

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

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER  
AND SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA No.558/Bang/2014
Assessment year : 2005-06

Wep Peripherals Ltd., II Floor, Basappa Complex, 40/1A, Lavelle Road, Bangalore – 560 001. <b>PAN: AAACW 3103F</b>	Vs.	The Additional Commissioner of Income Tax, Range 12, Bangalore.
APPELLANT		RESPONDENT

ITA No.876/Bang/2014
Assessment year : 2005-06

The Deputy Commissioner of Income Tax, Circle 12(5), Bangalore.	Vs.	Wep Peripherals Ltd., II Floor, Basappa Complex, 40/1A, Lavelle Road, Bangalore – 560 001. <b>PAN: AAACW 3103F</b>
APPELLANT		RESPONDENT

Appellant by	:	Shri B.K. Manjunath, CA
Respondent by	:	Shri R.N. Parbhat, CIT-III(DR)

Date of hearing	:	31.07.2017
Date of Pronouncement	:	31.07.2017

**ORDER**

*Per Sunil Kumar Yadav, Judicial Member*

These cross appeals are preferred by the assessee as well as revenue against the order of CIT(Appeals) *inter alia* on the following grounds:-

Assessee's appeal

- “1. That the order of the authorities below in so far as it is against the appellant is against the law, facts, circumstances, natural justice, equity, without jurisdiction, bad in law and all other known principles of law.
2. That the total income and the total tax liability computed is hereby disputed.
3. The Learned AO / CIT(A) erred in arbitrarily disallowing expenditure incurred on the welfare of the staff totaling to Rs. 17,03,848/- without appreciating the fact that the expenditure has been incurred wholly and exclusively for the purposes of the business.
4. The Learned AO/CIT(A) erred in arbitrarily disallowing travelling expenses to the extent of Rs. 20,00,000/- without appreciating the fact that the expenditure has been incurred wholly and exclusively for the purposes of the business.
5. The Learned AO/CIT(A) erred in disallowing advertisement and sales promotion expenses incurred on business meeting/ seminar to the extent of Rs.9,00,693/ - without appreciating the fact that the expenditure has been incurred wholly and exclusively for the purposes of the business.
6. The Learned AO/CIT(A) erred in disallowing advertisement and sales promotion expenses incurred on marketing research to the extent of Rs.3,86,167/- without appreciating the fact that the expenditure has been incurred wholly and exclusively for the purposes of the business.

7. The Learned AO/CIT(A) erred in making adhoc disallowance of Miscellaneous Expenses to the extent of Rs. 5,00,000/- and in doing so no sustainable or tenable reasons have been given for making the disallowance.

8. The above disallowances have been made on estimation and adhoc basis by the AO and the CIT(A) has erred in sustaining the disallowances without giving sustainable and tenable reasons and overlooking the details and information furnished by the appellant.

9. That the need for and the business expediency for incurring of expenditure has to be decided by the appellant and not by the AO/CIT(A).

10. The appellant denies the liabilities for interest u/ s. 234B and 234C. Further prays that the interest if any should be levied only on returned income.

11. No opportunity has been given before levy of interest u/ s 234B & C of the Act.

12. Without prejudice to the appellant's right of seeking waiver before appropriate authority the appellant begs for consequential relief in the levy of interest U/s. 234B & 234C.

13. For the above and other grounds and reasons which may be submitted during the course of hearing of this appeal, the assessee requests that the appeal be allowed as prayed and justice be rendered.”

#### Revenue's appeal

“1. The order of the learned CIT(A) is opposed to law and facts of the case.

2. On the facts and in the circumstances of the case the learned CIT(A) erred in allowing the claim of provision for warranty expenses of Rs.7,52,000 without appreciating the fact that the same is not admissible as business expense as held by the AO.

3. On the facts and in the circumstances of the case the learned CIT(A) erred in allowing the Staff Welfare (lunch) Expenses of Rs 8,20,500 without appreciating the fact that the assessee had not been able to prove that the same has been incurred for business purposes.

4. On the facts and in the circumstances of the case the learned CIT(A) erred in restricting the disallowances on account of Business Meeting expenses; Lunch, staff picnic, gifts etc expenses; Advertisement & Sales Promotion expenses; Marketing Research expenses to 25% of the expenses claimed, by holding that the respective disallowances made by the AO are unreasonable without appreciating the fact that the assessee has not been able to submit any evidence before the AO or at appellate proceeding to prove genuineness of the respective expenditures.

5. On the facts and in the circumstances of the case the learned CIT(A) erred in allowing the expenditure of Rs 10,00,000 claimed by the assessee as Advertisemen & Publicity expenditure without appreciating the fact that the assessee was not able to substantiate the same with any cogent evidence before the AO to prove that the same was for business purposes.

6. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.

7. The appellant craves leave to add, alter, amend and / or delete any of the grounds mentioned above.”

2. During the course of hearing, the Id. counsel for the assessee has invited our attention to the fact that before the AO, though assessee has filed enormous evidence in support of his claim, but the same was not examined by the AO and he made disallowances under different heads, against which an appeal was filed before the CIT(Appeals). Though

assessee has emphatically argued before the CIT(Appeals) that AO has not examined the detailed documents furnished before him in support of its various claims, but the CIT(Appeals) did not look into the documents. He, however, granted part relief to the assessee on different issues and the revenue is in appeal against the relief granted to the assessee before the Tribunal. The addition confirmed by the CIT(Appeals) is also challenged by the assessee before us through its appeal.

3. During the course of hearing, the Id. counsel for the assessee has submitted that since the lower authorities have not adjudicated the issues in the light of enormous evidence filed by the assessee, the matter may be restored back to the file of AO to readjudicate the issues afresh.

4. The Id. DR, on the other hand, has submitted that if the entire matter goes back to the AO for readjudication, he has no objection.

5. During the course of hearing, both the parties have agreed that let the matter be sent back to Assessing Officer for assessment *de novo* in the light of evidence filed by the assessee. Accordingly, we set aside the order of CIT(Appeals) and restore the matter to the file of Assessing Officer to readjudicate the issues afresh and frame the assessment *de novo* in the light of evidence filed by the assessee, after affording opportunity of being heard to the assessee.

6. In the result, the appeal of assessee as well as revenue are allowed for statistical purposes.

Pronounced in the open court on this 31<sup>st</sup> day of July, 2017.

Sd/-

( JASON P. BOAZ )  
Accountant Member

Sd/-

(SUNIL KUMAR YADAV )  
Judicial Member

Bangalore,  
Dated, the 31<sup>st</sup> July 2017.

/ Desai Smurthy /

Copy to:

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

By order

Senior Private Secretary  
ITAT, Bangalore.