

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH 'C', KOLKATA  
(Before Shri P. M. Jagtap, A.M. & Shri S.S.Viswanethra Ravi, J.M.)**

**ITA No. 1737/Kol/2013 : Asstt. Year : 2009-2010**

DCIT, Circle-5 Kolkata (APPELLANT)	Vs	M/s. Somany Ceramics Ltd. (PAN AA ECS 0763K) (RESPONDENT)
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**Appellant by : Shri Sital Chandra Das, JCIT, Sr.DR  
Respondent by : Shri P.K.Sanghai, FCA**

<b>Date of Hearing : 11.03.2016</b>	<b>Date of Pronouncement : 27.05.2016</b>
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**ORDER**

**Per Shri S.S.Viswanethra Ravi, J.M.**

This appeal is filed by the Revenue having aggrieved by the order dated 13.12.2012 passed by the CIT(Appeals)-VI, Kolkata in Appeal No.144/CIT(A)-VI/R-5/11-12/Kol for the assessment year 2009-10 framed under section 143(3) of the I.T.Act.

2. Challenging the above impugned order, the Revenue raised the following grounds before the Tribunal.

*“1. That the Ld. CIT(A) has erred in accepting the view of the assessee regarding prior period expenses related to earlier years being debited in the P/L account, though it is not permissible in mercantile accounting system.*

*2. That the Ld. CIT(A) has erred in taking decision on the basis of addition information under Rule 46A by accepting materials during the appellate proceedings.*

*3. That the appellant craves leave to add, alter or withdrew any ground or grounds of appeal before or at the time of hearing of the Appeal.”*

3. The Revenue filed this appeal with a delay of 80 days and the reasons stated in the affidavit that the AO was busy with huge time barred cases etc. The DR submitted that the AO got engaged in preparation of papers in this appeal, as well as, other time-barred appeals and prayed to condone the delay in the interest of justice. The A.R. did not raise any objection seriously. For the reasons stated in the affidavit, we are of the opinion that in the interest of justice, the reasons submitted by the department are reasonable, therefore the delay of 80 days be condoned and appeal of the Revenue is admitted.

3. Brief facts of the case are that the assessee company filed their return of income on 24.09.2009 for the year under consideration declaring a total income of Rs.12,05,21,925/- which was selected for scrutiny. During scrutiny, notices under section 143(2) and 142(1) were issued and in response to which the assessee appeared from time to time before the AO and furnished the required details and explanations. During the course of assessment, the AO found that the assessee company has debited prior period expenses of Rs.38,48,350/- during the relevant financial year. The AO observed that since the assessee company is following mercantile system of accounting, the expenses should have been charged in the same financial year to which it pertained. On query the assessee submitted that these liabilities have been generated during the year and it was not known earlier, the same should be disallowed. Being dissatisfied with the contention of the assessee, the AO disallowed the prior period expenses of Rs.38,48,350/-

4. Aggrieved by the assessment order under section 143(3), the assessee preferred appeal before the CIT-A. During the appellate proceedings, after examining the vouchers for all expenses, excepting the vouchers at sl. Nos.137,138,152 and 153 and after considering the submissions made by both the representatives, the ld. CIT(A) disallowed only Rs.3,71,464/- out of the total disallowance made by the AO amounting to Rs.38,48,350/-. Thus, the ld. CIT(A) allowed relief of Rs.34,76,886/- to the assessee company.

5. At the time of hearing before us, the ld. DR has vehemently relied on the order of the AO and submitted that the ld. CIT(A) should not have allowed the relief to the assessee because the view of the assessee regarding prior period expenses related to earlier years being debited in the P&L account is not permissible in mercantile accounting system and the assessee has not submitted every details of prior period expenses before the AO. Further, the ld. DR submitted that the ld. Counsel for the assessee submitted some additional information during the appellate proceedings and the ld. CIT(A) gave relief to the assessee by relying on the same without giving opportunity to the AO to examine the same which is in contravention of Rule 46A of the I.T. Rules. Therefore, the ld. DR prayed that the relief given to the assessee company should be cancelled and the order of the AO be restored.

5.1 The ld. Counsel for the assessee submitted that the concept of disallowance on the mercantile system of accounting by the A.O. was absolutely wrong as he mixed up the accounting standard norms with that of the concept of mercantile system and accrual under the taxation law. The ld. Counsel for the assessee reiterated the submissions made before the ld. CIT(A) and urged that the AO himself has observed in the

assessment order that the A.R. of the assessee appeared from time to time during the assessment proceedings and furnished the required details and explanations. Therefore, the Id. Counsel for the assessee prayed for sustaining the order of the Id. CIT(A) and dismissing the appeal of the Revenue.

6. Heard both the representatives and perused the record. The main stand of the Id. DR is that the Id. Counsel for the assessee has submitted some additional information before the Id. CIT(A), which were not submitted before the AO. The Id. CIT(A) without affording any opportunity of being heard about the additional information being furnished by the assessee during the appellate proceedings, allowed relief to the assessee, which is not permissible under law. The Id. CIT(A) should have been called remand report from the AO. We, therefore, set aside the impugned order of the Id. CIT(A) and remit the matter to the AO with a direction to examine the additional information submitted before the Id. CIT(A) and decide the same on merit, after giving the assessee proper and sufficient opportunity of being heard.

7. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order Pronounced in the Open Court on 27.05.2016.

**Sd/-**  
(P.M.Jagtap)  
ACCOUNTANT MEMBER

**Sd/-**  
(S.S.Viswanethra Ravi)  
JUDICIAL MEMBER

**Dated: 27.05.2016**

Talukdar/Sr.PS

**Copy of order forwarded to:**

- 1 M/s. Somany Ceramics Ltd., 2, Red Cross Place, Kolkata – 700  
001
- 2 DCIT, Circle-5, Kolkata
- 3 The CIT(A),
- 4 CIT,
- 5 D.R.

True Copy,

By order,

Asstt. Registrar, ITAT, Kolkata