

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No.1843/M/2013
Assessment Year: 2009-10**

The DCIT, Cir-22(1), Room No.411, 4 th Floor, Tower No.6, Vashi Station Complex, Mumbai - 400703 (Appellant)	Vs.	M/s. Positive Industries, 305/306, Vindhyachal CHS, 7 th Road, Neelkanth Vally, Rajawadi, Ghatkopar (E), Mumbai – 400 077 PAN: AADFP 8298A (Respondent)
---	-----	---

**CO No.103/M/2014
(Arising out of ITA No.1843/M/2013)
Assessment Year: 2009-10**

M/s. Positive Industries, 305/306, Vindhyachal CHS, 7 th Road, Neelkanth Vally, Rajawadi, Ghatkopar (E), Mumbai – 400 077 PAN: AADFP 8298A (Appellant)	Vs.	The DCIT, Cir-22(1), Room No.411, 4 th Floor, Tower No.6, Vashi Station Complex, Mumbai - 400703 (Respondent)
--	-----	--

Present for:

Assessee by : Shri Sanjay R. Parikh, A.R.
Revenue by : Dr. S. Pandian, D.R.

Date of Hearing : 28.03.2016
Date of Pronouncement : 31.03.2016

ORDER

Per Sanjay Garg, Judicial Member:

The above titled appeal by the Revenue and the corresponding cross objections by the assessee have been directed against the order dated 17.12.2012 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. The Revenue in this appeal has agitated the action of the Ld. CIT(A) in deleting the addition of Rs.15,09,709/- made by the Assessing Officer (hereinafter referred to as the AO) in respect of commission paid on purchases. At the outset, the Ld. D.R. has stated at bar that the tax effect in this appeal is less than Rs.10 lakhs and that as per the CBDT circular No.21/2015 dated 10/12/2015, he does not press the appeal of the Revenue and the same may be dismissed as not pressed.

3. The CBDT vide Circular dated 10/12/2015 (supra) has revised the monetary limits for filing of appeals by the Department before the Tribunal and further vide Para 10 of the said circular it has been clarified that said circular is applicable retrospectively to the pending appeals also. The relevant portion of the circular dated 10/12/2015 (supra) is reproduced below:-

" 3.Henceforth appeals/SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:-

<i>Sl. No.</i>	<i>Appeals in Income-tax matters</i>	<i>Monetary Limits (In Rs.)</i>
<i>1.</i>	<i>Before Appellate Tribunal</i>	<i>10,00,000</i>
<i>2.</i>	<i>Before High Court</i>	<i>20,00,000</i>
<i>3.</i>	<i>Before Supreme Court</i>	<i>25,00,000</i>

4. For this purpose, "tax effect" means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as "disputed issues"). However the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.

8. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:

- (a) Where the Constitutional validity of the provisions of an Act or Rule are under challenge, or
- (b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or
- (c) Where Revenue Audit objection in the case has been accepted by the Department, or
- (d) Where the addition relates to undisclosed foreign assets/ bank accounts.

9. The monetary limits specified in para 3 above shall not apply to writ matters and direct tax matters other than Income tax. Filing of appeals in other Direct tax matters shall continue to be governed by relevant provisions of statute & rules. Further, filing of appeal in cases of Income Tax, where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under section 12A of the IT Act, 1961, shall not be governed by the limits specified in para 3 above and decision to file appeal in such cases may be taken on merits of a particular case.

10. This instruction will apply retrospectively to pending appeals and appeals to be filed henceforth in High Courts/ Tribunals. Pending appeals below the specified tax limits in para 3 above may be withdrawal not pressed. Appeals before the Supreme Court will be governed by the instructions on this subject, operative at the time when such appeal was filed.”

(underlined for emphasis by us)

4. The tax effect in dispute in the captioned appeal is stated to be below the monetary limit of Rs.10.00 lacs as specified in the CBDT Circular dated 10/12/2015 (supra). The Ld. DR has not brought out any material to suggest that the captioned appeal is protected by any of the circumstances prescribed in Para-8 of the Circular dated 10/12/2015 (supra). He therefore has stated that in view of the above circular of the CBDT, the captioned appeal be treated as withdrawn/not pressed. Hence, without going into the merit of the issues raised in the present appeal, this appeal is treated as dismissed as withdrawn/not pressed as its filing being in contravention of the CBDT Circular dated 10/12/2015(supra) read with section 268A of the Income Tax Act.

5. Now coming to the cross objection filed by the assessee i.e. CO No.103/M/2014.

CO No.103/M/2014

6. The assessee has raised three issues in its cross objections. The first issue is relating to disallowance out of electricity expenses. The Ld. A.R. of the assessee has stated at bar that as per the instructions of his client, he does not press this issue. This issue/ground is, thus, dismissed as not pressed.

7. The second cross objection taken by the assessee is relating to the disallowance of factory expenses of Rs.2 lakhs. The Ld. A.R. of the assessee has demonstrated that the said addition was made by the AO alleging that the assessee had not furnished the necessary details in this respect. The Ld. A.R. has invited our attention to page 34 of the paper book which is an application dated 16.05.12 addressed to the Ld. CIT(A) for admission of additional evidence. In para 5 & 6 of the said application, the assessee has stated that the AO had made the said disallowance on adhoc basis and that the AO had not asked the assessee to submit the evidences in that regard. The assessee, thus, had filed the additional evidences showing the details of these factory expenses.

8. The Ld. CIT(A) had called *inter-alia* a remand report on this issue along with other issues raised by the assessee. However, the AO in the remand report failed to give any finding or report on the above issue. The said plea had also been raised by the assessee before the Ld. CIT(A). However, the Ld. CIT(A) without taking into consideration the plea of the assessee upheld the additions made by the AO on this issue.

9. The Ld. A.R., before us, has stated that the assessee had filed the details in the shape of additional evidences before the AO, the copies of which have been placed at page 41 to 53 of the paper book before us.

10. We have gone through the order of the Ld. CIT(A). We find that the assessee had taken a specific objection that despite filing of the necessary

details, the AO has failed to give his findings in the remand report in this respect and even the Ld. CIT(A) has also failed to consider the objections raised by the assessee in this respect.

11. In view of this, this issue needs to be examined by the AO afresh. We accordingly restore this issue to the file of the AO with a direction to examine the details furnished by the assessee in respect of the factory expenses and decide it afresh.

12. The third issue raised by the assessee is relating to the enhancement of deduction under section 80IB. The plea of the assessee has been that in view of the additions made by the AO, the assessee was entitled to the corresponding enhancement in respect of deduction claimed under section 80IB as the assessee was eligible for the same. However, the lower authorities have failed to consider the above prayer of the assessee. The Ld. CIT(A) has even not discussed this issue in the impugned order. We accordingly restore this issue also to the file of the AO with a direction to consider the eligibility of the assessee for enhanced deduction under section 80IB on account of additions, if any, made/sustained in the case of the assessee and if the assessee is found eligible for the same, then to allow the claim of the assessee accordingly.

13. With the above observation and in view of the circular dated 10/12/2015, the appeal of the Revenue is dismissed and the cross objection of the assessee is treated as partly allowed for statistical purposes.

Order pronounced in the open court on 31.03.2016.

Sd/-
(Ramit Kochar)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 31.03.2016.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.