

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "C", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1677/PUN/2011
निर्धारण वर्ष / Assessment Year : 2007-08

Atlas Copco (India) Limited,
Sveanagar, Dapodi,
Pune – 411 012
PAN : AAACA4074D

ACIT, Circle-8,
Pune
Vs.

(Appellant)

(Respondent)

Assessee by

Shri R. Murlidhar, Advocate

Revenue by

Shri M.K. Gautam, CIT-DR

Date of hearing

26-08-2019

Date of pronouncement

27-08-2019

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the final assessment order dated 30-09-2011 passed by the Assessing Officer (AO) u/s.143(3) r.w.s.144C(13) of the Income-tax Act, 1961 (hereinafter called 'the Act') in relation to the assessment year 2007-08.

2. The assessee has raised the following five additional grounds:

“Validity of the Order passed u/s. 143(3) r.w.s 144C of the Income- tax Act, 1961:

1. On the facts and in the circumstances of the case and in law, the learned Assessing Officer (Ld. AO) erred in passing the draft assessment order dated September 30, 2011 without following the mandate as laid down under section 144C of the Income-tax Act, 1961 (the Act).

The Appellant prays that the said draft assessment order be held as void-ab-initio, bad in law and illegal and consequently the entire assessment ought to be quashed.

2. On the facts and in the circumstances of the case and in law, the Ld. AO erred in issuing a notice under section 274 read with section 271(1)(c) of the Act along with the said draft assessment order, thereby not following the mandate as laid down under section 144C of the Act.

The Appellant prays that the said draft assessment order be held as void-ab-initio, bad in law and illegal and consequently the entire assessment ought to be quashed."

Claim of Education Cess

3. The Appellant prays that the liability for education cess on income tax paid for the year ought to be allowed as tax deductible expenses while computing the taxable income.

Consequential claim of Depreciation on the Expenditure of Premises

4. Consequent to the decision of Hon'ble ITAT in the AY 2004-05, in relation to disallowance of expenditure of premises amounting to Rs.14,18,525, being 40% of the total expenditure incurred during the year, which are held to be capital in nature for such year under consideration, i.e. AY 2004-05, the Appellant prays for allowance of the depreciation on the same, in the subsequent years, including AY 2007-08.

5. The Appellant craves leave to add, alter, mend, substitute and/or modify in any manner whatsoever all or any of the foregoing additional grounds of appeal at or before the hearing of the appeal."

3. The first set of two additional grounds are challenging the validity of order passed u/s.143(3) r.w.s. 144C of the Income-tax Act, 1961 on the ground that the draft assessment order passed by

the AO referred to the initiation of penalty u/s.271(1)(c). It is observed that similar additional grounds were taken up by the assessee for the A.Y. 2006-07 also. Vide order dated 21-08-2019, the Tribunal in ITA No.1470/PUN/2010 has dismissed such additional grounds by noting that no demand notice was directed to be issued by the AO pursuant to the draft order passed u/s.143(3) r.w.s.144C of the Act and hence the same could not be treated as a final assessment order. Following the precedent, we dismiss these additional grounds of appeal.

4. The next additional ground is against the claim of Education Cess. Both the sides are in agreement that similar issue has been decided by the Tribunal in the assessee's own case in its favour for the earlier years including the aforesaid assessment year 2006-07. Following the same, we decide this issue in the assessee's favour by holding that Education Cess on Income-tax paid should not be disallowed u/s.40(a)(ii) of the Act.

5. The next set of additional grounds is on claim of depreciation towards expenditure on Premises. Similar issue came up to be considered by the Tribunal in the assessee's own case for the A.Y. 2006-07 by holding that the amount of expenditure on Premises,

held to be capital in nature, should be subjected to depreciation as per law. We, therefore, direct to grant depreciation to the assessee in respect of expenditure on premises capitalized by virtue of the orders passed by the Tribunal for earlier assessment years 2004-05 to 2006-07.

6. The first effective issue raised by the assessee in its Memorandum of appeal is against the confirmation of transfer pricing addition in respect of the international transaction of payment of Royalty.

7. This issue is also recurring in nature. The Tribunal vide its order dated 22-07-2019 in ITA No.1303/PUN/2010 etc. for the A.Y. 2004-05 has decided it in assessee's favour by deleting the transfer pricing addition on account of Royalty. Similar view has been followed in all the subsequent years up to the year under consideration. The ld. DR could not point out any distinguishing feature in the facts for this year *vis-à-vis* the preceding years. Following the precedent, we direct to delete the transfer pricing addition in respect of Royalty.

8. The next addition assailed in this appeal is against the transfer pricing addition in the international transaction of Indenting Commission.

9. Here again, it is found that the Transfer Pricing Officer (TPO) proposed the transfer pricing addition on the similar pattern as was done for the earlier years. The Tribunal in ITA No.736/PUN/2011 vide its order dated 05-08-2019 for the A.Y. 2005-06 considered such issue and deleted the addition by observing that Material cost and Depreciation cost etc. were required to be included in the base of total costs for the purpose of computing the arm's length price. This order was based on a categorical finding rendered by the Id. CIT(A) on pages 27 and 28 of his order to the effect that if Material cost and Depreciation etc. are considered in the cost base, then the price charged by the assessee falls within +/-5% range. It is further observed that similar issue came up for consideration again before the Tribunal in its order for A.Y. 2006-07. Since this appeal came up through the route of the Dispute Resolution Panel in which there was no such categorical finding about the transaction being at arm's length price or not as was there for the A.Y. 2005-06, the Tribunal restored this matter to the file of AO/TPO for a fresh adjudication. However, for the year under consideration, it is observed from

pages 13 and 20 of the TPO's order that the assessee submitted a detailed calculation to the TPO by considering the Material cost and Depreciation cost in the base of costs and demonstrated that the transaction was at the ALP. The TPO did not controvert such a position but went with his earlier view that these costs were not required to be considered, which view has been overturned by the Tribunal for earlier years. Thus, it is evident that the facts and circumstances of the instant year are similar to those of the A.Y. 2005-06. Following the precedent, we order to delete the addition.

10. The next ground about capitalization of software expenses was not pressed by the ld. AR by conceding that such expenditure should be treated as capital expenditure on which depreciation should be allowed. It is seen that the AO has done the same, namely, capitalized the expenditure and then allowed depreciation. In view of these facts, this ground is not allowed.

11. The next ground is against capitalization of expenditure on the Premises. Here again, it is found that the facts and circumstances of this ground are *mutatis mutandis* similar to those of preceding years. The Tribunal for the A.Y. 2006-07 and earlier years has upheld

capitalization of expenses in relation to the Premises at 40%.
Following the precedent, we direct accordingly.

12. The next issue is about confirmation of disallowance at 10% of Miscellaneous expenses. The AO observed that the assessee claimed deduction of Rs.14.31 crore which included Software development expenses and Expenses on premises. Those two items were separately dealt with by him which, we have also separately adjudicated in earlier paras. The remaining amount of expenditure to the tune of Rs.13.18 crore under the head Miscellaneous expenses was not properly backed by vouchers and bills. The AO, therefore, made addition @10% at Rs.1,31,85,119/-.

13. Having heard both the sides and gone through the relevant material on record, it is observed that the AO has recorded a categorical finding that “though the entire bills have not been produced for verification and the reasons for non production was given that the bills are in huge volume.” He, therefore, proceeded to make disallowance at 10%. It is observed that similar issue came up for consideration before the Tribunal in the assessee’s own case for the preceding year as well. In the immediately preceding year, the Tribunal upheld the disallowance at 10% of such expenses.

Since the extent of disallowance made by the AO accords with that upheld by the Tribunal in the assessee's own case for the immediately preceding year, following the same, we uphold the addition, more specifically because of the uncontroverted finding returned by the AO that the entire bills were not produced for verification. This ground, therefore, fails.

14. The last ground of the appeal is against the addition of Rs.81,54,289/- towards Commission at 7.5%.

15. Here again, it is found that similar issue came up for consideration before the Tribunal in the assessee's own case for earlier years. In its order for the A.Y. 2006-07, the Tribunal has deleted such disallowance. Following the precedent, we order to delete the addition.

16. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 27th August, 2019.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 27th August, 2019
सतीश

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-13, Pune
4. The Pr.CIT-V, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे
“सी” / DR ‘C’, ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,**// True Copy //**

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	26-08-2019	Sr.PS
2.	Draft placed before author	26-08-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

*