

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC-A" BENCH : BANGALORE**

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER

ITA No.1598/Bang/2017
Assessment year : 2012-13

Deputy Commissioner of Income Tax, Circle-4(1)(2), Room No.230, 2 nd Floor, BMTc Building, 80 Feet Road, 6 th Block, Koramangala, Bengaluru-560095.	Vs.	M/s. Mann and Hummel Filter Pvt. Ltd., No.231/1, 11 th Main, Peenya Industrial Area, 1 st Stage, 3 rd Phase, Bengaluru-560058. PAN : AAECM4056D
APPELLANT		RESPONDENT

Revenue by	:	Shri. Vikas Suryawanshi, Addl. CIT
Assessee by	:	Shri. T. Suryanarayana, Advocate

Date of hearing	:	16.11.2017
Date of Pronouncement	:	23.11.2017

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the Revenue against the order of CIT(A), *inter alia*, on the following grounds:

1. *The Order of the Ld. CIT (A), in so far as it is prejudicial to the interest of the Revenue, is opposed to law and the fact and circumstances of the case.*
2. *On facts of the case, Whether the decision of the Ld CIT (A) is right in allowing the appeal of assessee as the same contravenes the provisions of section 14A and also the Ld CIT (A) has not followed the instructions laid down in the Board's Circular No 5/2014 dated 11.02.2014 & 14 of 2001.*
3. *On facts of the case, Whether the Ld CIT (A) is right in allowing the appeal on the issue of provision of inventory despite the fact that no contingent provision is allowable as per the I T Act, 1961.*
4. *On facts of the case, Whether the Ld CIT (A) is right in allowing the appeal on the issue of service tax receivable despite the fact that no provision is*

allowable as per the I T Act, 1961. Further, the assessee has not satisfied the conditions as enumerated in the Hon'ble Apex Court decision in the case of M/s Rotork India Pvt. Ltd., which case was relied on by the assessee itself.

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

6. The appellant craves leave to add, alter, amend and / or delete any of the grounds that may be urged.

2. Apropos ground No.1 is general in nature and needs no independent adjudication.

3. Apropos ground No.2 relate to the disallowance under section 14A of the Act despite the fact that assessee has not earned any exempted income. This issue has already been examined by the Tribunal in the case of *M/s. Tanglin Retail Reality Developments Private Limited Vs. DCIT in ITA No.265/Bang/2016*. The relevant portion of the order of the Tribunal is extracted hereunder for the sake of reference:

“4. Having carefully examined the order of the lower authorities in the light of the rival submissions, we find that the assessee has not received any exempted income, therefore no disallowance under section 14A is to be made. We have also carefully examined the computation of income and the Balance Sheets and find that the assessee has not earned any exempted income. We have also examined the judgments referred to by the assessee in which a similar proposition has been laid down. Therefore, we are of the view that when the assessee has not received any exempted income, no disallowance under section 14A can be made. We accordingly set aside the order of the CIT(A) and delete the additions made after making disallowance under section 14A of the Act.”

Following the above order, we delete the disallowance as there was no exempted income.

4. Apropos ground No. 3 relate to the provisions of inventories. In this regard it was contended that this issue is covered by the judgment of the jurisdictional High Court in the case of *CIT vs. IBM India Ltd. [2015] 55 taxmann.com 515 (Kar. HC)*. Copy of the order of the Hon'ble High Court is placed on record. It was also contended that while adjudicating the issue, the CIT(A) has followed the judgment of jurisdictional High Court and allowed the claim of the assessee.

The learned DR did not dispute these facts.

5. Having carefully examined the order of the lower authorities in the light of the submissions, I find that the impugned issue is squarely covered by the judgment of the jurisdictional High Court in the case of *CIT vs. IBM India Ltd.*, (supra) and CIT(A) decided the issue following the judgment of the jurisdictional High Court. For the sake of reference, I extract the relevant portion of the order of the CIT(A) as under:

“6.2 Assessee’s submissions:

The Assessee has filed his written submission dated 07.04.2017, the relevant portion of the written submission is reproduced as under:

- *The Company had created the provision for obsolete inventory based on the past experience and by applying a specific percentage on the value of non-moving inventory (i.e., inventory which has not moved for more than one year) in accordance with Indian GAAP and accounting Standards notified under the Companies Act, 1956.*
- *The Company places reliance on the following decisions, wherein it has been held that claims for provisions for obsolete inventory created based on the method of accounting followed consistently is allowable under the income tax law on accrual basis:*

a) IBM India Ltd. [2015] 55 taxmann.com 515 (Kar. HC)

b) Hotline Teletube and Components Ltd [2008] 175 TAXMAN 286 (Del HC); and

c) Tupperware India Pvt. Ltd. (ITA No. 5823/Del/2010, Order dated 1 October 2010) (Delhi ITAT).”

6.3 The Assessee contends that, the provision made against obsolete inventory, is a consistent practice based on the prescribed method of accounting followed by the appellant. The AO has not refuted this claim of the Assessee. It is not the AO’s case that, similar provisions were not made in the past and that the same were disallowed by the department. On the other hand there is no specific finding of fact to dispute the Assessee’s computation or the audited accounts. The amount in question being nominal and given the Assessee’s nature of business, there appears to be no tangible evidence to negate the Assessee’s claim, especially in light of the judicial position highlighted by the appellant. In these facts & circumstances, the disallowance of Rs.1,43,335/- is directed to be deleted.”

6. Since the CIT(A) has decided the issue following the judgment of the jurisdictional High Court, I find no infirmity therein. Accordingly, I confirm his order.

7. Apropos ground No. 4, the learned counsel for the assessee has invited our attention that on this issue the CIT(A) has restored the matter to the file of the AO with direction to readjudicate the issue afresh after affording opportunity of being heard to the

assessee. Since the issue has not been decided against the Revenue, no appeal of the Revenue is sustainable.

8. I have carefully examined the order of the CIT(A) and I find that CIT(A) has simply restored the matter to the file of the AO with certain directions to be executed after affording opportunity of being heard to the assessee. Since I do not find any infirmity in the order of the CIT(A), I confirm the same. I, however, for the sake of reference, extract the order of the CIT(A) as under:

“In background of the above discussion and facts & circumstances of the case, it is held that, the Assessee’s contention is prima-facie allowable in absence of specific evidenciary justification in the AO’s order and in view of the judicial position viz-a-viz the facts submitted by the appellant. However in holding so, the AO is also directed to verify, if and when this provision was reversed/adjusted by the appellant in the subsequent assessment periods, in respect of the impugned service tax amounts shown as receivable. The AO is directed to take appropriate rectificatory action after giving due opportunity to the appellant, who is simultaneously directed to produce the relevant evidenciary documents in this regard. This grounds of appeal is therefore allowed subject to the above direction.”

9. Accordingly, this appeal of the Revenue stand dismissed.

10. In the result, appeal of the Revenue is dismissed.

Pronounced in the open court on 23rd November, 2017.

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Place : Bangalore
Dated :23/11/2017
/NS/*

Copy to :

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

By order

Sr. Private Secretary,
ITAT, Bangalore.