



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

BEFORE SHRI R.C.SHARMA, AM

&

SHRI AMARJIT SINGH, JM

ITA No.5168/Mum/2015 & 5169/Mum/2015

(Assessment Year :1997-98 & 2003-04)

M/s. Advance Power Display Systems Ltd., Unit No. 08, SDF-I, Seepz Andheri (East) Mumbai – 400 096	Vs.	DCIT – 8(1) Room No.210/260, A, 2 nd Floor, Aayakar Bhavan, M.K.Road Mumbai – 400 020
PAN/GIR No. AAACA5970G		
Appellant)	..	Respondent)

Assessee by	Shri. Y.P.Trivedi & Ms. Usha Dalal
Revenue by	Shri V. Vidyadhar
Date of Hearing	05/03/2018
Date of Pronouncement	19/03/2018

आदेश / O R D E R

PER R.C.SHARMA (A.M):

These are the appeals filed by assessee against the order of CIT(A)-16, Mumbai dated 14/08/2015 for A.Y.1997-98 and 2003-04, in the matter of imposition of penalty u/s.271(1)(c) of the IT Act.

2. At the outset, learned AR placed on record, the quantum order of the Tribunal for the A.Y.1997-98 wherein addition on the basis of which penalty so imposed had been deleted by the Tribunal itself vide order dated 25/08/2016.

3. We have gone through the orders of the authorities below as well as the order of the Tribunal dated 25/08/2016, wherein the addition of

Rs.33,25,027/- so upheld by the CIT(A) was deleted by the Tribunal after observing as under:-

7. So far as the remaining material of Rs.33,25,027/- is concerned, the plea of the assessee is that the worth value of the material at the time of use was not that of invoice value. The material at the time of use had reduced to the scrap value which was used by the assessee for its manufacturing activity and the value of the material used was taken at 'zero' cost. The profits from the corresponding sales have already been offered for taxation by the assessee. Under such circumstances, in our view, the Ld. CIT(A) was not justified in confirming the additions of Rs.33,25,027/- at original bill value. Since the assessee has offered the profits from the sales of the goods and the raw material used has been taken at 'zero' value, hence, in our view, the value of the material has already been taxed and adding the bill value of the goods at Rs.33,25,027/- would amount not only to the excess addition but also to the double addition. We, therefore, direct the AO to verify whether the raw material worth Rs.33,25,027/- (as per their original bill value) was used in the manufacturing activity at 'zero' cost and if the corresponding profit from the sale of goods manufactured from the use of the said raw material has been offered for taxation, then no additions be made in respect of the said value of Rs.33,25,027/-. The action of the Ld. CIT(A) in deleting the remaining additions is upheld.

4. As the addition itself on which penalty has been imposed u/s.271(1)(c) vide order dated 28/03/2013, the penalty so levied has no legs to stand.

5. In view of the above discussion, we delete the penalty so imposed u/s.271(1)(c) with respect to addition of Rs.33,25,027/-.

6. In the assessment year 2003-04, penalty was levied for partly disallowing foreign travelling expenses alleged to be incurred on account of personal enjoyment.

7. It was argued by learned AR that similar travelling expenses were incurred in earlier and subsequent assessment years, however, no disallowance was made in those years. It was contended that assessee

being in the business of manufacturing and export of power supplies used to visit foreign countries for making purchases from the customers abroad and the expenditure so incurred on travelling was only for the purpose of business. Accordingly, it was prayed that mere disallowance of part of the expenditure will not entitle the AO to levy penalty for concealment of income.

8. On the other hand, learned DR relied on the order of the lower authorities.

9. We have considered rival contentions and carefully gone through the orders of the authorities below. From the record, we found that the assessee manufactures different models of SMPS and each product of the assessee is designed and manufactured as per customer specifications and every design is unique for a particular customer. All the customers of the assessee are located outside India and none of the sales of the assessee are generated in India. The assessee however does not supply the products directly to end customers. The products manufactured by the assessee are supplied to Quality Component Systems Pvt. Ltd., Singapore (QCS). QCS generates orders for SMPS from the final customers and then gets such products manufactured from the assessee as per orders and specifications of the customers.

10. From the record we found that during the year under consideration, the total turnover of the assessee involved manufacturing of more than 23 models of different complexity and sales quantity. The assessee had also provided statement of export sales for financial year 2002-03 in respect of

each of the models. The principle customers of the assessee from whom the orders are generated include Hewlett Packard, Cisco Systems, Foundry Networks, Brocade Communications and Riverstone Networks. We also observe that these customers are public companies located in USA and renowned companies in their fields. The business of the assessee and its turnover depends on orders generated from these customers and to secure business from these customers, extensive direct contact on a regular basis is necessary. We found that the immediate customer of the assessee - QCS, is located at Singapore and final customers of the assessee are mainly based in USA. The assessee had submitted details of foreign travel expenses vide letter dated 24 February 2006. The assessee had specified the period of visit and destinations visited. The places visited by these people included Singapore and various cities within USA, where various end customers of the assessee are located. Visits were also made to Shri Lanka and Japan for identifying new customers. The assessee also provided names of the customers visited, place of visit, persons with whom meetings, etc. were conducted and contact numbers of these customers. The assessee also submitted certain direct correspondences between the assessee and customers. These details have not been challenged or disputed by any of the authorities.

11. From the record, we also found that vide letter dated 24 January 2006, the assessee provided details of foreign exchange drawn along with copies of applications to bank and bank advices. It was also explained

that the assessee requires more than 3,000 components in its manufacturing operations which are produced by more than 100 suppliers located outside India. The assessee assists QCS in Technical & Advisory capacity to help identify the sources of these components. However, the learned AO, however allowed only a deduction of mere Rs.5,00,000 on an estimated basis and disallowed the balance. The AO has mentioned that the appellant had not been able to substantiate that the expenditure incurred by it was for the purpose of business and also held that the expenditure is incurred for personal purpose also. The AO mentioned that the tours of the appellant are for an abnormally long period and such long tours can only be for medical reasons or for holiday trips. Accordingly, AO disallowed the part of the part of travelling expenditure and also levied penalty u/s.271(1)(c). However, the addition so made by the AO was confirmed by the CIT(A) and also by Tribunal, but merely confirming part of disallowance does not automatically leads to levy of penalty u/s.271(1)(c). As per our considered view, the penalty proceedings and quantum proceedings are independent of each other and therefore levy of penalty is not mandatory in case of every addition confirmed. We found that the assessee has made sufficient disclosure vide various submissions made to the AO at the time of assessment proceedings. The expenditure claimed by the assessee is accounted for in its books of accounts. The facts submitted by the assessee viz. dates and places of visit by the directors of the assessee have not been challenged by the AO or the appellate authorities.

12. As per record, we observe that all the facts were disclosed and the claim was made for deduction of travelling expenses. As per record the assessee has made a bonafide claim. The AO as well as CIT(A) have not challenged the genuineness / bonafides of the expenditure so incurred. The claim of the assessee is also supported by various decisions and documentary evidences placed on the record. Thus, penalty cannot be levied where a bonafide claim of the assessee was rejected by the tax department. For this proposition, reliance is placed on the following judicial pronouncements.

- i) Cement Marketing Co. of India Ltd. v AC Sales Tax [1980] (124 ITR 15)(SC)(copy enclosed at pages 139 to 141 of paper book II)*
- ii) Associated Cement Companies Ltd. v, DCIT [1992] (40 ITD 70) (ITAT Mumbai) (copy enclosed at pages 142 to 148 of paper book II)*
- iii) Yasmin Properties (P) Ltd. v. ACIT [1993] (46 ITD 331) (Mumbai ITAT) (copy enclosed at pages 149 to 154 of paper book II)*
- iv) DCIT vs. Nokia India (P) Limited [2009] (124 TT} 145)(ITAT Delhi) (copy enclosed at pages 155 to 159 of paper book II)*

13. In view of the above discussion, we do not find any merit for the penalty so imposed u/s. 271(1)(c) on account of disallowance of part of travelling expenses.

14. In the result, appeals of the assessee are allowed.

Order pronounced in the open court on this 19/03/2018

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 19/03/2018
Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)

ITAT, Mumbai