

आयकर अपीलिय अधीकरण, न्यायपीठ – “C” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “C” KOLKATA*

Before **Shri N.V.Vasudevan, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.2439/Kol/2016
Assessment Year :2001-02

EPCOS India Pvt. Ltd. WBIDS Growth Centre, Kulia, Kanchrapara Road, P.O. N.s.Santatorium, Kalyanai, Nadia, West Bengal-741251 [PAN No.AAACI 6950 Q]	V/s.	DCIT, Circle-11, 6 th Floor, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri S.C. Giri, AR
प्रत्यर्थी की ओर से/By Respondent	Shri .K. Srihari, CIT-DR
सुनवाई की तारीख/Date of Hearing	28-02-2018
घोषणा की तारीख/Date of Pronouncement	20-04-2018

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-4, Kolkata dated 18.10.2016. Assessment was framed by DCIT, Circle-11, Kolkata u/s 251/147/154/143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 12.08.2014 for assessment year 2001-02.

Shri S.C. Giri, Authorized Representative appeared on behalf of assessee and Shri P.K. Srihari, Ld. Departmental Representative appeared on behalf of Revenue.

2. The assessee has raised the revised grounds of appeal which are reproduced below:-

- “1. That on the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in not adjudicating the additional ground of appeal taken by the appellant.*
- 2. That on the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in not adjudicating the additional ground of appeal taken by the appellant that it was eligible for deduction under section 80HHC of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) at 100% of export profit in computing Book Profit, being the same was the profit eligible for deduction under the said section in computing Book Profit, instead of restricting the deduction to 80% of export profit as prescribed under section 80HHC(IB) of the Act for the relevant year by the AO in order under section 251/147/154/143(1) of the Act dated 12-08-2014.*
- 3. That the appellant craves leave to add to and/or amend, alter, modify or rescind the grounds hereinabove before or at the time of hearing of the appeal.”*

3. Sole issue raised by assessee in this appeal is that Ld. CIT(A) erred in not adjudicating the additional ground raised by assessee.

4. At the outset, Ld. AR brought to our notice that assessee has raised additional ground of appeal vide letter dated 30.09.2016 before Ld. CIT(A). The Ld.AR further submitted that the additional ground raised by assessee is legal in nature and therefore same should have been admitted and adjudicated by Ld. CIT(A) in terms of principles laid down by the Hon'ble Supreme Court in the case of *NTPC vs. CIT* reported in 229 ITR 383 (SC) wherein it was held that assessee is entitled to raise additional grounds of appeal. Ld. AR also submitted that the issue raised in additional ground by assessee is covered by the judgment of Hon'ble Supreme Court in the case of *Ajanta Pharma Ltd. Vs. CIT* (2010) 194 taxman 358 (SC), wherein it was held that while computing deduction u/s 80HHC of the Act in computing Book profit under section 115JB of the Act the amount of eligible profit' should be allowed in full and not to the extent of deduction as prescribed in Sec. 80HHC(IB) of the Act.

On the other hand, Ld. DR submitted that assessee has claimed deduction u/s 80HHC of the Act for ₹6,98,33,000/- only and therefore the same amount of deduction was allowed by the AO. However, Ld. DR conceded the fact that the additional ground raised by assessee has not been adjudicated by Ld. CIT(A). Therefore, Ld. DR raised no objection if the matter is set aside to the file of Ld. CIT(A) for adjudicating the additional ground as per provision of law.

5. We have heard the rival contentions of both the parties and perused the material available on record. From the foregoing discussion, it is clear that the additional ground was raised by assessee before Ld. CIT(A) which reads as under:-

“1.0 That on the facts and in the circumstances of the case and in law, the AO ought to have allowed deduction under section 80HHC of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) 1t 100% of export profit in computing Book Profit, being the same was the profit eligible for deduction under the said section in computing Book Profit, instead of restricting the added to 80% of export profit without appreciating that the said restriction of 80% of export profit as prescribed in section 80HHC(IB) of the Act for the relevant assessment year was applicable in computing deduction under the normal provisions of the Act and not for computing Book Profit, as held by the Hon'ble Apex Court in the case of Ajanta Pharma Ltd. –vs- CIT (2010) 194 taxman 358 (SC)

2.0 That the appellant craves leave to add to and/or amend, alter, modify or rescind the grounds hereinabove before or at the time of hearing of the appeal.”

The additional ground was raised by the assessee vide letter dated 30.09.2016 and the order was passed by Ld. CIT(A) on 18.10.2016 without adjudicating the additional ground as raised by assessee. From the reading of additional ground of appeal, we note that it is legal in nature and arising out from the order of Authorities Below and no separate details / documents are required for adjudicating the same. Therefore, we are inclined to set aside the order of Ld. CIT(A) and direct him to admit the additional ground raised by assessee and adjudicate the same in accordance with law by passing a

speaking order. Hence, appeal filed by assessee is allowed for statistical purpose.

6. In the result, for statistical purpose, the appeal of assessee is treated as allowed.

Order pronounced in the open court 20/04/2018

Sd/-

(न्यायिक सदस्य)

(N.V.Vasudevan)
(Judicial Member)

Kolkata,

*Dkp, Sr.P.S

दिनांक:- 20/04/2018 कोलकाता ।

Sd/-

(लेखा सदस्य)

(Waseem Ahmed)
(Accountant Member)

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-EPCOS India Pvt. Ltd. WBIDS Growth Centre, Kulia, Kanchrapara Road, P.O. NS Sanatorium, Kalyani, Nadia, West Bengal-741 251
2. प्रत्यर्थी/Respondent-DCIT, Circle-11, 6th Fl, Ayakar Bhawa, P-7, Chowringhee Sq. Kol-69
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of
Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता ।