

आयकर अपीलीय अधिकरण "ए" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

सर्वश्री राजेन्द्र, लेखा सदस्य एवं संजय गर्ग, न्यायिक सदस्य

Before S/Shri Rajendra, A.M. and Sanjay Garg, J.M.

आयकर अपील सं./ITA No.3801/Mum/2014, निर्धारण वर्ष /Assessment Year: 2005-06

L&T Construction Equipment Ltd. (Formerly L&T Komatsu Ltd.);Taxation Department, L&T House, N.M. Marg, Ballard Estate, Mumbai-400 001. PAN: AAACL 4175 C	Vs.	Jt. CIT (OSD)-2(2) Aayakar Bhavan, M.K. Marg Mumbai-400 020.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri Rajesh Kumar Yadav

Assessee by: Shri Vijay Mehta

सुनवाई की तारीख / **Date of Hearing:** 18.01.2017

घोषणा की तारीख / **Date of Pronouncement:** 09.03.2017

आयकर अधिनियम, 1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य, राजेन्द्र के अनुसार -Per Rajendra,AM:

Challenging the orders,dated 20/03/2014 of the CIT(A)-5,Mumbai the assessee has filed the present appeal.Assessee-company,carrying on business manufacturing of construction equipments,field its return of income on 26/10/2005,declaring total income at Rs.23.13 lakhs under the normal provisions and Book Profit of Rs. 28.46 crores u/s.115JB of the Act. The Assessing Officer (AO) completed the assessment on 12/12/2008 at total income of Rs. 23.13 lakhs under normal provisions of the Act. The book profits were assessed at Rs. 28.46 crores u/s.115 JB.

Brief facts:

2.Effective ground of appeal is about adjustment to be made on account of on utilised cenvat credit to the value of closing stock u/s.145A of the Act. After going through the assessment order passed by the AO, on 12/12/2008, u/s.143 (3), the CIT- 2, Mumbai observed that same was erroneous and prejudicial to the interest of revenue. A Revisionary order, u/s.263 of the Act,was passed on 13/09/2010. In his order, he observed that the AO had failed to make addition on account of cenvat credit attributable to the closing stock of raw material of Rs.10.26 crore. He directed the AO's to redo the assessment as per law.Accordingly,the AO completed the assessment u/s.143 (3) r.w.s.263 on 14/12/2011.While completing the assessment,he made an addition of Rs.10.26 Crores to the total income on account of the cenvat credit attributable to the closing stock.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA). Before him, it made elaborate submissions and filed reconciliation statement about impact of exclusive method. Following chart was furnished by the assessee :

Particulars	Impact on book profit	
	Increase [Rs.]	Reduction [Rs.]
1. Cenvat Credit:		
1. attributable to Opening Stock not included in stock value	6,03,95,045	
2. availed credit to purchase	37,80,65,808	
3. attributable to closing stock not included in stock value		10,26,62,648
4. attributable to consumption not reduced from purchases		33,57,98,205
	43,84,60,853	43,84,60,853
Net Impact	NIL	

It was further contended that the adjustment mandated by section 145 A of the Act were revenue neutral, that the exclusive method adopted by it was as per the AS-2 issued by the ICAI, that the unutilized cenvat credit of Rs. 31.03.2005, amounting to Rs. 1.29 Crores was forming part of balance with customers under the schedule Loan and Advances, that the AO had wrongly added Rs. 10.26 crores.

After considering the submissions of the assessee, the FAA held that the assessee had argued that there was no impact on the profit for the year under consideration due to the method followed by it regarding cenvat credit and that the claim was not verifiable. He referred to the Annexure-3 of clause 12 to the Audit Report in Form 3CD and observed that cenvat credit attributable to consumption had been worked out at Rs. 33.57 crore, that same was the balancing figure that one would arrive at by adding the cenvat credit attributable to opening stock and purchases and reducing therefrom that attributable to closing stock, that the AO had not computed the impact correctly, that he had limited his exercise only by taking into account the cenvat credit attributable to closing stock only. He directed the assessee to recast the P&L account by inclusive method of accounting after including cenvat on sales and consumption and to work out the impact on profit. As per the FAA the assessee showed his inability to prepare such a statement. He held that section 43 would be applicable to Rs. 16.88 crores (excise duty). Accordingly he prepared a chart showing the impact of cenvat on profit

Cenvat attributable to consumption	33,57,98,205	Cenvat attributable to sales	53,72,77,536
Excise duty payable	16,88,17,723		

in cash [over and above the cenvat credit availed]			
Impact on profit	3,26,61,608		
	53,72,77,536		53,72,77,536

Finally he held that if inclusive method was applied the total profit would increase by Rs.2.36 crores and directed the AO to verify the figures. Thus the addition was reduced to Rs.3.26 crores as against Rs.10.26 crores.

4. During the course of hearing before us, the Authorised Representative (AR) argued that assessee was following exclusive method with regard to cenvat credit, that the AO and the FAA had taken a wrong figure of Rs.16.88 crores for cenvat credit purposes, that the actual figure was Rs.23.22 crores, that the assessee had paid excise duties on various dates. He referred to the page no.1 to 12 of the paper book evidencing the payment of excise duty. He further stated that matter needs verification at the end of departmental authorities. The Departmental Representative (DR) left the issue to the discretion of the Bench.

5. We have heard the rival submissions and perused the material before us. We find that the FAA has held that there was fallacy in the argument of revenue neutrality, that he had reduced the addition from Rs.10.26 crores to Rs. 3.26 crores, that the fact of payment of excise duty has not been considered by the AO/FAA. We are of the opinion that considering the peculiar facts of the case, the matter should be restored back to the file of AO for fresh adjudication, in the interest of justice. He is directed to verify the figure as to whether the figure should be taken at Rs.16.88 crores or Rs.23.33 crores in the table appearing at page -15 of the order of the FAA. He is further directed to afford a reasonable opportunity to the assessee, who would place all the necessary and relevant documents before the AO. Effective Ground of appeal is decided in favour of the assessee, in part.

As a result, appeal filed by the assessee stands partly allowed.

फलतः निर्धारिती द्वारा दाखिल की गई अपील अंशतः मंजूर की जाती है.

Order pronounced in the open court on 09th March, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक 09 मार्च, 2017 को की गई।

Sd/-

(संजय गर्ग /Sanjay Garg)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक/Dated : 09.03.2017.

Jv.Sr.PS.

Sd/-

(राजेन्द्र / RAJENDRA)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

- 1.Appellant /अपीलार्थी
2. Respondent /प्रत्यर्थी
- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त
- 5.DR “ A ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई
- 6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**
उप/सहायक पंजीकार **Dy./Asst. Registrar**
आयकर अपीलीय अधिकरण, मुंबई /**ITAT, Mumbai.**