$~5, 6, 8 & 9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 373/2012
\+ ITA 374/2012
\+ ITA 375/2012
\+ ITA 376/2012

CIT ..... Appellant

Through: Mr. Deepak Chopra, Sr. Standing Counsel with Mr. Harpreet Singh Ajmani, Advocate.

versus

CONTINENTAL CARBON INDIA LTD ..... Respondent

Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V.EASWAR

ORDER

% **31.05.2012**

These appeals under Section 260A of the Income Tax Act, 1961 ('Act', for short) by the Revenue in the case of Continental Carbon India Ltd. pertains to the assessment years 2003-04 (ITA 374/2012), 2005-06 (ITA 375/2012 and 376/2012) and 2007-08 (ITA 373/2012).

2. The common ground/ issue raised in these appeals pertains to disallowance of sundry creditors by the Assessing Officer. We may note that some disallowance was also made on account of difference between

the amount confirmed by the sundry creditors and the amount appearing in the books of accounts.

The respondent-assessee is engaged in the business of manufacture of carbon parts/ carbon black which is used in the manufacturing of tyre and rubber products. Assessee is a subsidiary of the Continental Carbon Company, Houston, USA.

Before the Assessing Officer the assessee had filed confirmations, vouchers and the bills issued by the sundry creditors. However, the Assessing Officer did not receive reply/ confirmation to notices issued under Section 133(6) from all/ some of the sundry creditors. The assessee had pointed out that payment to all these concerns were made by account payee cross cheques, TDS was deducted with relevant details of goods purchased/ services rendered. Reconciliation and difference in the amount was clarified before the first appellate authority. It is interesting to note that in respect of assessment year 2007-08 the Assessing Officer had issued notices to 22 parties including Steel Authority of India Limited, Indian Oil Corporation Ltd. and Transport Corporation of India Pvt. Ltd. Even with respect to the said companies the Assessing Officer observed and held that the transactions were bogus. Even the transactions with the two PSUs were held to be bogus. The said inference was drawn because there was no response/ reply to the notice under Section 133(6) of the Act. However, the Assessing Officer did not take any action against the said parties. Other than the failure of the sundry creditors to respond, no further investigation or enquiries were made. We also find that the application filed by the

assessee under Rule 46A for admission of additional evidence was dismissed by the first appellate authority in the assessment year 2003-04 but was partly allowed in the assessment year 2004-05. In assessment year 2007-08 the CIT (Appeals) partly allowed the application directing the Assessing Officer to verify and delete the addition to the extent the assessee filed confirmations for outstanding balances as on 31.03.2007.

3. Referring to the factual matrix of the present case and after examining the mode and manner of payment, TDS certificates, vouchers produced etc., the Tribunal reached the finding that assessee had discharged the burden upon them and the addition under Section 68 of the Act was not justified. In view of the aforesaid factual findings and observations we do not think that the order of the Tribunal calls for interference.

4. In the ITA No.374/2012 which relates to the assessment year 2003-04 one issue raised pertains to prior period expenses of ₹4,72,452/-. The assessee had received two bills from Continental Carbon Company, Houston, USA in respect of which vouchers dated 31.03.2002 were prepared but the amounts were recorded in the account books next year. The Assessing Officer disallowed the said expenditure as prior period expenses. Learned counsel for the appellant has drawn our attention to the Ledger entry for April, 2002 and March, 2003 and the debit note filed dated March, 2002. The factual aspect has been examined by the Tribunal in paragraph 12 of their order and they have observed after referring to the record that it relates to liability which

had crystallized in the year in question. After examining the bill/ services rendered, the finding recorded by the Tribunal is as under:

> *"Assessee duly explained that when these bills were received by the assessee, the liability crystallized. It has not been disputed that the services were rendered and there is no adverse finding about the bills or the liability having been communicated to the assessee earlier. It is further evident from the record that part of the bill was April 2002 and the balance was in March 2003. The assessee received the bills in March 2003 and by general entry entered the liability. Since the consultancy report was completed in March 2003, therefore, it is properly recorded. It is evident that the consultancy bills were raised by way of two bills i.e. April 2002 and March 2003. There is no dispute about the rendering of service and the last bill drawn by Continental Carbon Co. USA being March 2003. The liability has crystallized in this year and cannot be called as relating to earlier year and is allowable expenditure. In view thereof, we delete the addition."*

5. Keeping in view the aforesaid position and also keeping in mind that this Court is not required to go into the said aspect and question which is basically and primarily factual, we decline to interfere.

6. In the appeal filed for the assessment year 2005-06, three other contentions have been raised. The first contention relates to rate and deprecation on computer peripherals. The Tribunal held the depreciation on computer peripherals should be @ 60% and not @ 25% as held by the Assessing Officer. This Court in several decisions has held that the depreciation on computer peripherals should be allowed @ 60% (see ***CIT v. BSES Rajdhani Ltd.*** (ITA 1266/2010). The second issue

relates to disallowance of ₹1,23,000/- towards club expense on the ground that expense does not qualify and meet the requirement of Section 37(1) of the Act. The findings are factual and require no re-consideration. Moreover the amount is too small to be examined in an appeal under Section 260A of the Act. The last ground pertains to depreciation on capital stores. The assessee had purchased spare parts which were kept ready to use as emergency spares. The Assessing Officer disallowed the same on the ground that the emergency spares had not been used and hence no depreciation can be allowed. These emergency spares are entitled to depreciation in terms of the decision of this Court in ***Capital Bus Services (P) Ltd. v. CIT***, (1980) 123 ITR 404. The tribunal rightly held that depreciation was allowable to the assessee on the principle of passive user. Keeping in view the aforesaid position on the third ground also we do not see any reason to interfere with the order of the Tribunal.

9. The appeals are accordingly dismissed.

SANJIV KHANNA, J

R.V.EASWAR, J

MAY 31, 2012
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