IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "C" NEW DELHI)
BEFORE SHRI I.C. SUDHIR AND SHRI O.P. KANT

ITA No. 1579/Del/2013
Assessment Year: 2009-10

DCIT, Circle-11(1), New Delhi.	Vs.	Indication Instrument Ltd., NSIC Complex, Maa Anandmayee Marg, New Delhi. (PAN: AAACI1204M)
(Appellant)		(Respondent)

Assessee by: S/Shri Rakesh Gupta, Adv. & Sumit Jain CA
Department by: Shri T. Vasant, Sr. DR

Date of hearing : 28 .01.2016
Date of pronouncement: 22 :04.2016

ORDER

PER I.C. SUDHIR: JUDICIAL MEMBER

The Revenue has questioned first appellate order on the following grounds that the Learned CIT(Appeals) has erred in deleting the addition of (i) Rs.40,26,720 made on account of sales returns/warranty scraped at customers end; (ii) Rs.3,03,859 made on account of excess depreciation on certain assets; and (iii) Rs.1,03,912 made under sec. 14A of the Act.

2. Heard and considered the arguments advanced by the parties in view of orders of the authorities below, material available on record and the decisions relied upon.

3. Ground No.1: In support of this ground, the Learned Senior DR has basically placed reliance on the assessment order. He submitted that the assessee company is engaged in the manufacturing and sale of automotive dash board instruments. During the year, it had made exports to its clients at UK as well. The Assessing Officer observed that even though the assessee has effected total sales of Rs.65,52,52,124 after reducing an amount of Rs.95,62,736 as sales return, it booked only an amount of Rs.64,56,89,380 in the profit and loss account. On consideration of explanation of the assessee in this regard that on return of these goods, the same are recorded in RGI's registers as per the requirements of Central Excise Act, the Assessing Officer allowed sales returns to the extent of Rs.55,33,848 recorded in such registers and sales to the extent of Rs.40,26,720 not recorded in the said register was not allowed as sales return. Without appreciating this material fact, the Learned CIT(Appeals) has deleted the addition. The Assessing Officer was justified in not accepting the explanation of the assessee in respect of such sales that recording in the books was not made as the rejected goods were scrapped by the buyers at their own end in absence of evidence in support.

4. The Learned AR on the other hand placed reliance on the first appellate order with the submission that the assessee had furnished sufficient

material in support of its claim and the Learned CIT(Appeals) being convinced and satisfied with the same has deleted the addition in question. He submitted that assessee had furnished a confirmation from M/s. Vee Three North America regarding rejection at their end and destruction of goods by them in USA at their premises. It was submitted that total sales return of Rs.40,26,720 comprised of Rs.33,96,942 on account of material and Rs.6,29,778 for other items not relating to sales return. The Learned AR submitted that such a practice is not unusual and even in the case of assessee there were instances when such a claim was made in earlier years also, where goods that were rejected were not physically received back by the assessee. In respect of amount of Rs.6,29,778, the Learned AR submitted that this amount was in the nature of credit given to the customers as freight charges and was distinct in nature. Details of which were furnished before the Learned CIT(Appeals) showing that this amount was aggregation of various small sums of varied nature.

5. Having gone through the orders of the authorities below, we find that the Assessing Officer had made addition in question on the basis that details of such sales return were not available in the RGI registers as maintained under the Central Excise Duty Act. The explanation of the assessee in this

regard remained that sometimes when the cost of shipping back the goods returned by the customer particularly for overseas party, is high, they leave the goods at the customers end who scrapped out the same and the assessee receives the net consideration. In this regard, the assessee had furnished confirmation from M/s. Vee Three North America, USA. After verifying the explanation of the assessee, the Learned CIT(Appeals) found that certain items which were shown as sales return, not shown in RGI registers at the end of the assessee itself supports the claim of the assessee that such items were not physically returned to the assessee keeping in view the high cost of shipping of the goods that were found defective and rejected were not physically returned to the assessee. The Learned CIT(Appeals) also found strength in the claim of the assessee on the basis that as a prudent businessman, the assessee considered it appropriate to not incur freight expenses and instead allowed the overseas customers to scrap the goods returned by them. Since necessary confirmation was also furnished by the assessee in support, we are of the view that the Learned CIT(Appeals) was justified in deleting the addition in question. The same is upheld. The ground No.1 is accordingly rejected.

6. Ground No.2: In support of this ground, the Learned Senior DR placed reliance on the assessment order with the submission that the

Assessing Officer had made disallowance of Rs.3,03,859 on account of depreciation on the basis that the assets purchased in March 2009 were not put to use. Without appreciating this material aspect, the Learned CIT(Appeals) was not justified in deleting the disallowance in question.

7. The Learned AR on the other hand placed reliance on the first appellate order on the issue.

8. Considering the above submissions, we find that the claimed depreciation of the assessee was based upon its submission that it had not only installed but had also put to use the assets purchased in March 2009, which were considered as not having been used by the Assessing Officer while making the disallowance in question. The Learned CIT(Appeals) has, however, deleted the disallowance as the claim of user of the assets purchased in March 2009 was supported by copies of bills, GRN, PRR showing the testing and use of the assets. It was also submitted that the first appellate authority had already allowed the appeal on this ground in the assessment year 2006-07. We thus do not find infirmity in the first appellate order deleting the disallowance made on account of claimed depreciation. The same is upheld. The ground No. 2 is accordingly rejected.

9. Ground No.3: It is regarding disallowance of Rs.1,03,912 made under sec. 14A of the Act deleted by the Learned CIT(Appeals). In support of this ground, the Senior DR referred CBDT Circular No. 5/2014 dated 11.2.2014 clarifying the position regarding disallowance of expenses under sec. 14A of the Income-tax Act, 1961 in cases where corresponding exempt income has not been earned during the financial year. The Learned Senior DR tried to justify the action of the Assessing Officer in making the disallowance under sec. 14A of the Act in question.

10. The Learned AR on the other hand placed reliance on the first appellate order with this further submission that the issue is also covered by the decision of the ITAT in the case of the assessee itself for the assessment year 2006-07 vide order dated 29.6.2012. He submitted that the assessee itself had made disallowance under sec. 14A of the Act and the Assessing Officer without recording his satisfaction against the disallowance made by the assessee has made further disallowance. He also placed reliance on the decision of Hon'ble Delhi High Court in the case of Maxopp Investment Ltd. holding that Assessing Officer had to first give a finding as to the fact that he is not satisfied with the correctness of amount of expenditure incurred for earning exempt income.

11. Having gone through the orders of the authorities below, we find that in its return of income, the assessee itself had disallowed an amount of Rs.1,59,410 towards the expenses incurred for earning the dividend income. The Assessing Officer, however, was of the view that the assessee has not made disallowance in a reasonable manner to ascertain the true and correct picture of its income. Accordingly, he invoked the provisions of sec. 14A and made disallowance of Rs.3,53,755. The Learned CIT(Appeals) observed that the assessee was not in disagreement with the Assessing Officer that provisions of sec. 14A were applicable to the case of the assessee but the difference was on the working of the amount. The assessee made disallowance on the basis of its own working in the books of account and the Assessing Officer applied the provisions of Rule 8D as per his own working without finding any fault with the working given by the assessee. The Learned CIT(Appeals) held that as per provisions of sec. 14A(2), the Assessing Officer was firstly required to record his dissatisfaction with the working of the assessee with cogent reason. The Learned CIT(Appeals) found that the assessee itself had made disallowance through the mechanism of Rule 8D in its return of income as per the details furnished before him. The contention of the assessee remained that the investment which had not resulted in tax exempt income ought to have been excluded from the terms

"average investment" for calculating the disallowance under Rule 8D. The Learned CIT(Appeals) was of the view that interest on various borrowings that were relatable to specific purposes (other than earning of dividend income) ought not to have been considered for making disallowance under Rule 8D (2)(ii). Accordingly, he held that for making disallowance under Rule 8D(2))(ii) interest expenses of Rs.3,88,932 alone is to be considered. He observed further that for the purpose of average investment, an amount of Rs.71 lacs which was towards making investment resulting in taxable income are also to be excluded. He accordingly worked out disallowance under sec. 14A at Rs. 2,49,843 giving relief of Rs.1,03,912 in this regard to the assessee. We thus find that the first appellate order on the issue is comprehensive and reasoned one. The same is accordingly upheld. Ground No.3 is accordingly rejected.

12. In result, the appeal is dismissed.

Order pronounced in the open court on 22.04.2016

Sd/-	Sd/-
(O.P. KANT)	(I.C. UDHIR)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated: 22 /04/2016
Mohan Lal

Copy forwarded to:

1) Appellant

2) Respondent

3) CIT

4) CIT(Appeals)

5) DR:ITAT

ASSISTANT REGISTRAR

	Date
Draft dictated directly on computer	22.04.2016
Draft placed before author	22.04.2016
Draft proposed & placed before the second member	
Draft discussed/approved by Second Member.	22.04.2016
Approved Draft comes to the Sr.PS/PS	22.04.2016
Kept for pronouncement on	22.04.2016
File sent to the Bench Clerk	22.04.2016
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	