

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
**Before Shri Abraham P. George, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member**

आयकर अपील सं./I T.A. No. 709/Mds/2018
निर्धारण वर्ष/**Assessment Year:2012-13**

The Deputy Commissioner of
Income Tax, Corporate Circle 2(1),
Room No. 511, 5th Floor, Wanaparthy
Block, 121, M.G. Road, Chennai – 34.

M/s. ETA General Pvt. Ltd.,
Vs. No. 71, Sterling Road,
Nungambakkam,
Chennai 600 0034.
[PAN:AAACE6650P]

(Appellant)

(Respondent)

अपीलार्थी की ओर से / Appellant by : Shri Clement Ramesh Kumar, Addl. CIT
प्रत्यर्थी की ओर से/Respondent by : Shri G. Baskar, Advocate
सुनवाई की तारीख/ Date of hearing : 30.07.2018
घोषणा की तारीख /Date of Pronouncement : 12.10.2018

आदेश / O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) 6, Chennai dated 30.11.2017 relevant to the assessment year 2012-13. The only effective ground raised in the appeal of the Revenue is that the Id. CIT(A) has erred in deleting the disallowance of provision of service commission of ₹.3,96,54,222/-.

2. At the outset, the Id. Counsel for the assessee has submitted that similar issue was subject matter in appeal before the Tribunal in assessee's own case for earlier years and vide its order dated 05.10.2016, the Tribunal

has held that the commission provided in the year of sales should be allowed and remitted the matter back to the file of the Assessing Officer. Accordingly, after due verification, the Assessing Officer has allowed the provision of service commission while giving effect to the order of the Tribunal. Under these facts and circumstances, the Id. CIT(A) has observed that that the assessee itself written off the excess amount so far provided in the assessment years 2013-14 and 2015 and if the amounts disallowed are sustained as a mere provision, then the amount written off in the subsequent years should be deleted to the extent they were assessed in the earlier years. Since the Assessing Officer himself has allowed the provision for service commission, the Id. CIT(A) deleted the disallowance.

3. Per contra, the Id. DR submitted that the order of the Tribunal dated 05.10.2016 has not attained its finality since the Department preferred further appeal before the Hon'ble Madras High Court. It was further submitted that to allow the claim of service charges as soon as assessee makes sales to its dealers even though as admitted by the assessee, part of service commission is reversed after three years on account of non-receipt of sale invoices and installation charges from its dealers, which shows that liability is only contingent and pleaded that the order of the Id. CIT(A) should be reversed.

4. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. The only dispute in this appeal is with regard to the disallowance of provision of service commission of ₹.3,96,54,222/-. In the appeals for the assessment years 2008-09 to 2011-12 filed by the Revenue, similar issue was adjudicated by the Tribunal vide its order dated 05.10.2016, wherein the Tribunal has observed as under:

“4. We have heard both the parties and perused the material on record. The main contention of the ld. D.R is that the Service Commission is only a provision made in the books of accounts and it was not actually incurred. On the other hand, ld. A.R submitted that the assessee has been following the same system of book keeping consistently from year to year and this Sales Commission embedded to the sales. Whenever assessee makes the sales corresponding liability attached to the assessee to maintain air conditioners in a better condition of operations for a particular period and for which the assessee is providing free maintenance warranty, which involves the cost to be borne by the assessee for which the assessee is making the provision in the books of account of assessee. Further, he submitted that when the assessee recognized the income on the sale of the air conditioners at the same time on provisional basis, provision towards services created by the assessee. According to him, the Department cannot disturb the consistent method of accounting followed by the assessee. In our opinion, if the Service Commission is directly attach to sales made by the assessee and as soon as sales are accounted corresponding service charges/commission to be incurred by the assessee to be booked in the books of account of assessee. Accordingly, we are inclined to remit the issue to the file of AO to verify the books of accounts of assessee whether the Service Commission is debited when the sales made and if the assessee charges service commission as soon as the sales is made, the claim of assessee is to be allowed, as it is related to the sales of air conditioners. With this observation, we remit the issue to the file of AO for fresh consideration.”

It emanates from the appellate order that after verification, the Assessing Officer has allowed the service commission provided in the books in the earlier years after remand from the ITAT. However, copy of such revised

assessment order passed by the Assessing Officer giving effect to the order of the Tribunal dated 05.10.2016 was not brought on record. Accordingly, the Assessing Officer is directed to verify and decide the issue afresh in accordance with law keeping in view of the decision of the Tribunal dated 05.10.2016 in assessee is own case for earlier assessment years. Just because the Department preferred further appeal against the order of the Tribunal for earlier years, we cannot take a different view until the order of the Tribunal is reversed or modified by higher forum. Therefore, in line with the order of the Tribunal, if the Assessing Officer revised the assessment by allowing the claim of disallowance of provision of service commission for earlier assessment years as observed by the Id. CIT(A), then the same should be allowed for assessment year under consideration after verification.

5. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on the 12th October, 2018 at Chennai.

Sd/-
(ABRAHAM P. GEORGE)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 12.10.2018

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.