

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.9597/Del/2019

निर्धारणवर्ष/Assessment Year: 2011-12

Central Warehousing Corporation, 4/1, Siri Industrial Area, August Kranti Marg, New Delhi. PAN No. AAACC1206D	बनाम Vs.	DCIT Circle-5(2), New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

&

**Cross Objection No. 236/Del/2017
(In I.T.A No.5647/Del/2017)**

निर्धारणवर्ष/Assessment Year: 2011-12

Central Warehousing Corporation, 4/1, Siri Industrial Area, August Kranti Marg, New Delhi. PAN No. AAACC1206D	बनाम Vs.	ACIT Circle-5(2), New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri K Sampath, Advocate & Shri V. Rajakumar, Advocate
Revenue by	Shri Vivek Kumar Upadhyay, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	27.12.2023
उद्घोषणाकीतारीख/Pronouncement on	12.03.2024

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal and cross objection are filed by the assessee against the order of the Ld.CIT(Appeals)-2, New Delhi dated

21.03.2017 for the AY 2011-12. Grounds of cross objection are as under: -

1. *“it is contended that the section 14A has no application in the instant case and disallowance to the extent of Rs.53,62,072/- without bringing on record any material to the fact that expenses have been incurred by the appellant for earning exempted income is wrong.*
2. *Without prejudice to the above, it is contended that the disallowance under section 14A is wrong and regular revision since investment in subsidiary have to be excluded.*
3. *It is contended that investment in sister concern or investment as a mandatory direction in State Warehousing Corporation should not be considered as investment.*
4. *It is contended that Rs.5,58,92,400/- on account of Engineering overheads on capital works has been wrongly disallowed by the Assessing Officer treating these as capital expenditure. There has been no change in the treatment and principle of consistency should have been followed.*
5. *It is contended that the provision of section 115JB is not attracted in the Appellant Corporation case since the appellant is not covered by Companies Act and its Balance Sheet is drawn according to Rules frame under Warehousing Corporations Act 1962.”*

2. Ld. Counsel, at the outset, submits that the cross objection was filed by the assessee against the Revenue's appeal in ITA No.5647/Del/2017 and also a separate appeal is filed by the assessee which is numbered as ITA 9597/Del/2019. Ld. Counsel submits that the appeal of the Revenue in ITA No.5647/2017 was

decided by the Hon'ble Tribunal in a batch of appeals on 23.08.2019. Therefore, the Ld. Counsel for the assessee submits that the cross objection of the assessee has to be decided independently.

2.1 Ld. Counsel further submits that the grounds in cross objection as well as in appeal are similar and since the appeal filed by the assessee is time barred by 843 days the cross objection of the assessee once decided, the appeal of the assessee becomes infructuous. On merits of the grounds taken in the cross objection and also the appeal the Ld. Counsel for the assessee submits that all the grounds are decided by the Tribunal in earlier years. The Ld. Counsel submits that in so far as grounds no. 1, 2, 3 and 4 are concerned these grounds were restored to the file of the AO and ground no.5 of grounds of appeal was dismissed by the Tribunal in earlier years. The Ld. Counsel further filed written synopsis stating as under: -

“Ground Nos. 1, 2 and 3: These three grounds in the CO and three grounds in the instant appeal pertain to a single issue being the disallowance u/s 14A of the Act. The discussion on this issue is contained in the assessment order at pages 3 and 4. The Ld. CIT(A) has decided this issue on pages 14 and 16 of the impugned order. The Hon'ble Tribunal, 'B' Bench in the batch appeals has decided this issue on page 56 in para 31.

The issue has been reverted to the file of the AO by the Hon'ble Tribunal with the following observations:-

“31. The ground No. 1 (Hi) (three) of the appeal of the Revenue for AY 2008-09, the cross objection No. 1 (one) of the assessee for AY 2008-09 and Ground No. 1 of the appeal of the Assessee for AY 2009-10 and Ground No. 1 and 2 of the Cross objection for AY 2010-11 are related to disallowance under section 14A of the Act read with Rule 8D of the Rules. The identical grounds of the Revenue and the assessee in assessment year 2006-07 have been restored to the file of the Assessing Officer for deciding afresh in the light of the recent decisions of the Hon'ble courts. Accordingly, the respective grounds for AY 2008-09; 2009-10 and 2010-11 are restored to the file of the Assessing Officer for deciding in accordance with law. The respective grounds are accordingly allowed for statistical purposes.”

Ground No. 4 in the CO and Ground No. 4 in appeal is with reference to the engineering overheads on capital works which has been capitalised in assessment. The discussion by the AO is on pages 4 to 6 of the assessment order. The GIT (A) has recorded his verdict on pages 16 to 17 of the impugned order. The Tribunal, 'B' Bench has discussed this issue in para 34 on pages 57 to 58 of the order. The issue has been reverted to the AO with the following observations:-

“34. The ground No. 3 of the appeal of the assessee for assessment year 2009-10 and cross objection No. 3 (three) of the assessee for assessment year 2010-11 relates to unabsorbed Engineering overheads. These issues are identical to ground No. four of the appeal of the Revenue for assessment year 2006-07, which has been restored to the file of the assessing officer for deciding afresh. Accordingly, following our finding in assessment year 2006-07, these grounds of the appeal and cross objection of the assessee are restored to the file of the Assessing Officer. These

grounds are accordingly allowed for statistical purposes.”

The fifth ground in the CO and the fifth ground in appeal are with regard to the inapplicability of the provisions of Section 115JB of the Act to the Assessee company. The AO has discussed this issue on page 7 of the assessment order. The GIT (A) has discussed this issue on pages 19 to 20 of the impugned order. The Hon'ble Tribunal in terms of its observations contained in paras 11.5 to 11.6 on pages 31 to 32 of the Tribunal order has dismissed this ground of appeal with the following observations:-

"11.5 The Ld. Counsel of the assessee failed to explain any specific guidelines / instruction for preparing profit and loss account and balance sheet in the relevant regulatory Acts, which could become basis for non-application of sub-section 2 of section 115JB of the Act. Moreover, the assessee has complied the provisions of section 115JA or JB in earlier years and this doubt has been raised for the first time in casual manner, without supporting with any provision under any law.

11.6 In view of the above, the request of the learned Counsel to restore the matter back to the file of the Assessing Officer is not justified and accordingly rejected. The additional grounds of the appeal of the assessee are accordingly dismissed.”

It is pleaded that the grounds taken in the CO and the appeal may kindly be decided and disposed off as per the precedent of the earlier years as cited and extracted here above.”

3. Heard rival submissions. In view of the submissions of the Ld. Counsel as extracted above ground nos. 1, 2, 3 & 4 are restored to the file of the AO to decide in view of the observations of the

Tribunal in assessee's own case for the earlier assessment years. So far as ground no.5 is concerned following the order of the Tribunal in assessee's own case, the same is dismissed.

4. In the result, appeal of the assessee is dismissed as infructuous and the cross objection of the assessee is partly allowed as indicated above.

Order pronounced in the open court on 12/03/2024

**Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

**Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER**

Dated: 12/03/2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi