

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D" NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, PRESIDENT
&
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

I.T.A. No.987/DEL/2014
Assessment Year: 2008-09

ThyssenKrupp Elevator (India) Pvt. Ltd., Plot No.429, Functional Industrial Estate, Patparganj, New Delhi.	v.	DCIT, Circle-16(1), New Delhi.
TAN/PAN: AABCT 6921F		
(Appellant)		(Respondent)

I.T.A. No.871 & 4708/DEL/2014
Assessment Year: 2008-09

DCIT, Circle-16(1), New Delhi.	v.	ThyssenKrupp Elevator (India) Pvt. Ltd., Plot No.429, Functional Industrial Estate, Patparganj, New Delhi.
TAN/PAN: AABCT 6921F		
(Appellant)		(Respondent)

Appellant by:	Shri S.D. Kapila, Adv. & Shri R.R. Maurya, Adv.		
Respondent by:	Shri Amit Jain, Sr.D.R.		
Date of hearing:	18	06	2018
Date of pronouncement:	17	09	2018

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid cross Appeals have been filed by the assessee as well as by the Revenue against the impugned order dated 12.11.2013, passed by the CIT (Appeals)-XI, New

Delhi for the quantum of assessment passed u/s.143(3) for the Assessment Year 2008-09. The appeal in ITA No.4708/Del/2014 have been filed by the Revenue against the order dated 16.06.2014, passed by Id. CIT(Appeals)-XI, New Delhi against the order u/s.154 for the Assessment Year 2008-09. We will first take up the Revenue's appeal in ITA No.871/Del/2014, wherein the Revenue has raised the sole ground:-

“1. Ld. CIT(A) erred in deleting the disallowance of Rs.8,46,99,684/- on account of advance from customers. These advances in fact constitute receipt in the hands of the assessee in view of its nature of business activities.”

2. At the outset, Id. counsel for the assessee submitted that this issue stands squarely covered by the decision of the Tribunal in assessee's own case in the earlier year right from the Assessment Years 2005-06 to 2007-08 passed in ITAs No.956, 1118, 3755/Del/2009 & 3354 & 3488/Del/2010 order dated 07.11.2017.

3. The facts in brief are that assessee-company is engaged in the business of marketing, selling, installing, commissioning, service, repairs, maintenance and modernization of elevators and escalators. The learned Assessing Officer following the earlier years' assessment orders held that advance received by the assessee from the customers is income of the assessee. The assessee had shown an amount of Rs.41.96 in his balance sheet as advance from

the customer including deferred revenue, the details of which is as under:-

(a)	Rs.17.07 crores	Representing initial advance received against the contract
(b)	Rs.2.9 crores	Representing unadjusted advance against maintenance contracts.
(c)	Rs.21.99 crores	Unadjusted advance representing over billing in case of new installation significant modernization jobs

3.1 According to Assessing Officer, advanced received during the year which remained unadjusted at the end of the year and shown in the balance sheet net of the sum which is in this year was Rs.8.47 crores, is income of the assessee and while doing so he has followed the earlier assessment orders. The main contentions of the Assessing Officer in the earlier years were as under:-

“(a) the accounting system adopted by the assessee over the years is nothing to do with the statutory provisions which provides for maintenance of books of account in the prescribed way;

(b) The assessee is a corporate entity and is mandatorily required to prepare its profit and loss account under the accrual system of accounting which prescribes accounting for every receipts received by it;

(c) As and when any money is received from its customers, though advance as termed by the assessee, its recording into the proper account is mandatory on the part of the assessee;

(d) The assessee has taken such sums shown in the balance sheet as liability without routing them through the P&L account, which is not permissible under the accrual system of accounting as prescribed under the Indian Companies Act.”

4. On the other hand, the case of the assessee was that it has booked income of Rs.51.59 crores mainly from three types of contracts undertaken with the customers covering;

- (a) New contracts for supply and installation;
- (b) Repair and Modernization contracts;
- (c) Maintenance contracts.

4.1. Regarding accounting practice followed by the assessee, it was submitted that since it was following 'percentage of completion method' regularly, therefore, such an accounting standard cannot be disturbed.

5. Ld. CIT (A) following the earlier orders and has deleted the said additions.

6. We find that in the earlier years, the Tribunal has deleted the said addition after observing and holding as under:-

"32. We have carefully considered the rival contentions. The assessee has followed mercantile accounting system and carries on contract of supply and installation of elevators, their repairs, and maintenance. It followed the percentage of completion method and according to the contracts Rs. 7.87 crores are the initial advance received against the contract and Rs. 4.87 cores were unadjusted advances in case of new installation and modernization job. The Rs.7.87 crores is purely an advance for which work is to be done therefore; in this year, correctly no revenue can be recognized. Further, revenue has been recognized out of this advance in subsequent years. With respect to Rs. 4.87 crores is an advance received after adjustment of progressive billing. Therefore, from both

these sums no revenue is to be recognized during the year. Further, the unadjusted advances are offered for taxation in subsequent years. Hence, we do not find any infirmity in the order of the Id CIT(A) in deleting the addition of Rs. 127455308/-. In the result ground No. 2 of the appeal is dismissed.”

6.1 Once it is an undisputed fact that assessee has been following ‘*percentage of completion method*’ as prescribed by AS-7 and AS-9 and in pursuance to the said system of accounting the assessee has been recognizing revenue in the following manner:-

- (a) New installations and significant modernization jobs - On percentage of completion method where on the percentage of completion method, where the outcome of the contract can be reliably estimated, based on proportion of the cost to the total estimated cost. Where the outcome of the contract cannot be reliably estimated, contract revenue is recognized only to the extent of cost incurred, of which recovery is probable.
- (b) Repairs and small modernization jobs, lasting for a short period, on completion method.
- (c) Method contracts: Revenue pertaining to maintenance contracts is recognized on time basis as per terms of the contract.

And if the advance is for which work has not been done in this year, then, revenue has correctly not been recognized and as and when revenue has been recognized, the same has been offered for taxation. Accordingly, the aforesaid finding of the

Tribunal is reiterated and thus, ground raised by the Revenue is dismissed.

7. Now, we come to the assessee's appeal wherein the assessee has raised following substantial grounds:-

"3. That the learned CIT(A) has erred in upholding the additions of Rs.(56,26,481) crore made by the learned assessing officer in respect of 'Advance received from Customers' for maintenance of elevator under Annual Maintenance Contract as entered into by the assessee, without appreciating that 'Advance received from customers' are:

- i) accounted for as per the recognized accounting system followed by the assessee; and*
- ii) offered to tax in the next assessment years based on the accounting system.*

3.1 That the learned CIT(A) has erred in merely following the order passed in earlier years regarding addition in respect of advance received from customers under AMC contract, without appreciating that the observation made in the earlier year orders are factually erroneous.

4. That the learned CIT(A) has erred in upholding the disallowance of expenses claimed under the head 'advances written off, without appreciating the nature of the expenses claimed.

4.1 That the learned CIT(A) has on erroneous interpretation of provisions of Income-tax Act, 1961 ("the Act"), upheld the disallowance of 'Advances to suppliers written off' amounting to Rs. 11,54,061.

4.2 That the learned CIT(A) has on mere surmise, erred in upholding the disallowance of Rs. 6,46,179 being amount of 'TDS recoverable written off' in the books of account.

4.3 That the learned CIT(A) has without considering the facts on record and on erroneous observations and interpretation of provisions

of the Act, upheld the disallowance of Rs. 39,732 being amount of 'Rent deposit' written off in the books of account.

4.4 That the ld. CIT(A) without appreciating the facts, has erred in upholding the disallowance of Rs.1,648 being amount of 'Excess TDS deposited' written off in the books of account.

5. That the ld. CIT(A) has erred in confirming levy of interest u/s.234B & 234D and withdrawal of interest under section 244A of the Act.”

8. In so far as grounds no.3 and 3.1 are concern, learned counsel submitted that this issue also stands covered by the Tribunal in assessee's own case for the earlier years wherein Tribunal has deleted the said addition.

9. On the other hand, learned Department Representative has strongly relied upon the order of the ld. CIT(A).

10. On a perusal of the impugned order we find that, this issue is quite similar to the issue raised by the Department because the ld. CIT (A) held that in so far as advances received for maintenance of elevators under annual maintenance contract should be routed through P&L account and this issue was decided against the assessee by the ld. CIT(A) in the earlier years. We find that the Tribunal has held and decided this issue from paragraphs 18 to 21 in the following manner:

“18. Ground No. 3 of the appeal of the assessee is against the disallowance of Rs. 20313101/- representing advance received from customer under annual maintenance contracts entered into by the assessee. The assessee has shown a sum of Rs. 147768409/- into its balance sheet as advance received from the customers. The Ld. assessing officer enquired about the claim

of such advances received by the assessee. The assessee explained that it is engaged in the business of installation of the elevator's and therefore, on the receipt of the order the customers are paying advances at certain percentage on various dates and also pay initial advance amount. The assessee raises the invoices against these advances in phased manner. According to the terms of the agreement, until the advances are set off by raising the bill, same are shown as advances and no revenue is booked till that time. The Ld. Assessing Officer asked the assessee that why this sum should not be treated as income of the assessee. The assessee submitted that out of the sum of Rs. 147768409/- a sum of Rs. 127455308/- is pertaining to the advance from customers including progressive billing and a sum of Rs. 20313101/- is advance billing with respect to the maintenance contracts. Assessee also submitted that it follows the percentage of completion method and therefore the proportionate cost as per the accounting standard 7 issued by the Institute of chartered accountants of India is booked and consequent related revenue is also booked in accordance with the percentage of the work completed with respect to the each client. However, the Ld. assessing officer rejected the contention of the assessee and stated that the assessee is maintaining its books of account on the accrual basis and further the assessee is incurring heavy losses from year to year, therefore, according to the Ld assessing officer the devise adopted by the assessee was a mechanism under which its real income remains understated to the extent of the advances which are not routed through the profit and loss account. According to him, these advances are in fact the revenue of the assessee and therefore he made an addition of Rs. 1476,68409/- to the total income of the assessee. Aggrieved with this assessee preferred an appeal before the Ld. CIT (A) who granted relief of Rs. 78702572/- and Rs. 48752736/-. However, he confirmed the addition of Rs. 20313101/- on account of maintenance contracts. Therefore, assessee is in appeal against the confirmation of the above advance with respect to the maintenance contract of Rs. 20313101/-.

19. The ld AR submitted that the above amount is advance for the

annual contract for maintenance of the elevator, which is accounted for as income of the assessee on the period basis. He submitted that this policy is followed by the assessee for last several years consistently and no fault has been found with. He father submitted that in maintenance contract, which are for a period and therefore, the amount of income if recognized based on the period, is the correct accounting method.

20. *The Id Departmental Representative vehemently supported the order of the Id CIT(A) and further submitted a chart from which he asserted that it is not the case of the assessee that over a period the amount of advances and amount of revenue recognition are becoming equal. He further that had the assessee followed the correct system of accounting, the percentage of revenue recognition to advances received should increase. With respect to the maintenance contract, he submitted the same argument.*

21. *We have carefully considered the rival contentions. The Id CIT(A) has confirmed the advance for maintenance of elevators because of the reason that it is not refundable and assessee did not spent any amount exempt on small items on stores. He further erroneously compared it with warranty expenses. The above amount comprises of annual maintenance contract and assessee is correctly accounting it as income on the period basis. This method of accounting cannot be found fault with as assessee is regularly following the same. In view of this, we direct the Id Assessing Officer to delete the addition of Rs. 20313101/- on account of advances received.”*

11. Since similar issue and facts are permeating in this year also, therefore, following the precedence of the earlier years, we hold that the addition sustained by the Id. CIT(A) is to be deleted because assessee has been correctly accounting its income on periodical basis in view of regular accounting standard followed by it. Accordingly, grounds no.3 and 3.1 is treated as allowed.

12. In so far as the issue of disallowance of expenses claimed under the head 'advances written off, the facts in brief are that the assessee has written off certain advances amounting to Rs.11,54,061/- given to the suppliers for supply of raw material, however parties had neither supplied the material nor refunded the amount paid as advances. It has been stated by the assessee that it fails to negotiate with the parties, amount was written off as irrecoverable. Learned Assessing Officer has disallowed the same by holding that it has failed to satisfy the conditions of the Section 36(2).

13. Ld. CIT (A) has confirmed the said addition on the ground that no proper application could be filed and no evidence was furnished to substantiate the claim.

14. After hearing both the parties, we find that the main reason for making the disallowance by the Assessing Officer was that this amount was never form part of the income; therefore, it failed the conditions given in Section 36(2). Here, the assessee has given an advance for supply of material which neither supplied nor the amount paid could be recovered. Such a claim cannot be disallowed as a bad debt, and therefore, to hold that condition of Section 36(2) has not been satisfied would be wholly erroneous. The claim has to be allowable u/s. 37(1) r.w.s. 28 of the Act, being the loss incurred in carrying out the operation of the business. This principle is covered by the judgment of Hon'ble Supreme Court in the case of CIT vs. Mysore Sugar Co. Ltd., reported

in 46 ITR 649 (SC). Accordingly, grounds no.4 and 4.1 as raised by the assessee is allowed.

15. Similarly, in so far as the disallowance of TDS recoverable written off and rent deposit written off in the books, same reasoning has been given by the Assessing Officer as well as Id. CIT(A).

16. In so far as TDS amount written off on account of its non recoverability from the customers, it has been stated that customers had deducted tax at source services provided by the assessee and in earlier years also certain payment for services of the assessee were withheld by the customers which were equivalent to the TDS amount. The assessee had booked the same in TDS recoverable amount under the books of account. However, the customers neither provided the TDS certificates nor deposited the same in the Tax Department which were shown to be evident from 'form 26AS'. The assessee has taken up the matter with respect to customers and once the payment could not be received the assessee has write off the balance in its books of account. It was contended that the assessee has disclosed the income pertaining the aforesaid debtors in the earlier years, and therefore, it is bad debt allowable u/s.36(1)(vii) r.w.s. 36(2). Once the aforesaid facts has not been disputed either by the Assessing Officer or by the Id. CIT(A), we do not find any reason as to why such a bad debt should not be allowed because if the assessee has booked the amount of TDS recoverable in its books of account

and is offered for its income this writing off the same from the books of account when it was not recoverable same has to be allowed in terms of Section 36(1)(vii) r.w.s. 36(2). Accordingly, this issue is also decided in favour of the assessee.

17. In so far as the disallowance of Rs.39,732/- on account of rent deposit written off, the relevant facts are that assessee was in possession of the rented premises at Shree Bankey Bihari Lal Board Mills, C-33/2, Industrial Area, Meerut Road, Ghaziabad till the year 2005, from where the business activities were carried on. The assessee had payment of Rs.90,000/- as refundable security deposit as per the term of contract which was refundable at the time of vacation of the premises. The aforesaid premises was vacated by the assessee in the year 2005 and only deposit to the extent of Rs.50,268/- was refunded and the balance amount Rs.39,732/- was deducted on account of deduction of repair expenses incurred by the landlord on such premises. The assessee had disputed its liability for repairs and accordingly had not charged the amount as 'repair expenses' in the books of account and once the negotiation failed with the landlord assessee has written off in the books of account. Both learned Assessing Officer and Id. CIT(A) have held that conditions prescribed u/s.36(2) are not satisfied. In any case, if the amount withheld by the landlord from the security deposit of Rs.39,732/- on the ground that certain repair expenses have been incurred by the landlord on such premises which has not been claimed by the assessee in its books of account then benefits arising out

of such repairs having been enjoyed by the assessee exclusively for carrying out its business activities has to be allowed as deduction because it falls in the nature of expenditure and repairs. If the amount shown as refundable deposit has not been received as stated to be spent on repairs without debiting the same to the P&L account then writing off of such an amount has to be allowed as deduction and it cannot be held that conditions of Section 36(2) requires to be fulfilled.

18. Lastly, on account of 'Excess deposit of TDS' written off, it has been stated that assessee while depositing the TDS deducted from the salaries to the employees inadvertently paid excess amount of Rs.1,648/- over and above the amount deducted as TDS. However, when the assessee came to know its mistake, it had to recover the same from the department. Learned Assessing Officer held that TDS amounts cannot be claimed as business losses and disallowed the same which has been confirmed by the ld. CIT(A) also. If it is not in dispute that excess TDS has been deposited and could not be recovered from the Department, then same has to be allowed u/s.37(1) r.w.s. 28 of the Act. Accordingly, the same is directed to be allowed.

19. The issue of levy of interest under various sections has not been argued, and therefore, same is treated as not pressed.

20. In the result, the appeal of the assessee is allowed and Revenue's appeal is dismissed.

21. In so far as the Revenue's appeal in ITA No.4708/Del/2014 following grounds have been raised:-

"1. On the facts and in the circumstances of the case, the ld. CIT(A) erred in admitting additional ground of appeal which the assessee had neither raised at the stage of scrutiny proceedings nor in its revised return and directing the Assessing Officer to verify the claim of the appellant from its record and allow depreciation on the goodwill."

22. Thus, the only ground raised by the Revenue is that the ld. CIT(A) has erred in admitting the additional ground of appeal which was not raised during the course of the assessment proceedings nor in the revised return. Here, in this case, the assessee has filed an application u/s.154 on the ground in the first appeal filed before the ld. CIT(A) the assessee has taken an additional ground in respect of claim of depreciation of goodwill which could not be adjudicated. Ld. CIT(A) held that inadvertently this ground could not be adjudicated and after following the judgment of Hon'ble Supreme Court in the case of NTPC Ltd. vs. CIT, reported in (1998) 229 ITR 383, and judgment of Hon'ble Delhi High Court in the case of Areva T&D India Ltd. vs. DCIT in ITA No.315/2010 allowed the admissibility of the additional ground. On the merits, he followed the judgment of Hon'ble Supreme Court in the case of **CIT vs. Smiff Securities Ltd., reported in (2012), 348 ITR 302 (SC)** that depreciation on intangible assets, viz., goodwill is an allowable expenses. It

has been informed by the ld. counsel for the assessee that Hon'ble Delhi High Court in the case of the assessee in the Assessment Year 2003-04 has allowed the depreciation on goodwill following the judgment of Hon'ble Supreme Court in the case of **CIT vs. Smiff Securities Ltd., (2012) 348 ITR 302 (SC)**. In support, he filed the copy of the judgment dated 15.10.2015 passed in ITA No.305/2015.

23. After hearing both the parties, we find that such an additional ground raised by the assessee before the ld. CIT(A) was purely a legal ground admissible in view of the judgment of Hon'ble Supreme Court in the case of **CIT vs. Smiff Securities Ltd. (supra)** that depreciation has to be allowed on account of intangible assets. Accordingly, depreciation of WDV of the goodwill was allowed. Since both on the issue of admissibility and on the issue of deprecation the matters stands covered, we do not find any substance on the ground by the Revenue and the same is dismissed.

24. In the result, the appeal of the assessee is allowed and both the appeals of the Revenue are dismissed.

Order pronounced in the open Court on 17th September, 2018.

Sd/-
[G.D. AGRAWAL]
PRESIDENT

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 17th September, 2018

PKK: