

IN THE INCOME-TAX APPELLATE TRIBUNAL "C" BENCH MUMBAI

BEFORE SHRI G.S. PANNU, VICE-PRESIDENT AND
SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 4985/Mum/2017 (Assessment Year 2012-13)

DCIT Circle-7(3)(2) Room No. 669A, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	M/s Polycom Unified Communications Solutions Pvt. Ltd., 1102, 11 th Floor, Tower B, Peninsula Business Park, S.B. Road, Parel, Mumbai-400013 PAN: AAECD1892Q
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Appellant

Respondent

Appellant by : Shri Awungshi Gimson (CIT-DR)

Respondent by : Shri Salil Kapoor (AR)

Date of Hearing : 30.04.2019

Date of Pronouncement : 22.05.2019

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by revenue under section 253 of Income-tax Act ('Act') is directed against the order of Id. Commissioner of Income-tax (Appeals)-6, Mumbai [hereinafter referred as Id. CIT(A)] dated 24.04.2017 for Assessment Year 2012-13. The revenue has raised the following grounds of appeal:

I. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) [ailed to take the contents of the remand report into consideration before passing the appellate order, is perverse in nature.

II. On the facts and in the circumstances of the ease, the Ld. CIT(A) erred in deleting the additions made by the AO on account of cost of fixed assets purchased during the) assessment under consideration at Rs.5,60,40,964/-

III. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the adhoc disallowances @ 25 % made by the AO on account of

Salary, contribution to various funds and workman & Staff welfare expenses of Rs.5,86,48,850/-.

IV. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the adhoc disallowance @ 25% made by the AO on account of Salary, Contribution to various funds & workman & Staff Welfare Expenses of Rs.5,86,48,850/-

V. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the ad~ disallowance @25% made by the A.O. on account of Training & Seminar Expenses of Rs.11,33,890/-.

VI. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the additions @ 100% made by the AO on account of business promotion & advertisement expenses of Rs.62,74,237/-.

VII. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the adhoc disallowance @ 25% made by the AO on account of travelling and conveyance of Rs.50,74,237/-

VIII. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the disallowance @ 100% made by the AO on account of legal and professional fees of Rs. 1,15,14,850/-.

IX. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the adhoc disallowance @ 25% made by the A.O. on account of Facilities maintenance expenses of Rs. 22,11,991/-

X. On the facts and circumstances of the case, the Ld. CIT (A) erred in deleting the disallowance @ 25% made by the AO on account of Utility expenses of Rs. 16,45,628/-.

XI. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting disallowance @ 100% made by the AO on account of Outsource service cost expenses of Rs.12,20,167/-.

XII. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the adhoc disallowance @ 25% made by the AO on account of freight expenses of Rs.8,10,155/-

XIII. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the adhoc disallowance @ 25% made by the AO on account of Recruitment & Relocation expenses of Rs.4,58,812/-.

2. Brief facts of the case are that the assessee is a private limited company, filed its return of income under section 1394) on 30.11.2013 declaring total income at Rs. 7,16,97,530/-. The return of income was selected for scrutiny. During the assessment proceedings the assessing officer recorded that despite providing the reasonable opportunity the assessee not furnished the books of accounts and no compliance of various the notices were made. The assessing officer after examining the balance sheet for the year ended on 31/03/2012 made the following disallowances:

Sr.No.	Particulars	Amount/deduction claimed	Disallowed by AO
(a)	Addition to Fixed Assets	Rs. 5,60,40,964/-	20%
(b)	Salary expenses & Staff Welfare expenses	Rs. 22,89,70,127/-	25%
(c)	Training & Seminar Expenses	Rs. 45,35,560/-	25%
(d)	Business Promotion & Advertisement expenses	Rs. 62,74,237/-	100%
(e)	Traveling & Conveyance expenses	Rs. 2,01,94,223/-	25%
(f)	Repair & maintenance expenses	Rs.8,62,957/-	25%
(g)	Legal & Professional fees expenses	Rs. 1,15,14,850/-	100%
(h)	Facilities Maintenance expenses	Rs. 88,47,964/-	25%
(i)	Utilities expenses	Rs. 65,82,514/-	25%
(j)	Outsourced service cost expenses	Rs. 12,20,167/-	100%
(k)	Freight expenses	Rs. 32,40,662/-	25%
(l)	Foreign Exchange Loss	Rs. 1,30,19,006/-	100%
(m)	Recruitment & Relocation expenses	Rs. 18,35,250/-	25%

3. On appeal before the Id. CIT(A), all the disallowance was deleted. Aggrieved by the order of Id. CIT(A), the revenue/Assessing Officer has filed the present appeal before us.

4. We have heard the submission of Id. Department Representative (DR) for the revenue and Id. Authorized Representative (AR) of the assessee and have gone through the orders of authorities below.
5. Ground No. 1 relates to non-consideration of remand report by Id. CIT(A). The Id. DR for the revenue submits that Id. CIT(A) that all the additions/disallowance were deleted by Id. CIT(A) without appreciating the remand report. The Id. DR for the revenue prayed that matter may be restored back to the file of Id. CIT(A) to consider the remand report and pass the order afresh.
6. On the other hand, the Id. AR of the assessee supported the order of Id. CIT(A). The Id. AR of the assessee submits that the Assessing Officer passed the assessment without giving sufficient and fair opportunity to the assessee. The assessee was never issued show-cause notice on the various disallowances made by Assessing Officer. The Assessing Officer disallowed various expenses either 100% or on adhoc basis @ 25% without specifying any reason. The Id. AR further submits that during the hearing of appeal, the assessee furnished detailed submissions along with copy of bills and vouchers and also filed application for additional evidence. Before admitting the additional evidence, the Id. CIT(A) examined the assessment record and noted that assessee was only asked to produce the books of account vide order-sheet entry dated 20.01.2015 and no second opportunity was provided to the assessee.

After considering the assessment record, the submission and additional evidences furnished by assessee were admitted and forwarded to the Assessing Officer for his remand report, the assessee was also directed to appear before the Assessing Officer on 27.02.2017. The remand report of the Assessing Officer was received on 21.04.2017. The Id. CIT(A) after considering the remand report granted relief to the assessee.

7. We have considered the rival submissions of the parties and have gone through the orders of authorities below carefully. We have noted that during the first appellate proceeding, the assessee submitted that the Assessing Officer neither issued any show-cause notice nor give any opportunity and submits that the adhoc disallowance are liable to be deleted. The assessee also furnished the additional evidence under Rule 46A. The Id. CIT(A) after perusing the assessment record recorded that vide order-sheet entry dated 20.01.2015, the assessee was asked to produce the books of account. No second opportunity was granted by the Assessing Officer. The Assessing Officer has not issued any show-cause notice before making various disallowances. The Id. CIT(A) admitted the additional evidence which consist of various bills and vouchers and forwarded the same to the Assessing Officer with the direction to the assessee to appear before the Assessing Officer on 27.02.2017 along with the necessary bills and vouchers. The assessee

reported to the Id. CIT(A) that they appeared before the Assessing Officer on the date fixed along with bills and vouchers and complete set of audited books of account. The Id. CIT(A) recorded that Assessing Officer has not furnished his remand report. Therefore, vide letter/order dated 12.04.2017 was called along with assessment record. The Assessing Officer attended the proceeding before the Id. CIT(A) along with assessment record. On perusing of record, the Id. CIT(A) recorded that on the given date, the assessee had appeared before the Assessing Officer along with all bills, vouchers and audited accounts. The Assessing Officer admitted that no discrepancy was found in the bills, vouchers and books of account maintained by assessee and all necessary bills produced were verified. The Assessing Officer undertook to furnish remand report within next two working days. On 21.04.2017, the Assessing Officer furnished the remand report. The Id. CIT(A) has recorded the contents of remand report in para-6.1.15 at page no. 23 to 34 of his order. The copy of remand report was furnished to the assessee for their comment. The assessee furnished their response to the remand report. The comments/reply of assessee is recorded by Id. CIT(A) in para-6.1.6 at page no. 35 to 38 of his order.

8. We have noted that after recording the contents of remand report and the reply/objection of assessee, the Id. CIT(A) proceeded to adjudicate the various other grounds of appeal raised by assessee. In our view, the

ground of appeal raised by Assessing Officer/revenue has no leg to stand that remand report was not considered by Assessing Officer. In the result, ground no.1 of the appeal is dismissed.

9. Ground No.2 relates to deleting the addition on account of fixed asset. The Id. DR for the revenue supported the order of Assessing Officer. The DR further submits that Id. CIT(A) accepted the explanation of assessee despite bringing adverse remand report in respect of fixed asset by the Assessing Officer. The Id. DR for revenue prayed that the issue may be restored to the file of Assessing Officer for fresh adjudication. On the other hand, the Id. AR of the assessee submits that the Id. CIT(A) granted relief to the assessee after appreciating the evidence and the remand report furnished by Assessing Officer. There is only mistake in dates of invoices which were explained to the Id. CIT(A).
10. We have considered the contention of both the parties. In the balance-sheet, the assessee has shown the addition of Rs. 5,60,40,964/-, which consist of Rs. 5,10,69,423/- on account of computers, Rs. 38,44,488/- on account of lease hold improvements, Rs. 11,20,820/- on account of office equipments and Rs. 6,233/- on account of furniture & fixtures. The Assessing Officer made addition holding that the assessee failed to produce the original copy of bills for purchase of asset and no copy of bills for verification of genuineness were produced. The Assessing Officer, therefore, made the addition of Rs. 97,68,069/-. Before the Id.

CIT(A), the assessee submitted that the assessee has shown the addition of Rs. 5,60,40,964/- to the fixed assets during the relevant period and claimed depreciation of Rs. 2,24,93,514/- under section 32. The Assessing Officer failed to consider that assessee has not charged the aforesaid amount as revenue expenses in its Profit & Loss A/c. The assessee by following the standard accounting policy capitalized the said addition to the fixed assets and claimed depreciation. The assessee prayed that disallowance made by Assessing Officer on account of addition of cost should be deleted as the amount was not claimed as deduction from the taxable income. On the submission of assessee, the Assessing Officer furnished his remand report on 21.04.2017. In the remand report, the Assessing Officer stated that assessee made addition to the fixed asset namely computers, furniture and fixture and office equipment. On account of addition on computer, the Assessing Officer identified discrepancies in four receipt with regard to receipt for invoices no. 1112/126089 and for invoices no. 1112/126090 both dated 29.11.2011 for Rs. 77,000/- each, invoices no. 1112/135293 & invoices no. 1112/135293 both dated 10.01.2012 for Rs. 2,000/-. The Assessing Officer on the above discrepancies justified the disallowance of Rs. 97,68,069/-. The second addition to fixed asset relates to furniture & fixtures. The Assessing Officer in his remand report accepted that all invoices is duly verifiable and certified by Auditors. For addition to

office equipments, the Assessing Officer in his remand report stated that on verification, it was noted that equipments of Rs. 48,16,877/- were purchased in Financial Year 2008-09. Further, Polycom Inc. invoice dated 16.12.2011 for Rs. 49,92,982/- has been put to use on 15.12.2011. The shipping of goods/asset would have taken a reasonable time from USA to India. The assessee has surprisingly used the goods prior to purchase. Similarly, the goods purchased from the same consignee dated 28.12.2011 for Rs. 6,70,446/- have been put to use on 31.12.2011, which shows that goods were shipped and installed in Gurgaon, India within less than three days which is unbelievable. The Id. CIT(A) deleted the entire addition holding that the Assessing Officer has given his remand report to justify the high pitch assessment. Before us, the Id. AR of the assessee has not substantiated as to how there was a mismatch of date. The Assessing Officer has specifically brought out the discrepancies in acquisition of various assets. The Assessing Officer has only accepted that invoices regarding furniture & fixtures are verifiable. Therefore, in our view, the Id. CIT(A) is not justified in deleting the entire addition without specifying as to how the assets were put to use either before the date of purchase or installed within three days from shipping USA to Gurgaon, India. Thus, this ground of appeal is resorted to the file of Assessing Officer to consider the issue afresh after verification of the facts and the evidences about the acquisition of the asset and pass the

order in accordance with law. Needless to say that before passing the order, the Assessing Officer shall grant opportunity to the assessee. In the result, this ground of appeal is allowed for statistical purpose.

11. Ground No. 3, 4, 5, 7, 9, 10, 12 & 13 relates to deleting the adhoc disallowance @ 25% on account of salary, contribution to various funds, Training & Seminar, Travelling & Conveyance, Facilities Maintenance, Utility Account Expenses, Freight Expenses and Recruitment & Relocation Expenses. The Id. DR for the revenue submits that during the assessment, the assessee has not substantiated the expenses nor furnished any documentary evidence to substantiate the expenses. The Assessing Officer has made reasonable disallowance in absence of verifiable evidence. On the other hand, the Id. AR of the assessee submits that the Assessing Officer made adhoc disallowance without assigning any specific reason. The Id. CIT(A) after considering the remand report find that the Assessing Officer has not specified any discrepancies and considering the remand report deleted the entire addition/disallowance.

12. We have considered the rival submission of the parties and gone through the orders of authorities below. The Assessing Officer made addition on adhoc basis on deduction on account of salary, contribution to various funds, Training & Seminar, Travelling & Conveyance, Facilities Maintenance, Utility Account Expenses, Freight Expenses and

Recruitment & Relocation Expenses. Before making addition, the Assessing Officer concluded that the assessee has not filed any documentary evidence nor furnished any details, therefore, adhoc disallowance on account of all these expenses @ 25% disallowed. Before the Id. CIT(A), the assessee furnished detailed submission along with documentary evidences as stated above, the submission and the documentary evidences of assessee was forwarded to the Assessing Officer for his remand report. The Assessing Officer furnished his remand report on 21.04.2017. The Id. CIT(A) after perusing remand report concluded that the addition on the presumption that no bills or voucher or books of account produced cannot be sustained on adhoc basis. The Assessing Officer made disallowance without specifying any specific incidence, such disallowances are not sustainable as per the provisions of law.

13. We have independently examined the disallowances. The Assessing Officer made 25% disallowance on account of salary, contribution to various funds and workmen and staff welfare. During the remand report, the assessee furnished details of salary and allowances, furnished copy of Form-16 issued to certain employee as supporting evidences for their salary paid during the year. The assessee also furnished the break-up of contribution made to various funds. The assessee also furnished details of gratuity, PF contribution, PF Admin. charge, ESI contribution, EDLI

contribution. Details of Staff Welfare Expenses, Seminar Expenses, which is duly recorded by Id. CIT(A) in para-6.1.5 in its order. The Assessing Officer objected about the allowance by expressing his view that stock options have been made to the employees, which have been added to the total income of respective employee as perquisite. Under which head the payments is made is not verified. For payment of HRA made to three employees, the Assessing Officer stated that no evidence is furnished by these employees as to whom the HRA has been paid. The Assessing Officer further stated that working of gratuity is not furnished. For claim of PF contribution, the Assessing Officer objected that same is subjected to the provision of section 43B and that the assessee has not furnished the proof of payment. For Staff Welfare Expenses, the assessee has not furnished the details of employees and to whom the payments have been made for use of meal and entertainment coupon. No detail of Star Award was furnished. The purpose of payments for Star Award is not explained. We have noted that the Assessing Officer has not disputed the genuineness and admissibility of expenses rather disputed that quantum of the expenses. The Assessing Officer during the remand report has not sought such explanation about the quantum of expenses from the assessee and in the remand report insisted to sustain the addition. In our view, without specifying the genuineness of expenses, the adhoc disallowance is not justified.

Therefore, we do not find any merits in the ground no. 3, 4, 5, 7, 9, 10, 12 & 13, which we dismissed.

14. Ground No. 6, 8 & 11 relates to deleting the 100% addition on account of Business Promotion & Advertisement Expenses, Legal & Professional Fees and Outsource Service Cost Expenses respectively. The Id. DR for the revenue submits that during the assessment, the assessee has not substantiated the expenses nor furnished any documentary evidence to substantiate the expenses. The Assessing Officer has made disallowance in absence of any explanation or in absence of verifiable evidence. On the other hand, the Id. AR of the assessee submits that the Assessing Officer made addition without any specific reason. The Id. CIT(A) after considering the remand report find that the Assessing Officer has not specified any discrepancies and considering the remand report deleted the entire addition/disallowance.
15. We have considered the submission of both the parties and have gone through the orders of lower authorities. The Assessing Officer made the addition by making 100% disallowance holding that no proof, bill or voucher was produced. For business promotion and advertisement Expenses and that no TDS under section 194C was deducted. For Professional Fees & Travelling Expenses, the Assessing Officer concluded that no details were furnished. For Outsource Expenses, the assessee has not deducted TDS. Therefore, the Assessing Officer has

made 100% addition on these expenses. The Id. CIT(A) deleted the entire addition holding that no discrepancies in the vouchers and books of account was noticed by Assessing Officer and that all these facts were verified from the assessment record that all the vouchers and books were produced before Assessing Officer.

16. We have examined all these additions/disallowances. For legal & professional expenses, the Assessing Officer in his remand report stated that assessee submitted part wise details of legal & Professional expenses incurred during the year along with the details of TDS. The assessee also furnished the all invoices of parties having major amounts. On verification of invoices and TDS, the Assessing Officer tried to justify the payment due to short deduction of TDS. The Assessing Officer has not doubted the genuineness of professional expenses. No adverse material was brought on record by Assessing Officer. Therefore, in absence of genuineness of legal and professional expenses, the 100% disallowance is not justified.

17. For business promotion expenses, the Assessing Officer in his remand report stated that the assessee furnished party-wise details along with details of TDS. The assessee under this head, claimed expenses relating to the gift item. The assessee furnished invoices of parties having major amounts and invoices on sample basis for other parties. The Assessing Officer objected the allowance on the ground that no nexus of business

activities and that business expediency have not been established and recommended 20% of disallowance. The Assessing Officer not doubted the genuinity and the identity of the recipient. The assessing officer has not examined the percentage of expenses vis-à-vis the business turnover of the assessee. Moreover, the items on the assessee made expenses for business promotion consist of Pen holders, Printed folders, Leaflets, Pens, Mugs, Black Mugs and Boxes. In our view the assessee has made genuine business promotion expenses and the disallowance was not justified.

18. For outsources service cost the assessing officer in his remand report stated that the outsource service cost was claimed to have been incurred on centralized training expenses. The said expenses was made to the associated enterprises M/s Polycham Inc in USA, which had conducted the training. The TDS provisions are not applicable, so no TDS was made. The assessee furnished the details of training program and the breakup and details of the expenses along with the details of the participants, venue and date. The assessing officer suggested disallowing 25% of such expenses. We have seen that when the activity of the training program and the genuineness of the expenses is not doubted by the assessing officer no disallowances of such training of outsource service cost is justified. Moreover, the assessee has paid the expenses to its associated enterprises, whose identity is not in dispute. In

our view the assessing officer was not justified in making such disallowance. In the result the ground No. 6, 8 & 11 raised by the revenue are also dismissed.

19. In the result, appeal of the revenue is partly allowed.

Order pronounced in the open court on 22/05/2019.

Sd/-

G.S. PANNU

VICE-PRESIDENT

Mumbai, Date: 22.05.2019

SK

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "C" Bench, ITAT, Mumbai
6. Guard File

Sd/-

**PAWAN SINGH
JUDICIAL MEMBER**

BY ORDER,

**Dy./Asst. Registrar
ITAT, Mumbai**