

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 4959/DEL/2016 (A.Y 2011-12)
(THROUGH VIDEO CONFERENCING)**

DCIT Circle-7(1), Room No. 403, C. R. Building, I. P. Estate New Delhi (APPELLANT)	Vs	Dee Development Engineers Ltd. 1255, Sector-14, Faridabad PAN: AACCD0207H (RESPONDENT)
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Appellant by	Sh. Jagdish Singh, Sr. DR
Respondent by	Sh. Ved Jain, Adv

Date of Hearing	25.03.2021
Date of Pronouncement	08.04.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 10/06/2016 passed by CIT(A)- 3, New Delhi for Assessment Year 2011-12.

2. The grounds of appeal are as under:-

1. "Ld. CIT(A) erred in law and on facts of the facts of the case in deleting the addition of Rs. 34,30,151/- made by AO on account of late deposit of ESIC & PF. "
2. "Ld. CIT(A) erred in law and on facts of the facts of the case in deleting the addition of Rs. 11,75,214/- made by AO on account of sales promotion & festival expenses."
3. "Ld. CIT(A) erred in law and on facts of the facts of the case in deleting the addition of Rs. 87,82,889/- made by AO on account of expenditure incurred on Corporate Social Responsibility."
4. "Ld. CIT(A) erred in law and on facts of the facts of the case in deleting the

addition of Rs. 16,83,921/- made by AO u/s 14A of the Income Tax Act, 1961 read with rule 8D of the Income Tax Rules 1962."

5. *"Ld. CIT(A) erred in law and on facts of the facts of the case in admitting additional ground regarding allowability of provisions of carbon credits."*

6. *"Ld. CIT(A) erred in law and on facts of the facts of the case in allowing the appellant relief of Rs. 2,68,40,816/- on account of provisions of carbon credits"*

3. The assessee company is engaged in the business of manufacturing and fabrication of piping system and pipe fitting, generation of power through BIO Mass Technology. The assessee company filed return of income declaring a loss of Rs. 6,66,42,802/- and book profit declared at Rs. 3,82,77,391/- on 24.09.2011. The Company revised its return of income on 25.02.2013. The case was selected for scrutiny and notices u/s 143(2) and 142(1) were issued. The assessee through Authorized Representative filed the details and appeared from time to time during the assessment proceedings. The Assessing Officer made various disallowances and additions and assessed the total loss at Rs. 5,14,26,560/-.

4. Being aggrieved by the assessment order, the assessee filed before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. As regards to Ground No. 1 relating to addition of Rs. 34,30,151/- made by the Assessing Officer on account of late deposit of ESIC & PF, the Ld. DR submitted that the CIT(A) erred in deleting the said addition without giving proper findings further, the Ld. DR relied upon the order of the Assessing Officer. As regards to Ground No. 2 relating to addition of Rs. 11,75,214/- made by the Assessing Officer on account of sales promotion & festival expenses, the Ld. DR relied upon the Assessment Order. As regards to Ground No. 3 relating to addition of Rs. 87,82,889/- made by the Assessing Officer on account of expenditure incurred on Corporate Social Responsibility, the Ld. DR submitted that the Assessing Officer has given a detailed reasoning as to why

the said expenditure cannot be allowed to the assessee. As regards to Ground No. 4 relating to addition of Rs. 16,83,921/- made by the Assessing Officer u/s 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962, the Ld. DR submitted that the Assessing Officer has rightly made the said disallowance. As regards Ground No. 5 and 6, the Ld. DR submitted that the CIT(A) erred in admitting the additional ground regarding the allowability of provisions of carbon credits. The Ld. DR further submitted that allowing the relief of Rs. 2,68,40,816 on account of provisions of carbon credits is untenable. The Ld. DR relied upon the Assessment Order.

6. The Ld. AR relied upon the assessment order and the order of the CIT(A). The Ld. AR submitted that the assessee company is engaged in the business of manufacturing of fabrication of Pipe System and Pipe Fitting, Generation of power through Bio-Mass Technology. As regards Ground No. 1 of the Revenue's appeal, the Ld. AR submitted that the assessee company has collected amount towards employees contribution towards ESI & PF and deposited to the Government on various dates as per challans issued. Undisputedly, the assessee has not disputed the fact that the employees contribution towards Provident Fund and ESI was filed after due date but before filing of the Income Tax Return. It is settled principle of law that amount deposited by the assessee on account of contribution towards PF & ESI would qualify for deduction even though paid after the due dates prescribed under the Provident Fund and ESI Act but before filing of the Income Tax Return. The Ld AR relied upon the decision of CIT Vs. Vinay Cement Ltd. (2009) 313 ITR (ST.) 1 (SC). The Ld. AR also relied upon the decision of the Hon'ble Delhi High Court in case of CIT Vs. AIMIL Ltd. (2010) 321 ITR 508 and the decision of the Hon'ble Delhi High Court in case of Pr. CIT vs. Pro Interactive Service (India) Pvt. Ltd. ITA No. 983/2018 pronounced on 10.09.2018. As regards Ground No. 2 of the Revenue's appeal, the Ld. AR submitted that during the present Assessment Year, the assessee claimed expenses under the head Sales Promotion at Rs.20,20,436/- and Diwali

expenses at Rs.8,76,320/-. The Ld. AR submitted that the Assessing Officer disallowed these expenses these are personal in nature. The Ld. AR submitted that the assessee is maintaining regular books of accounts and the same are being audited. Complete details of expenses were produced before the Assessing Officer. The Assessing Officer has not at all pointed out that expenditure was incurred for personal purpose. The Ld. AR relied upon the Delhi High Court decision in case of DCIT Vs. Haryana Oxygen Ltd. (1999) 76 ITD (Del) 32 and Friends Clearing Agency Pvt. Ltd. Vs. CIT(2011) 332 ITR 269 (Del). The Ld. AR also relied upon the decision of the Delhi High Court in case of CIT Vs. Monto Motors Ltd. And ITA No. 978/2011 dated 12/12/2011 and CIT Vs. Jubilant Food Works Pvt. Ltd. , ITA No. 310/2014 dated 1/8/2014. As regards Ground No. 3 of the Revenue's appeal, the Ld. AR submitted that the expenditure of Rs. 87,82,889/- was incurred for community development and Corporate Social Responsibility (CSR). On specific query raised by the Assessing Officer, the assessee submitted a note on CSR expenditure that it has incurred scholarship of Rs. 3,62,236/- on account of scholarship and tuition fees for girl child of junior employees since Financial Year 2009-10 and provided scholarship to 48 girl child in Financial Year 2011-12. The Ld. AR further submitted that the amendment in Section 37(1) of the Act w.e.f. 1/4/2015 which was accompanied by the statutory requirement with regard to discharging the corporate social responsibility is disabling provision which puts an additional tax burden on the assessee in the sense that the expenses that the assessee is required to incur under statutory obligation in the course of his business are not allowed deduction in the computation of income w.e.f. 1/4/2015. CSR expenses incurred voluntarily as assumption of responsibility is not affected by amendment in Section 37(1) of the Act. Thus, the Ld. AR submitted that the expenditure incurred is incidental instant to the assessee's business and ought to be allowed as deduction u/s 37 of the Act. As regards Ground No. 4, the Ld. AR submitted that during the year under construction the assessee company has not earned any exempt income. The Ld AR relied upon the decision in case of Cheminvest Ltd. Vs. CIT (2015) 378 ITR 33

wherein it is held that in absence of any exempt income, disallowance u/s 14A was not permissible. As regards Ground No. 5 & 6 relating to additional ground before CIT(A) in respect of Carbon Credit amounting to Rs. 2,68,40,816/- being wrongly recorded as income, the Ld. AR submitted that the assessee could not get the credit certified from the concerned authority during the assessment proceedings and accordingly the management created a provisions of Rs. 2,68,40,816/- at the year-end which increased the net profit and closing stock by the said amount. Certification report dated 31/12/2012 and calculation of carbon credits and provisions were placed before the CIT(A) and CIT (A) after taking into considerations all the aspect has rightly deleted this addition. In-fact, the Assessing Officer, in his remand report observed that no taxable amount has been taken place and provisions has been written off in subsequent years i.e. Assessment Year 2012-13. The Ld. AR further relied upon the decision as follows:-

1. *Pr. CIT Vs. Dodson Lindblom Hydro Power Pvt. ITA No. 1820 of 2016 dated 27.02.2019 Bombay High Court.*
2. *CIT Vs. Shree Cement Ltd. D. B. ITA No. 85/2014 dated 22.08.2017 Rajasthan High Court*
3. *Principal CIT Vs. Kalpataru Power Transmission Ltd. Tax Appeal No. 141/2017 dated 2.3.2017 (Gujrat High Court)*
4. *Pr. CIT Vs. L. H. Sugar Factory Pvt. Ltd. [2017] 392 ITR 568 dated 1/08/2016 Allahabad High Court*
5. *IT Vs. Subhash Kabini Power Corporation Ltd. [2016] 385 ITR 592 dated 29.03.2016 Karnataka High Court.*

7. We have heard both the parties and perused all the relevant material available on record. As regards Ground No. 1, the assessee company has not deposited the employees' contribution within the due date which is prescribed under the said statute i.e. Provident Fund and ESIC. This issue is dealt by the Hon'ble Delhi High Court in case of CIT vs. M/s Bharat Hotels Ltd. 410 ITR

417 wherein the issue is decided in favour of the Revenue, without considering the decision of the Hon'ble Delhi High Court in case of CIT vs. AIMIL Ltd. (2010) 321 ITR 508 (Del.). But the Ld. AR relied upon the decision of the Hon'ble Delhi High Court in case of Pr. CIT vs. Pro Interactive Service (India) Pvt. Ltd. ITA No. 983/2018 pronounced on 10.09.2018 wherein the Hon'ble High Court decided the issue in favour of the assessee relying upon the judgment of AIMIL Ltd. (supra). The Hon'ble Delhi High Court held that the legislative intent was/is to ensure that the amount paid is allowed as expenditure only when payment is actually made. We do not think that the legislative intent and objective is to treat belated payment of Employee's Provident Fund (EPF) and Employee's State Insurance Scheme (ESI) as deemed income of the employer under Section 2(24)(x) of the Act. It is settled law that when two judgments are available giving different views then the judgment which is in favour of the assessee shall apply as held in case of Vegetable Products Ltd. 82 ITR 192 by the Hon'ble Supreme Court. Hence, in light of the latest decision in case of Pro Interactive Service (India) Pvt. Ltd., the issue is covered in favour of the assessee. Hence, Ground No. 1 is dismissed.

8. As regards Ground No. 2, the Assessing Officer did not justify the reasoning that the sales promotion expenses and Diwali Expenses were expenses related to the personal in nature and not that of business expenses. The assessee has given details as to how these expenses are related to the business expenses. The CIT(A) has given a detailed finding to that effect. There is no need to interfere with the findings of the CIT(A). Hence, Ground No. 2 is dismissed.

9. As regards Ground No. 3, in case of National Seeds Corporation Ltd. Vs. Additional CIT (ITA No. 6794/Del/2014) dated 4/4/2018 ITAT Delhi, it has been categorically held that the Explanation (2) of Section 37(1) was inserted w.e.f. 1st April 2015 and cannot be construed as to assessee's disadvantage in

respect of the period prior to this amendment and thus, supports the case of the assessee. Hence, Ground No. 3 is dismissed.

10. As regards Ground No. 4, it is clear finding in assessment order as well as by the CIT(A) that there is no exempt income earned by the assessee during the year. Hence, the decision of the Hon'ble Delhi High Court in case of Cheminvest Ltd. (Supra) will be applicable. Hence, Ground No. 4 is dismissed.

11. As regards Ground No. 5 & 6 relating to provision for carbon credits, it is pertinent to note that the assessee admitted that the provision of carbon credits was inadvertently included in the taxable income of the assessee, though the same is not taxable under the Act. Besides this no sale of carbon credits took place during the year under consideration. The Assessee submitted the basis for creation of said provision by submitting the calculation of provision, basis for the same and a certification report and these documents were verified by the Assessing Officer. In remand report dated 11.09.2015, the Assessing Officer observed that the provision of carbon credits of Rs. 2,68,40,816/- has been written off in the subsequent year i.e. A.Y. 2012-13 which was disallowed by the Assessing Officer in the assessment order for the said year. The Assessing Officer has also further observed that no taxable event has occurred or accrued to the assessee in the year under consideration. The assessee has also given a proper reasoning as to why the evidences were not before the Assessing Officer at the time of assessment proceedings. The CIT(A) has rightly accepted those evidences and has taken cognizance of the remand report filed by the Assessing Officer wherein it is observed that no taxable amount has incurred in the present Assessment Year and provisions has been written off in subsequent years. Therefore, there is no need to interfere with the finding of the CIT(A). Hence, Ground No. 5 & 6 are dismissed.

12. In result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on this 08th Day of April, 2021.

Sd/-

**(R. K. PANDA)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 08/04/2021
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI