आयकर अपीलीय अधिकरण, मुंबई, "ई" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

BEFORE SHRI N.K.BILLAIYA, AM, AND SHRI SANJAY GARG, JM

आयकर अपील सं./I.T.A. No. 5618/Mum/2011

(**निर्धारण वर्ष** / Assessment Year: 2008-09)

EPC Industries Ltd. Plot No.H-109, MIDC Ambad, Nashik-422010	**बनाम**/ Vs.	ACIT-10(3), Aayakar Bhavan, M.K.Road, Mumbai-400020
स्थायी लेखा सं./PAN : **AAACE2659J**		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी की ओर से / **Assessee by:**	Shri Vipul Joshi & Shri Nishit Gandhi
प्रत्यर्थी की ओर से/ **Respondent by :**	Shri Kishore Dhule

सुनवाई की तारीख /**Date of Hearing** : **11/08/2014**

घोषणा की तारीख /**Date of Pronouncement** : **20/08/2014**

आदेश / O R D E R

PER N.K.BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-22, Mumbai, dated 06/06/2011 pertaining to A.Y. 2008-09.

2. The first grievance of the assessee relates to the disallowance of ₹.7,58,82,547/- being 15% of the expenses claimed at ₹.11,39,93,239/-. During the course of scrutiny assessment proceedings, the assessee was asked to file details in respect of the expenses debited in profit & loss account amounting to ₹.11,39,93,239/-. The assessee filed details in respect of few items of expenses amounting to ₹.3,81,10,692/-. On receiving no details pertaining to expenditure of ₹.7,58,82,547/-, the AO proceeded by disallowing 15% working out to ₹.11,382,382-. The assessee carried the matter before the CIT(A) and filed complete details in respect of

expenses debited to profit & loss account. The CIT(A) has considered the grievance of the assessee at para 6.1 of his order and has held that for want of non-availability of details from the assessee, the AO have no option but to make disallowance on estimated basis and the disallowance is reasonable.

3. Before us, the ld. Counsel for the assessee vehemently submitted that all the details were furnished before the lower authorities which have not been considered by them. The counsel drew our attention to the relevant pages of the paper book filed and pointed out that the findings of the CIT(A) are erroneous in as much as complete details of expense were before him. *Per contra*, the ld. DR stated that the AO has allowed the expenses for which details were furnished and on the balance an estimated disallowance at the rate of 15% was made because the AO have no other option.

4. We have carefully perused the orders of the authorities below and also the relevant documents referred before us. Admittedly, the assessee has debited ₹11,39,93,239/- to its profit and loss account. The bifurcations of the expenses are found at Schedule-9 to the profit & loss account. Page 95 of the paperbook shows that the details were furnished by the assessee before the AO and the CIT(A). A perusal of the computation of income shows that the assessee has *Suo Moto* made certain disallowance in respect of inadmissible items which include expenses inadmissible ₹.10,00,000/- commission ₹.98.41 lakhs provision for doubtful debt ₹.43.09 lakhs, Statutory liability ₹.53.17 lakhs, freight of ₹.6.90 lakhs, Site installation ₹.4.61 lakhs and Prior period expenses of ₹.2.04 lakhs. The details of expenditure debited to profit & loss account also includes repairs to

machineries, site expense, commission, bad debts and miscellaneous expenses and some other expenses. The AO has made *ad-hoc* disallowance on 15% in respect of expenditure amounting to ₹.7,58,82,547/-. Considering the facts in totality in the light of *Suo Moto* disallowances by the assessee further disallowance by the AO seems unwarranted as the necessary details were much available before the ld. CIT(A) which has not been considered by the CIT(A) and since the assessee itself has disallowed expenses a further disallowance is uncalled for. We therefore set-aside the findings of the CIT(A) and direct the AO to delete the addition of ₹.11,382,382/-.

5. First grievance of the assessee is allowed.

6. The second grievance relates to attribution of estimated interest of ₹.14,03,810/- towards work in progress. The AO noticed that the assessee has shown capital work in progress at ₹.1,75,47,620/-. The AO further found that the assessee has debited an amount of ₹.1,99,22,738/- as interest. The assessee was asked to explain whether any interest is capitalized and if not why the same should not be capitalized. The assessee stated that no interest was capitalized. The AO estimated interest attributable to the capital work in progress at the rate of 8%and worked out the attribution to ₹.14,03,810/-. The CIT(A) confirmed the findings of the AO, On finding that no details were produced by the assessee to justify why interest should not be capitalized. Before us, the counsel for the assessee stated that out of total interest at ₹.1.99crores interest amounting to ₹.1.44 crores pertain to interest on debentures. It is the say of the counsel that debentures were issued much earlier and

therefore there is no question in attributing interest out of this. The DR simply supported the findings of the lower authorities.

7. We have carefully perused the orders of the authorities below and the relevant documentary evidence brought before us. Schedule 'C' and schedule 'D' of the balance sheet show the amount of secured loans and unsecured loans, secured loans contain term loan from bank, cash credit/working capital from bank and term loan for machinery. Unsecured loans refers to the optionally convertibility debentures and interest free loan under sales tax deferral scheme. On these borrowings, the assessee has paid interest amounting to ₹.1.99 crores out of which interest on debentures is ₹.1.44 cores and other interest is ₹.54.83 lakhs. So far as, interest on debentures is concerned no attribution is required. However, considering the nature of the secured loan certain part of the interest appears to be pertaining to some capital assets. We therefore restore this issue to the files of the AO. The assessee is directed to file the detail of interest amounting to ₹.54,83,286/- and justify that no interest is attributable. The AO is directed to examine such details and decide the issue afresh considering the interest amounting to ₹.54,83,286/- only.

8. Second grievance is allowed for statistical purpose.

9. The Third grievance relates to the disallowance of the claim on account of sales tax deferred. It is the claim of the assessee that a revised computation of income was filed during the course of assessment proceedings in which the deferred sales tax claim amounting to ₹.24,83,103/-, which was added back in the original computation of income, has been withdrawn. It is the say of the

counsel that the lower authorities have not considered the revised computation of income. We find force in the contention of the ld. Counsel. The assessment order is framed on the basis of original computation of income. We therefore restore this issue to the files of the AO, the AO is directed to decide the issue afresh in the light of the revised computation of income as per the provision of law after giving a reasonable opportunity of being heard to the assessee.

10. The third grievance of the assessee is allowed for statistical purpose.

11. The last grievance of the assessee relates to the treatment of interest income amounting to ₹.19,26,941/- under the head 'income from other sources' as against under the head 'profit & loss of business.

12. During the course of assessment proceedings, the AO found that the assessee has shown interest income of ₹.19,26,941/- under the head 'business income'. The AO was of the opinion that since the assessee is engaged in the business of manufacturing of HDPE pipes, fittings and sprinkler system, the interest is to be taxed under the head 'income from other sources'. The ld. CIT(A) confirmed the findings of the AO relying upon the decision of the Hon'ble Supreme Court in the case of ***Pandian Chemicals Ltd.*****129 Taxman 539**. Before us, the ld. Counsel stated that deposits were made out of commercial reasons to avail facilities from the bank and therefore interest received on such deposits should be treated as business income. *Per contra*, the ld. DR supported the findings of the lower authorities. A perusal of schedule 'G' of current assets forming part of the balance sheet show that the fixed deposits are lodged with

banks as margin for funding working capital facilities, which shows that the fixed deposits have a direct nexus with the working capital facilities availed from the bank. In our considered view, the interest earned from such deposits of the money kept apart for the purpose of business is to be taxed under the head income from the business and could be not taxed under 'income from other sources'. We draw support from the decision of the Hon'ble Bombay High Court in the case ***Indo Swiss Jewels ltd. 284 ITR 389***. We accordingly direct the AO to treat the interest income under the head 'profit & gains of the business' as declared by the assessee.

13. The last grievance of the assessee is allowed.

14. In the result, appeal filed by the assessee is allowed in part for statistical purpose.

Order pronounced in the open court on 20/08/2014
आदेश की घोषणा खुले न्यायालय में दिनांक 20/08/2014, को की गई ।

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Sd/-
(N.K.BILLAIYA)
ACCOUNTANT MEMBER

मुंबई Mumbai; *दिनांक* /Dated : 20th AUGUST, 2014.

Shekhar, P.S.

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT- , Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**