

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**  
[Before Shri Mahavir Singh, JM & Shri M. Balaganesh, AM]

**I.T.A No.1047/Kol/2012**  
**Assessment Year: 2003-04**

Joint Commissioner of Income-tax (OSD), Vs. M/s. Jagadamba Tea Co. Pvt. Ltd.  
(PAN:AADCS7601K) Circle-4, Kolkata  
(Appellant) (Respondent)

Date of hearing: 24.08.2015  
Date of pronouncement: 14.09.2015

For the Appellant: Shri Arindam Bhattacharya, JCIT, Sr. DR  
For the Respondent: Shri Subash Agarwal, Advocate

**ORDER**

**Per Shri Mahavir Singh, JM:**

This appeal by revenue is arising out of order of CIT(A), Central-II, Kolkata in appeal No. 211/CC-1/CIT(A)C-II/10-11 dated 29.03.2012. Assessment was framed by ACIT, C.C-1, Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the Act) for AY 2003-04 vide its order dated 24.03.2006.

2. At the outset, it is noticed that this appeal of revenue is barred by limitation by 25 days and revenue has filed Condonation petition supported by affidavit stating some reasons. Then this fact was confronted to Ld. Sr. counsel for the assessee Shri Subhas Agarwal, he fairly conceded that he has no objection if delay is condoned and appeal is admitted. Hence, we admit the appeal and adjudicate the same.

3. The first issue in this appeal of revenue is against the order of CIT(A) deleting the addition made by AO of bogus liability of Rs.30 lakhs after taking remand report from AO. For this, revenue has raised following ground no.1:

*“1. That on the facts and circumstances of the case, ld. CIT(A) erred in law in directing the AO to delete the addition of Rs.30,00,000/- as bogus liability though as per the remand report the AR of the assessee failed to furnish the details of the creditors along with mailing address.*

4. Briefly stated facts are that the AO made addition of Rs.30 lakhs out of current liabilities of Rs.1,32,65,506/- on estimate basis by observing in para 4 as under:

*“4. No details of liability of Rs.1,32,65,506/- was filed. So, on estimate basis a sum of rs.30,00,000/- is treated as bogus liability.”*

Aggrieved, assessee preferred appeal before CIT(A), who after obtaining remand report from AO dated 09.11.2009 deleted the addition by stating that the assessee company has produced complete details about liabilities shown in the Balance Sheet and the AO also verified the books of account during remand proceedings but could not find any adverse fact in respect to these liabilities. The CIT(A) also observed that the AO has not rejected the book results and these are statutory liabilities as well as liabilities on account of sales and purchases and also expenses. Aggrieved, now revenue is in appeal before us.

5. We have heard rival submissions and gone through facts and circumstances of the case. We find that the AO has just made addition on estimate basis without giving any basis or finding as can be observed from the observation of the AO, which is reproduced in para 4 above. Even otherwise, the CIT(A) after going through the remand report of the AO dated 09.11.2009 noted that the assessee company filed party-wise details of liabilities for expenses, liabilities for others, liabilities for garden and liabilities on account of trade deposits and advances. The AO during remand proceeding could not point out any defect or adverse inference from these details. In such circumstances, we are of the view that the CIT(A) has rightly accepted the contention of the assessee after taking remand report from the AO. Even now before us the Ld. Sr. DR could not point out what is the error in the order of the CIT(A) or the factual finding is wrong. In the absence of the same and the facts narrated by CIT(A), we confirm the order of CIT(A) and this issue of revenue's appeal is dismissed.

6. The next issue in this appeal of revenue is against the order of CIT(A) in deleting the addition made by AO on account of expansion of maintenance of new extension as capital in nature amounting to Rs.2,27,765/-. For this, revenue has raised following ground no.2:

*"2. That on the facts and circumstances of the case, Ld. CIT(A) erred in law in directing the AO to delete the addition of Rs.2,27,765/- on account of expansion and maintenance of new extension though the expenditure is capital in nature."*

7. Briefly stated facts are that the AO disallowed a sum of Rs.2,27,765/- being expenses incurred by assessee on account of expansion of maintenance of new extension

by treating the same as capital in nature. The AO for making disallowance observed in para 6 of his order, which reads as under:

*“6. In the Profit & Loss Account, the assessee has debited a sum of Rs.2,27,765/- under the head ‘expansion & maintenance of new extension’. Apparently, this expenditure is capital in nature. So, this amount is disallowed.”*

Aggrieved, assessee preferred appeal before CIT(A), who after seeking remand report from AO deleted the addition by observing that the expenses debited under the head expansion and maintenance of new extension in the ledger account. The expenses are in the nature of payments made to casual workers for uprooting, leveling and cutting jungle and weeding out unnecessary weeds. The payments are also made for the purpose of cultivation and filling work. According to CIT(A), the very nature of these expenses cannot be held as capital and in the year under consideration no new area was brought to cultivation and this was expense for existing unit. Accordingly, he deleted the disallowance. Aggrieved, now revenue is in appeal before us.

8. We have heard rival submissions and gone through facts and circumstances of the case. We find that the assessee has incurred expenses for maintenance of existing bushes which involved planting, growing and nurturing of such tea bushes which are entirely necessary for basic operation and manufacturing and production of tea. The assessee produced copy of ledger account before CIT(A) from where he observed that these expenses were incurred for payment of casual workers for uprooting, leveling and cutting jungle and weeding out unnecessary things and accordingly, these expenses are in the nature of revenue expenditure and cannot be held to be capital in nature. We concur with the finding of CIT(A) in view of the above facts and circumstances and accordingly, this issue of revenue's appeal is dismissed.

9. The next issue in this appeal of revenue is against the order of CIT(A) in directing the AO to apply rule correctly and determine the loss from tea business as income from other sources and according to revenue rule 8 of I. T. Rules, 1962 (hereinafter referred to as 'the rules') does not apply to income from other sources but apply only to tea business. For this revenue has raised following ground no.3:

*“3. That on the facts and circumstances of the case, Ld. CIT(A) erred in law in applying Rule 8 incorrectly in determining the loss from tea business as ‘income from other sources’ does not come under Rule 8 since this is not related to tea business.”*

10. Briefly stated facts are that the AO has not applied the provisions of Rule 8 of the Rules while computing business income for the reasons that the income to the extent of Rs.3.28 lacs is income from other sources. Aggrieved, assessee preferred appeal before CIT(A), who directed the AO to apply rule 8 of the Rules and determine the taxable business by observing in para 24 of his order, which reads as under:

*“24. I have considered the submissions of the appellant and perused the assessment order. In principle, I agree with the submission of appellant company that the AO has not correctly applied the provisions of Rule 8 to determine the taxable business income. He is directed to compute the correct taxable income as per Rule 8 while giving effect to the appellate order. The ground no. 10 is allowed.”*

Aggrieved, revenue is in appeal before us.

11. We have heard rival submissions and gone through facts and circumstances of the case. We find that the CIT(A) has merely directed the AO to compute the business income after applying the provisions of Rule 8 of the I. T. Rules. However, we are of the view that the CIT(A) has no power under the Act to set aside the issue but in our view, we direct the same accordingly. This issue of revenue's appeal is allowed for statistical purposes.

12. In the result, the appeal of revenue is partly allowed for statistical purpose.

13. Order is pronounced in the open court on 14.09.2015.

Sd/-  
(M. Balaganesh)  
Accountant Member

Sd/-  
(Mahavir Singh)  
Judicial Member

Dated :14th September, 2015

Jd. Sr. P.S

Copy of the order forwarded to:

1. APPELLANT óCIT (OSD), Circle-4, Kolkata.
2. Respondent ó M/s. Jagadamba Tea Co. Pvt. Ltd., 34, Ustad Amir Khan Sarani, 708/1, Block/1, Block-P, New Alipore, Kol-53
3. The CIT(A), Kolkata
4. CIT Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.