maintained by the party (Same is also written back by Appellant in next year)</i> | <i>(259,994)</i>   |
| 4 | <i>Less: Letter of credit matured &amp; accounted by us which was accounted by party 2008-09 on discounting</i>                  | <i>(7,875,000)</i> |
|   | <i>Balance as per Accounts of ACCL as on 31.03.2010</i>  |                    |

8. The entire documents have been examined by the Id. CIT (A) and the detailed note has been prepared which has been examined by us. Perusal of the reconciliation between the balance of the assessee and M/s Concast Exim Ltd. shows that M/s Concast Exim Ltd. had purchased the goods from the overseas sellers and had supplied them to the assessee, there being two purchases through this party.

9. Invoice dated 04.12.09 shows a purchase price of Rs. 66,852,440/- and these goods were sold by M/s. Schintzar Steel industries Portland Oregon USA. The invoice dated 20.02.10 for Rs. 89,755,000/- shows that the goods were dispatched by S Norton & Co. Ltd. UK. The supply was spread over two years.

10. It is seen that as against the balance of the assessee in the books of M/s Concast Exim Ltd. as on 31.03.10 being Rs.8,77,70,584/-, the balance of that party as per the Books of the assessee Company on the same date was Rs.3,59,06,000/-. Perusal of the reconciliation reveals that there were entries of Customs duties paid, Foreign Exchange fluctuation, Excise duty on purchases which contributed towards the difference. The major difference, amounting to Rs.5,40,20,748/- was due to purchase of 3000 MT of Shredded Steel Scrap (Invoice - 001)

entered in April 2010, which was entered by M/s Concast Exim Ltd. in February 2010. It is seen that after the reconciliation, there is a difference of only Rs.20/-. Hence, we hold that no addition is called for on account of purchases from this party.

11. With regard to "Fridon Kikalishvili" 43 Building 8, Vazisubani Tbilisi, Georgia, the assessee had purchased Cast Iron Scrap/Heavy Melting Scrap from this party, the total purchases amounting to Rs.75,38,644/- in the F.Y. 09-10, with a total payment of Rs.10,92,087/-, leaving a credit balance of Rs. 64,46,557/-. It was submitted that the transaction with this party continued in the F.Y. 10-11 during which further goods were purchased from it. Perusal of the reconciliation between the balance of the assessee and M/s Fridon Kikalishvili shows that the assessee has stated that the Closing Balance of the assessee in books of M/s Fridon Kikalishvili as on 31.03.2010 was USD 1,38,171/- equivalent to Rs. 64,68,652/- and that the Closing Balance of M/s Fridon Kikalishvili in the Books of assessee as on 31.03.10 was Rs. 64,46,557/-. A reconciliation Statement for the reason of difference between balance of assessee and M/s Fridon Kikalishvili was submitted by the assessee.

12. In view of the entire facts of the case, we hold that no addition is called for on account of purchases from M/s Fridon Kikalishvili.

13. With regard to M/s Agarwal Coal Corporation Pvt. Ltd. (ACCL), the Closing Balance of the assessee in books of M/s ACCL as on 31.03.10 was Nil, whereas Closing Balance of M/s ACCL in the Books of assessee as on 31.03.10 was Rs.

4,86,531/-. It was stated that the copy of account for the F.Y. 09-10 shows that a sum of Rs. 73,88,469/- was the opening credit balance as on 01.04.09, and a total payment of 78,75,000/- was made to that party by the assessee, and thus, a Debit Balance of Rs. 4,86,531/- was outstanding in the Books of the assessee.

14. On going through the details no addition could be made under this Section because (i) there was Opening Balance and no New Credit had appeared in the Books of the assessee this year, and that (ii) it was the Debit Balance against M/s Agrawal Coal Corp. P Ltd. (ACCL) and not the Credit Balance, and hence no addition could be made u/s 68. The Id. CIT (A) has gone through the reconciliation Statement for the difference between balance of assessee and M/s ACCL. It was held that on perusal of the Reconciliation Statement reveals Nil balance of the assessee as per the accounts of ACCL on 31.03.10 and that of Rs.4,86,531/- as per the Books of the assessee. It is seen that such reconciliation includes an amount of Rs.2,59,994/- which has been shown as an amount Written Off by that party, i.e. ACCL, as per the ledger maintained by that party.

15. Further, there was actually a Debit of Rs.4,86,531/-, which was wrongly taken as a Credit from M/s ACCL by the Assessing Officer. In view of the entire facts of the case, we decline to interfere with the order of the Id. CIT (A).

16. Since, the Id. CIT (A) observation with regard to the amount of Rs.2,59,994/- is not a ground of appeal before us, no action is called for.

**Ground No. 3:**

17. The Assessing Officer has disallowed the Interest on the borrowed capital claimed by the Assessing Officer amounting to Rs.28,84,000/- being the Interest attributable from the period of the installation of the new Plant up to the date of start of commercial use of the Plant.

18. Against the total Interest paid till the commercial starting of Power Plant was Rs. 1.1 Crores, out of which an amount of Rs.81,16,000/- was attributed till to the date of installation and the balance of Rs.28,84,000/- was the Interest attributable from the date of installation to the date of commercial operation of the Power Plant.

19. The Assessing Officer capitalized the amount of interest amounting to Rs.28,84,000/- being the interest from installation to commercial operation on the ground that as per the Accounting Principles, the interest paid should be capitalized till the date the Power Plant was put to use, and hence disallowed the claim of Rs.28,84,000/- and added it to the income of the assessee company.

20. It was submitted by the assessee that the "Trial Run" was also an actual use and hence Interest for the period from the installation for "Trial Run" should be allowed as Revenue expenditure. The assessee relied upon the judgment of the Hon'ble Supreme Court of India in the case of Commissioner of Income Tax vs. Shri Rama Multi Tech Ltd., 2017(4) TMI 669.

21. There was no dispute that the Power Plant was used for Trial Run from the date of the installation to the date of the start of commercial use. The Assessing Officer has made the disallowance on the Ground that the interest incurred for the period before the commercial starting of the Power Plant had to be disallowed, without taking into account the period for "Trial Run".

22. Heard the arguments of both the parties and perused the material available on record.

23. We have gone through the case law of Shri Rama Multi Tech Ltd (supra) relied upon by the assessee and find that neither the facts of the case nor the ratio laid down in the case are applicable to the instant case.

24. We have gone through the issue with relevance to the allowances claimed in the P&L account whether it be depreciation or capitalization of interest with regard to the "Trial Run" of the unit.

25. In the case of PCIT Vs Larsen & Turbo Ltd., the Hon'ble Court ruled that once the plant commenced operations and a reasonable quantity of product is produced, the business is set up even if product was sub-standard and not marketable. In this case, a trial run was conducted for one day. After the trial run, commercial production of cement was initiated within reasonable time. According to AO, trial production was continued beyond the end of the financial year and therefore, he disallowed depreciation. The Co-ordinate Bench of ITAT allowed the depreciation holding that even if the plant and

machinery was used for trial run, some quantity was manufactured. The decision of the Tribunal was affirmed by the Hon'ble High Court and the SLP filed by the revenue has been dismissed.

26. In case of CIT Vs Escorts Tractors Ltd, Delhi High Court [2015] 56 taxmann.com 333 Delhi, Court held that Section 32 does not contemplate that manufacturing or production should have actually commenced nor does it contemplate that assets should be used for whole of the assessment year. Depreciation would be allowed when the machinery was installed before the end of the financial year and used only for the trial run, though not for the production.

27. Coming to the interest, such expenses incurred by a company for business purposes is a deductible expense under section 37(1) of the Act which provides that "*expenses laid out or expended wholly and exclusively for purposes of business shall be allowed in computing Profits and Gains from Business and Profession*". Further, proviso to section 36(1)(iii) of the Act provides for "*capitalization of interest paid for acquisition of an asset from the date on which funds were borrowed till the date such asset is **put to use***". Furthermore, as per Explanation 8 to section 43(1), interest paid shall be added in the actual cost of the asset till the asset is first "put to use" for claiming depreciation.

28. The Hon'ble Bombay High Court in the case of Western India Vegetable Products Ltd v. CIT [TS-3-HC-1954] held that setting up means ready to commence while actual commencement is when the business activity actually

commences and expenses incurred during the gap between set up and commencement are allowable deductions.

29. On the contrary, the Hon'ble Bombay High Court in the case of CIT vs. Forging and Stamping Pvt. Ltd. [TS-5079-HC-1979], held that mere trial run of the machines would not be sufficient to conclude that the business had set up.

30. The Co-ordinate Bench of ITAT Kolkata in the case of ACIT v. Paharpur Cooling Towers P. Ltd [TS-5437-ITAT-1992] held that assessee had not only set up its business but also commenced production when it started its trial production and hence allowed the expenses on trial production i.e. after setting up of business but prior to commercial production.

31. We have also gone through the ICDS IX with relation to capitalization of borrowing costs. The main guidelines with regard to the capitalization of borrowing costs are as under:

1. The borrowing costs should be capitalized to an extent to which it is incurred during the reporting period on the borrowed funds, specifically for the purpose of acquisition, construction or production of qualifying asset.
2. The capitalization will commence from the date when the funds have been borrowed, in case funds have been borrowed for the purpose of acquisition, construction or production of qualifying asset. In case of inventory, it will commence from the date, the utilization of borrowed funds have been started.

3. The capitalization of borrowing cost will cease when the qualifying asset is first put to use. In case of inventory, it will cease when the activities necessary to prepare such inventory, for its sale, are substantially completed.
4. When the construction of qualifying asset is taken up in parts and a substantially completed part is capable of being used then, the capitalization of borrowing costs will cease:
  - a. In case of part of qualifying asset, when such part of qualifying asset is first put to use
  - b. In case of part of inventory, when the activities necessary to prepare such part of inventory, for its sale, are substantially completed

32. CBDT vide notification no. 87 dated 29.09.2016 Central Government notified amended ICDS with effect from the assessment year 2017-18

**33. Having gone through the entire factum of the case, owing to the similar determinative factum of "put to use" in ICDS IX, AS-16, the judicial pronouncements, provisions to Section 36(1)(iii) and Explanation 8 to Section 43(1), we hereby hold that the Interest of Rs. 28,84,000/- has to be treated as Revenue Expenditure and need not be Capitalized. Accordingly, the disallowance of Rs. 28,84,000/- is hereby directed to be deleted.**

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

Order Pronounced in the Open Court on 06/07/2021.

Sd/-

**(Kul Bharat)**  
**Judicial Member**

**Dated: 06/07/2021**

\*Subodh\*

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**