



M/s. Tech Data Advanced Solutions India Pvt. Ltd.
Assessment Years :2010-11 & 2011-12

आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI

माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपीलसं./I.T.A. No.4731/Mum/2015
(निर्धारणवर्ष / Assessment Years:2010-11)
&

आयकर अपीलसं./I.T.A. No. 650/Mum/2016
(निर्धारणवर्ष / Assessment Years: 2011-12)

DCIT-15(3)(1) Room No.517,5 th Floor Aaykar Bhavan, M.K.Road Mumbai-400 020	बनाम/ Vs.	M/s Tech Data Advanced Solutions (India) Pvt. Ltd. (earlier known as Avnet Technology Solutions (I) Pvt. Ltd.) A-301, 3 rd Floor, Supreme Business Park Behind Lake Castles Hiranandani, Powai, Mumbai-400 076
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AAACO-3686-M		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Shri Anadi Verma-Ld. CIT DR
Assessee by	:	Shri Vijay Mehta, Ld.AR

सुनवाई की तारीख/ Date of Hearing	:	29/07/2019
घोषणा की तारीख / Date of Pronouncement	:	16/09/2019

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by revenue for Assessment Years [AY] 2010-11 & 2011-12 contests separate order of Ld. first appellate authority on certain grounds of appeal. Since the issues as well as facts are common, we dispose-off both the appeals by way of this common order for the sake of convenience and brevity. First, we take up ITA



No.4731/Mum/2015 for AY 2010-11 which is against the order of Ld. Commissioner of Income Tax (Appeals)-16, Mumbai [CIT(A)] order dated 06/05/2015 wherein the revenue has raised following ground of appeal: -

1. "On the facts and in the circumstances of the case, the Ld.CIT(A), has erred in directing the A.O to accept the book results and delete the addition of Rs.13,58,97,128/- made consequent to estimation of gross profit."

The assessment for impugned AY was framed by *Ld. Income Tax Officer-8(1)(1), Mumbai u/s 143(3) read with Section 144 of the Income Tax Act,1961* on 28/03/2013 wherein the income was assessed at Rs.14.39 crores after certain additions / disallowances as against returned loss of Rs.12.32 Lacs filed by the assessee on 14/10/2010 which was subsequently revised at the same figures on 12/03/2012 and 30/03/2012 to revise the TDS claim. As evident from ground of appeal, the sole subject matter of appeal before us is Gross Profit addition of Rs.13.58 Crores as made by learned AO.

2.1 The assessee being *resident corporate entity* was stated to be engaged in *trading of information technology products and providing maintenance services* during the year under consideration. The assessee reflected sales receipts under 3 heads as tabulated below: -

No.	Segment	Amount (Rs.)
1.	<i>Sale of Hardware, Server & Accessories</i>	<i>Rs.5.29 crores</i>
2.	<i>Software sales</i>	<i>Rs.3.41 crores</i>
3.	<i>Others</i>	<i>Rs.128.24 crores</i>
	TOTAL	Rs.136.94 Crores

The assessee had reported segment wise quantitative disclosures in Schedule 19 of the Balance Sheet in the following manner: -

Description of receipts	Opening stock		Purchases		Sales		Closing Stock	
	Qty.	Value	Qty.	Value	Qty	Value	Qty.	Value



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Hardware, Server & Accessories	185	378376	176910	678635958	172103	52921922	5008	25442085
Software	-	0	-	427226891	--	34188645	--	5144857
Others	-	9371819	--	181555119	--	1282483853	--	4937404
	185	9750195	176910	1287417968	172103	1369594420	5008	35524346

The Ld. AO, on the basis of above table, made the following observations: -

- i) *The assessee had 1,77,095 (Opening + Purchases hardware items amounting to Rs.67,90,14,334/-) at its disposal for sale having average cost per item @ Rs.3834/-. Out of these items, the assessee sold 172103 items for Rs.5,29,21,922/- at an average cost of Rs.307/- i.e. much below the purchase cost.*
- ii) *There are no quantitative details of software items. But the above table shows that the software worth Rs.42,20,82,034/- [Purchase Rs.42,72,26,891/- (-) Closing stock Rs.51,44,857/-] have been sold for Rs.3,41,88,645/- which is much below the purchase price.*
- iii) *The assessee had items amounting to Rs.19,09,26,938/- (Opening + Purchases) under the head "Others" which have been sold for Rs.128,24,83,853/-*
- iv) *As per the letter of the assessee filed on 28.12.2013, the assessee stated that the income from trading representing purchases and sale of computer hardware with built in software is Rs.1,36,95,94,420/- and income from services is Rs.1,38,11,424/-. However, the assessee did not clarify as to how the income of Rs.57,71,57,702/- subjected to TDS u/s 194A, 194C,194J of the Act has been accounted for. The assessee has claimed TDS of Rs.5,07,29,492/- on the receipts of Rs.57,71,57,702/- which is not in the nature of trading income of the assessee.*
- v) *If the non-trading income is reduced from the total turnover, then the trading, turnover stands at Rs.79,30,67,718/- (Rs.1,36,95,94,420 – Rs.57,65,26,702). This figure gives incongruous pictures if we take into account the cost of goods sold by the assessee company which computed as per below based upon the schedule 19:*

Opening Stock	Rs.70,70,931
Add: Purchases	Rs.1,28,74,17,968
Total goods available	Rs.1,29,44,88,899
Less: Closing stock	Rs.3,55,24,346
Cost of goods sold	Rs.1,25,89,64,553



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The above details shown that the goods worth Rs.1,25,89,64,553/- have been sold for Rs.79,30,67,718/-.

Keeping in view the above noted discrepancies, explanations were called from the assessee.

2.2 In defense, the assessee drew attention to the nature of business being carried out by the assessee and explained that it was trading in computer server / hardware / accessories which were procured from multiple sources. Thereafter, these items would be preloaded with software procured from many other sources. Thereafter the different components would be assembled into one composite supply which may be sold against one invoice. Accordingly, this may be termed as 'Many to One' assembly – meaning procuring from many / multiple sources and supply to one source. The books of accounts would capture these multiple procurements against multiple purchase invoices, but may end up having lesser number of invoices. In these circumstances, it was rather difficult to appropriately classify and tie-up or reconcile the purchases with the sales figures, quantitatively. It was further explained that Schedule 19 merely provides quantitative figures of majorly traded products with a residuary class titled as 'Others' in which case, it may not be possible to provide quantitative particulars. Nevertheless, the summary value of this classification remains accurate, which will match with the figures reflected in Profit and Loss Account. The classification in Schedule 19 will involve some estimation on account of the nature of procurement and sales. It was further submitted that the stock records were maintained in SAP, an Enterprise Resource Planning (ERP) application.



2.3 However, since the assessee, in the opinion of learned AO, neither submitted reconciliation nor even furnished quantitative details of the items including the items dealt with under the head “others” and therefore, the submission was vague, general and unsatisfactory as it failed to explain the discrepancies. In the above background, a conclusion was drawn that the assessee was claiming the purchase cost of the computer peripherals (Hardware/software/others) on which it had earned non-trading income of Rs.57.65 Crores in form of technical fees, service charges, maintenance charges etc. Therefore, the purchase cost was to be capitalized against which the depreciation would be admissible.

2.4 The assessee again clarified that it was dealing in large variety of items relating to computer and information technology and the material was being procured from various vendors. The value of each of the items could be as low as few hundred rupees to as high as few lakhs per unit and therefore, no meaningful conclusion or comparison of these quantities could be made from the simplistic presentation of quantitative particulars as contained in the notes to accounts. Further, considering the huge varieties of such items, providing further break up would be impracticable. The attention was drawn to the fact that adequate inventory stock records were duly maintained on the computer system. It was clarified that given the nature of products and solutions that the Company deals in, the value of Sales as disclosed under ‘Others’ is an aggregated value of ‘Hardware, Servers, Accessories,’ ‘Software’ and ‘Other ‘ type products which is rather practically not possible to break up into distinct units / numbers, The same was supported by the fact that



value of sales under the head 'Others' was much higher than what could have been available for it to be sold under this category. This kind of a presentation of the numbers was stated to be not unique to the current financial year but presentation was similar as done in the earlier years. It was also submitted that quantitative details provided in the notes on accounts could not be used to make any useful comparison or analysis as these are different families of components/ items having varied costs/values, and hence, the same may be considered as statistical data serving no purpose from an assessment or evaluation purpose. A plea was also raised that closing stock was properly valued and there was no error and the valuation was on similar basis as done in earlier years. The assessee also made available digital data containing all the sale as well as purchase invoices. The attention was also drawn to the fact that the accounts were duly audited and no qualification was made by the auditor in their report on the aspect of accounting records. Regarding service income of Rs.57.71 Crores, it was submitted that the assessee renders technical and support services to its customers which is subjected to Tax withholding. In some case of sale of software, tax has been deducted by the customer. Nevertheless, these figures were already included in the income reflected by the assessee for the year under consideration.

2.5 However, not satisfied and finding that there was a fall in Gross Profit Rate during the year, Ld. AO rejected the books of accounts u/s 145(3) and estimated the Gross profit (GP) Rate of 18% against Sales of Rs.136.95 Crores which resulted into GP addition of Rs.13.58 Crores in the hands of the assessee. The rate of 18% was primarily derived from



the fact that GP rate earned by the assessee for AYs 2008-09 & 2009-10 was 18.13% & 18.76% respectively.

2.6 Subsequently, the assessee preferred a rectification application u/s 154 against the assessment order to bring to notice the fact that after excluding the revenue from service income, the gross GP rate for AYs 2008-09 & 2009-10 would be 10.77% & 9.61% respectively and therefore, quantum assessment order would require rectification in the light of those facts. However, the said application also got rejected. Aggrieved, the assessee preferred appeal against the quantum assessment order framed by Ld. AO and also agitated the rejection of rectification application u/s 154 before first appellate authority.

3.1 The assessee reiterated its stand by way of elaborate written submissions, which have already been extracted in the impugned order and hence, not repeated here again to avoid duplication. The attention was drawn to the fact that Ld.AO proceeded on wrong appreciation of facts and misunderstood the nature of business being carried out by the assessee since the assessee carried out composite operation consisting of sale of hardware, software, other products along with support services. The non-trading income of Rs.57.65 Crores as taken separately by Ld. AO was implicit in the composite sales figures since in many cases, TDS was deducted by customers against sale transactions also. In the above background, the assessee agitated the rejection of books of accounts and consequential estimation of gross profit as made by learned AO.

3.2 The Ld. CIT(A), after due consideration of factual matrix and assessee's submission held that rejection of books was not based on



facts since the assessee had maintained regular books of account which were duly audited. The assessee had also furnished almost all the sales as well as purchase invoices during assessment proceedings and no discrepancies could be pointed out by Ld. AO in the same. As against this, Ld. AO based its finding on certain figures reported in financial statements without pointing out any defect in the books of accounts. Therefore, the rejection of books of accounts by learned AO was not justified.

3.3 Regarding estimation of GP rate of 18%, it was held that Ld. AO was incorrect in estimating the rate @18% since the gross profit rate in earlier years was in the range of 9.61% to 10.77% after excluding support services income and therefore, the estimation made by Ld.AO was without any basis. Consequently, the impugned addition made by Ld. AO was deleted. Aggrieved, the revenue is in further appeal before us.

4. The respective representatives have advanced arguments, which we have considered. The Ld. AR has drawn our attention to the sample purchase as well as sale invoices as kept in the paper-book to support the conclusions drawn by Ld. CIT(A). The Ld. DR, on the other hand, has submitted that the conclusions drawn by Ld. AO were based upon figures reflected in assessee's financial statements. The Ld. DR also pleaded for restoration of matter back to the file of Ld. AO for the purpose of reappraisal of factual matrix.

5. We have duly considered the rival submissions and deliberated on the judicial pronouncements as referred before us. After due consideration of factual matrix, we find that the assessee is a corporate



entity and its accounts were subjected to Audit under The Companies Act as well as under The Income Tax Act. No qualification / adverse remarks have been made by the auditors regarding maintenance of stock records / valuation etc. The figures of sale as well as purchases, on aggregate basis, as per books of accounts perfectly matched with assessee's financial statements. The assessee had produced all sales as well as purchase invoices in digital form before Ld. AO during assessment proceedings. However, no discrepancies could be pointed out in the same by Ld. AO. Further, no specific defects were pointed out in the books of accounts as well. The whole allegation of Ld. AO emanates from figures reported by the assessee in Schedule 19 of the Balance Sheet, based upon which certain conclusions were drawn. However, quantitative discrepancies, if any, stood explained by the fact that the assessee's nature of business made it impractical to report the quantitative details in the desired manner. The perusal of sample invoices, as produced before us, would support the fact that the assessee was procuring raw material from several vendors which would be assembled into a composite product which could be sold with or without software and the sale transaction could be with or without service contracts. Those facts would explain non-reporting of quantitative details in Schedule 19 of the Balance Sheet and therefore, the conclusions drawn by Ld. AO from the same would obviously distort the factual matrix.

6. Another undisputed fact is that the Gross Profit rate in earlier years were much lower after excluding the service income. So far as the reconciliation of Service income & TDS figures reported in Form 26AS is



concerned, no specific allegation of non-reporting of any income has been made by Ld. AO in the quantum assessment order and therefore, no adverse conclusion could be drawn therefrom.

7. Therefore, on the facts and circumstances, we are of the considered opinion that first appellate authority has clinched the issue in the right perspective and therefore, the same would not require any interference on our part. No convincing case has been made before us to remit the matter back to the file of Ld. AO. Therefore, by confirming the stand of Ld. CIT(A), we dismiss the appeal.

Revenue's Appeal ITA No.650/Mum/2016, AY 2011-12

8. The facts are *pari-materia* the same in this AY. The assessee has been saddled with GP addition of Rs.14.06 Crores on similar lines. The Ld. first appellate authority, relying upon the stand of its predecessor for AY 2010-11, deleted the additions. Aggrieved, the revenue is in further appeal before us. The facts and circumstances being identical, our observation, discussion and conclusion as given for AY 2010-11, shall *mutatis mutandis* apply to this year also. The appeal stands dismissed.

Conclusion

9. Both the appeals stand dismissed.

Order pronounced in the open court on 16th September, 2019.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated :
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent



3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.