

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND

SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2641/Bang/2017
Assessment Year : 2013-14

The Deputy Commissioner of Income Tax, Circle – 1 (1) (1), Bangalore.	vs.	M/s. Adcock Ingram Limited, 49D, Bommasandra Industrial Area, Anekal Tauk, Bangalore – 560 099.
APPELLANT		RESPONDENT

Assessee by	:	Shri L. Bharath, CA
Revenue by	:	Ms. Neera Malhotra, CIT (DR)

Date of hearing	:	04.04.2019
Date of Pronouncement	:	16.04.2019

**ORDER**

*Per Shri Pavan Kumar Gadale, Judicial Member*

The revenue has filed an appeal against the order of Commissioner of Income-tax (Appeals)-1, Bangalore passed u/s. 143(3) and 250 of IT Act.

2. The revenue has raised the following grounds of appeal.

*“1. The order of the Learned CIT (Appeals), in so far as it is prejudicial to the interest of revenue, is opposed to law and the facts and circumstances of the case.*

*2. The Ld. CIT (A) erred in allowing forfeiture of security deposit as revenue expenditure, even though the same is capital in nature.*

*3. The Ld. CIT (A) erred in allowing the assessee's appeal on the claim of expenses in respect of payment made to M/s H.K. Technologies Ltd. for business purpose only, by admitting additional evidence in the form of MOU between assessee and M/s H.K. Technologies in violation of Rule 46A of the I.T. Rule, 1962 and where the Hon'ble Apex Court in its judgment in the case of Shri Lachminarayan Mandanlal Vs. CIT in Civil Appeal No. 20 of 1969 has held that mere existence of an agreement between the assessee and its selling agent or the payment of certain amounts as commission does not bind the Assessing officer to hold that the payments were made exclusively and wholly for the purpose of assessee's business.*

*4. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the Ld. CIT (A) be reversed and that of the Assessing Officer be restored.*

*5. The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of appeal.”*

3. Brief facts of the case are the assessee is engaged in the business of manufacture of pharmaceutical formulations and providing outsourced formulation manufacturing services and it services the domestic and export markets with one of its key customers being Adcock Ingram Healthcare (Pty) Limited, South Africa ('AIHPL') and filed the return of income on 18.11.2013 disclosing total income of Rs. 43,62,66,300/-. Subsequently the case was selected for scrutiny and notice u/s. 143(2) was issued. In compliance Id. AR of assessee appeared time to time and made submissions. The Assessing Officer found assessee has international transactions and the matter was referred to the TPO and the TPO has passed the order u/s. 92CA with TP adjustment of Rs. 10,52,95,928/-. In respect of the other disallowance, the Assessing Officer has disallowed an amount of Rs. 42,80,810/- as provision for doubtful advance and also expenditure incurred without deducting TDS Rs. 13,47,737/- and the assessee has claimed loss on sale of asset Rs. 4,42,017/-. Similarly, the assessee has made payments to M/s. H K Technologies Limited of Rs. 1,97,66,101/- and the assessee was asked to prove the genuineness of these payments made by demonstrating the services provided by M/s. H K Technologies Limited to the assessee company and the Assessing Officer disallowed the claim u/s. 37 as the expenditure not incurred solely for the purpose of business and there is no debit notes to show the work done by them for getting approvals from the authorities and assessed the total income and passed the draft assessment order u/s. 143(3) r.w.s. 144C determining the total income of Rs. 56,73,98,890/-. Whereas against the Draft assessment order, the assessee filed a letter dated 19.01.2017 of filing the appeal before CIT(A) and therefore the Assessing Officer passed the final assessment order u/s. 143(3) r.w.s. 144C determining the total income of Rs. 56,73,98,890/-.

4. Aggrieved by the order, the assessee filed an appeal before CIT(A) whereas the CIT(A) having considered the submissions and the agreements filed by the assessee based on the provisions and granted the relief.
5. Aggrieved by the order of CIT(A), the revenue is in appeal before us. The Id. DR submitted that the assessee in respect of payment made to M/s. H K Technologies Limited has filed the Memorandum of Understanding between the assessee and M/s. H K Technologies Limited. The Id. DR further submitted that it was filed in course of hearing and there is violation of provision of Rule 46A of IT Rules. CIT(A) has not considered the findings of the Assessing Officer and dealt with the material filed by the assessee and prayed for allowing the appeal. The Id. DR of revenue also filed a letter dt. 29.11.2018 from the Assessing Officer that the documents referred in respect of claim of payment made to H K Technologies Limited were not present in the record. Contra, the Id. AR of assessee supported the order of CIT(A).
6. We heard the rival submissions and perused the record. We found strength in the submissions of Id. DR of revenue that the CIT(A) has admitted the additional evidence i.e. MoU between assessee and H K Technologies Limited and the AO was deprived to verify and examine the same. The Id. DR submitted that these documents were not filed before the Assessing Officer. Therefore considering the facts and the provisions of Rule 46A, we consider appropriate to restore this matter to the file of CIT(A). Accordingly we restore the entire disputed issue to the file of CIT(A) and shall call for the information from the AO and also the assessee shall cooperate in submitting the details if any. Accordingly the grounds of appeal of revenue are allowed for statistical purposes.
7. In the result, the appeal filed by the revenue is allowed for statistical purposes. Order pronounced in the open court on the date mentioned on the caption page.

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Sd/-  
(PAVAN KUMAR GADALE)  
Judicial Member

Bangalore,  
Dated, the 16<sup>th</sup> April, 2019.  
/MS/

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|---------------|------------------------|
| 1. Appellant  | 4. CIT(A)              |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT        | 6. Guard file          |

By order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Bangalore.