

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.1958/Bang/2018
Assessment Year: 2007-08

JCIT(LTU) Bangalore	Vs.	M/s. Texas Instruments (India) Pvt. Ltd. Bgmane Tech Park No.66/3, Adjacent to LRDE C.V Raman Nagar Post Byrasandra Bangalore-560 093 PAN NO : AA ACT5445M
APPELLANT		RESPONDENT

Appellant by	:	Smt. R. Premi, D.R.
Respondent by	:	Shri Sharath Rao, A.R.

Date of Hearing	:	15.12.2020
Date of Pronouncement	:	16.12.2020

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The revenue has filed this appeal challenging the order dated 30-03-2018 passed by Ld CIT(A)-2, Bengaluru and it relates to the assessment year 2007-08. The only issue urged by the revenue is whether the Ld CIT(A) was justified in deleting the addition of Rs.5,53,30,473/- made by the AO u/s 40(a)(i) of the Income-tax Act,1961 [‘the Act’ for short].

2. The facts relating to the issue are discussed in brief. The original assessment for the year under consideration was completed

Page 2 of 6

by the AO on 26-08-2011 u/s 143(3) r.w.s. 144C of the Act. The above said assessment order was revised by Ld CIT (LTU) u/s 263 of the Act and hence the AO passed re-assessment order u/s 143(3) r.w.s 263 of the Act. The issue under dispute relates to the addition of Rs.5,53,30,473/- made by the AO.

3. The Ld CIT (LTU) noticed that the assessee had disallowed a sum of Rs.24,77,29,455/- in the earlier year u/s 40(a)(i)/(ia) of the Act, but claimed the above said amount fully as deduction during the year under consideration. The Ld CIT took the view that the assessee is required to substantiate the said claim with evidences. He noticed that the AO has not properly examined the above said claim made by the assessee in the original assessment proceedings. Accordingly, the Ld CIT (LTU) revised the assessment order and restored the matter to the file of AO for examining it afresh. In the set aside proceedings, the AO observed that the assessee has furnished evidences to the tune of Rs.19,23,98,982/- only. Accordingly, he disallowed the balance amount of Rs.5,53,30,473/- and added the same to the total income of the assessee.

4. In the appellate proceedings, the assessee submitted before the Ld CIT(A) that it had disallowed a sum of Rs.24,77,29,455/- u/s 40(a)(i)/(ia) of the Act, while computing the total income for assessment year 2006-07. In the succeeding year, i.e., during the year under consideration, the yearend provisions were reversed and credited to the expenditure account. Since the assessee had disallowed the provision for expenses in AY 2006-07, the reversal of the same is not taxable during AY 2007-08. Accordingly, it was submitted that the assessee has claimed the amount of provision for expenses so reversed as deduction. The Ld CIT(A) called for a remand report from the AO on the explanations so offered by the assessee.

Page 3 of 6

In the remand report, the assessing officer submitted that the ledger account of “Software development expenses” contain reversal entries. However, the AO submitted that the individual ledger copies of vendors were not produced before him. The assessee, thereafter, gave a detailed reply to Ld CIT(A) explaining the modalities of passing accounting entries. It was submitted that the reversal of provision for expenses results in reduction in the amount of concerned expenditure. It was also submitted that the amount so reversed is not taxable, since it represents the amount disallowed in the earlier year. The Ld CIT(A) was convinced with the explanations given by the assessee. Accordingly, he deleted the impugned disallowance. Aggrieved, the revenue has filed this appeal.

5. The Ld D.R supported the order passed by the AO by submitting that the assessee has failed to show evidences for the amount of Rs.5,53,30,473/- disallowed by the AO.

6. The Ld A.R submitted that the assessee had voluntarily disallowed a sum of Rs.24.77 crores in AY 2006-07 u/s 40(a)(i)/(ia) of the Act for non-deduction of tax at source. The above said amount consisted of following two items:-

Invoices received and accounted in AY 2006-07	-	15.06 crores
Year end provisions made in AY 2006-07	-	9.71 crores

		24.77 crores
		=====

The Ld A.R submitted that the assessee had not deducted tax at source from the above said payments during the year ending 31.3.2006 (AY 2006-07) and hence disallowed the same u/s 40(a)(i)/(ia) of the Act. During the financial year 2006-07 relevant to AY 2007-08, the assessee deducted tax at source from the amount of Rs.15.06 crores and hence it was claimed as deduction as per the

provisions of sec.40(a)(i)/(ia) of the Act. The AO has also allowed the same.

7. The Ld A.R submitted that the dispute relates to the provision for expenses of Rs.9.71 crores accounted for in AY 2006-07. He submitted that the assessee is following mercantile system of accounting and hence it is required to provide for all known expenses. It is also following the policy of reversing the yearend provisions on the first day of next year. Accordingly, the assessee reversed the amount of Rs.9.71 crores as on 1.4.2006 and credited the same to the expenses account, which resulted in offering the same as income. However, since the assessee has not claimed the above said amount of Rs.9.71 crores as deduction in the immediately preceding year, the same is not taxable as income, when it is credited to the expenditure/profit & loss account. Accordingly, the assessee claimed the amount of Rs.9.71 crores as deduction. Out of the above said provision amount, the assessee could relate the expenditure accounted for in AY 2007-08 to the extent of Rs.4.17 crores. Hence the AO has assessed the same as income for want of evidences. The Ld A.R submitted that the yearend provisions are made on estimated basis and hence there bound to be difference between the amount so provided for and the bill amount. Hence it is difficult to make one to one linking of exact amounts. In any case, remaining amount of Rs.5.54 crores represents mere reversal of provision created earlier and also not claimed as deduction in the earlier year. Hence the amount of Rs.5.54 crores has suffered tax in AY 2006-07. Hence taxing the same amount again in the current year would result in double taxation of same income. The Ld A.R submitted that the Ld CIT(A) has appreciated these submissions and accordingly deleted this addition. Accordingly, the Ld A.R contended that the order passed by Ld CIT(A) does not call for any interference.

8. We heard the rival contentions and perused the record. As per the submissions made by Ld A.R, we notice that the disallowance of Rs.5.54 crores made by the AO forms part of Provision for expenses amount of Rs.9.71 crores created on 31.3.2006 relevant to AY 2006-07. It was submitted that the above said amount of Rs.9.71 crores represented yearend provision for expenses created as per accounting principles. There is no dispute with regard to the fact that the above said amount of Rs.9.71 crores (included in the amount of Rs.24.77 crores) was disallowed by the assessee voluntarily in AY 2006-07, meaning thereby, the assessee did not claim Rs.9.71 crores as deduction at all in AY 2006-07.

9. As per the provisions of the Act, if the assessee has got any benefit from an amount, which was claimed as deduction in an earlier year, then such benefit is taxable. However, when the assessee has not claimed the amount as deduction at all in an earlier year, any benefit obtained from it cannot be subjected to tax under the Act. In the instant case, the assessee has disallowed the provision amount of Rs.9.71 crores while computing total income for AY 2006-07, meaning thereby, the assessee has not claimed the amount of Rs.9.71 crores as deduction in AY 2006-07. The assessee has reversed the entire amount of Rs.9.71 crores in the year relevant to AY 2007-08 by crediting the same to expenditure account/P & L a/c. Out of the amount so reversed, the assessee has incurred expenses to the tune of Rs.4.17 crores. The assessee has not incurred expenses for the balance amount of Rs.5.54 crores and hence it has increased the profit/total income of the assessee. Since it was not claimed as deduction in AY 2006-07, the same cannot be subjected to tax during the year under consideration. Accordingly, we are of the view that the Ld CIT(A) was justified in deleting the

Page 6 of 6

disallowance of Rs.5.54 crores. Accordingly, we uphold his order passed on this issue.

10. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 16th Dec, 2020

Sd/-
(George George K.)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 16th Dec, 2020.
VG/SPS

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.