

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D", NEW DELHI
BEFORE SH. G.D. AGRAWAL, PRESIDENT
AND
SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
ITA No. 2417/Del/2012
(Assessment Year: 2008-09)**

Uniword Telecom Ltd. C/o. Satish Aggarwal & Associates, CA, 4/5, Asaf Ali Road New Delhi	Vs.	ACIT Range-18 New Delhi
PAN : AAACU5105D		

**ITA No. 2660/Del/2012
(Assessment Year: 2008-09)**

ACIT Circle-18(1), Room No. 211A, C.R.Building New Delhi	Vs.	Uniword Telecom Ltd. H-58, Himalaya House, Kasturba Gandhi Marg, Connaught Place New Delhi
(Appellant)		(Respondent)

Assessee by : Sh. Satish Aggarwal, Sh. Dharender Kr., CA
Revenue by : Sh. Amit Jain, Sr. DR

Date of hearing : 23.04.2018
Date of pronouncement : 27 .06 .2018

ORDER

PER BENCH :

ITA no. 2417/Del/2012 is assessee's appeal against order dated 20/08/2012 passed by the Ld. CIT(A)-XXI, New

Delhi for assessment year 2008-09 whereas ITA no. 2660/Del/2012 is the department's cross appeal for the same year.

2. The brief facts of the case are that the return of income was filed declaring total income of Rs. 4,79,98,210/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). The case was selected for scrutiny thereafter revised return of income was filed declaring income at Rs. 68,21,192/-. During the relevant previous year, the assessee company was engaged in manufacture and trading of Telephone Products and parts as well as in the business of manufacture of Public Address System. The assessment was completed at an income of Rs. 5,72,12,950/- after making the following additions/disallowances –

- i) Bill discounting charges Rs. 2,73,33,202/-
- ii) income claimed who have not accrued during the year Rs. 2,17,86,841/-

- iii) disallowance out of purchase Rs. 6,32,969/-
- iv) ROC fees Rs. 25,000/-
- v) disallowance out of rent rates and taxes Rs. 2,27,500/-
- vi) gift items included in vehicle running expenses Rs. 1,22,300/-
- vii) disallowance out of deduction claimed u/s 80G of the Act Rs. 2,29,500/-
- viii) disallowance out of repairs and maintenance Rs. 34,450/-.

3. Aggrieved the assessee approached the Ld. First Appellate Authority who gave partial relief to the assessee and now the assessee is in appeal before the ITAT challenging the confirmation of addition of Rs. 2,17,86,841/- which relates to income which as per the assessee has now accrued during the year. The department is in appeal challenging a deletion of addition in respect of bill discounting charges amounting to Rs. 2,73,23,202/-, disallowance out of purchase amounting to Rs. 6,32,969/- and deletion of addition amounting to Rs. 2,27,500/- in

respect of rent rates and taxes. The grounds taken by both the parties are as under :-

ITA No. 2417/Del/2012

“1. The order of the Learned CIT(A) XXI is arbitrary, biased, bad in law and in circumstances and facts of the case with respect to additions sustained by him.

2. That the Learned CIT(A) has grossly erred in confirming the addition of Rs. 2,17,86,841/- made by the assessing officer on incorrect appreciation of the facts on the issue and in holding that the aforesaid income accrued to the appellant despite the debtor making a counter claim against the appellant.”

ITA No. 2660/Del/2012

“1. On the facts and in the circumstances of the case and in law the learned CIT(A) erred in deleting the addition of Rs. 2,73,23,202/- disallowed by the AO on account of payment of discount charges without appreciating that the assessee did not prove the incurring such expenses during the course of assessment even though enough opportunities were provided for this purpose. “11,94,988/- made u/s 40(a)(ia) of the income tax Act for non deduction of tax at source out of professional charges.”

2. On the facts and in the circumstances of the case and in law the learned CIT(A) erred in deleting the addition of Rs. 6,32,969/- made as bogus purchases since the party

from which the alleged purchases were made failed to respond to notice u/s 133(6) of the Income Tax Act, 1961 and assessee offered no explanation for this lapse.”

2.1 On the facts and in the circumstances of the case and in law the learned CIT(A) erred in admitting fresh evidence during the course of appellate proceedings, without any explanation on the part of the assessee as to why the same could not be produced/replied to by the concerned party.

3. On the facts and in the circumstances of the case and in law the learned CIT(A) erred in deleting the addition of Rs. 6,32,969/- made as disallowance out of expenses under the head ‘Rent Rates and taxes.’”

4. The Ld. Authorised Representative submitted that the assessee company has been registered as a sick industrial company u/s 15 of Sick Industrial Companies (Special Provisions) Act, 1985. It was submitted that the return of income was revised by the assessee to claim an expenditure of Rs. 2,73,33,202/- towards discounting charges paid to Global Trade Finance Pvt. Ltd. (now known as SBI Global Factors Ltd.) and for referral of income of Rs.

2,17,86,841/- which had been reflected as due from M/s. Actaris Industries (India) Pvt. Ltd. It was also submitted that the return was revised to claim correct amount of depreciation which was Rs. 2,64,60,685/- as against Rs. 3,44,03,708/- as claimed originally. The Ld. Authorised Representative submitted that the department was challenging the deletion of addition with respect to bill discounting charges paid to M/s. Global Trade Finance Ltd who are attention to the details of the bill discounting charges as reproduced by the assessing officer at page 5 of the assessment order and submitted that the AO had not accepted the claim of discounting / factoring charges on the ground that the address of M/s. Global Trade Finance Ltd. had not been furnished before the AO and therefore in absence of proper address verification of the details / transactions was not possible. The Ld. Authorised Representative submitted that the Ld. CIT(A) deleted the

disallowance by observing that the expenditure on discounting charges had direct nexus with the business of the assessee company and that it met the requirements for allowance as expenditure u/s 37(1) of the Act. The Ld. Authorised Representative also submitted that the revenue is contesting the deletion by the Ld. CIT(A) on the ground that the Ld. CIT(A) had admitted additional evidence. It was submitted that the Ld. CIT(A) had admitted additional evidence vide para 2.2 and 2.3 of the impugned order after sending a copy of the paper book containing additional evidences to the assessing officer in remand proceedings. The Ld. Authorised Representative also submitted that the AO had not conducted any further inquiry during the remand proceedings. The Ld. Authorised Representative also submitted that both before the Ld. CIT(A) as well as the AO, the assessee had expressed its inability to obtain confirmation from Global Trade Finance Ltd. and further

that the AO could have requisition the required information directly from Global Trade Finance Ltd. the assessee was unable to furnish the confirmation. The Id. Authorised Representative reiterated that the expenditure was allowable in terms of section 37(1) of the Act as the same was incurred wholly for the purpose of the business of the assessee.

5. The Ld. Authorised Representative also made reference to the ground of appeal no. 1 of the department's appeal and submitted the second half of the ground with respect to disallowance of Rs. 11,94,988/- u/s 40(a)(ia) did not pertain to the assessee and was therefore, liable to be dismissed as infructuous.

6. With regard to ground no. 2 challenging the deletion of addition of Rs. 6,32,969/- which had been treated as bogus purchase from M/s. Klassic Printers due to failure in furnishing the response u/s 133(6) of the Act, the Ld.

Authorised Representative submitted that the AO had issued notices u/s 133(6) of the Act to 24 parties out of which 23 parties had responded and only M/s. Klassic Printers had not responded and therefore, the AO had proceeded to treat the impugned amount as unverified purchase and had added the same to the income of the assessee. The Ld. Authorised Representative submitted that the assessee had duly filed copy of ledgers accounts of M/s. Klassic Printers, copies of invoices and confirmed copy of account of the assessee in the books of M/s. Klassic Printers as additional evidence during the course of appellate proceedings and Ld. CIT(A) had asked for the comments of the AO on the same in remand proceedings. The Ld. Authorised Representative further submitted that the AO had not made any adverse comments on this issue in the remand report and thereafter the deletion was made by the Ld. CIT(A).

7. With respect to ground no. 3 the Ld. Authorised Representative pointed out that the impugned amount pertaining to disallowance out of Rent Rates and taxes was Rs. 2,27,500/- which had been incorrectly stated as Rs. 6,32,969/- in the grounds of appeal. The Ld. Authorised Representative submitted that the Ld. CIT(A) had deleted the disallowance after perusal of the copy of rent agreement for premises leased by the assessee in Mysore and as well as perusal of ledger account of rent paid which was filed as additional evidence and the amount was deleted as the AO had not made any adverse comments in the remand proceedings.

8. Argueing for the grounds raised by the assessee in its appeal bearing ITA no. 2417/Del/2012, the ld. Authorised Representative submitted that the assessee was challenging the confirmation of addition regarding reversal of income amounting to Rs. 2,17,86,841/-. It was

submitted that M/s. Actaris Industries (India) Private Ltd. was assessee's customer for whom it had developed specific zigs, tools, dies and fixtures for manufacture of components for exclusive requirement of M/s. Actaris Industries (India) Private Ltd. and a manufacturing and supply agreement was executed by the assessee with this company. It was submitted that a copy of this agreement was filed before the Ld. CIT(A) as additional evidence. Our attention was drawn to pages 32 to 61 of the paper book wherein a copy of this agreement had been placed. It was further submitted that the assessee had been supplying tailor made energy meters to this company since 2004. It was further submitted that this company was an Indian arm of a foreign entity which had closed down its operations in India. The Ld. Authorised Representative further submitted that the assessee company had regular dealings with this company for sale and service and the

assessee company had customized inventory which had no other commercial value in the open market. It was submitted that the assessee company had raised the debit notes on the company but M/s. Actaris Industries (India) Pvt. Ltd. had completely denied its liability for this amount of Rs. 20,17,90,844/- from the assessee company for loss of interest on advance given to the assessee company, loss on account of failure to manufacture the right quality of goods and damages for loss of reputation etc. It was further submitted that a copy of this legal notice was filed before the AO during the assessment proceedings and was also submitted before the Ld. CIT(A). The Ld. Authorised Representative submitted that the AO did not accept the claim for reversal of income by referring to the inability of the assessee to furnish confirmation and lack of time to make enquiries before the assessment got time barred. It was further submitted that the AO did not make requisite

enquiries during the remand proceedings and also did not make any adverse comment on the additional evidence and submission made by the assessee on merits. The ld. Authorised Representative also submitted that the Ld. CIT(A) had upheld the addition by observing that no prudent businessman will offer such income for taxation which was under dispute. The Ld. Authorised Representative reiterated that it was only after the assessee had raised the debit notes that the customer had decided not only to deny its liability but had also raised a counter claim and had sent a legal notice to the assessee. In such a situation the assessee had no option but to revise the income Tax return by reducing the income by the impugned amount. It was submitted that since there was no accrual of income of Rs. 2.17 crores, the same would not have been charge to tax irrespective of the entries made in the books of accounts. The Ld. Authorised

Representative also placed reliance on a number of judicial precedence in support of the contention that income cannot be assessed on the basis of entries in the books of accounts alone.

9. The ld. Departmental Representative while responding to the assessee's appeal placed reliance on the concurrent findings of both the authorities and submitted that the impugned amount had rightly been added to the income of the assessee and that it was an attempt by the assessee to reduce its taxability.

10. With respect to the department's appeal the Ld. Sr. Departmental Representative placed reliance on the observations and findings of the AO and submitted that the Ld. CIT(A) had allowed relief to the assessee ignoring the observations of the AO and have also admitted additional evidence without questioning the assessee as to why these

evidences were not furnished during the course of assessment proceedings.

11. We have heard the rival submissions, we have also perused the material on record as far as the department's appeal bearing in ITA no. 2660/Del/2012 is concern it is seen that the Ld. CIT(A) has deleted the addition of Rs. 2,73,23,202/- pertaining to bill discount charges by noting that he has gone through the details with regard to the expenditure and has found that the same is neither personal in nature nor capital in nature. The Ld. CIT(A) has observed that only objection of the AO is that the confirmation of the expenditure has not been filed during the course of assessment proceedings. The Ld. CIT(A) has also noted that there was a litigation pending with M/s. Global Trade Finance Ltd. Due to which the assessee was not in a position to obtain confirmation. We also note that while admitting additional evidence with respect to this

issue, the Ld. CIT(A) has asked for the comments of the AO in the remand proceedings. A copy of the remand report dated 22.02.2012 which has been placed on record shows that even in the remand proceedings the AO has not taken any steps to enquire about the transaction if he had any doubt regarding the same. The AO has simply stated that the assessee had not furnished the confirmation from this party. The Ld. CIT(A) has also observed that in absence of any finding contrary the factoring charges paid to M/s. Global Trade Finance Ltd. were fully allowable u/s 37(1) of the Act. Although the Ld. Sr. Departmental Representative has vehemently argued against the action of the Ld. CIT(A) in deleting this disallowance. He could not point out any factual or legal inaccuracy in the findings recorded by the Ld. CIT(A) except pleading that the assessee had not furnished the details before the AO. Keeping in view the provisions of section 37(1) of the Act which prescribes that

in expenditure would be allowable if it is not in the nature of capital, if it is not personal in nature and if it has been expended fully and exclusively for the purpose of business, we find no reason to interfere with the findings of the Ld. CIT(A) on this issue. We also note that due to some typographical error, the department has also challenged deletion of addition of Rs. 11,94,988/- alleged to have been made u/s 40(a)(ia) of the Act in ground no. 1 of the department's appeal. We agree with the submission of the Ld. Authorised Representative that this ground does not emanate from the orders either of the lower authorities. Accordingly this portion of the ground is infructuous. Accordingly ground no. 1 of the department's appeal stands dismissed.

12. Coming to ground no. 2 of the department's appeal which challenges the action of the Ld. CIT(A) in deleting the addition of Rs. 6,32,969/- being alleged bogus purchases

it is seen the Ld. CIT(A) has observed after going through the copy of ledger account of M/s. Klassic Printers as well as the ledger account of purchases in the books of accounts of the assessee that these entries cross matched. The Ld. CIT(A) has also noted that the impugned bills were available at pages 59 to 63 of the paper book wherein complete purchase details along with address and PAN were mentioned. The Ld. CIT(A) has also noted that at the time of admitting additional evidence, the details were sent to the AO for his comments but the AO did not make any adverse comment on the additional evidences but only reiterated that the reason behind the addition was that the letter issued u/s 133(6) of the Act was not responded too. Thus, the fact remains that the Ld. CIT(A) has duly verified the entries in the books of accounts as well as the bills of purchase. It also remains undisputed that the only ground on which the addition was made failure of this party to

respond to the notice issued u/s 133(6) of the Act. The Ld. Sr. Departmental Representative also could not point out any factual or legal inaccuracy in the conclusion so arrived at by the Ld. CIT(A). In such circumstances, there is no reason for us to interfere and we dismiss ground no. 2 and 2.1 of the department's appeal.

13. Coming to ground no. 3 the effective ground challenges the action of the CIT(A) in deleting an addition of Rs. 2,27,500/- towards payment of rent, this amount represented rent of Rs.1,42,500/- towards lease charges of office and factory premises at Mysore and Rs. 85,000/- represented rent for guest house maintained at Mysore. The Ld. CIT(A) admitted additional evidence in this regard also which were in the form of lease agreement. Before admit of additional evidence, the Ld. CIT(A) also sought comments from the AO but the AO did not make any adverse comment on the same. The Ld. CIT(A) has given a

categorical finding that in view of the lease agreement and the details thereof which were submitted before him, the amount was deductible. No factual or legal infirmity was pointed out by the Ld. Sr. Departmental even during the course of proceedings before us. In such a circumstance, we find no reason to interfere with the findings of the Ld. CIT(A) on this issue also. Accordingly ground no. 3 of the department's appeal stands dismissed.

14. Ground no. 4 is general ground raised by the department and the same is not being adjudicated upon.

15. In the result, the appeal of the department stands dismissed.

16. Coming to the assessee's appeal bearing ITA no. 2417/Del/2012, the only issue under challenge is the issue of confirming addition of Rs. 2,17,86,841/- pertaining to income which as per the assessee had not

accrued to the assessee. It is seen that the assessee company had raised a debit note of Rs. 21,76,841/- on M/s. Actaris Industries (India) Pvt. Ltd. and had treated the amount of debit note as income. Subsequently the M/s. Actaris Industries (India) Pvt. Ltd. did not accept the debit note and not only denied its liability for the amount of debit note which had been treated as income by the assessee but also served the legal notice on the assessee demanding an amount of Rs. 20,17,90,844/-. The assessee in view of this developments filed a revised return and sought to reduce its income by an amount of Rs. 2,17,86,841/- on the ground that this income had not accrued to the assessee in view of the company M/s. Actaris Industries (India) Private Ltd. denying its liability. The AO as well as the Ld. CIT(A) added this amount to the income of the assessee. The AO observed that how and why the auditors did not detect and

point out the mistakes at the time of audit that a sum of Rs. 2,17,86,841/- had been incorrectly credited. The Ld. CIT(A) upheld the addition on the ground that no prudent businessman would have offered income for taxation which was under dispute specially where the accounts had been audited. Thus, both the lower authorities have proceeded on basis of mere conjectures and surmises without actually examining the issue as to whether the averments of the assessee regarding rejection of the debit notes, denial of liability by M/s. Actaris Industries (India) Private Ltd. and filing of counter claim was credible or not. In the course of proceeding before us the Ld. Authorised Representative also could not demonstrate by cogent evidence as to how the dispute was finally settled between the assessee and the other party. In such a situation it is our considered opinion that interest of justice would be served if the issue

is restored to the file of the Ld. CIT(A) to examine the issue afresh. Accordingly this ground is restored to the file of the Ld. CIT(A) with the direction to adjudicate the issue after taking into consideration the claim of assessee regarding denial of liability by the other party as well as after verifying the veracity of the claim and also after duly considering the stage at which the litigation between the two parties is at the present moment. Needless to say the Ld. CIT(A) will allow proper opportunity to the assessee before proceeding with the adjudication. We also direct the assessee to extent timely co-operation to the Ld. CIT(A) when called upon to do so. Accordingly ground no. 2 of the assessee's appeal stand allowed for statistical purposes.

17. Ground no. 1 and 3 are general in nature and are not being adjudicated upon. In the result the appeal of the assessee stands allowed for statistical purposes.

18. In the final result appeal of the department stands dismissed and the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 27th June, 2018).

Sd/-

Sd/-

(G.D.AGARWAL)

(SUDHANSHU SRIVASTAVA)

PRESIDENT

JUDICIAL MEMBER

Date: 27th .06.2018

Binita

Copy of order to: -

- 1) The Appellant;
- 2) The Respondent;
- 3) The CIT;
- 4) The CIT(A)-, New Delhi;
- 5) The DR, I.T.A.T., New Delhi;

True Copy

By Order

ITAT, New Delhi

