

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” Bench, Mumbai**

**Before Shri Ravish Sood, Judicial Member
and Shri N.K. Pradhan, Accountant Member**

**ITA No.316/Mum/2013
(Assessment Year: 2009-10)**

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| M/s PBJ Industrial Electronics Pvt. Ltd. 72, BCD, Kandivali Govt. Ind. Estate, Kandivali Charkop, Kandivali (East), Mumbai – 400067 | Vs. | Income Tax Officer 9(2)-4, Mumbai. |
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PAN – AAACP2508H

(Appellant)

(Respondent)

Appellant by: Ms. Mamta Parmar, A.R
Respondent by: Shri Abi Rama Kartikiyen, D.R
Date of Hearing: 03.04.2019
Date of Pronouncement: 12.04.2019

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-20, Mumbai, dated 16.10.2012, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income Tax Act, 1961 (for short 'I.T Act'), dated 30.12.2011 for A.Y. 2009-10. The assessee assailing the order of the CIT(A) has raised before us the following grounds of appeal:

- "1. The Learned Commissioner of Income Tax (Appeals) - 20 erred on facts and in law by passing the order without giving full and proper consideration to the written submissions filed and personal verbal explanations provided during the course of the appellate proceedings*

2. *The Learned commissioner of Income Tax (Appeals) - 20 erred on facts and in law in passing the order without appreciating the facts of the case fully arid properly.*

3. Commission to Wave Form Controls Pvt. Ltd. Rs:11,26,986/-

- a. *The Learned Commissioner of Income Tax (Appeals) - 20 erred on facts and in law in confirming the addition on account of Cessation of liability u/s 41(1) on account of commission to M/s. Wave Form Controls Pvt. Ltd amounting to Rs. 11,26,986/- without realizing that liability has not ceased but it is discharged by the appellant company in the circumstances.*
- b. *The Commissioner of Income tax (A) erred in stating on line 5 of para 4.3 on page 5 of the order that "It was accepted by the appellant that there is no confirmation from the said company.*
- c. *The Commissioner of Income tax (A) erred in stating on third last line of para 4.3 on page 5 of the order that "There is no nexus of corresponding liability between the appellant and Electric Corporation of India."*

4. Disallowance of Research & Development Expenses Rs.4,18,093/-

- a. *The Learned Commissioner of Income Tax (A) erred in facts and on law in confirming the addition on account of Research & Development expenses amounting to Rs. 4,18,093/-.*
- b. *The Learned Commissioner of Income Tax (A) erred in facts and on law in stating in para 5.3 of page 6 of his order that "I find that appellant has failed to substantiate its claim before the AO and also in the appellate proceedings. Only general reply has been given without full details of payments, complete evidence of such payments. Full name and address of the employee has also not been given. In such situation, such salary expenditure cannot be presumed to be genuine one, unless proved it beyond doubt. Therefore, on account of the failure on the part of the appellant to substantiate its claim, such disallowance of expenditure is confirmed."*

5. Disallowance of Other Expenses amounting to Rs.2,38 087/-

- a. *The Learned Commissioner of Income Tax (A) erred in facts and on law in stating in para. 6 on page 7 of his order that During the course of appellate proceedings, AR has not pressed Gr. no 4 for adjudication hence, for statistical purposes, Gr. no 4 is dismissed." , which is absolutely absurd and far away from reality.*
- b. *The Learned Commissioner of Income Tax (A) erred in facts and on law in not adjudicating the ground no 4, which deals with disallowance of Rs. 2,38,087/- on account of electricity, telephone, medical and credit card (sales promotion) expenses of directors as unverifiable (25% of Total Expenditure Rs. 9,52,028).*
- c. *The Learned Commissioner of Income Tax (A) erred in facts in dismissing the ground challenging the addition of Rs. 2,38,097/-.*

d. The Learned CIT(A) erred on law and in facts in arbitrarily confirming addition of Rs. 2,38,097/- made without any proper base and valid reason, Alternatively the addition is highly excessive in nature.

The appellant craves to leave, acid, alter, edit, amend, delete any of the above grounds of appeal either in full or in parts before the final hearing of this appeal.”

2. Briefly stated, the assessee company had filed its return of income for A.Y. 2009-10 on 26.09.2009, declaring total income at Rs. 12,27,970/-. The return of income filed by the assessee was processed as such under Sec.143(1) of the I.T Act. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec.143(2).

3. The A.O during the course of the assessment proceedings *inter alia* made the following additions/disallowances in the hands of the assessee:

| Sr. No. | Particulars | Amount |
|---------|---|----------------|
| 1. | Disallowance under Sec.41(1) of the outstanding commission payable to M/s Waveform Controls Pvt. Ltd. | Rs.11,26,986/- |
| 2. | Disallowance of 25% of salary expenses of Rs.16,72,325/- | Rs.4,18,093/- |

After making the aforesaid additions/disallowances the income of the assessee company was assessed at Rs.57,57,870/-.’

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, the CIT(A) not being persuaded to subscribe to the contentions advanced by the assessee in context of the aforesaid additions/disallowances upheld the same.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorized Representative (for short ‘A.R’) for the assessee took us through the facts in context of the aforementioned additions/disallowances under consideration. It was submitted by the Id. A.R that an outstanding commission of Rs.11,26,986/- payable by the assessee to M/s

Waveform Controls Pvt. ltd. was disallowed by the A.O under Sec.41(1) of the I.T Act. It was submitted by the ld. A.R that the said commission was relatable to A.Y. 2004-05 on which TDS was deducted and deposited by the assessee in the government treasury. It was submitted by the ld. A.R that the only issue that had weighed in the mind of the A.O while adding the aforesaid amount under Sec.41(1) was that the assessee had failed to place on record the confirmation of the party to whom commission was payable. It was averred by the ld. A.R that the assessee was not in good terms with the aforementioned party viz. M/s Waveform Controls Pvt. ltd., which at the relevant point of time also owed a sum of Rs.15,22,873/- to its 'sister concern' viz. M/s Electric Corporation of India. It was submitted by the ld. A.R that the assessee pursuant to the severed relations with the aforementioned party viz. M/s Waveform Controls Pvt. Ltd. had transferred its outstanding liability of Rs.11,26,986/- due towards the said party to its 'sister concern', as a result whereof the balance receivable by the 'sister concern' from the said party stood reduced to Rs. 3,95,887/- [Rs.15,22,873/- (-) Rs.11,26,986/-]. In sum and substance, it was the claim of the ld. A.R that the outstanding liability of the assessee towards the aforementioned party viz. M/s Waveform Controls Pvt. Ltd. was transferred to its 'sister concern' i.e M/s Electric Corporation of India. In order to substantiate her aforesaid claim the ld. A.R took us through the copy of the 'ledger account' of M/s Waveform Controls Pvt. Ltd. in the 'books of accounts' of its 'sister concern' i.e M/s Electric Corporation of India. In fact, it was the claim of the assessee that pursuant to the aforesaid arrangement, while for on the one hand the assessee had discharged its liability due towards M/s Waveform Controls Pvt. ltd. and had substituted its 'sister concern' i.e M/s Electric Corporation of India for an equivalent amount in its 'books of account', while for on the other hand the amount recoverable by its

'sister concern' i.e M/s Electric Corporation of India from the said party i.e M/s Waveform Controls Pvt. ltd. was reduced to an amount of Rs.3,95,887/-. It was submitted by the ld. A.R that as the assessee had on 14.12.2011 pursuant to its aforesaid arrangement discharged its liability that was due towards M/s Waveform Controls Pvt. Ltd., therefore, it was incorrect on the part of the A.O to have concluded on the basis of self-suiting and premature observations that such liability had ceased to exist during the year under consideration i.e A.Y. 2009-10. Alternatively, it was submitted by the ld. A.R that even otherwise the A.O had not given any reason as to why the aforesaid liability was held by him to have ceased to exist during the year under consideration i.e A.Y. 2009-10. Insofar the disallowance of 25% of salary of R & D staff salary amounting to Rs.4,18,093/- was concerned, it was submitted by the ld. A.R that the lower authorities had not accorded any reason for making of such adhoc disallowance in the hands of the assessee. Apart there from, it was submitted by the ld. A.R that the A.O during the course of the assessment proceedings had never called upon the assessee to explain as to why an adhoc disallowance in respect of the aforesaid salary expenses may not be carried out. It was submitted by the ld. A.R that though the complete details of the employees along with their complete address and credentials were filed in the course of the appellate proceedings, however, the latter had wrongly observed that no such details were furnished by the assessee. In order to fortify her aforesaid contention the ld. A.R took us through a letter dated 04.10.2012 that was furnished with the CIT(A), wherein the complete details of the aforesaid employees as mentioned hereinabove were filed with him. Further, in order to buttress her aforesaid claim that the assessee had booked genuine salary expenses, it was submitted by the ld. A.R that similar expenses claimed by the assessee in the preceding

years was allowed by the A.O and no adverse inferences as regards the same was drawn by him.

6. Per contra, the ld. Departmental Representative (for short 'D.R') submitted that as the assessee had failed to substantiate the fact that the liability towards M/s Waveform Controls Pvt. Ltd. was outstanding during the year under consideration, therefore, the same was rightly disallowed by the A.O under Sec.41(1) of the I.T Act. Further, it was submitted by the ld. D.R that as the *inter se* adjustment of the aforesaid liability between the assessee and its 'sister concern' i.e M/s Electric Corporation of India had remained unverified, therefore, the matter in all fairness may be restored to the file of the CIT(A) for making necessary verifications. Insofar the disallowance of 25% of the salary expenses by the A.O was concerned, the ld. D.R relied on the orders of the lower authorities.

7. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, on a perusal of the records it is discernible that an outstanding commission on sales aggregating to Rs.11,26,986/- was payable by the assessee to its sales agent viz. M/s Waveform Controls Pvt. Ltd on 31.03.2009. Further, as claimed by the assessee the aforesaid party i.e M/s Waveform Controls Pvt. Ltd. pursuant to goods purchased from its 'sister concern' viz. M/s Electric Corporation of India, G-9, Shalimar Industrial Estate, Matunga Labour Camp, Mumbai 400019, PAN AAAFE0529L, owed a sum of Rs.15,22,873/- to it. In sum and substance, while for the assessee as on 31.03.2009 owed an amount of Rs. 11,26,986/- to the aforesaid party i.e M/s Waveform Controls Pvt. Ltd., while for the latter owed an amount of Rs. 15,22,873/- to the 'sister concern' of the assessee i.e M/s Electric Corporation of India. In fact, as stated by the ld. A.R the directors of the assessee company were partners

in the aforesaid 'sister concern' i.e M/s Electric Corporation of India. It was the claim of the assessee before the lower authorities that as M/s Waveform Controls Pvt. Ltd. was not discharging its liability towards its 'sister concern' i.e M/s Electric Corporation of India, therefore, for the said reason the amount due by the assessee towards the said party i.e M/s Waveform Controls Pvt. Ltd. was also not paid and was kept outstanding. In the backdrop of the aforesaid facts the assessee had subsequently on 14.12.2011 discharged its liability towards M/s Waveform Controls Pvt. Ltd. by passing a journal entry and transferring its liability to its 'sister concern' i.e M/s Electric Corporation of India. As a result of the aforesaid arrangement, the amount outstanding in the books of the assessee company as payable to M/s Waveform Controls Pvt. Ltd. stood reduced to Nil. Further, the amount receivable by the 'sister concern' of the assessee i.e M/s Electric Corporation of India from M/s Waveform Controls Pvt. Ltd. pursuant to the said arrangement stood reduced to an amount of Rs.3,95,887/- [Rs. Rs.15,22,873/- (-) Rs. 11,26,986/-] (Page 65) of the assessee's 'Paper book' (for short 'APB'). In our considered view the authenticity of the claim of the assessee of having entered into the aforesaid arrangement with its 'sister concern' can safely be gathered from a perusal of the copy of the 'ledger account' of M/s Waveform Controls Pvt. Ltd. as appearing in the 'books of accounts' of the 'sister concern' i.e M/s Electric Corporation of India. Apparently, now when the assessee pursuant to its aforesaid arrangement had as on 14.12.2011 discharged its liability towards M/s Waveform Controls Pvt. Ltd., therefore, it is difficult to comprehend that the said liability had ceased to exist during the year under consideration i.e A.Y 2009-10. Admittedly, the authenticity of the arrangement as per which the assessee had transferred its outstanding liability towards M/s Waveform Controls Pvt. Ltd. to its 'sister concern' i.e M/s Electric Corporation of India has not been dislodged by the revenue by placing on

record any documentary evidence which would irrefutably disprove the same. However, the genuineness of the said arrangement cannot also be accepted at the very face of it, specifically when the same had been carried out in the course of the assessment proceedings. In our considered view the veracity of the arrangement between the assessee and its 'sister concern' can safely be gathered from the fact as to whether the aforesaid party viz M/s Waveform Controls Pvt. Ltd. had acknowledged such arrangement or not. We thus in all fairness restore the matter to the file of the A.O for making necessary verification as regards the said fact. The A.O shall in the course of the set aside proceedings make necessary verifications from the aforesaid party viz. M/s Waveform Controls Pvt. Ltd. Apart there from, the A.O shall also make necessary verifications from the 'sister concern' of the assessee i.e M/s Electric Corporation of India as regards the subsequent discharge of the liability of Rs. 11,26,986/- by the assessee towards it i.e after 14.12.2011. In case either the aforesaid party i.e M/s Waveform Controls Pvt. Ltd. acknowledges the aforesaid arrangement or the outstanding liability of the assessee amounting to Rs. 11,26,986/- towards its 'sister concern' i.e M/s Electric Corporation of India had been partly/fully discharged by the assessee subsequent to its generation on 14.12.2011, then it can safely be inferred that there was no cessation of liability in the hands of the assessee during the year under consideration. In sum and substance, if either the aforesaid party i.e M/s Waveform Controls Pvt. Ltd. acknowledges the discharge of the liability of the assessee pursuant to the aforesaid *inter se* arrangement entered on 14.12.2011 between the assessee and its 'sister concern' i.e M/s Electric Corporation of India OR the assessee had subsequent to 14.12.2011 either partly/fully discharged its liability of Rs. 11,26,986/- in favour of its 'sister concern' i.e M/s Electric Corporation of India, then no addition u/s 41(1) shall be called for in the hands of the assessee.

8. Be that as it may, we are unable to comprehend as to on what basis the revenue has related the alleged cessation of liability to the year under consideration. In fact, as per Sec.41(1) a trading liability is to be held to have ceased to exist during any previous year in which some benefit in respect of such trading liability is obtained by the assessee. We find that the lower authorities without pointing out as to what benefit was obtained by the assessee during the year in respect of its liability due towards M/s Waveform Controls Pvt. Ltd., had in fact without giving any reason added the same u/s 41(1) in the hands of the assessee for the year under consideration. Rather, the assessee on 14.12.2011 by transferring its outstanding liability to the 'sister concern', had in the said year i.e A.Y. 2012-13 pursuant to the said arrangement generated a new liability towards its 'sister concern'. In sum and substance, now when the revenue has not doubted the very basis of generation of liability of the assessee towards its 'sister concern' i.e M/s Electric Corporation of India, therefore, obtaining of any benefit by the assessee in respect of its outstanding liability towards the aforesaid party i.e M/s Waveform Controls Pvt. Ltd. during the year under consideration i.e A.Y. 2009-10 cannot be summarily inferred. As the matter had been restored by us to the file of the A.O for making necessary verifications in context of the issue under consideration, therefore, in case any addition u/s 41(1) is sought to be made by him during the year under consideration, then he shall record a finding as to what benefit in respect of such trading liability was obtained by the assessee during the year i.e A.Y 2009-10. We thus in all fairness restore the matter to the file of the A.O in terms of our aforesaid observations. The **Ground of appeal No. 3** is allowed for statistical purposes.

8. We shall now advert to sustaining of the disallowance of salary expenses of Rs.4,18,093/- by the CIT(A). We find that the assessee had claimed salary expenses of Rs.16,72,375/- in respect of its employees

whose services were being availed for its research and development work. The A.O on an adhoc basis disallowed 25% of the salary expenses and made an addition of Rs.4,18,093/-. In fact, the A.O had not given any cogent reasoning for resorting to such adhoc disallowance. On appeal, the CIT(A) had endorsed the disallowance of the salary expenses stating that the assessee had failed to substantiate its claim before the A.O as well as before him. We find that the said observation of the CIT(A) is found to be perverse, as the assessee had during the course of the appellate proceedings placed on record its submissions dated 14.10.2012 along with the complete details of the 5 employees and their respective salaries viz. (i) Mr. John Fernandes:(Rs.3,56,044.88); (ii) Mr. Minesh Bhatakar: (Rs.3,76,226.97); (iii) Mr. Shrikant D. Panchal: (Rs.1,87,686/-); (iv) Mr. Shital Raja Patil:(Rs.3,26,210.76); and (v) Mr. Ramesh Memada: (Rs.4,26,209.67), alongwith their income tax credentials and the TDS details. We thus not being able to persuade ourselves to subscribe to the observations of the lower authorities, who without according any justifiable reason had most arbitrarily resorted to a disallowance of 25% of the salary expenses paid to the employees whose services were availed by the assessee in its research and development work, delete the disallowance of Rs.4,18,093/- sustained by the CIT(A). The **Ground of appeal No. 4** is allowed.

9. The **Ground of appeal 1 and 2** being general in nature are dismissed.

10. The ld. A.R during the course of hearing of the appeal submitted that she was not pressing ground of appeal No. 5. In terms of the said concession of the ld A.R the **Ground of appeal No. 5** is dismissed as not pressed.

11. The appeal of the assessee is allowed.

Order pronounced in the open court on 12.04.2019

Sd/-

Sd/-

(N.K. Pradhan)
ACCOUNTANT MEMBER

(Ravish Sood)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 12.04.2019
Ps. Rohit

आदेश की 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, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

**आयकर अपीलीय अधिकरण, मुंबई / ITAT,
Mumbai**

