

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH, RAIPUR**

BEFORE SHRI N.K. BILLAIYA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 189/RPR/2016
Assessment Year: 2011-12**

M/s EICS Technology Pvt. Ltd., Om Residency, Ring Road No. 2, Bilaspur (C.G.) PAN: AABCE6109J	Vs.	The Income Tax Officer, Ward-1(1), Mahima Complex, Vyapar Vihar, Bilaspur (C.G.)
(Appellant)		(Respondent)

Assessee by : Shri G.S. Agrawal (CA)
Revenue by : Shri Sanjay Kumar (DR)

Date of Hearing: 08/03/2018
Date of Pronouncement: 04/06/2018

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 14.03.2016 passed by the Commissioner of Income Tax (Appeals), Bilaspur, for the assessment year 2011-12, whereby the Ld. CIT (A) has dismissed the appeal filed by the assessee against assessment order passed by the AO u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee company filed its return of income for the assessment year under consideration declaring the total income of Rs. 3,07,710/-. Since, the case was selected for scrutiny notice u/s 143 (2) was issued by the AO and in response to the said notice, the authorized representative of the assessee appeared before the AO and

filed written submissions. It was noticed that the assessee company had shown advances of Rs. 86,44,79,739/- from customer. The assessee was accordingly asked to furnish the details of customer from whom the advances were received. From the details, it was further noticed that the assessee company had received advance of Rs. 85,74,00,000/- from Vikash Smelters and Alloys Ltd. Kolkata. In order to verify the transaction, the AO issued letter u/s 133(6) of the Act. Since, the notice was received back un-served, commission u/s 131 (1) (d) of the Act was issued. The report received from ADIT (Inv.), Kolkata revealed that Vikash Smelters and Alloys Ltd. had given Rs. 87,24,00,000/- as advance to the assessee company. Accordingly, the assessee was asked to explain the difference between the amount shown by the assessee and the actual amount received by the assessee. The assessee company contended that it had not received any the amount other than the amount mentioned in its books of account. Rejecting the contention of the assessee, the AO made addition of Rs. 1,50,00,000/-.

3. Similarly, the assessee had claimed travelling expenses of Rs. 4,92,564/- The assessee was asked furnish the details and explain these expenses. In response thereof the assessee contended that the Directors along with some of the staff members visited Bangkok, China, Hongkong and Dubai in connection with the business development and for getting new contracts. However, AO rejecting the contention of the assessee made disallowance of the entire amount of expenses claimed by the assessee and added the same to the income of the assessee.

4. Apart from the aforesaid two additions, AO made other disallowances and determined the total income of the assessee at Rs. 1,59,96,270/-. The assessee challenged the assessment order before the Ld. CIT (A). The Ld. CIT (A) dismissed the appeal of the assessee and confirmed both the additions. The assessee is in appeal against the said order.

5. The assessee has challenged the impugned order passed by the Ld. CIT(A) on the following grounds:-

1. *“That under the facts the learned CIT (A) erred in confirming the addition of Rs. 1,50,00,000/- being different in account with M/s Vikas Smelters and Alloys Ltd. rejecting the explanations as well as the confirmation letter of the above party confirming that due to accounting error Rs. 1,50,00,000/- was wrongly debited to the account of the appellant.*

Prayed that addition of Rs. 1,50,00,000/- is not income of the appellant, is unjustified, the learned CIT (A) also erred in not accepting the confirmation letter regarding above error, the addition of Rs. 1,50,00,000/- be deleted.

2. *Under the facts and the law the learned CIT (A) erred in confirming the disallowance of Rs. 4,92,564/- made by the learned Assessing Officer towards foreign tour expense of the directors and engineers on different occasions to Dubai, China, Bangkok, etc. for the purpose of business by rejecting the explanation.*

Prayed that expenses are for business and be disallowed.”

6. At the outset, the Ld. counsel for the assessee submitted that the impugned order passed by the Ld. CIT (A) is erroneous and bad in law as the Ld. CIT (A) has erred in not allowing the additional evidence filed under rule 46A of the Income Tax Rules, 1962 (hereinafter to refer as Rules), i.e., confirmation of the party M/s Vikash Smelters Ltd. (Director Mr. Akash Patni) contact No. 08420621879) for advance given to M/s EICS Technology Pvt. Ltd. during the assessment year 2011-12. The Ld. counsel further submitted that since examination of the said documents was essential for adjudicating the assessee's appeal, the Ld. CIT (A) ought to have admitted the same u/s 46A of the Rules. In the light of the aforesaid facts, the Ld. counsel submitted that the impugned order may be set aside or in alternative, the additional evidence produced before the CIT (A) may be allowed and the assessee may be permitted to present its case in the light of the aforesaid additional evidence.

7. Regarding disallowance of travelling expenses claimed by the assessee under the head 'Travelling Airlines', the Ld. counsel submitted that since all the relevant details were submitted before the AO the Ld. CIT(A) ought to have deleted the disallowance made by the AO. The Ld. counsel further submitted that since, the Ld. CIT(A) has confirmed the addition without giving any valid reason, the findings of the Ld. CIT(A) is liable to be set aside.

8. On the other hand, the Ld. Departmental Representative (DR) relying on the concurrent findings of the authorities below submitted that since the assessee has failed to substantiate its contention before the authorities below, there is no infirmity in the impugned order. Hence, there is no merit in the appeal of the assessee.

9. We have heard the rival submissions and perused the material on record. So far as the first ground of appeal is concerned, we notice that the assessee had made a request vide application dated 22.07.2015 to the Ld. Commissioner of Income Tax for admitting the additional evidence submitted before him. The contention of the Ld. counsel is that since the assessee could not file the aforesaid documents during the assessment proceedings because the assessment order was passed by without giving sufficient opportunity to the assessee, the Ld. CIT (A) ought to have allowed the request of the assessee and admitted the additional interest in the interest of justice.

10. The paper book filed by the assessee contains copy of application for additional evidence at page 33 & 34. However, we notice that the Ld. CIT(A) has neither rejected nor allowed the application moved by the assessee under Rule 46A of the Rules for the reasons best known to him.

11. Under Rule 46A the additional evidence can be produced during the course of appellate proceedings, under the following circumstances:-

- (a) *Where the [Assessing Officer] has refused to admit evidence which ought to have been admitting, or*
- (b) *Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the [Assessing Officer] or*
- (c) *Where the appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal or*
- (d) *Where the [Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.*

12. As contended by the Ld. counsel, these documents are essential for adjudicating the present issue and since these documents were neither examined by the AO nor by Ld. CIT(A), the same are required to be examined/verified by the Assessing Officer. Under these circumstances, we are of the considered view that the assessee should get an opportunity to present its case in the light of the additional evidence produced before the Ld. CIT (A). We therefore admit the additional evidence produced by the assessee and set aside this ground of appeal to the file of AO with the direction to decide this ground of appeal afresh in the light of the additional evidence produced before the Ld. CIT (A) after hearing the assessee.

13. The second ground of appeal pertains to disallowance of Rs. 4,92,564/- claimed as expenses on travelling. We notice that the Ld. CIT (A) has confirmed the addition holding that there are two Directors in the company, who are husband and wife. During appellate proceedings, the assessee contended that the Director visited abroad in connection with the business of the assessee company, whereas before the AO, the assessee contended that Director and staff members had travelled abroad. It is not the case of the revenue that the Director did not visit abroad during the assessment year under consideration. Since the revenue has not disputed the expenses incurred on travelling and not collected/pointed out any cogent evidence to rebut the plea of the assessee that the director(s) visited the different countries in connection with the business of the company, it cannot be presumed that the Director(s) had travelled abroad during the financial relevant to the

assessment year under consideration, but not in connection with the business of the company. We therefore set aside the findings of the Ld. CIT (A) and allow this ground of appeal of the assessee and direct the AO to delete the addition.

In the result, appeal filed by the assessee for assessment year 2011-2012 is allowed for statistical purposes.

Order pronounced in the open court on 4th June, 2018.

Sd/-

(N.K. BILLAIYA)

ACCOUNTANT MEMBER

Raipur, दिनांक Dated: 04/06/2018

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय
अधिकरण, Raipur / DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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