

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचंद, लेखा सदस्य एवं श्री कुल भारत] न्यायिक सदस्य के समक्ष  
BEFORE: SHRI BHAGCHAND, AM & SHRI KUL BHARAT, JM

आयकर अपील सं./ ITA No. 942/JP/2016  
निर्धारण वर्ष / Assessment Year : 2008-09.

M/s. Genus Power Infrastructures Ltd., (previously known as Genus Overseas Electronics Ltd.), SPL-3, RIICO Ind. Area, Sitapura, Tonk Road, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward 7(2), Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AACCG 1218 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No. 948/JP/2016  
निर्धारण वर्ष / Assessment Year : 2008-09.

The Dy. Commissioner of Income-tax, Circle-7, Jaipur.	बनाम Vs.	M/s. Genus Power Infrastructures Ltd., (previously known as Genus Overseas Electronics Ltd.), SPL-3, RIICO Ind. Area, Sitapura, Tonk Road, Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AACCG 1218 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Manish Agarwal (CA)  
राजस्व की ओर से / Revenue by : Shri R.A. Verma (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 20/02/2017  
उद्घोषणा की तारीख / Date of Pronouncement : 22/02/2017

आदेश / ORDER

PER SHRI KUL BHARAT, J.M.

These two cross appeals by the assessee and the revenue are directed against the order of Id. CIT (A)-III, Jaipur dated 19.08.2016 pertaining to A.Y. 2008-09. First, we take up the revenue's appeal in ITA No. 948/JP/2016. The revenue has raised the following grounds of appeal :-

- 1) On the facts and in the circumstances of the case and in law, the CIT (A) has erred in deleting penalty u/s 271(1)(c) on disallowance of commission & brokerage and service tax of Rs. 4,14,72,012/- and legal & Profession and consultancy charge to M/s. Vidarbha Electrical Nagpur amounting to Rs. 35 lac on the ground that these additions have been deleted by the ITAT vide its order dated 20.05.2016 in ITA No. 38/JP/2012 but the Department has not accepted the decision of the ITAT and appeal before Hon'ble Rajasthan High Court has been filed on these issues.
- 2) The appellant craves leave to add, alter, amend, withdraw or insert any ground or grounds of appeal before or at the time of hearing of the appeal.

2. At the outset, Id.Counsel for the assessee pointed out that the Hon'ble ITAT while dealing with the above grounds in quantum appeal in assessee's own case, after discussing the matter at great length, has allowed the claim of the assessee by deleting the addition. This fact is not controverted by the Id. D/R. We find that the revenue's ground for filing the appeal is that the

revenue has not accepted the decision of the ITAT rendered in the quantum proceedings in ITA No. 38/JP/2012.

3. We have heard rival contentions and perused the material available on record. The revenue has not placed any material suggesting that the order passed in quantum appeal was stayed or rejected by the Hon'ble Jurisdictional High Court. As the addition has been deleted by the Tribunal in quantum proceedings, in our considered view, penalty does not survive. Therefore, we do not see any reason to interfere into the order of Id. CIT (A), the same is hereby upheld.

4. Now, we take up assessee's appeal. The assessee has raised the following grounds of appeal :-

1. On the facts and circumstances of the case and in law, Id. Commissioner of Income Tax (Appeals) has grossly erred in confirming penalty u/s 271(1)(c) on a sum of Rs. 196,750/- paid as donation and claimed as deduction u/s 80G of the IT Act, 1961, which was disallowed solely due to non-furnishing of documents, though the same was paid through payee's a/c cheque and thus the same deserves to be deleted.
  - 1.1 That, Id. CIT (A) further erred in not appreciating the legal position that mere rejection of deduction claimed does not ipso facto results in concealment or furnishing of inaccurate particulars, particularly when it was not disputed that payment was made by cheque, thus, the penalty so confirmed deserves to be deleted.
  - 1.2 That Id. CIT (A) erred in confirming the penalty without appreciating the fact that no satisfaction was recorded by Assessing Officer before levying penalty and it was levied merely

for want of donation receipts, thus levy of penalty is not justified and deserves to be deleted.

2. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal.

The only effective ground is against sustaining the penalty of Rs.1,96,750/- made in respect of confirmation of disallowance of deduction/s 80G of the Income Tax Act, 1961.

5. The Id. Counsel for the assessee reiterated the submissions as made in the written brief and submitted that the authorities below were not justified in imposing penalty and confirming the same. He submitted that the payment was made through banking channel. It is sufficient to demonstrate that it was not a bogus payment. The Id. Counsel has placed reliance on the decision of the Hon'ble Supreme Court rendered in the case of CIT vs. Reliance Petroproducts Pvt. Ltd. 36 DTR 449 (SC).

6. On the contrary, the Id. D/R opposed the submissions. He submitted that the assessee did not furnish any evidence suggesting that payment made to the Institution was entitled for acceptance of donation. Under these facts, the authorities below were justified in levying the penalty.

7. We have heard rival contentions, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the payment has been made through

banking channel. However, there is no material suggesting that the payment was made to the institution which was registered under section 80G of the I.T. Act. In the absence of this vital material evidence, the explanation of the assessee is devoid of any merit. The ground raised in the appeal is dismissed.

8. In the result, both the appeals of the assessee and revenue are dismissed.

Order pronounced in the open court on 22/02/2017.

Sd/-  
(भागचंद)  
(BHAGCHAND)  
लेखा सदस्य / Accountant Member

Sd/-  
( कुल भारत )  
(Kul Bharat)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:- 22/02/2017.

d/

आदेश की प्रतिलिपि अग्रेषित@Copy of the order forwarded to:

1. अपीलार्थी@The Appellant- M/s. Genus Power Infrastructures Ltd., Jaipur.
2. प्रत्यर्थी@ The Respondent- The ITO Ward 7(2)/DCIT, Circle-7, Jaipur.
3. आयकर आयुक्त@ CIT
4. आयकर आयुक्त(अपील)@The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर@DR, ITAT, Jaipur
6. गार्ड फाईल@ Guard File (ITA No. 942 & 948/JP/2016)

आदेशानुसार@ By order,

सहायक पंजीकार@Asst. Registrar