



ITA No.3923/Mum/2016  
M/s. Prestress Wire Industries  
Assessment Year :2011-12

**आयकर अपीलीय अधिकरण “एच” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“H” BENCH, MUMBAI**

**माननीय श्री पवन सिंह, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI PAWAN SINGH, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.3923/Mum/2016  
(निर्धारण वर्ष / Assessment Year: 2011-12)

<b>Asst. Commissioner of Income Tax -17(2)</b> Room No.134 Aaykar Bhavan, M.K. Road, Mumbai-400 020.	<b>बनाम/ Vs.</b>	<b>Presstress Wire Industries</b> 303, Elphinstone House Murzbhan Road, Fort Mumbai-400 023.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AAAFP-5807-C</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी/ <b>Respondent</b> )

&  
C.O. No.01/Mum/2018

(निर्धारण वर्ष / Assessment Year: 2011-12)

<b>Presstress Wire Industries</b> Reliable Citadel, Office No. 202 2 <sup>nd</sup> Floor, Building No. 17 Gola Lane, D.N.Road Fort, Mumbai – 400 001	<b>बनाम/ Vs.</b>	<b>Asst. Commissioner of Income tax -17(2)</b> Room N0134, Aaykar Bhawan M.K.Marg, Mumbai-400 020.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AAAFP-5807-C</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी/ <b>Respondent</b> )

<b>Assessee by</b>	:	Nitesh Joshi & Damodar Kabra- Ld. ARs
<b>Revenue by</b>	:	Manoj Kumar Singh - Ld.DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	16/11/2018
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	08/01/2019

**आदेश / ORDER**

**Per Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by revenue for Assessment Year [AY] 2011-12 contest the order of Ld. Commissioner of Income-Tax (Appeals)-28,



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Mumbai, [CIT(A)], Appeal No. CIT(A)-28/JCIT-12(1)/IT-79/2014-15 dated 30/03/2016 on following effective grounds: -

- “1. On the facts & in the circumstances of the case, and in law, the Ld.CIT(A) has erred in directing the A.O.to delete the addition of Rs.22074697/- on account of unreported profit on sale of out of books production without appreciating the fact that the assessee has utterly failed to discharge its onus of disproving the findings given by the Assessing Officer arrived at pursuant to detailed analysis of production vis-a vis the power consumption.
2. On the facts and circumstances of the case and in law, the Learned CIT(A) has erred in directing the A.O.to delete the disallowance of deduction u/s.80IB of the Act in respect of Unit-III and Falandi Unit of the assessee, as the issue that these units are not established in consequence to restructuring of other Units of the assessee has not been conclusively established in assessment and appellate proceedings”
- 3a. On the facts and circumstances of the case and in law, the Learned CIT(A) has erred in directing the A.O. to delete the addition of Rs.1,61,87,146/-as deemed dividend u/s.2(22)(e) of the Act, relying upon certain decisions, which in principle have not been accepted by the Revenue”
- 3b. On the facts and circumstances of the case and in law, the Learned CIT(A) has erred in directing the A.O.to delete the addition of Rs.1,61,87,146/- as deemed dividend u/s.2(22)(e) of the Act, without appreciating the fact that the issue in akin circumstances has been decided in favour of Revenue by the Hon'ble Mumbai ITAT in the case of ITO vs. Sahir Sami Khatib, as reported in 57 taxmann.com 13”

The assessee has filed Cross objection on the following effective grounds: -

1. The learned Commissioner of Income Tax (Appeals)-28, Mumbai, hereinafter referred to as the "CIT(Appeals)", erred in dismissing the ground of appeal no. 1 before him that the sales tax of Rs.2,14,83,178/- embedded in the sales amount collected from customers is a capital receipt.

Your respondents submit that, on the facts and in the circumstances of their case, the sales tax amount of Rs.2,14,83,178/- included in the sales is a capital receipt and accordingly not includible in the total income assessable under the IT Act.

2. The "CIT(Appeals)" erred in not agreeing with the contention of the appellant that the interest received from associate and other concerns on temporary deployment of funds has to be netted off against interest expense for computing income from interest assessable under the head 'Income from other sources'.

Your respondents submit that, on the facts and in the circumstances of their case, related interest paid on cash credit account ought to have been allowed as



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*a deduction in computing the net income from interest assessable under the head 'Income from other sources'."*

The assessment for impugned AY was framed by *Ld. Joint Commissioner of Income Tax-Range 12(1), Mumbai [AO]* in scrutiny assessment u/s 143(3) on 25/03/2014 wherein the total income of the assessee was determined at Rs.1051.43 Lacs after certain additions /disallowances as against returned income of Rs.547.35 Lacs e-filed by the assessee on 28/09/2011 which was later revised to Rs.384.36 Lacs on 31/03/2012. The assessee being *resident corporate entity* was stated to be engaged in the business of *manufacturing & trading of prestressed wires, standard wires & allied products*. The assessee has six units namely *PW-I, PW-II, PW-III at Silvassa, Unit at Falandi, Unit at Vikrampur and unit at Udwada*. During impugned AY, the assessee had claimed deduction u/s 80IB in respect of *Unit-III at Silvassa & Falandi Unit*.

2.1 In the revised return of income, the assessee reduced its income by Rs.214.83 Lacs, being notional *central sales tax* embedded in the sales transactions, treating the same to be capital in nature in view of the fact that it enjoyed certain sales tax exemption as granted by the state government. It was submitted that as per the policy for *Micro, Small and medium enterprises* announced for *Dadra & Nagar Haveli*, concessions including sales tax facilities were granted to aid, assist, finance, promote, expedite and accelerate the economic development of the region and therefore, the notional central sales tax embedded in sale transactions was capital receipt in nature and hence not taxable. The Ld. AO denied



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the same to the assessee citing multiple reasons as stated in *para 6.2* of the quantum assessment order. The stand of Ld. AO, upon confirmation by first appellate authority is under challenge in assessee's cross-objections. The Ld. Authorized Representative for Assessee [AR], *Shri Nitesh Joshi*, at the outset, submitted that the identical matter for AY 2009-10 has already been restored by the Tribunal to first appellate authority vide *ITA No.6467/Mum/2013* and therefore, the matter for this year may also be restored on similar lines. Keeping in view the submissions, the matter stand remitted back to the file of Ld. AO on similar lines so as to enable the revenue to take uniform stand in the matter. The Ld. AO is directed to re-adjudicate the same keeping in view the directions of the Tribunal for AY 2009-10. Ground Number-1 of cross-objections stands allowed for statistical purposes.

2.2 The second addition pertain to treatment of certain interest income earned by the assessee. During assessment proceedings, it transpired that the assessee earned aggregate interest income of Rs.171.78 Lacs on *loans, investments & deposits* whereas it incurred interest expenditure of Rs.558.11 Lacs on borrowings and accordingly debited net interest of Rs.386.32 Lacs in the Profit & Loss account which effectively meant that interest income earned by the assessee was treated as business income and deduction u/s 80IB was claimed on such income. The Ld. AO, relying upon assessment order for AY 2007-08, assessed interest income of Rs.171.78 Lacs under the head *income from other sources* which reduced assessee's business profits available for claiming deduction u/s 80IB. The Ld. CIT, after appreciating the



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break-up of interest amount & relying upon the decision of Hon'ble Bombay High Court rendered in *Vidyut Corporation [324 ITR 221]* as well as the decision of this Tribunal in assessee's own case for 2007-08 & 2008-09 concluded that interest to the extent of Rs.77.84 Lacs representing *interest on temporary deployment of funds* was to be treated as *Income from other sources*. Aggrieved, the assessee is under appeal by way of ground number-2 in the cross-objections. The Ld. AR submitted that corresponding interest expenditure should be allowed to the assessee while computing income under the head *income from other sources*. Our attention has been drawn to the order of the Tribunal for AY 2007-08 & 2009-10. After going through the same, we find that relying upon matter for AY 2007-08, the issue in AY 2009-10 has been restored to the file of Ld. AO. The relevant findings of the Tribunal could be extracted in the following manner: -

6.2. During the course of hearing before us representatives of both the sides conceded that the issue had been sent back to the file of AO by the Tribunal while deciding the C.O.138/Mum/2012 (A.Y. 2007-08, dt.31.01.14). We find that the facts for consideration are similar to the earlier year we would like to reproduce paragraphs 14-17 of the impugned order of the Tribunal, relied upon by the AR and same reads as under :-

"14. Regarding the issue of interest received from fixed deposits kept as margin money for bank guarantees, Ld Counsel for the assessee mentioned that the temporary deployment of funds should be assessed as „business income“ and not as „income from other sources“ as treated by the Assessing Officer. In this regard, Ld Counsel relied on the following decisions.

- i) CIT vs. Vidyut Steel Ltd. 219 ITR 30 (AP)
- ii) CIT vs. Koshika Telecom Ltd 287 ITR 479 (Del)
- iii) CIT vs. Karnal Cooperative Sugar Mills Ltd 243 ITR 2 (SC)
- iv) CIT vs. Indo Swiss Jewells Ltd 284 ITR 389 (Bom)

15. On the other hand, Ld DR dutifully relied on the order of the AO.

16. We have heard both the parties and perused the orders of the Revenue Authorities as well as citations quoted by the Ld Counsel along with the relevant material placed before us. On perusal of the cited judgments of the higher judiciary, we find that they are relevant for the proposition that there is no question of isolating the interest received on margin money paid for obtaining bank guarantee and assessing it as separate income under section 56. Therefore, agree with the view of the Tribunal that the income derived on the margin money for obtaining bank guarantee cannot be separately assessed under section 56. Considering the binding



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*judgments given by the Hon'ble High Courts as well as the Hon'ble Supreme Court, we are of the opinion that the interest derived on margin money for the purpose of obtaining bank guarantee should be assessed as business income instead of 'income from other sources'. Accordingly, we decide this part of the ground in favour of the assessee.*

*17. Regarding the issue raised in ground no.3 with regard to benefit of netting off of interest income against the expenditure and the same was raised without prejudice. In this regard, it was argued by the Ld Counsel that whether the impugned interest is assessed under the head business income or income from other sources, if it is held that the said receipts do not qualify for deduction u/s 80IB of the Act, then the exclusion for the purposes of ascertaining the income qualifying for deduction has to be the net interest income and not the gross interest receipt. In support of his contention, Ld Counsel relied on the judgment of the Hon'ble Supreme Court in the case of ACG Associated Capsules P. Ltd vs. CIT (343 ITR 89). In this connection, both the parties stated that the said claim of the assessee needs to be considered in favour of the assessee in view of the binding judgment of the Hon'ble Apex Court in the case of ACG Associated Capsules P. Ltd vs. CIT (supra). Accordingly, we direct the AO to apply the said judgment on considering the facts of the present case after reasonable opportunity of being heard to the assessee as per the principles of the natural justice. In substance, ground no 3 is treated as allowed in favour of the assessee.*

*Respectfully following the above, sole ground of appeal raised by the assessee in its C.O., is restored back to file of A.O. for fresh adjudication. He is directed to afford a reasonable opportunity of hearing to the assessee. C O. filed by A.O. is decided in part.*

Keeping in view the uniform stand of the Tribunal and submissions made by Ld. AR, the issue stands restored back to the file of Ld. AO for re-adjudication on similar lines after providing reasonable opportunity of being heard to the assessee. If the interest income of Rs.77.84 Lacs is assessed as income from other sources, the interest expenditure, to the extent it has nexus with earning of the stated interest income, shall be allowed against the same and accordingly, the interest expenditure, to that extent, as claimed under the head *Business Income* shall stand disallowed. This ground as well as assessee's cross-objection stand allowed for statistical purposes.

3.1 The Ld. AO, relying upon order for 2009-10, has made another addition on account of unreported production and suppression of income as computed on the basis of power units consumed in *Unit-III*. The Ld.



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AO, on the basis of power consumption during impugned AY, arrived at a conclusion that assessee's unreported production in *Unit-III* was 6792 MT which could produce finished goods to the extent of 6705 MT valued at Rs.27.08 Crores. Thus, by applying *Gross Profit rate* of 8.15%, the impugned additions have been worked out to be Rs.220.74 Lacs. The Ld. CIT(A), relying upon the order of its predecessor for AY 2009-10, deleted the same. Aggrieved, the revenue is in further appeal before us. Both representatives converge on the point that this issue stood covered in assessee's favor by the order of the Tribunal for AY 2009-10 as well as for AY 2010-11, the copies of which have been placed on record. Upon due consideration, we find that the matter, for AY 2009-10 has been concluded in assessee's favor, in the following manner: -

*6. We have heard the rival submissions and perused the material before us. We find that the AO had made the additions as he was of the opinion that there was some discrepancy in consumption of electricity in one of the units. In our opinion it was a good starting point to make further investigation, but it in itself is not the clinching evidence for making addition. Any abnormality found in the return has to be investigated to arrive at the correct taxability, but there is marked difference between a lead and an evidence. It is duty of the AO to call for explanation of the assessee about discrepancies noted by him before fastening tax liability to it. There can be several reasons for abnormal results and they could be perfectly valid. So, without considering the same no decision should be taken. Business world does not run as per the arithmetic rules it has many a nuances and each factor plays a role on taxable income of an assessee. It is not appropriate to apply mathematical formulas and determine tax liability. In the case before us, the assessee had filed a letter addressed to the State Electricity authorities informing them of malfunctioning of meter for two-three months. It is quite common feature that electricity meters in some cases do not function properly and electricity boards take time to rectify the defects. Thus, a plausible and reasonable explanation was filed by the assessee about the discrepancy in electricity bill. But the AO without making any inquiry in that regard, jumped on a final conclusion. Besides even if there was no malfunctioning of the meters, there can be many a reason for mismatch in consumption of electricity and production of goods. The assessee is not manufacturing only one type of wires or not using one kind of raw material. The variation in the final product and the raw material will affect the consumption of electricity. Other factors mentioned by the assessee for variation in power consumption before the FAA, were also not considered by the AO. It is pertinent to note that the AO has not commented upon the documents maintained by the assessee for the purposes of excise duty or sales tax department. No evidence has been brought on record about unrecorded purchases of raw material. It is not understood as how without purchases goods were manufactured and sold as alleged by the AO. We are of the opinion that the FAA has rightly held that the addition made by the AO*



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*was based on surmises and conjectures and on any reliable evidence. So, confirming his order, we decide the last ground against the AO.*

Material facts & circumstances being the same, respectfully following the consistent stand of Tribunal, we confirm the stand of first appellate authority and dismiss this ground of revenue's appeal.

3.2 The Second ground of revenue's appeal is related with assessee's eligibility to claim deduction u/s 80IB against *Unit-III at Silvassa & Falandi Unit*. The Ld. AO opined that these units were not newly created but arrangement by way of transfer from *Unit-I and Unit-II* since these units exhausted eligibility to claim the aforesaid deduction. It was further concluded that it was a deliberate ploy by assessee to convert *Unit-I & Unit-II* from stand-alone independent unit into that of job work units for the benefit of *Unit-III* with the sole objective of maximizing the deduction u/s 80IB. Since the deduction against *Unit-III & Falandi Unit* was denied to the assessee in AYs 2008-09 & 2009-10, the same was disallowed in the impugned AY also. The same, upon confirmation by Ld. CIT (A) is under appeal before us. The first appellate authority has noted that *Unit-III* was eligible to claim the deduction u/s 80IB from AY 2003-04 onwards which was already been upheld by the Tribunal and the revenue's appeal against the Tribunal order was also dismissed by Hon'ble Bombay High Court. The Ld. CIT(A) observed that both the aspects viz. whether the unit was engaged in carrying out manufacturing activity as well as whether the unit was formed by splitting up or reconstruction of a business were already considered in the aforesaid decisions. Regarding *Falandi Unit*, it was noted that the unit was located at different location



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and independently engaged in carrying out manufacturing activities and therefore it was eligible to claim the said deduction as already upheld by the Tribunal up-to AY 2008-09. Aggrieved, the revenue is in further appeal before us.

3.3 Although Ld. DR supported the stand of Ld. AO, however, nothing could be brought on record to rebut the observations made by first appellate authority and the undisputed position that emerges is that fact that the stated issue stood covered in assessee's favor in earlier years. Respectfully following the binding judicial precedents, this ground stands dismissed.

4.1 The last issue in assessee's appeal is *deemed dividend u/s 2(22)(e)*. It transpired that the assessee took loan of Rs.11.46 Crores from a sister concern namely *Shankarlal Gilada & Sons Pvt Ltd.* in which one of the partners of assessee's firm namely *Sangeeta Gilada* had substantial shareholding of 18%. Since the said entity had accumulated reserves of Rs.161.87 Lacs, the loan to that extent was added to the income of the recipient assessee as deemed dividend u/s 2(22)(e). The same, upon confirmation by first appellate authority, is under appeal before us. The Ld. CIT(A) has provided relief to the assessee by following the binding judicial precedent in the shape of decision of Hon'ble Bombay High Court rendered in *Bhaumik Color & Universal Medicare*. Further, similar addition made in AY 2009-10 was deleted by the first appellate authority in that AY. Aggrieved, the revenue is in further appeal before us.



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4.2 We find that it is undisputed fact that the assessee is not holding any beneficial shareholding in aforesaid lender and the recipient of loan is the assessee and not the beneficial shareholder. The identical issue for AY 2009-10 was contested by revenue before this Tribunal vide ITA No. 6569/Mum/2013 wherein the stand of first appellate authority was confirmed by placing reliance on the decision of Hon'ble Bombay High Court rendered in *Universal Medicare [324 ITR 263]*. During impugned AY, the Ld. CIT(A) has also followed the same judicial precedent. This being the position, we find no infirmity in the impugned order on this issue. By confirming the same, we dismiss this ground of appeal.

4.3 Finally, the revenue's appeal stands dismissed.

### **Conclusion**

5. The revenue's appeal stands dismissed whereas assessee's cross objections stands allowed for statistical purposes.

*Order pronounced in the open court on 08<sup>th</sup> January, 2019.*

**Sd/-**

**(Pawan Singh)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 08/01/2019  
Sr.PS, Jaisy Varghese

### **आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent



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3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.

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