

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI
BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER
AND
SMT. BEENA A PILLAI, JUDICIAL MEMBER

ITA No. 2417/Del/2016
Assessment Year : 2011-12

M/s KSC Engineers Pvt.Ltd. 4-H, Gopala Tower Rajendra Place New Delhi 110 008 PAN: AAACK6112C	vs.	ACIT, Circle 14(2) Room No.311A 3 rd Floor, C.R.Building I.P.Estate New Delhi 110 002
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ITA No.3209/Del/2016
Assessment Year : 2011-12

ACIT, Circle 14(2) Room No.311A 3 rd Floor, C.R.Building I.P.Estate New Delhi 110 002	vs.	M/s KSC Engineers Pvt.Ltd. 4-H, Gopala Tower Rajendra Place New Delhi 110 008 PAN: AAACK6112C
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ITA No.5224/Del/2016
Assessment Year : 2012-13

M/s KSC Engineers Pvt.Ltd. 4-H, Gopala Tower Rajendra Place New Delhi 110 008 PAN: AAACK6112C	vs.	ACIT, Circle 14(2) Room No.311A 3 rd Floor, C.R.Building I.P.Estate New Delhi 110 002
(Appellant)		(Respondent)

Assessee by	Sh. P.P.Gambhir, CA
Revenue by	Sh. Vijay Kr. Jiwani, Sr.D.R.
Date of Hearing	30.07.2018
Date of Pronouncement	06/09/2018

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present cross appeals have been filed by assessee as well as revenue against order dated 09/03/16 passed by Ld. CIT (A)-5, Delhi for assessment year 2011-12 and appeal filed by assessee against order dated 21/07/16 passed by Ld. CIT (A)-5, Delhi for assessment year 2012-13 on following grounds of appeal:

Assessee's appeal

ITA 2417/Del/16 AY: 2011-12

"1. That the order passed by Ld.CIT(A) to the extent of addition upheld is bad at law, wrong in facts and against the principles of natural justice.

2. That the Ld.CIT(A) has erred in upholding the addition of Rs.9,82,594/- being the 80% value of obsolete, defective, unusable and unsaleable stock to the extent of Rs.12,28,242/- as the said stock was valued at market price of Rs.2,45,648/- being 20% of cost price.

3. That the appellant craves the right to add, amend, delete or substitute the ground of appeal at any time before the finalization of appeal proceedings."

PRAYER: It is prayed that addition confirmed by the Ld.CIT(A) may kindly be deleted and necessary relief allowed.

ITA No.5224/Del/16 A.Y. 2012-13

“1. That the order passed by Ld.CIT(A) to the extent of addition upheld is bad at law, wrong in facts and against the principles of natural justice.

2. That the Ld.CIT(A) has erred in not allowing the value of opening stock of Rs.5,37,04,497/- for FY 2011-12 (Assessment Year 2012-13) which was taken as closing stock, while making assessment for the AY-2011-12. It is fundamental principle automatically that the closing stock as assessed for the AY 2011-12, becomes the opening stock of next year. However, the ld.CIT(A) has not given the said treatment of stock on the ground that the appeal is treated as infructuous and consequently dismissed because the Income Tax Department as well as the Assessee have filed appeals against the original order passed u/s 143(3) of the Income Tax Act, 1961 (the Act) Act for the A.Y.2011-12.

3. That the appellant craves the right to add, amend, delete or substitute the ground of appeal at any time before the finalization of appeal proceedings.”

PRAYER: It is prayed that the closing stock of Rs.5,37,04,497/- as assessed by the AO for A.Y.2011-12 be treated as opening stock for the A.Y.2012-13 and necessary relief allowed.

ITA No.3209/Del/16 A.Y. 2011-12 (revenue's appeal)

1. *“That the directions of the learned CIT(Appeals) are erroneous & contrary to facts & law”.*

2. *“That on the facts & in the circumstances of the case & in law, the Ld. CIT (A) is erred in deleting the disallowance made on account of Personal & Unvouched expenses of Rs.4,89,587/-.”*
3. *“That on the facts & in the circumstances of the case & in law, the Ld.CIT(A) is erred in restricting the disallowance made on account of Disallowance u/s 36(1)(iii) to Rs. 10,47,260/-.”*
4. *“That on the facts & in the circumstances of the case & in law, the Ld.CIT(A) is erred in deleting the disallowance made on account of Under valuation of closing stock Rs.2,25,40,280/-.”*
5. *“That the order of the Ld.CIT(A) is erroneous and is not tenable on facts and in law”.*
6. *“That the grounds of appeal are without prejudice to each other,”*
7. *“That the appellant craves leave to add, alter, amend or forego any ground(s) of the appeal raised above at the time of hearing.”*

2. Assessment year 2011-12

Brief facts of the case are as under:

Assessee filed its return of income on 29/09/11 declaring profit of Rs.64,72,317/-. The case was selected for scrutiny and notices under section 143(2) and 142(1) of the Income Tax Act, 1961 (the Act) along with a questionnaire were issued to assessee. In response to the statutory notice issued, assessee's Representative attended the proceedings and furnished requisite details/information.

2.1. Ld.AO observed that during the year under consideration assessee was engaged in the business of manufacturing, trading

and export of spare parts mainly used for trucks. Ld.AO observed that assessee has not followed the requirements of Accounting Standard 1 regarding disclosure of accounting policies and Accounting Standard 2, regarding valuation of inventory. Dissatisfied with correctness of accounts filed by assessee, Ld.AO invoked section 145 (3) of the Act, and rejected books of accounts of assessee and proceeded to complete assessment under section 144 of the Act. Ld.AO estimated total income of assessee at Rs.3,29,92,340/-, by making following disallowances:

Income as per return		Rs. 64,72,317/-
Add:		
i)Personal & unvouched expenses	Rs. 4,89,587/-	
ii)Membership & Subscription as discussed	Rs.52,700/-	
iii) Disallowance u/s 14A	Rs.39,057/-	
iv) Disallowance u/s 36(1)(iii)	Rs. 16,37,392/-	
Excess claim of rent	Rs.6,30,000/-	
Under valuation of closing stock	Rs.2,35,22,874/-	
Closing stock of packaging material	Rs.48,417/-	
Value of scrap	Rs. 1,00,000/-	Rs. 2,65,20,027/-
Total income		Rs.3,29,92,344/-
R/O Total Income		Rs.3,29,92,340/-

2.2. Aggrieved by the order of Ld. AO, assessee preferred appeal before the Ld. CIT (A) who partly gave relief to assessee.

2.3. Aggrieved by the order of Ld. CIT (A) revenue as well as assessee are in appeal before us.

3. Assessment year 2011-12

ITA No. 3209/Del/2016 (Revenue's appeal)

Ground No. 1 is general in nature and therefore do not require any adjudication.

3.1. Ground No. 2 in revenue's appeal is in respect of deleting the addition made by Ld.A.O. on account of personal and unverifiable expenses of Rs. 4,89,587/-. Ld. DR submitted that assessee has not maintained any logbook for vehicles and no details regarding telephone expenses has been maintained phone number wise. He submitted that regarding tour and travel expenses, proper supporting evidences were not available to prove expenses being incurred exclusively for the purposes of business. It has been submitted by Ld.DR that under these circumstances Assessing Officer could not verify expenses fully and disallowance has been rightly made. He submitted that assessee failed to establish nexus between expenditure incurred and business activity. He placed reliance upon observations of Ld. AO.

3.2. On the contrary Ld.AR submitted that bills and vouchers were produced before Assessing Officer and ad hoc disallowance at 20% of expenses, has been made without any basis. He submitted that various expenses like telephone expenses, vehicle

running expenses, travelling expenses and depreciation of vehicle could not have been disallowed, as these were exclusively for purposes of business. Ld.AR submitted that telephone expenses pertains to telephones installed at factory, and other official places, including mobile phones used by Directors or other senior officials, for which there cannot be any apprehension of personal element.

3.3. Regarding foreign travel expenses, Ld.AR submitted that assessee furnished details of foreign travel expenses and assessing officer has not observed any discrepancy or error in the same. He submitted that in paper book at pages 136-151 documents /evidences substantiating foreign travel incurred by individual directors and other senior officers have been placed. Referring to these pages, he submitted that, foreign travel has been incurred for purposes of business procurement, as assessee is engaged in export of goods. Ld.AR submitted that assessee earned duty drawback during the year under consideration to the extent of Rs.44,93,921/-, which has been reflected in Schedule 9 to Profit and Loss account at page 111 of paper book. He placed reliance upon observations of Ld.CIT (A).

3.4. We have perused submissions advanced by both sides in the light of records placed before us.

3.5. It is observed that assessee has produced bills in support of foreign travel expenses incurred by it. Further it is observed that foreign travel has been undertaken by Directors or other officials alone, and Ld.A.O. has not been able to establish any infirmity/discrepancy in evidences filed by assessee.

3.6. Ld.CIT(A) categorically observed that assessee provided Ledger account of telephone expenses which contained telephone numbers and mobile numbers of assessee, having installed, either at factory, or offices, or mobiles, used by directors/senior officers. Regarding local travel expenses, Ld.CIT (A) categorically observed that Ledger account does not indicate any personal expenditure. In respect of vehicle running expenditure and depreciation is concerned, it has been observed by Ld. CIT (A) that assessee itself has made *suo moto* disallowance amounting to Rs.64,800/-, on account of perquisite value for use of vehicles for personal reasons in the computation of income.

3.7. Before us, Ld. DR has not been able to establish anything contrary to what has been observed by Ld.CIT (A). Further Ld.AR placed reliance upon assessment order for assessment year 2013-14 and 2014-15, wherein no disallowance has been made in respect of such expenses claimed by assessee.

3.8. Considering totality of facts and keeping in view that Ld. DR has not been able to prove anything contrary to observations of Ld. CIT (A), by way of any documentations or evidences, we are of considered opinion that no fault can be found with the view taken by Ld.CIT (A).

3.9. Accordingly this ground raised by revenue stands dismissed.

4. Ground No. 3 is in respect of disallowance being restricted by Ld. CIT (A) to Rs.10,47,260/- under section 36 (1) (iii) of the Act, as against Rs.16,37,392/-, made by Ld.AO.

4.1. Ld. DR submitted that assessee made certain investments in capital asset which had not been put to use during the year

under consideration. It was submitted that these assets had no nexus with business activity carried on by assessee, and therefore said expense did not fall within the ambit of section 36 (1) (iii) of the Act. Ld.DR submitted that assessee paid a sum of Rs.17,08,271/-as interest to banks on secured loans, and since loan amount has not yet been utilised by assessee completely, a proportionate disallowance was warranted for.

4.2. On the contrary Ld.AR submitted that secured loans represented cash credit facilities availed from bank against hypothecation of stocks, foreign bills, ODI limits and sundry debtors. The secured loans amounted to Rs.4.65 crores, and were invested in stock inventory which included vehicle purchased amounting to Rs. 5.18 crores. Thus Ld.AR submitted that entire borrowed money were utilised for purposes of business. It has been submitted by Ld.AR that before Ld.A.O. assessee submitted details of properties purchased from its own funds, and the manner in which assessee utilised borrowed funds. He submitted that interest incurred on term loans taken for various business operations had direct nexus with activities carried on by assessee during the year under consideration.

4.3. We have perused the submissions advanced by both sides in the light of the records placed before us.

4.4. It is seen that Ld.A.O. has invoked *Proviso* to section 36 (1) (iii) of the Act. Ld.CIT (A) has observed that investments in immovable properties amounted to Rs.2.15 crores during the year, and accumulated funds which includes share capital and reserves available with assessee were to the extent of Rs.2.76 crores. He records assessee submissions that a sum of Rs.2.03

crores were received by way of advance to foreign customers, which has been verified by Ld.CIT (A) having regard to the fact that in subsequent year advances received during the year under consideration has been settled, as and when sales were made. Ld.CIT (A) while coming to such conclusion placed reliance upon details of advances received during assessment year 2011-12 and 2012-13 filed before the Ld.CIT (A). Thus in our considered opinion having regard to balance sheet of assessee for year under consideration, assessee had sufficient funds of its own, and therefore presumption by Ld.AO without any supportive documents/evidences is unacceptable. Ld.CIT (A) placed reliance upon decision of *Hon'ble Supreme Court* in the case of *Hero Cycles Pvt.Ltd Vs.CIT*, reported in (2015) 63 *taxmann.com* 308, wherein it has been held that;

“13. *In the process, the Court also agreed that the view taken by the Delhi High Court in CIT v. Dalmia Cement (P.) Ltd. [2002] 121 Taxman 706 wherein the High Court had held that once it is established that there is nexus between the expenditure and the purpose of business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the Board of Directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. It further held that no businessman can be compelled to maximize his profit and that the income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the*

matter from their own view point but that of a prudent businessman.”

4.5. On the basis of the above discussion and ratio held by *Hon’ble Supreme Court* in case of *Hero Cycles Pvt.Ltd Vs.CIT*, we do not find any infirmity in the decision of Ld. CIT (A). However at this juncture we direct Ld.AO to allow the netting of interest.

4.6. Accordingly, this ground raised by revenue stands dismissed.

5. Ground No. 4 is in respect of disallowance deleted by Ld.CIT (A) on account of under valuation of closing stock of Rs.2,25,40,280/-.

5.1. Ld.DR submitted that assessing officer from financial statements observed closing stock of finished goods being understated by assessee due to change in method of valuation, which was not reported in tax audit report. Ld.DR further submitted that until assessment year 2010-11 stock of finished goods and raw materials were valued at lower of cost at market value, however for assessment year under consideration method was changed to 20% of the cost price, which was in violation of provisions of section 145A of the Act.

5.2. On the contrary, Ld.AR placed reliance upon detailed observations made by Ld.CIT(A) regarding accounting policies issued by Institute of chartered Accountants, and submitted that approach adopted by Ld.AO is not based upon any material evidences, wherein it could be established that market price of products was in fact higher than cost price. It was also submitted that it is wrong on behalf of Ld.AO to say that there was a change in accounting policy during the year under

consideration and that assessing officer adopted FIFO method for valuing entire closing stock, including obsolete, as well as slow-moving items without any justification.

5.3. We have perused the submissions advanced by both the sides in the light of the records placed before us.

5.4. Ld.CIT (A) in detail has dealt with this issue, having regard to statement of accounts of assessee for year under consideration in the following manner:

“9.5.1 In the submissions made on 16.02.2016 the details regarding the valuation of the slow moving items imparts which were actually valued @ 20% of cost (as explained in the letter dated 18.01.2016) was also furnished at pages 1 to 32 of the paper book. At page 1 was the summary of the slow moving items valued at Rs. 41,04,889/- and at page 2 was the summary of the dead/obsolete stock valued at 20% of the cost price. Pages 3 to 32 contained the item wise valuation of finished goods in pieces, raw material in meters, raw material in kgs and finished goods in sets. Perusal of these details shows that the appellant valued some of the slow moving finished goods @ 20% of the cost, which in its view, was the realizable value of the stocks which were valued at 20% and which are included in the slow moving stock appearing on the balance sheet date i.e. 31.03.2011 of Rs. 41,04,889/-. It is found from the said summary that the finished goods in pieces and sets and raw material in meters and kgs were valued at 20% of the cost and the net effect of such an exercise was that stocks at a cost price of Rs. 12,28,242/- appeared in the balance sheet at Rs. 2,45,648/-, thereby having an overall impact of Rs.9,82,594/-.

9.5.2 *On the issue of change in the methods of accounting regularly followed by the appellant company the AR submits that there is no such change. I have also perused the "significant accounting policies" and notes to accounts appearing in the financial statements for the FYs 2004-05, 2005-06, 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11 wherein the stocks are stated to be valued at cost price or market price whichever is lower. Moreover, it is noticed that the AO has based her decision in making the impugned addition to the closing stock on section 145(2) and AS 2 issued by ICAI as per which, according to her, the stock should have been maintained under First In First Out (FIFO) which have not been followed. I have perused AS 2 available at pages 76 to 82 of the paper book which deals with the accounting for inventories other than work in progress arising under construction contracts, work in progress arising in the ordinary course of business of service providers, shares, debentures and other financial instruments held as stock in trade and inventories of life stock, agricultural and forest products and mineral oils and ores and gases. As per the definition of inventories under AS 2, these are assets held for sale in the ordinary course of business or in the process of production of such sale or held in the form of materials or supplies to be consumed in the production process or in the rendering of services. As per AS 2, inventories should be valued at the lower of cost and net realizable value. The net realizable value is defined as the estimated selling price in the ordinary course of business less the estimated cost of completion and the estimated cost necessary to make the same. I find that while the majority of the items held in closing stock were valued at*

cost or market price whichever is lower, only some items which have become obsolete, defective and unfit for sale were valued on the basis of net realizable value method. The substantiation of this valuation was also furnished before the AO in the forwarding letter dated 03.02.2013 and is available at pages 83 and 84 of the paper book. The report of the technical committee comprising of the director and the manager (store) of the appellant company which was subsequently approved by the managing director shows that the estimated selling price of these items was taken to be the 20% of the cost of such items. The AO has merely stated that the market price i.e. the present sale price of the products estimated @ 20% of the cost are much higher than the cost price as is evident from the stock statement submitted by the assessee. She has however, not pointed out a single case wherein the market price of the product is in fact higher than the cost price. Regarding the failure on the part of the appellant to disclose the impact on any change in accounting policy in the year in which such change is effected, since the appellant has not, in fact, changed any accounting policy, this contention on the part of the AO is also not justified.

9.5.3 The contention of the appellant is that adoption of the FIFO method by the AO by valuing the entire closing stock including the slow moving items, without any justification or show cause notice, amounts to changing the method of valuation regularly followed. This action on the part of the AO has been held to be unjustified by several High Courts such as the Madras High Court in the case of CIT vs. Anandha Metal Corporation and C. Jayantilal, Allahabad High Court in the case of Shivraj Tobacco Co. (P) Ltd., Rajasthan

High Court in the case of Wolkem -India Ltd. and P&H High Court in the case of Sant Ram Mangat Ram in the decisions cited supra. The Hon'ble Supreme court in the case of CIT vs. Dynavision Ltd. (348 ITR 380) has held that when an assessee has been consistently following the method of valuation of closing stock at cost or market price, whichever is lower, any addition on account of under valuation of closing stock was unjustified more so when the AO revalued the closing stock without making any adjustment to the opening stock. In this decision, the SC relied on its earlier decision in the case of Chainrup Sampatram wherein it had been held that the valuation of the unsold stock at the close of the accounting period was a necessary part of the process of determining the trading results of that period. It was held that the closing stock cannot be regarded the source of profits and hence, the through purpose of crediting the value of unsold stock is to balance the cost of the goods entered on the other side of the account at the time of the purchase, so that on cancelling out of the entries relating to the same stock from both sides of the accounts would leave only the transactions in which the actual sales had taken place in the course of the year and thereby show the profit or loss actually realized on the years trading. In the present case the situation is that the AO has valued the entire closing stock at cost by following the FIFO method and without giving the benefit of this valuation of the opening stock. Consequently, as the appellant has rightly stated, this cannot be done as per the Supreme Court decision without giving the effect of valuation to the opening stock as well. In that sense the addition of Rs.2,25,40,280/- is unjustified and cannot be upheld.”

5.5. Ld.CIT(A) categorically observed mistake in valuation of closing stock adopted by Ld.AO by using FIFO method. It is observed that Ld.AO has not granted adjustment of opening stock and slow moving items, which has been held to be unjustified by plethora of decisions. On the basis of the above detailed observations by Ld. CIT (A), we do not find any infirmity in deleting addition made by Ld.AO. Ld.AO is directed to value closing stock after eliminating opening stock for the year, slow moving & obsolete items at cost price or market price whichever is lower.

5.6. Accordingly this ground raised by revenue stands dismissed.

6. In the result appeal filed by revenue stands dismissed.

7. ITA No. 2417/del/2016 (Assessee's appeal)

Ground No. 1 and 3 are general in nature and therefore do not require any adjudication.

7.1. Ground No. 2

Only issue raised by assessee in this appeal is in respect of addition being upheld by Ld.CIT (A) being 80% of obsolete, defective, unusable and un saleable stock to the extent of Rs.12,28,242/-.

7.2. Ld.AR submitted that obsolete, defective and rusted stock, which was not in saleable condition was valued at its market price as estimated by Management at 20% of its cost. He submitted that in support of valuation of obsolete and effective stock, a report was prepared by Management, was submitted to Ld.AO, which has been ignored by authorities below. Ld.AR

submitted that Ld.AO made addition on entire closing stock, as per value worked out on FIFO method which has amounted to double addition based on different goods.

7.3. Ld.DR on the contrary placing reliance upon orders of Ld. CIT (A) submitted that valuation of slow-moving items at 20% of cost leads to a situation, wherein profits for year under consideration becomes distorted. He submitted that there was a difference in the closing stock in balance sheet that was submitted before the bank and closing stock as per books of accounts and financial statements, to an extent of Rs.9,82,594/-, for which no explanation has been offered by assessee. He thus submitted that addition of difference in closing stock in both balance sheets has been rightly made by Ld. AO as confirmed by Ld. CIT (A).

7.4. We have perused the submissions advanced by both the sides in the light of the records placed before us.

7.5. Assessee in paper book has placed details of slow-moving items which has been valued at Rs.41,04,889/- at pages 225-254 of paper book. Summary of dead stocks valued at 20% of cost has been placed at page 255 of paper book and report prepared by assessee on inventory of unsaleable spare parts in stock is placed at page 256-257. On perusal of these details we observe that assessee has valued some of slow-moving items at 20% of cost, which in assessee's view was realisable value of such stock and was appearing in the balance sheet dated 31/03/11 at Rs.41,04,889/-. Further it is observed from records placed before us, as well as observations of Ld.CIT (A) that assessee has been valuing closing stock at cost or market whichever is lower since

its inception, and a change in the method of accounting of closing stock at cost or net realisable value for the year under consideration would definitely distort profits of assessee. Assessee has not stated any reason for deviating from a method regularly adopted by assessee in the past. In our considered opinion assessing officer as well as Ld. CIT (A) was right in sustaining the addition of Rs.9,82,594/-.

7.6. Accordingly this ground raised by assessee stands dismissed.

8. In the result appeal filed by assessee stands dismissed.

9. Assessee's appeal

ITA No. 5224/del/2016 (assessment year 2012-13)

Only issue raised by assessee in this appeal is in respect of opening stock for assessment year 2012-13 which automatically is the closing stock for assessment year 2011-12.

9.1. It has been submitted by Ld.AR that, it is a natural corollary that closing stock of previous year becomes opening stock of subsequent assessment year. It has been submitted that Ld. CIT (A) held this issue as infructuous, since valuation of closing stock for assessment year 2011-12 had not attained finality, as the appeal was pending before this Tribunal.

9.2. We have now decided this issue for assessment year 2011-12 in the foregoing paragraphs in ITA No. 2417/Del/2016.

9.3. Accordingly we direct Ld.AO to compute closing stock for assessment year 2011-12 after considering disallowance confirmed by us amounting to Rs.9,82,594/- in preceding paragraphs.

9.4. Accordingly this ground raised by assessee stands allowed for statistical purposes.

10. In the result appeal filed by assessee stands allowed for statistical purposes.

11. In the result, for assessment year 2011-12 assessee's as well as revenue's appeal stands dismissed and for assessment year 2012-13 assessee's appeal stands allowed for statistical purposes.

Order pronounced in the Open Court on 06th September, 2018.

Sd/-

(R.K.PANDA)
Accountant Member

Sd/-

(BEENA A PILLAI)
Judicial Member

Dated: the 06th September,2018.

- Gmv / Binita

Copy of the Order forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard File

By Order

Asst. Registrar
ITAT, Delhi Benches, New Delhi

S.No.	Details	Date
1.	Draft dictated on	
2.	Draft placed before author	
3.	Draft proposed & placed before the Second Member	
4.	Draft discussed/approved by Second Member	
5.	Approved Draft comes to the Sr. PS/PS	
6.	Kept for pronouncement	
7.	Order uploaded on	
8.	File sent to Bench Clerk	
9.	Date on which the file goes to Head Clerk	
10.	Date on which file goes to A.R.	
11.	Date of Dispatch of order	