

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

**BEFORE
SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 161/Del/2010
Assessment Year: 2006-07

Sahasra Electronics Pvt. Ltd., House No.33, Pocket-1, Jasola, New Delhi.	Vs.	ITO, Ward-7(2), New Delhi
PAN :AAFCS4643L		
(Appellant)		(Respondent)

ITA No. 534/Del/2010
Assessment Year: 2006-07

ITO, Ward-7(2), New Delhi	Vs.	Sahasra Electronics Pvt. Ltd., House No.33, Pocket-1, Jasola, New Delhi.
PAN :AAFCS4643L		
(Appellant)		(Respondent)

Assessee by	Shri Tarun Chanana, Advocate
Department by	Shri Abhishek Kumar, Sr. DR

Date of hearing	29.11.2022
Date of pronouncement	26.12.2022

ORDER

PER ASTHA CHANDRA, JUDICIAL MEMBER:

These cross-appeals filed by the assessee and the Revenue are directed against the order dated 26.11.2009 of the Ld. Commissioner of Income-Tax (Appeals)-X, New Delhi ("**CIT(A)**") pertaining to assessment year ("**AY**")2006-07. These were heard together and are being disposed of by this common order.

2. The assessee company is stated to be engaged in manufacturing at its Noida, Special Economic Zone, Noida and export of "Populated Printed Circuit Boards" (PPCB). It filed its return of income on 31.10.2006 for AY 2006-07 declaring an income of Rs.61,502/- after availing exemption of Rs.3,14,68,857/- under section 10A of the Income-Tax Act,1961 (**"The Act"**). The return was processed under section 143(1) of the Act. The case was selected for scrutiny. The Ld. Assessing Officer (**"AO"**) recomputed the income of the assessee in his order dated 23.10.2007 passed under section 143(3) of the Act as under:-

"14. After discussions, in view of the oral and written submissions made on behalf of the assessee company and on perusal of the documents on record, the returned income of the assessee company is being re-computed as under:

<i>Net Profit as per Profit & Loss Account</i>	(Rs.)	(Rs.)
		3,15,70,409
<u>Add:</u>		
<i>Depreciation as per Companies Act debited to P&L a/c</i>	20,23,383	
<i>Donation paid disallowed</i>	1,051	
<i>Value of free of cost material being added back as per Discussion at para 6 supra</i>	59,34,099	
<i>Expenditure on Tools and Accesssories capitalized as per Para 7 supra</i>	11,98,102	
<i>Expenditure on Electric load sanction capitalized as per Para 8 supra</i>	3,25,387	
<i>Bogus Creditors added back as per para 9 supra</i>	1,03,72,323	
<i>Bogus Advances from Customer added back as per Para 10 supra</i>	22,91,125	
<i>Excess claim of Bank Interest paid on Canara Bank OD As per para 11 supra</i>	78,657	
<i>Balance amount of Local Sales as per para 12 supra</i>	26,393	
<i>Rent paid disallowed u/s 40(a)(ia)</i>	1,20,000	
<i>Expenses disallowed in computation by the assessee</i>		
<i>Payments on which TDS was deposited late</i>	4,23,014	
<i>Miscellaneous expenses w/o</i>	17,378	
<i>Preliminary expenses w/o</i>	5,150	
<u>Less:</u>		
<i>(a) Interest income – for separate consideration</i>	33,192	
<i>(b) Depreciation as per Income Tax Act</i>	25,10,026	
<i>(c) Exemption u/s 10A of I.T. Act, 1961</i>	3,14,68,857	
<i>(being restricted to that claimed as per Form 56F)</i>		
<i>Taxable Business Profit</i>	(A)	2,83,74,396
<i>Business Income from Domestic Sales as per</i>	(c)	31,629

<i>Income from Other Sources (Interest Income) (B)</i>	33,192
<i>Gross Total Income (A) + (B) + (C)</i>	2,04,39,217”

3. Aggrieved, the assessee appealed before the Ld. CIT(A) who allowed the appeal of the assessee partly maintaining certain disallowances/add backs and deleting certain disallowances either fully or in part. It is against sustaining the disallowances/add backs that the assessee is in appeal before the Tribunal whereas the Revenue has challenged before us the additions/disallowances which have been deleted wholly or in part.

4. We have heard the Ld. Representative the parties and perused the material on records.

5. We shall take up the appeal of the assessee and the Revenue together.

5.1 The assessee has taken the following grounds of appeal:

- “1. *Whether, on the facts and circumstances of the case, the learned Commissioner of Income-Tax (CIT’A’) has erred in confirming the action of the Assessing Officer (A.O) of treating Rs.4,92,464/- out of Rs.8,38,479/- charged by the assessee under the expenses head ‘Tools & Accessories purchased’ on account of purchase of Tools and Miscellaneous Accessories, as capital in nature and not revenue.*
2. *Whether, on the facts and circumstances of the case, the learned CIT’A’ has erred in confirming the action of the AO of treating Rs.60,800/- out of Rs.3,59,623/- charged by the assessee under the expenses head ‘Tools’ & Accessories Purchased’ on account of Tools & Miscellaneous Manufacturing expenses, as capital in nature and not revenue.*
3. *Whether, on the facts and circumstances of the case, the learned CIT’A’ has erred in confirming the action of the AO of treating Rs.3,25,387/- paid to the service charges/system loading charges, as capital in nature being one time payment, and not as revenue expenditure.*
4. *Whether, on the facts and circumstances of the case, the learned CIT’A’ has erred in confirming the action of the AO of adding back to the profits, Rs.5,54,423/- being the amount due to 3 sundry creditors, namely, Consult Techniques (I) Pvt. Ltd., Rs.1,34,469/-, Dynapro Engineering Associates, Rs.2,79,894/ and Capital*

Building Material Supplier, Rs.1,40,060/-, due to non receipt of any response from these parties by the A.O u/s.133(6), of the Act, in the remand proceedings.

5. *Whether, on the facts and circumstances of the case, the learned CIT'A' has erred in confirming the action of the AO of adding back to the Net Profits, Rs.1,69,272/-, being the amount due to 1 Sundry Creditor i.e.; Blue Star Limited, due to non service of a notice u/s. 133(6) of the Act, sent by the A.O in the remand proceedings.*
6. *Whether, on the facts and circumstances of the case, the learned CIT'A' has erred in confirming the action of the AO of adding back Rs.78,657/- to the Net Profits, being the amount paid by the assessee to its Bank as Interest on term loan, by treating that to be an amount for which the assessee did not establish that the expenditure was incurred for business purposes.*
7. *Whether, on the facts and circumstances of the case, the learned CIT'A' has erred in confirming the action of the AO of adding back to Net Profit, Rs.26,393/- being the difference between the figure of Gross Sales as per CST/VAT return, Rs.1,29,293/-, and Rs.1,02,900/-, as per Books of account, for want of details of consequent adjustment on account of payment of CST of Rs.4,973/- and Rs.21,420/- as Customs Duty.*
8. *That the order of the learned CIT 'A' is bad in law and on the facts of the case."*

5.2 The grounds of appeal taken by the Revenue are as under:

1. *"Ld. Commissioner of Income-Tax (Appeals) erred, in law and on the fact and circumstances of the case, in deleting the addition of Rs.59,34,099/- made by the AO on account of value of raw material."*
2. *"Ld. Commissioner of Income-Tax (Appeals) erred, in law and on the fact and circumstances of the case, in allowing 10% of interest of Rs.33,192/- as expenses incurred for earning interest income."*
3. *"Ld. Commissioner of Income-Tax (Appeals) erred, in law and on the fact and circumstances of the case, in deleting the addition of Rs.6,44,838/- out of Rs.11,98,102/- made by the AO on account of expenditure incurred on tools and accessories being capital in nature."*

4. *“Ld. Commissioner of Income-Tax (Appeals) erred, in law and on the fact and circumstances of the case, in deleting the addition of Rs.1,03,72,323/- made by the AO on account of unconfirmed sundry creditors.”*
5. *“Ld. Commissioner of Income-Tax (Appeals) erred, in law and on the fact and circumstances of the case, in deleting the addition of Rs.22,91,125/- made by the AO on account of unconfirmed advances received from customers.”*
6. *“Ld. Commissioner of Income-Tax (Appeals) erred, in law and on the fact and circumstances of the case, in deleting the addition of Rs.1,20,000 made by the AO u/s.40(a)(ia) of the IT Act on account of rent paid to director.”*
7. *“Ld. Commissioner of Income-Tax (Appeals) erred, in law and on the fact and circumstances of the case, in directing the AO to reduce Rs.31,629/- being domestic sale from eligible profit u/s 10A after verification.*
8. *“Ld. Commissioner of Income-Tax (Appeals) erred, in law and on the fact and circumstances of the case, in directing the AO to allow 100% deduction u/s. 10A on business profits.”*

6. Ground no.1 and ground no.2 of the assessee and ground no.3 of the Revenue relate to expenses incurred by the assessee for purchase of Tools and Miscellaneous accessories (Rs.8,38,479/-) and Tools and Miscellaneous Manufacturing Expenses (Rs.3,59,623/-). The Ld. AO treated these expenses debited to P & L account as capital expenditure and added the total sum of Rs.11,98,102/- to the income of the assessee. Before the Ld. CIT(A), the assessee submitted that each of the purchases/expenses under the above said two heads of account are on revenue account being part of the manufacturing process and not of enduring nature which could get classified as “capital expenditure”. The Ld. CIT(A) scrutinized the entire list of expenses item by item keeping in view their use in the manufacturing process and recorded the finding that addition of Rs.4,92,464/- and Rs.60,800/- respectively out of the above two heads of account is sustained being capital expenditure entitled to depreciation at the admissible rate as per Rules and deleted the disallowance of Rs.3,45,965/- and Rs.2,98,823/- respectively under the said two heads of account. We endorse the factual finding arrived

at by the Ld. CIT(A) by applying the functional test. Accordingly, ground no.1 and 2 of the assessee and ground no.3 of the Revenue are dismissed. The Ld. AO shall comply with the direction given by the Ld. CIT(A) as to the verification for allowing depreciation.

7. Ground no.3 of the assessee relates to disallowance of Rs.3,25,387/- out of electricity expenses. Rejecting the explanation of the assessee that the expenditure was of revenue nature, the Ld.CIT(A) held that the impugned expenditure represented "one time" payments to Noida Authority. In the absence of any evidence brought on record by the assessee to contradict the finding of the Ld. CIT(A), we uphold the impugned disallowance and reject this ground of the assessee.

8. Ground no. 4 & 5 of the assessee and ground no.4 of the Revenue relate to sundry creditors amounting in all to Rs.1,64,44,854/-. On being asked, the assessee produced confirmation from six parties involving credits aggregating to Rs.60,72,531/- before the Ld. AO who added back the balance credits amounting to Rs.1,03,72,323/- to the income of the assessee from undisclosed sources. Before the Ld. CIT(A), explanation in respect of each of the sundry creditors was filed. The Ld. CIT(A) perused the documents placed on his records by the assessee/Ld.AO. He also verified from bank statements/books of accounts produced before him by the assessee for the year under appeal as also for Financial Year 2006-07 about the correctness of the copy of account of all the sundry creditors. The Ld. CIT(A), thereafter, discussed the issue of every category of sundry creditors and recorded the following findings:

"(b)1. I have gone through the submissions made by the appellant, the orders of the AO the reports of the AO dt.26/02/2009 dt. 12/10/2009 and have also pursued the documents placed on my records by the appellant/AO. I have also verified from Bank statements/Books of account produced before me by the appellant for the year under appeal and also for the F.Y. 2006-07 about the correctness of the copy of account of all the sundry creditors (the balances as on 31/03/2006 of which were treated as fabricated by the AO simply because confirmations were not available respect of them).

2. *It is felt that the AO has not examined the evidence produced by the appellant the remand proceedings nor gave an opportunity to the appellant to produce before him what he thought was not filed/produced by assessee or produce witness.*

Further it is felt that the AO has also not brought on record any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

3. *In view of the above, the issue of every category of sundry creditors is discussed and decided as below:*
- i) *The addition made on account of the following Sundry Creditor balances is deleted since they stand reconfirmed by the Parties in remand proceedings*

S. No.	Name	Balance Outstanding (Rs.)
1.	Mahesh Kumar & Co.	1,05,337.00
2	Shatabdi Switchgears & Control P. Ltd.	1,61,747.00
	Total	2,67,084.00

- ii) *The addition made on account of the following Sundry Creditor balance is deleted since the balance outstanding as reconfirmed by the vendor is Rs.6,19,168.20 and difference of Rs.6,19,168.20 and Rs. 6,13,213.20 i.e.;Rs.5,955/-has been explained by the appellant.*

S. No.	Name	Balance Outstanding (Rs.)
1	Haerisons Corporation	6,13,213.20
	Total	6,13,213.20

- iii) *The addition made on account of the following Sundry Creditor balances is upheld since no explanation was given by the assessee in the remand proceedings with the evidence that the notices u/s 133(6) were sent to them but nobody responded. However, the appellant has claimed that no notice was issued by the AO to produce them as witness. However, it is felt that nothing prevented the appellant to do so also in support of their claim and contention. Under the circumstances, the addition is upheld.*

S. No.	Name	Balance Outstanding (Rs.)
1.	Consult Techniques (I) Pvt. Ltd.	1,34,468.50
2.	Dynapro Engineering Associates	2,79,893.28
3.	Capital Building Material Supplier	1,40,060.00
	Total	5,54,421.78

Therefore, addition of Rs.5,54,421/- is upheld.

- iv) *The addition made on account of the following Sundry Creditor balances is upheld since the notices u/s 133(6) sent to it was received back undelivered. No explanation of acceptable and convincing nature was filed by the appellant in this regard. Under the circumstances, the addition is upheld.*

S. No.	Name	Balance Outstanding (Rs.)
1.	Blue Star Limited	1,69,272.00
	Total	1,69,272.00

Therefore, addition of Rs.1,69,272/- is upheld.

- v) *The addition made on account of the following Sundry Creditors balances (Indian parties) is deleted since the AO decided to check the veracity of the Sundry Creditors balances on test check basis and did not send any notices to them with a view to examine the correctness or otherwise of the balances shown by the assessee as outstanding to them as on 31/03/2006. In any case, the evidence of payment to these parties as available on records does not call for any additions on this account.*

S. No.	Name	Balance Outstanding
7.	Balaji Control	1,650.00
8.	Bath Selection	18,420.00
9.	Blue Sky Systems	45,919.00
2.	Ace - Dimensions	21,989.00
3.	Anand Vatika Nursery & Farms	4,900.00
4.	Antrix Associates	8,460.00
5.	Ashish Aqqarwal - Advocates	4,000.00
6.	Aurotel Communication Pvt Ltd.	1,098.00

10.	Cookson India Pvt. Ltd.	24,000.00
11.	Eagle Hunter Solutions Ltd.	16,129.00
12.	EGL-Eagle Global Logistics (I) Pvt. Ltd.	42,943.35
13.	Global Electronics	200.00
14.	Hynetic Electronics Pvt. Ltd.	1,625.00
15.	Khanna & Mathur	15,680.00
16.	Khanna Traders & Engineers	4,700.00
17.	Kirash Infocom	16,633.00
18.	Lakhotia Marbles	50,575.00
19.	Mahabir Building Materials Store	21,500.00
20.	Mr. Varun Manwani	58,000.00
21.	Nadeem Ahmed Printer	6,170.00
22.	Noida Aluplex Pvt. Ltd.	33,653.00
23.	Noida Golf Course Society (Regd.)	1,347.34
24.	On Dot Courier & Cargo Ltd.	785.00
25.	Parveen Building Material Supplier	46,358.00
26.	Perfect Tech Solutions	800.00
27.	P.N. Sharma & Co.	3,000.00
28.	Pooja Printers	2,400.00
29.	Prism Circuitronics	605.00
30.	Prism Circuitronics P Ltd.	20,400.00
31.	Ramesh Motors	380.00
32.	Ruby Stationery	1,066.00
33.	Shiv Alluminium & Glass	62,621.50
34.	Supreme Collection (India) Ltd.	86,181.25
35.	Vibrant Technologies	8,780.00
36.	V.K. Electricals & Sanitations	1,29,326.16
	Total	7,68,284.60

vi) *The addition made on account of the following Sundry Creditors balances is deleted since the appellant has itself adjusted those balances in the subsequent years in the normal course of its business*

S. No.	Name	Balance Outstanding (Rs)
1.	De Office Furniture Pvt. Ltd.	47,237.75
2.	Kyoritsu Automation	6,795.00
3.	Pradeep Building Material Supplier	53,917.50
	Total	1,07,950.25

- vii) *The addition made on account of the following 15 Sundry Creditors balances of Foreign Parties, for want of confirmation, is deleted since the AO thought that no notices to verify the correctness and genuineness of the balances reflected by the appellant, as outstanding to them, could have been sent to them. It is seen that the appellant had furnished confirmations from most of the parties and these are stated to be running parties in the normal course of business. The AO also stated that Form No.2 was not filed by the assessee to evidence the payments made to foreign parties. Without-giving it an opportunity to file that or to produce any other evidence of payment made, the AO went against the plea of the appellant that their banker namely Canara Bank, OBU Branch in NSEZ was not insisting on filing of Form No.2 (the correct Form is Form No. 1) by it when the payment was being made against bills of entry (duly certified by the Customs Authorities). It is seen that the evidence of payment made to these parties filed by the appellant for F.Y. 2006-07 and the evidence in the form of Form No.2 in the case of Mr. Cee Jan Bevers and the confirmation of balances have been placed on record by the appellant:*

S. No.	Name	Balance Outstanding (Rs.)
1.	Dinkel International	51,994.80
2.	Arrow Electronics Asia (S) PTE.	55,832.19
3.	Cee Jan Bevers	5,50,173.87
4.	Central Semiconductor Corp.	1,79,270.96
5.	Dependable Electro Supply Co.	71,800.82
6.	Graftec Electronic Sales	45,817.64
7.	Memec Electronic Components (AP) Ltd.	1,84,870.40
8.	Morethanall Co Ltd.	1,82,220.44
9.	Mouser Electronics INC.	2,733.06
10.	National Electronic Ltd.	4,21,024.56
11.	N.F. Smith & Associates	1,10,591.61
12.	Nucleus Electronics Ltd.	1,49,318.40
13.	Optima Tech. Associates	55,83,625.14
14.	Pro-an Electronic Co. Ltd.	1,11,881.26
15.	Queen Mao Electronic Co. Ltd.	4,19,46.47
	Total	77,43,101.62

Under these circumstances, it is seen that the AO has not made out a case that the sundry creditors as above are not genuine and that they have been paid out of books. It is seen that there is no such evidence on record which could support such conclusion of the AO. Hence, the addition of Rs.77,43,101/- is liable to be deleted. Held accordingly.

- viii) *The addition of Rs.17,109/- made on account of unconfirmed Sundry creditor balance of Rs.17,109/- shown by the appellant against M/s Excel El-tech Inc. is deleted since no notice for verification was sent by the AO and in any case, the balance in the account of the vendor, after adjustment on account of exchange difference in A.Y. 2006-07 and 2007-08, stands reversed on 19/08/2007 by credit to Purchase Import by the entire value of Purchase Import (\$ 385 on 15/09/2005), as was evident from the copy of account of the party placed at Page 429 of PB-2 (was sent to the AO for verification).*
- ix) *The addition of Rs. 1,38,986/- made on account of unconfirmed Sundry Creditor balance of M/s Professional Plastics, is deleted since the amount due to this party after adjustment on account of Foreign Exchange losses, was reversed by credit to Profit & Loss account under the head "Balance Written off" on 04/07/2007 as per copy of account available at Page 446 of PB-2.*
- x) *The addition of Rs.1,066/- due to M/s R.J. International and of Rs. 16,331/- to M/s Sai Semi Speciality, due to non availability of confirmations by these Sundry creditors, is also deleted since these amounts stands written back by the appellant to its Profit & Loss account on 14/08/2007 as per copies of their ledger accounts placed at Page 450 and 451 of PB-2.*
- xi) *The AO is directed and delete the additions on account of unconfirmed Sundry Creditors of Rs.1,03,96,821/- as stated above.*
- xii) *It seems there was a mistake in allowing Rs.60,72,531/- on account of confirmed Sundry Creditor balances whereas the sum total was Rs.60,48,031/- only. The balance of M/s Aman Chemicals was taken at Rs.49,000/- whereas it was Rs.24,500/- only. This mistake gets rectified in the process of my deleting some of the additions as per the respective decisions (given in each category of sundry creditors as held above) from the total Income assessed as against Rs.1,03,72,323/- added to Income by the AO on this account. The AO is directed to work out the relief to the appellant, after verification, as per law.*

Held accordingly."

8.1 The assessee is in appeal before the Tribunal against confirmation of addition amounting in all to Rs.5,54,422/- being credits in the name of Consult Technologies (I) Pvt. Ltd. (Rs.1,34,468.50), Dynapro Engineering Associates (Rs.2,79,893.28) and Capital Building Material Supplier (Rs.1,40,060/-) and ground no. 4 relates thereto. The assessee has also challenged before the Tribunal the confirmation of addition of credit of

Rs.1,69,272/- in the name of Blue Star Ltd. and its ground no.5 relates thereto. The Revenue has come up in appeal before the Tribunal against deletion of addition aggregating to Rs.1,03,96,821/- and its ground no.4 relates thereto.

9. Perusal of the Ld.CIT(A)'s order reveals that he upheld the addition of Rs.5,54,422/- in the name of three creditors mentioned above for want of explanation in remand proceedings and lack of response to notice under section 133(6) of the Act sent to them. However, the Ld. CIT(A) was candid enough to say that the assessee's contention before him was that no notice was issued by the Ld. AO to the assessee to produce the creditors as witness. If that be so, it is a clear case of violation of principle of natural justice. Instead of requiring the assessee to produce the above creditors for examination, the Ld. AO issued notice under section 133(6) of the Act to them. There may be numerous reasons for them to decline to respond to the notice issued by the Ld. AO under section 133(6) of the Act. Similarly, the addition of Rs.1,69,272/- in the name of creditor 'Blue Star Ltd.', has been confirmed by the Ld.CIT(A) only because notice under section 133(6) of the Act sent to the creditor was received back undelivered. In our considered opinion, the aforesaid additions do not stand on solid legal foundations. If the assessee is not required by the Ld. AO to produce the creditors and sent notice under section 133(6) direct to the creditors and they do not respond, the assessee cannot be blamed therefor. Moreover, there may be valid reasons for non-delivery of notice under section 133(6) of the Act by the postal authorities for which it would be unjust to penalize the assessee. In taking this view, we are supported by the ratio of decision of the Hon'ble Supreme Court in CIT vs. Orissa Corporation (P) Ltd.159 ITR 78 (SC) wherein Their Lordships held that where the assessee could not produce the parties and summons issued are returned un-served, it did not follow automatically that an adverse inference should be drawn that the amounts represented undisclosed income of the assessee. Confirmation of the parties in their copy of ledger accounts appearing in the books of the assessee were brought on record by the assessee. We, therefore, hold that the assessee has

discharged its onus which lay on it and, therefore, the impugned additions sustained by the Ld. CIT(A) are deleted. Ground no.4 and ground no.5 of the assessee is decided in its favour.

10. As regards, ground no. 4 of the Revenue against deletion of addition of Rs.1,03,72,323/- by the Ld. CIT(A), on perusal of the order of the Ld.CIT(A), we observe that he verified and examined the evidences placed before him besides giving him an opportunity to the Ld.AO to examine the evidence in remand proceedings. He has recorded his finding on each and every creditor balance outstanding with which we agree. We uphold his findings. In our considered opinion, the Ld. CIT(A) was perfectly justified in deleting the impugned addition made by the Ld.AO. Accordingly, we reject ground no.4 of the Revenue.

11. Ground no.6 of the assessee relates to disallowance of Rs.78,657/- being interest paid to bank which has been upheld by the Ld.CIT(A). The Ld. AO found that interest charges debited to P & L account was Rs.2,25,812/- but as per ledger account copy submitted before him showed interest payment of Rs.1,47,155/-. So, he added the difference of Rs.78,657/- to the income of the assessee. Before the Ld. CIT(A), the assessee submitted that the assessee had obtained Term loan as also working capital loan and interest in respect of both types of loans amounted to Rs.2,25,812/- which was claimed in Profit and Loss account. Since details were furnished and books of account were scrutinized by the Ld. AO, impugned disallowance was not justified as the entire borrowings were used for the purpose of business. The Ld. CIT(A) confirmed the impugned disallowance for want of details and that it was not established that the Term loan and interest paid thereon was used for the purposes of assessee's business. We do not agree with the reasoning of the Ld. CIT(A). It is observed that the solitary reason for disallowance by the Ld. AO is absence of ledger account details of Term loan obtained by the assessee. The assessee brought on record ledger account of Term loan as also the sanctioned letter of the bank which were not examined by the Ld. AO in remand proceedings. Therefore, it is not

correct to say that details were not furnished. In the absence of any adverse material brought on record by the Revenue to disprove the claim of the assessee that the Term loan obtained by the assessee was utilized for purposes other than business, disallowance of interest paid thereon cannot be sustained. We delete the impugned disallowance and decide this ground in favour of the assessee.

12. Ground no.7 of the assessee relates to confirmation by the Ld. CIT(A) of assessment of Rs.26,393/- being CST and custom duty of Rs.4,973/- and Rs.21,420/-. The Ld. AO found that there was difference of Rs.26,393/- in sales as per CST/VAT returns (Rs.1,29,293/-) and that reflected in P & L account (Rs.1,02,900/-) which he added to the income of the assessee as suppressed sales. It was submitted by the assessee before the Ld. AO that reconciliation between the aforesaid two figures was given to the Ld. AO and bills/vouchers/sale bills and books of account were produced before him. It was also submitted that since the assessee was accounting for CST payable and CE duty payable as liabilities, it reflected its Domestic sale at Rs.1,02,900/- only and the CST and CE duty payable was adjusted when those liabilities were discharged. The Ld. CIT(A), however, maintained the impugned addition for the reason that no bills of consequent adjustment was filed. On the above facts and in the circumstances of the case, we are of the view that the issue requires verification of the assessee's contention. We, therefore, set aside the order of the Ld. CIT(A) on the issue and restore the matter back to the file of the Ld. AO for fresh adjudication after allowing reasonable opportunity of hearing to the assessee.

13. Ground no. 8 of the assessee is of general nature not requiring adjudication.

14. Ground no.1 of the Revenue relates to addition of Rs.59,34,099/- made on account of free of cost raw-material received and adjusted by the assessee from gross sale value to arrive at net sales. On appeal, Ld. CIT(A) deleted the impugned addition following the order of his predecessor for AY

2005-06 which was upheld by the Tribunal. It has been brought to our notice by the parties that against the order of the Tribunal dated 29.01.2010 in ITA No.1951/Del/2009 for AY 2005-06, the Revenue filed appeal before the Hon'ble Delhi High Court which vide order dated 01.12.2010 in ITA No.1863 of 2010 dismissed the appeal of the Revenue by observing as under:

“ It is clear from the above that as per the system of accounting followed by the assessee, proper entry in respect of said material received on free of cost was made. The ITAT has clearly commented upon the confusion which arose in the mind of the Assessing Officer which led to the aforesaid addition. In the order of the CIT(A), as extracted above, it would be seen that reference is made to table which is shown in para 5.2, as per that table even for the assessment years 2003-04 and 2004-05, the goods received on free of cost basis were accounted for in the books of accounts in the same manner which was accepted by the Assessing Officer while making the assessment for those years.

We thus do not find any question of law arises for determination in the present case.”

14.1 Since the facts continued to remain the same in assessment year 2006-07, presently under consideration, following the decision (supra) of the Hon'ble Delhi High Court, in assessee's own case, we reject this ground of the Revenue.

15. Ground no. 2 of the Revenue is against the action of the Ld. CIT(A) in allowing 10% of interest of Rs.33,192/- earned, as expenses incurred in earning that income. It has been brought to our notice by the parties that identical issue arose for consideration before the Tribunal in Revenue's appeal for AY 2005-06 and the Tribunal vide its order (supra) directed the Ld. AO to verify the facts regarding interest income and expenses. The Ld. DR submitted that the Ld. AO vide his order under section 254/250/143(3) dated 31.12.2010 (copy placed on record) has, after verifying the facts allowed the assessee's claim in AY 2005-06. Nonetheless, we deem it fit to remit the matter back to the file of the Ld. AO to consider the issue afresh in the light of the material available with him on record. He shall, of course, allow adequate opportunity of being heard to the assessee.

16. Ground no.5 of the Revenue relates to the addition of Rs.22,91,125/- made by the Ld. AO on account of unconfirmed advances received from customers which the Ld. CIT(A) deleted. The Ld. AO made the impugned addition for the reason that the assessee did not produce confirmation from two foreign customers, namely, M/s. Dem Manufacturing Ltd. and M/s. Optima Tech in whose name the outstanding balance was Rs. 64036.71 and Rs. 22,27,088.38 respectively. Before the Ld. CIT(A), the assessee submitted that from the copy of account of the above two parties as appearing in the books of account of the assessee filed before the Ld. AO, it is clear that aforesaid advances which were outstanding as on 31.03.2006 were adjusted in subsequent year(s). The confirmation of Rs.22,27,088/- from M/s. Optima Tech was filed before the Ld. CIT(A). In remand proceedings, the Ld. AO stated that notice under section 133(6) of the Act could not be issued to foreign parties and that the assessee did not file copy of FIRC or Form No.2 which could have established payment details. The Ld. CIT(A) deleted the impugned addition. On consideration of the submission of the parties and perusal of the material on record, we do not find any reason to take a view different from the Ld. CIT(A) whose finding is based on facts and evidence available on record. It has been submitted by the parties before us that there was no requirement of FIRC or Form No.2 to be filed for units operating out of SEZ. We, therefore, reject this ground of the Revenue.

17. Ground no. 6 of the Revenue relates to deletion of Rs.1,20,000/- by the Ld. CIT(A) of addition made by the Ld. AO under section 40(a)(ia) of the Act on account of rent paid from which no TDS was deducted. The parties have agreed that the provisions of section 194-I was inapplicable, as the lease deed in respect of premises at D-3/3033, Vasant Kunj, New Delhi on record revealed that the rent was Rs.10,000/- p.m. only and thus rent payable could not have exceeded Rs.1,20,000/- for Financial Year 2005-06 relevant to AY 2006-07. Therefore, the assessee was under no legal obligation to deduct TDS on rent paid as per provisions of section 194-I of the Act. It is on the basis of the aforesaid factual position and the law

applicable that the Ld. CIT(A) deleted the impugned addition under section 40(a)(ia) of the Act with which we agree and accordingly reject this ground of the Revenue.

18. Ground no.7 of the Revenue relates to the direction of the Ld. CIT(A) to the Ld. AO to reduce Rs.31,629/- being domestic sale from eligible profit under section 10A after verification. The Ld. AO, while computing income first reduced the profit from domestic sales to arrive at profits of eligible business for section 10A deduction and then added the same to compute 'business income' whereas the assessee itself has first reduced Rs.31,629/- being profit from domestic sales from the Net Profit as per P & L account to compute income eligible for exemption under section 10A of the Act and then added it back to the profits arrived at from the eligible business (which was nil) to arrive at its business income of Rs.31,629/-. Since, there was an error committed by the Ld. AO, the Ld. CIT(A) gave the impugned direction. There being no flaw in it, we reject this ground of the Revenue as well.

19. Ground no. 8 of the Revenue relates to the direction of the Ld. CIT(A) to the Ld. AO to allow 100% deduction under section 10A on business profits. While giving the said direction, the Ld. CIT(A) followed the decision of his predecessor for AY 2005-06 as there is no change in law in AY 2006-07 under consideration and that the said direction of his predecessor is in accord with the Special Bench decision of Kolkata Tribunal in ITO vs. Kenaram & Subhash Shah 116 ITD1(Kol.). Accordingly, the Ld. CIT(A) held that the profit of the business as assessed by the Ld. AO or directed to be assessed, would qualify to be considered as profits which then would be eligible for 100% deduction under section 10A of the Act for AY 2006-07 as in the preceding years. It has been brought to our notice by the parties that the Revenue had challenged the similar direction of the Ld. CIT(A) before the Tribunal and vide order dated 29.01.2010 in ITA No.1951/Del/2009, the Tribunal confirmed the similar direction of the Ld. CIT(A). It is stated by the Ld. DR that the decision (supra) of the Tribunal has been accepted by the department and no appeal has been preferred before the Hon'ble Delhi High

Court on the point. It is, therefore, manifest that finality has been attained on this issue. In view of the above, we do not find anything wrong in the impugned direction of the Ld. CIT(A) which we uphold.

20. In the result, the appeal of the assessee in ITA No. 161/Del/2010, as also of the Revenue in ITA No. 534/Del/2010 are partly allowed for statistical purposes.

Order pronounced in the open court on 26th December, 2022.

sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

sd/-

**(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 26th December, 2022.

Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation (Order drafted through Dragon software):	
2.	Date on which the draft of order is placed before the Dictating Member:	
3.	Date on which the draft of order is placed before the other Member:	
4.	Date on which the approved draft of order	

	comes to the Sr. PS/PS:	
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	
6.	Date on which the final order received after having been signed/pronounced by the Members:	
7.	Date on which the final order is uploaded on the website of ITAT:	
8.	Date on which the file goes to the Bench Clerk	
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	