आयकर अपीलीय अधीकरण, न्यायपीठ – "C" कोलकाता,

IN THE INCOME TAX APPELLATE TRIBUNAL
*KOLKATA BENCH "**C**" KOLKATA*

Before **Shri N.V.Vasudevan, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.688 & 1325/Kol/2014
Assessment Years :2008-09

EPCOS India Pvt. Ltd., Kulia Kancharapara Road, Kalyani-741251 [**PAN No.AACI 6950 Q**]	**V/s**.	ITO, Ward-11(1), P-7, Chowringhee Square, Aayakar Bhavan, Kolkata-69
DCIT, Circle-11, P-7, Chowringhee Square, Kolkata-69	**V/s**.	EPCOS India Pvt. Kulia Kancharapara Road, Kalyani-741251
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

ITA No.1718 & 1895/Kol/2014
Assessment Year: 2010-11

EPCOS India Pvt. Ltd., Kulia Kancharapara Road, Kalyani-741251	**V/s**.	DCIT, Circle-11, P7, Chowringhee Square, Aayakar Bhavan,Kolkata-69
DCIT, Circle-11, P-7, Chowringhee Square, Kolkata-69	**V/s**.	M/s EPCOS India Pvt. Ltd., Kulia Kancharapara Road,Kalyani-741251
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

ITA No.2553 & 2758/Kol/2013
Assessment Year: 2009-10

EPCOS India Pvt. Ltd., Kulia Kancharapara Road, Kalyani-741251	**V/s**.	DCIT, Circle-11, P-7, Chowringhee Square, Aayakar Bhavan, Kolkata-69
DCIT, Circle-11, P-7, Chowringhee Square, Kolkata-69	**V/s**.	M/s EPCOS India Pvt. Kulia Kancharapara Road, Kalyani-741251

अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

आवेदक की ओर से /By Assessee	Shri Anup Sinha, AR
राजस्व की ओर से/By Revenue	Shri G. Hangshing & Shri Sallong Yaden, CIT-DR
सुनवाई की तारीख/Date of Hearing	11-01-2018
घोषणा की तारीख/Date of Pronouncement	02-02-2018

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

These three appeals and cross-appeals by same assessee and Revenue are directed against the separate order of Commissioner of Income Tax (Appeals)-XII, Kolkata vide different dated 14.03.2014, 18.07.2014 & 12.09.2013. Assessments were framed by ITO/DCIT Ward-11(1)/Circle-11, Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide their differ orders dated 29.12.2011, 26.03.2014 and 06.03.2013 for assessment years 2008-09 to 2010-11 respectively.

Shri G. Hangshing & Shri Sallong Yaden,Ld. Departmental Representative appeared on behalf of Revenue and Shri Anup Sinha, Ld. Authorized Representative appeared on behalf of assessee.

2. In all the cross-appeals filed by assessee as well as Revenue, the facts and circumstances are identical therefore all these appeals were heard together and are being disposed off by way of this consolidated order for the sake of convenience.

3. First we take up Revenue's appeal in **ITA No.2758/Kol/2013** for AY 09-10 as lead case. The Revenue has raised the following grounds of appeal:

> *1. That on the facts and circumstances of the case and as per law Ld. CIT(A) erred in allowing the commission expenses amounting to Rs. 100,66,944/- as trade discount.*
>
> *2. That on the facts and circumstances of the case and as per law Ld. CIT(A) erred in by deleting addition u/s 40(a)(ia) amounting to Rs.*

100,66,944/- which was added back by AO as non-deduction of TDS on the commission payment u/s 194H.

3. That on the facts and circumstances of the case and as per law Ld. CIT(A) erred in restricting the disallowances on expenses of damage goods to 10% i.e. Rs. 872556/- instead of Rs. 8735561/- even though assessee did not produce any evidence or details neither during assessment proceeding nor before appellate authority.

4. That on the facts and circumstances of the case and as per law Ld. CIT(A) erred in restricting the provision of doubtful debts for computing income u/s 115JB amounting from Rs.11627000/- to Rs. 2281000/- even though assessee did not produce any evidence or details during assessment proceeding. The Ld. CIT(A) also erred in allowing fresh evidence during appellate proceedings in violation of Rule 46A of I.T. Act.

4. The first issue raised by Revenue in grounds no. 1 and 2 are inter-related and therefore being taken up together that the Ld. CIT(A) erred in deleting the addition made by the AO for Rs.1,00,66,944/- on account of non-deduction of TDS u/s 194H read with section 40(a)(ia) of the Act.

5. Briefly stated facts are that the assessee in the present case is a private limited company and engaged in the business of manufacturing and sale of soft ferrite components, DC and AC capacitors, metalized films etc. The assessee in the year under consideration has claimed expenses under the head “trade discount and cash discount” of Rs.45,71,944/- and Rs.54,95,000/- respectively. The assessee during the assessment proceedings explained that impugned discounts were given to its customers on account of bulk quantity purchased by them. There was a contract between the assessee and its customers which was based on principal to principal basis. As such, there was no agreement of principal and agency between the assessee and its customers therefore the discount offered to the customers cannot partake the character of commission as envisaged u/s 194H of the Act.

6. However, the AO during the assessment proceedings observed certain facts as detailed under:

i) The amount of discount offered to the customers was subject to various terms and conditions therefore it partake the character of commission;

ii) The amount of discount was settled by the assessee by issuing credit note to the customers. These credit notices were issued to the customers only on the happening of the particular event/ activity such as receipt of payments made by the customers. Thus, the discount offered by the assessee is in the nature of commission.

iii) The discount was also offered to the customers on account of prompt payment made by dealers to the assessee. This again reflects that the discount is related to providing some services like prompt payment.

iv) The amount of commission offered by the assessee is directly linked/related to its liquidity which proves that these are not normal discount offered by the assessee but represents the amount of commission.

v) The terms and condition between the assessee and its customers is of principal and agent.

In view of the above, the AO was of the view that an amount of discount offered by the assessee is nothing but commission expenses which is liable for deduction of TDS u/s 194H of the Act. Besides the above the AO also observed that similar kind of disallowances was also made in the assessment year 2008-09. Thus, the AO made the disallowance of Rs.1,00,66,944/- only and added to the total income of the assessee.

7. Aggrieved, the assessee preferred an appeal to Ld. CIT(A). The assessee before the Ld. CIT(A) submitted that the contract of sale between

the assessee and its customers / dealers is based on principal-to-principal basis. Therefore, the transaction between the assessee and its customers represents the sale purchase activities. Thus, the discount offered cannot be terms as commission u/s 194H of the Act. The assessee in support of his claim has also relied on the judgment of Hon'ble Supreme Court in the case of *CIT vs. Ahmadabad Stamp Future Association* reported in 348 ITR 378 (SC). The Ld. CIT(A) after considering the submission of the assessee deleted the addition made by the AO by observing as under:

> *"I have carefully considered the submission put forth on behalf of the appellant along with supporting documents & case laws relied upon and perused the facts of the case including the contention of the AO in the assessment order. It is seen that the appellant has claimed deduction for cash discount and trade discount allowed to the customers for purchasing the product of the appellant in bulk quantities under section 37(1) of the Act while computing the total taxable income. The AO in his order passed u/s 143(3) of the Act has disallowed the deduction claimed on the alleged ground that similar disallowance was made in the immediately preceding year and the appeal for that year is still pending for disposal. From the perusal of the details filed by the appellant, it is observed that in the immediately preceding assessment year the disallowance of cash and trade discount was made on the alleged ground that the same being in nature of commission paid to different parties and as no tax was deducted as per the provision of TDS before making the payment under section 40(a)(ia) of the Act.*
>
> *My attention was invited to the fact that the appellant has offered discounts to the customers as per the contract of sale entered into between the appellant and the customers taken place on a principal to principal basis. Further, my attention is also drawn to the decision of the Hon'ble Supreme Court in the case of CIT vs. Ahmedabad Stamp Vendors Association reported in 348 ITR 378 (S C) wherein the Hon'ble Court has held that offering of discount for purchase in bulk would partake the character of discount on transaction of sale and as such the provision of Section 194H of the Act has no application. My attention was further invited to the fact that both the cash/trade discounts were claimed as allowable deduction and the same was also allowed in all the previous years up to assessment year 2007-08.*
>
> *In the light of the above discussion and findings, perusing the facts of the case and respectfully following the principles enunciated by the Hon'ble Supreme Court (supra). I am of the considered opinion that the offering of discount for purchasing the quantity in bulk by the customers*

> *cannot be treated as payment of commission to the customers specially when the sale is happening on a principal to principal basis. Hence, I am inclined to agree with the appellant and direct the AO to allow deduction claimed for cash/trade discount amounting to INR 54,95,000/- and INR 45,71,944/- respectively while computing the total taxable income and this ground of appeal is accordingly allowed."*

Being aggrieved by the Ld. CIT(A) the Revenue is in second appeal before us.

8. The Ld. DR before us vehemently supported the order of AO. Ld. DR prayed before the Bench to confirm the order of AO.

On the other hand, the Ld. AR before us filed the paper book which is running from pages 1 to 56 and submitted that the assessee company has offered the aforesaid cash/trade discount to the customers for purchasing the products in bulk quantity. Thus, the discounts were offered by the assessee company as per the contract of sale between the assessee company and its customer was based on principal to principal basis. The aforesaid discounts were allowed as business expenditure under the provision of section 37 of the Act for all the assessment years except the assessment year 2008-09, where the AO has stated that offering discount on sale would pertain the character of '***commission***' and as there was no deduction of tax at source from such commission, the entire amount was disallowed u/s 40(a)(ia) of the act. In this connection, it may be stated that though there are favorable decisions of various High Courts of the country that the discounts offered on sales would not partake the character of commission, there was no decision of the Hon'ble Supreme Court on this point. Now the issue has been set at rest by the decision of the Hon'ble Supreme Court in the matter of Ahmedabad Stamp Vendors Association (supra) wherein the Hon'ble Supreme Court has held that offering discount for purchase in bulk quantity would partake the character of discount on transaction of sale and as such, the provision of section 194H of the act has no application and hence, disallowance u/s 40(a)(ia) of the Act cannot be made. In view of the above submission especially in view of the binding decision of the Hon'ble Supreme Court, we would request your kind-

self to allow the expenditure incurred by the assessee company under the head cash/trade discount u/s 37(1) of the Act. Ld. AR further submitted that up to assessment year 2007-08 no disallowance was made on account of discount offered to the customers though the assessments were framed u/s 143(3) of the Act. It was also brought to our notice that from the assessment years 2013-14 and 2014-15 again no disallowance on account of commission expenses was made by the Revenue. Thus, keeping the principal laid down by the Hon'ble Supreme Court in the case of *Radhasoami Satsang vs. Commissioner of Income Tax* (1992) 193 ITR 0321 (SC) wherein it was observed in the absence of any material change in the facts, the Revenue should not take a different view in the other year. The Ld. AR in support of its claim has also filed the copy of the assessment orders pertaining to assessment years 2013-14 and 2014-15 which are placed on record.

8.1 On the principal of consistency the Ld. AR also relied on the judgment of Hon'ble Supreme Court in the case of *CIT vs. Dalmia Promoters and Developers Pvt. Ltd*. in Civil Appeal No. 74/2007wherein it was held as under:

> *"Tax(Appeals) by its order dated 4th September, 1996 taking into account inter alia the fact that for the previous three assessment years the assessee for similar interest from such fixed deposits had been held to come within the head 'business income' and, therefore, following the principle of consistency, it was held that this would have to be for the assessment year 1993-94 as well. An appeal filed by the Revenue before the Income Tax Appellate Tribunal was dismissed on 1st October, 2004".*

The Ld. AR in support of its claim also filed the copy of dealership agreement on sample basis which are placed on record. The relevant clauses of the agreement are reproduced as under:

> *"2. The relationship between EPCOS and the Dealer will be strictly on principal to principal basis*
>
> *3. The Dealer will not be entitled to represent EPCOS in any manner or fashion as EPCOS Agent and shall have no right or authority to make any commitments of EPCOS's behalf or bind EPCOS in any respect*

and for any purpose whatsoever and to assign any benefits, rights or obligation herein to any other person(unless otherwise specified).

18.1. EPCOS shall sell the said Products to the Dealer at List Price ruling at the time of delivery less normal Trade Discount on such List Price which will be notified to the Dealer, from time to time. The List Prices are the maximum prices. The Dealer is, however, free to charge lower prices than the prices mentioned in the List Price.

25.1 The payments shall be made to EPCOS by the Dealers before dispatch, unless credit facility has been granted or agreed

25.2. In case credit facility is given, payment should be made as per Business Policy letter intimated to the Dealer from time to time.

The Ld. AR vehemently supported the order of Ld. CIT(A).

8. We have heard the rival contentions of both the parties and perused and carefully considered the material on record; including the judicial pronouncements cited and placed reliance upon. The issue, in the instant case, relates to whether the amount of commission offered by the assessee is in the nature of commission as envisaged u/s 194H of the Act. At this juncture, we find important to refer to the meaning of commission or brokerage as provided in explanation to section 194H of the Act which reads as under:

Explanation.—For the purposes of this section,—

(i) "commission or brokerage" includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities;

From the above provision, it is clear that some services should be provided by the person or any other services in the course of buying and selling of goods. In the instant case, the assessee has been supplying goods to its dealers on principal to principal basis as evident from the agreement as discussed above. Therefore, we find that there was no relationship between the assessee and its customers as of principal and agents. Therefore, the amount of discount

offered by the assessee cannot be termed as commission u/s 194H of the Act. Moreover, the issue of discount offered by the assessee has been duly settled by the Hon'ble Supreme Court in the case Ahmadabad Stamp Vendors Association (supra) wherein it was held as under :

> *"We are satisfied that 0.50% to 4% discount given to the Stamp Vendors is for purchasing the stamps in bulk quantity and the said discount is in the nature of cash discount.*
>
> *In the circumstances, we concur with the impugned judgement that the impugned transaction is a sale. Consequently, section 194H of the Income-tax Act, 1961, has no application."*

There is no dispute that the discount was offered by the assessee to its dealers in relation to the sales made by it to them. Thus the provisions of section 194H does not apply to the impugned discount offered by the assessee. Thus, we do not find any reason to interfere in the order of ld. CIT(A). Hence the ground of appeal filed by the Revenue is dismissed.

9. Next issue raised by Revenue in Ground no. 3 is that the Ld. CIT(A) erred in restricting the disallowance of the expenses of damage to 10% i.e. from Rs. 87,35,561/- to Rs. 8,72,556/-.

10. The assessee, in the year under consideration has claimed the expenses of Rs.87,35,561/- under the head damages. On question by the AO about the nature of details of such expenses the assessee failed to file the necessary details. Therefore the AO made the disallowance of Rs. 87,35,561/- and added to the total income of the assessee.

12. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A). The assessee before the Ld. CIT(A) submitted that on many occasions the goods sold to the customers were rejected on account of low quality. These goods were either brought back to the factory for repairing or these goods were scrapped at the customers end. The goods which were brought back for the purpose of repairing and the cost incurred thereon in the form of freight

custom duty, octroi, excise duty and sales tax as well as cost of scrapping work was categorized under the head damages. The cost of damages was directly related to the business activities of the assessee and therefore, the same is eligible for deduction u/s 37(1) of the Act.

12.1 The assessee also submitted that necessary details were filed before the AO vide letter dated 25.02.2013. After considering the submissions of the assessee the ld. CIT(A) deleted the addition made by the AO in part by observing as under:

> *"I have carefully considered the submission put forth on behalf of the appellant along with supporting documents/details furnished and perused the facts of the case including the contention of the AO in the assessment order. It is seen that the appellant has claimed deduction while calculating total taxable income in respect of damages pertaining to rejected goods which were sold by the appellant to the customers previously. The AO in his order passed u/s 143(3) of the Act has disallowed the deduction claimed on the ground that no details were produced before the AO to prove that the expenditure was incurred for business purpose and further similar disallowance was made in the immediately preceding year and the appeal for that year is still pending for disposal.*
>
> *In the course of appellate proceedings, my attention was invited to the fact that the appellant had made available before the AO at the time of assessment proceedings vide its letter dated 25th February, 2013 which contained a brief note on justification of various expenses incurred under the head damages and further the appellant had also enclosed sample copies of the documents evidencing the fact that the expenses on damages have actually been incurred by the appellant. The copy of the letter enclosing the details was also filed before me. On perusal of the same, I find that when the goods are rejected by the customers due to quality problems, the said goods are brought back to the factory for repair/scrapping or scrapping might have been done at customer's end, depending upon the problem, condition of the goods and the costs of bringing back the goods to the factory. It is also noted that the expenses debited to damages account in relation to rejected goods are freight, customs duty, octroi, excise duty and sales tax paid on returned goods and cost of scrapping. It is also seen that no material evidence has been brought on record by the AO to suggest that any of the expenses claimed under this head has been incurred other than the purpose of the business of the appellant. Under this circumstances, I am of the*

view that the AO is not justified in disallowing the entire claim of expenses of Rs. 87,35,567/- under this head.

In the light of the above, discussion/findings, perusing the entire facts of the case and nature of expenses, I am of the considered view that 10% of expenses claimed under this head can reasonably be treated as disallowable expenses not incurred for the purpose of the business of the appellant. Therefore, I restrict the disallowance to Rs.8,72,556/- being 10% of the total claim as against Rs.87,35,567/- made by the AO. Thus, this ground of appeal is partly allowed. "

Being aggrieved by this order of Ld. CIT(A) both Revenue and assessee are in appeal before us.

13. The Revenue is in appeal before us against the relief granted by the Ld. CIT(A) to the tune of 90% of damages expenses whereas the assessee is in appeal before us against the confirmation of the addition made by the AO to the tune of 10% of cost of damages in ITA No. 2253/Kol/2013. The ground of assessee appeal in **ITA No. 2253/Kol/2013** for A.Y 2009-10 goes as under:-

"1. That on the facts and the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) [hereinafter referred to as 'Ld. CIT(A)'] erred in restricting the expenditure incurred by the appellant under the head 'damages'' during the year under consideration to ninety percent of the actual expenditure incurred by the appellant and thereby not allowing the expenditure incurred to the extent of ten percent without assigning any reasons and even after accepting the fact that the requisite details to substantiate the claim were filed by the appellant before him as well as before the Assessing Officer.

14. As the issue raised by Revenue & Assessee is common, therefore we clubbing the same for the purpose of adjudication.

The Ld. AR before us enclosed details of expenses related to damages amounting to INR 87,35,561/- for the reference along with some sample copies of documents. On a perusal of the aforesaid details, your kind-self may appreciate that when the goods are rejected by the customers due to quality problems, the said goods are brought back to the factory for repair/scrapping or it may be done at customer's end, depending upon the problem condition of the goods and the costs of bringing back the goods to the factory. The

expenses debited to 'damages' account in relation to rejected goods are freight, customers duty, octroi, excise duty and sales tax paid on returned goods and cost of scrapping. Thus, your kind-self may appreciate that the above expenses incurred by the assessee company to the customers previously are incurred for the purpose of carrying out the business of the assessee company and as such the same should be allowed u/s 37(1) of the Act. Please note that during the assessment year 2008-09, the addition relating to these expenses have been made by the ld. Assessing Officer without giving any opportunity to the assessee company to file any details/documents under the aforesaid head. During the relevant assessment year, the assessee company is having in its possession all the details relating to expenses for damages which are placed on pages 40 to 60 of the paper book.

On the other hand, the Ld. DR submitted that the explanation was filed by the assessee at the time of assessment without filing the documentary evidences. The assessee failed to file the details of the sales made to the parties which were returned back. The Ld. DR vehemently supported the order of the AO.

15. We have heard the rival contentions and perused the material available on record. In the instant case, the assessee has incurred cost of Rs.87,35,561/- under the head damages. As per the assessee, the goods which were returned back by the customers on account of low quality to the factory. The cost incurred on the repairs of such goods was classified as damages. The cost of damages was inclusive of freight custom duty, octroi, excise duty, sales tax etc. The cost incurred by the assessee is placed on pages 40 to 60 of the paper book. The Ld. AR also drew our attention on the sample documents in support of expenses incurred on damages which are placed on pages 46 to 60 of the paper book. After perusal of the papers filed by the assessee we note that these documents have not been doubted by the lower authorities.

16. Indeed the assessee has not produced details of the sales which were returned back by the parties but in our considered view this cannot be the sole basis for making disallowance of damage expenses claimed by the assessee. The AO has not pointed out any defect in the submission made by the assessee before rejecting the claim made by it. In view of the above, we hold that the AO cannot just brush aside the details filed by the assessee and draw a conclusion that the expenses are not incurred in connection with the business of the assessee. We note that sufficient details were duly filed by the assessee at the time of assessment proceedings in support of the cost incurred on the damages and no defect of whatever has been pointed out by the AO. The Ld. DR has also not brought anything on record contrary to the finding of Ld. CIT(A). Thus, we hold that the cost incurred for the damage of goods is directly connected with the business activities of the assessee and accordingly eligible for deduction u/s 37(1) of the Act. Thus, the ground of appeal raised by the Revenue is dismissed and the ground of appeal raised by the assessee is allowed.

17. The next issue raised by the Revenue in this appeal is that the Ld. CIT(A) erred in restricting the disallowance of Rs. 1,16,27,000/- to Rs. 22,81,000.00 on account of provision of doubtful debts while computing the income u/s 115JB of the Act.

The assessee in the year under consideration has claimed the deduction of Rs. 1,16,27,000/- while determining the book profit u/s 115JB of the Act. The deduction was claimed by the assessee for the actual bad debts written off through provision for doubtful bad debts account under clause (i) of explanation 1 to section 115JB of the Act. However, the deduction claimed by the assessee was disallowed by the AO while determining the profit u/s 115JB of the Act on the ground that no detail was provided by the assessee in support of his claim. Thus, the AO disallowed the claim of the assessee and

added a sum of Rs. 1,16,27,000/- while determining the book profit under the provisions of MAT.

18. Aggrieved assessee preferred an appeal to the Ld. CIT(A). The assessee before the Ld. CIT(A) submitted that it has created provision in the earlier years which was duly offered to tax under the provision of bad debts. The following details was furnished by the assessee to the Ld. CIT(A).:

Provision for doubtful debt added back in computation under MAT:

Assessment Year	***Amount(INR)***
1997-98	*File not traceable*
1998-99	*13,99,000*
1999-2000	*NIL*
2000-2001	*File not traceable*
2001-02	*18,18,000*
2002-03	*96,000*
2003-04	*NIL*
2004-05	*NIL*
2005-06	*NIL*
2006-07	*NIL*
2007-08	*19,70,000*
2008-09	*25,77,000*
2009-10	*14,86,000*
TOTAL	***93,46,000***

In view of the above, the assessee submitted that the amount of provision return back during the year should be allowed as deduction as per clause (i) of explanation 1 to section 115JB of the Act. The Ld. CIT(A) after considering the submission of the assessee deleted the addition in part made by the AO by observing as under:-

> *"DECISIONS:*
>
> *I have carefully considered the submission put forth on behalf of the appellant along with supporting documents/details furnished and perused the facts of the case including the contention of the AO in the assessment order. It is seen that while calculating the book profit under the provisions of section115JB of the Act, the appellant has claimed deduction of an amount of INR 1,16,27,000/- under the head 'provision for doubtful debts written back.' The in his order passed under section 143(3) of the Act had disallowed the deduction claimed on the alleged ground that it was an actual bad debt written off through the provision account an further contended that no details of bad debt written off and*

added back while determining the computation of total income in all the pat years were made available to him during the assessment.
In support of this issue of appeal, my attention was drawn to the accounting treatment followed by the appellant while writing off the bad debt through the provision for bad debt account created earlier. From the said treatment, it is apparent that at the time of writing off actual bad debt through provision account, the provision for bad debt created earlier is to be reversed an credited to profit and loss account. However, du9e to cancellation of contra entries, the said amount are not being reflected on the fact of the profit and loss account. Thus, whenever the bad debt I written off through the provision for Bad Debt Account an equal amount is credited to the profit and loss account on account of release of provision for bad debt. Further, was stated before me that the provision for bad debt has been added back while computing the book profit in earlier years. A list of the amounts added back under the head provision for doubtful debt in all the past year were made available before me. On account of perusal of the same, I find that the appellant in the past years has added back an amount of INR 93,46,000/- while computing the book profit.

In the instant case of the appellant, it is observed that the appellant has added back an amount of INR 93,46,000/- in the past years under the head provision for bad debt but the appellant has credited the amount of provision for bad debt written back amounting to INR 1,16,27,000/- in the year under consideration the profit and loss account. Hence, I restrict the claim of the app under the provision of clause (i) of the Explanation 1 appended below section 115JB of the Act to INR 93,46,000/- as against the total claim of INR 1,16,27,000/- i.e. actual amount of additions made by the appellant in past years.

In the light of the above discussion & findings and taking into account the factual and legal position, I direct the AO to allow the appellant an amount of IINR 93,46,000/- while computing the book profit under the provisions of section115eJB of the Act. Thus, this ground of appeal is partly allowed."

Being aggrieved by the order of the Ld. CIT(A) the Revenue is in appeal before us.

19. The Ld. DR before us submitted that no details whatsoever were furnished by the assessee during the assessment proceedings. The details filed by the assessee before the Ld. CIT(A) were admitted in contravention to the provision of Rule 46A of the Income Tax Rules. Thus, the Ld. DR prayed

before the Bench to restore the impugned issue to the file of AO for fresh adjudication in accordance with law.

On the other hand, the Ld. AR raised no objection if the matter is remanded back to the file of AO for fresh adjudication.

20. We have heard the rival contentions and perused the material available on record. In the instant case, we note that the Ld. CIT(A) has admitted the fresh evidences in contravention to the provision of Rule 46A of Income tax Rules. We note that the necessary details of the provision created by the assessee in earlier years were not supplied by the assessee to the AO at the time of assessment proceedings. In view of the above, we are of the view that the issue of provisions for doubtful debts written back by the assessee for Rs.1,16,27,000/- needs to be examined by the AO. In respect of issue it was agreed by both the parties that the issue must be restored back to the file of AO for fresh examination. Accordingly, we remit back the issue to the file of AO to examine afresh and to decide the issue in accordance with law. AO must give reasonable opportunity to the assessee before passing order on this point. Consequently, the ground of appeal raised by the revenue is allowed for statistical purposes.

21. In the result, Revenue's appeal is partly allowed for statistical purpose and assessee's appeal ITA No.2553Kol/2013 is allowed.

Coming to Revenue's appeal in ITA No.1895/Kol/2014 for A.Y. 10-11.

22. Ground No. 1 and 2 are inter-related and therefore being taken up together. It is relevant to observe here that the facts in Ground No. 1 & 2 of this appeal are similar to the facts in ITA No.2758/Kol/2013 and the findings given in ITA No.2758/Kol/2013 shall apply to this case also with equal force. Consequently, Revenue's grounds is dismissed.

23. Next ground No. 3 in this appeal of Revenue is that Ld. CIT(A) erred in restricting the disallowances on expenses of damage goods to 10% i.e. Rs.28,12,555/- instead of R.2,81,25,553/-.

24. Same ground of the appeal of Revenue has already dealt in the respective issues by us in or above stated order in **ITA No. 2758/Kol/2013** in para 15 & 16 of this order and no need for separate adjudication. Hence, this ground of Revenue's appeal is dismissed.

25. Next issue raised by Revenue in ground No.4 is that Ld. CIT(A) erred in restricting the provision of doubtful debts for computing income u/s. 115JBB of the Act to Rs.70,39,025/-.

26. We have already dealt this issue elaborately in Revenue's appeal in ITA No.2758/Kol/2013 while adjudicating the ground of appeal of Revenue in ITA No.2758/Kol/2013 and since we have allowed this ground for statistical purpose hence, this ground of Revenue, following the same analogy. Consequently, Revenue's appeal is allowed for statistical purpose.

27. In the result, Revenue's appeal is partly allowed for statistical purpose.

Coming to assessee's appeal in ITA No.688 & 1718/Kol/2014/2014 for A.Ys 08-09 & 10.11.

28. Solitary issue raised by assessee in both the appeal and we have already dealt this issue elaborately while adjudicating the ground of assessee's appeal in ITA No.2253/Kol/2013 in para 15 & 16 of this order. Since we have allowed this ground of appeal of assessee and following the same analogy we also allow this ground of assessee's appeal.

29. In the result, both appeal of assessee is allowed.

Coming to Revenue's appeal in ITA No.1325/Kol/2014 for A.Y. 08-09.

30. Solitary issue raised by Revenue in this appeal is that Ld. CIT(A) erred in restricting the disallowance of R.1,06,86,737/- on account of expenses on damage goods.

31. It is relevant to observe here that the facts in ground No. 1 of this appeal are similar to the facts in ground No.3 in ITA No.2758/Kol/2013 for A.Y.

2009-10 and the findings given in **ITA No.2758/Kol/2013** shall apply to this case also with equal force. Hence, this ground of Revenue's appeal is dismissed.

32. In the result, Revenue's appeal is dismissed.

33. **To summarize:-**

ITA No.	**A.Y.**	**Appeal by**	**Result**
2758/K/13	**09-10**	**Revenue**	**partly allowed for statistical purpose**
2553/K/13	09-10	assessee	allowed
1895/K/14	**10-11**	**Revenue**	**partly allowed for statistical purpose**
1718/K/14	10-11	assessee	allowed
688/K/14	08-09	assessee	allowed
1325/K/14	**08-09**	**Revenue**	**dismissed**

Order pronounced in the open court 02/02/2018

Sd/-
(न्यायिक सदस्य)
(N.V.Vasudevan)
(Judicial Member)

Sd/-
(लेखा सदस्य)
(Waseem Ahmed)
(Accountant Member)

Kolkata,

*Dkp, Sr.P.S
दिनांकः- 02/02/2018 **कोलकाता** ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक/Assessee-M/s EPCOS India Pvt. Ltd., Kulia Kanchrapara Road,Kalyani-741251
2. राजस्व/Revenue-ITO Ward-11(1)/DCIT, Circle-11, P-7, Chowringhee Square, Kolkat-69
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

Sr. Private Secretary, Head of Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता ।