

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.253/Del./2016
(Assessment Year : 2006-07)**

**ITA No.254/Del./2016
(Assessment Year : 2007-08)**

**ITA No.255/Del./2016
(Assessment Year : 2008-09)**

**ITA No.256/Del./2016
(Assessment Year : 2009-10)**

**ITA No.257/Del./2016
(Assessment Year : 2010-11)**

M/s. Encore Technologies Pvt. Ltd., vs. ACIT, Central Circle 11,
C – 160, Okhla Industrial Area, Phase – I, New Delhi.
New Delhi - 110 020.

**(PAN : AABCE0859M)
(APPELLANT)**

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Shri S.S. Rana, CIT DR

Date of Hearing : 25.11.2019

Date of Order : 29.11.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since common questions of facts and law have been raised in all the aforesaid appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. Appellant, M/s. Encore Technologies Pvt. Ltd. (hereinafter referred to as the 'assessee') by filing the present appeals sought to set aside the impugned orders all dated 31.10.2013 passed by the Commissioner of Income-tax (Appeals)-XXXI, New Delhi qua the assessment years 2006,07, 2007-08, 2008-09, 2009-10 & 2010-11 on the grounds inter alia that:-

“AY 2006-07

That on the facts & circumstances of the case the learned AO and the CIT (A) erred in :

- (1) *Disallowance of Rs.53,89,420/- in AY 2006-07 on account of bogus purchases.*

AY 2007-08

That on the facts and circumstances of the case the learned ITO and the CIT(A) erred in :

- 1) *Disallowing purchases amounting to Rs.50,39,398 on account of Bogus purchases.*
- 2) *Upholding the Assessment & addition of Rs.2,50,000/-u/s 14A inspite of the fact that the Assessment for the year had abated in terms of section 153A & no incriminating material was unearthed in the course of search & seizure operations.*
- 3) *Disallowing Rs.2,50,000 u/s 14A of the Income Tax Act.*
- 4) *Disallowing the expenditure u/s 14A without the Assessing Officer giving any finding in the assessment order regarding the amount of actual expenditure incurred by the assessee to earn tax-free income.*
- 5) *Not following the orders of the jurisdictional High Court in this.*

AYs 2008-09, 2009-10 & 2010-11

That on the facts and circumstances of the case the learned ITO and the CIT(A) erred in :

1) Upholding the Assessment & addition of Rs.4,22,000/- each in AYs 2008-09, 2009-10 & 2010-11 respectively u/s 14A inspite of the fact that the Assessment for the year had abated in terms of section 153A & no incriminating material was unearthed in the course of search & seizure operations.

3) Disallowing Rs.4,22,000/- each in AYs 2008-09, 2009-10 & 2010-11 respectively u/s 14A of the Income Tax Act.

4) Disallowing the expenditure u/s 14A without the Assessing Officer giving any finding in the assessment order regarding the amount of actual expenditure incurred by the assessee to earn tax-free income.

5) Not following the orders of the jurisdictional High Court in this..”

2. Briefly stated the facts necessary for adjudication of the issue at hand in all the aforesaid appeals are : Assessing Officer (AO) noticed that the assessee company has made purchases of Rs.52,89,420/- and Rs.50,39,398/- in AYs 2006-07 & 2007-08 respectively from M/s. Jay Enn Infotech Ltd., 105-A/2, Saraswati House, 27 Nehru Place, New Delhi. AO also noticed that the assessee company being group company of Tulip group on whose premises search was conducted and Shri H.S. Bedi, CMD of the company admitted that the group companies have been involved in making bogus purchases from some of the entities. AO declining the contentions raised by the assessee proceeded to conclude that since M/s. Jay Enn Infotech Pvt. Ltd. is not carrying out substantial business activities at the address given and no details in respect of dispatch of goods are available, disallowed an amount of

Rs.52,89,420/- and Rs.50,39,398/- in AYs 2006-07 & 2007-08 respectively on account of bogus purchases.

3. AO made addition of Rs.4,12,280/-, Rs.4,83,780/-, Rs.5,52,417/- and Rs.70,72,280/- in AYs 2007-08, 2008-09, 2009-10 & 2010-11 respectively by invoking the provisions contained u/s 14A of the Income-tax Act, 1961 (for short 'the Act') read with Rule 8D of the Income-tax Rules, 1962 (for short 'the Rules') on the ground that expenditure incurred on account of dividend income is liable to be disallowed.

4. Assessee carried the matter by way of appeals before the Id. CIT (A) who has confirmed the additions of Rs.52,89,420/- and Rs.50,39,398/- in AYs 2006-07 & 2007-08 respectively on account of bogus purchases, restricted the disallowances made by the AO u/s 14A to Rs.2,50,000/-, Rs.4,22,000, Rs.4,22,000/- & Rs.4,22,000/- in AYs 2007-08, 2008-09, 2009-10 & 2010-11 respectively by partly allowing the appeals. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeals.

5. Assessee has not preferred to put in appearance despite issuance of the notice and consequently, we proceeded to decide the present appeal with the assistance of the Id. DR as well as on the basis of documents available on the file.

6. We have heard the Id. Departmental Representative for the revenue to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

**GROUND NO.1 OF
AYs 2006-07 & 2007-08**

7. When we examine the impugned order passed by the Id. CIT (A) particularly para 4.2.5 and 4.2.6 of AY 2006-07, the assessee had come up with a specific stand that it has not only debited purchases to profit & loss account and it has also credited profit & loss account with sale proceeds and if there were no purchases, there would not also be sales. Ld. CIT (A) without giving any findings on these pleadings abruptly proceeded to confirm the addition on account of bogus purchases on the basis of conjectures and surmises that, *“from the invoices submitted during the appellate proceedings which are computer printouts where very huge quality of computer peripherals like routers, modems, switches, converters have been shown to have been transported/dispatched by hand which is not believable on the very face of it. Such large quantity of goods had to be transported by some mode of vehicular transport which is missing in the cases. Further, Tulip Telecom Ltd. itself was an important partner of*

CISCO in India and there were no valid reasons for purchase of these products from an in descript company.”

8. We are of the considered view that when entire purchases have been duly debited in the profit & loss account matched with sale proceeds and account books have not been rejected then it is difficult to agree with the reasoning given by the Id. CIT (A) that the purchases cannot be believed. Moreover, when a company has stated to have purchased the computer peripherals etc. which are stated to have been transported/dispatched by hand, the same cannot be declared bogus on the ground that the same were required to be transported by way of mode of vehicular transport. Because it is a matter of common knowledge that many of the companies make available purchases made from them at the doorstep of the buyers.

9. In these circumstances, we are of the considered view that Id. CIT (A) has not decided the issue on the basis of evidence led by the assessee rather decided the issue on the basis of presumptions which is not sustainable in the eyes of law. So, in the interest of justice, we deem it necessary to remit the case back to the Id. CIT (A) to decide afresh after examining the entire evidence led by assessee by providing further opportunity of being heard. Consequently, ground no.1 of AYs2006-07 & 2007-08 is determined in favour of the assessee for statistical purposes.

GROUND NO.2, 3, 4 & 5 OF AY 2007-08**GROUND NO.1, 2, 3, 4 & 5 OF
AYs 2008-09, 2009-10 & 2010-11**

10. Undisputedly, the assessee has received dividend income of Rs.22,00,930/-, Rs.19,73,245/-, Rs.15,94,579/- and Rs.40,76,753/- in AYs 2007-08, 2008-09, 2009-10 & 2010-11 respectively and claimed the same as exempt income from tax. It is also not in dispute that the assessee has not made suo motu disallowance on account of expenses incurred to earn the dividend income.

11. When we examine impugned orders passed by the Id. CIT(A) restricting the addition made by the AO u/s 14A to Rs.4,12,280/-, Rs.4,83,780/-, Rs.5,52,417/- and Rs.70,72,280/- in AYs 2007-08, 2008-09, 2009-10 & 2010-11 respectively, it is apparent on record that in all the cases, disallowance has been made by the AO on account of administrative charges i.e. equal to 0.50% of average value of investment. But we fail to understand as to how and under what circumstances, Id. CIT (A) has restricted the addition which is otherwise required to be made on the basis of set formula given under Rule 8D in the light of the evidence led by the assessee.

12. Moreover, when we peruse para 4.3.1 of the impugned order passed by the Id. CIT (A) in AY 2007-08, he has specifically come

up with the findings inter alia that the AO has not given any finding that he has not satisfied with the appellant/assessee's claim that no expenditure has been incurred on the investment activity; that investment is an opening balance and that there is no interest payment made on the loans and in fact the company has not raised any investment for the purpose of investment and that Rule 8D is effective from 2008-09 and not from the current assessment year. Despite recording all these facts, Id. CIT (A) again proceeded to apply Rule 8D for AY 2007-08. So, we are of the considered view that orders passed by the Id. CIT (A) is a cryptic one and need to be passed on the basis of evidence led and arguments addressed by the assessee.

13. When we peruse the impugned order passed by the Id. CIT(A) for AYs 2008-09, 2009-10 & 2010-11 again Id. CIT (A) admitted inter alia that the AO has not recorded his dissatisfaction as to the claim of the assessee that no expenditure has been incurred to earn the dividend income; that no fresh investment has been made by the appellant during the year under assessment; that interest taken for computing the disallowance u/s 8D i.e. Rs.66,500/- has not been paid towards any loan rather the said interest payment relates to interest paid on late deposit of TDS on salary, but despite all these findings, Id. CIT (A) proceeded to

restrict the additions to Rs.4,12,280/-, Rs.4,83,780/-, Rs.5,52,417/- and Rs.70,72,280/- in AYs 2007-08, 2008-09, 2009-10 & 2010-11 respectively by applying the Rule 8D mechanically.

14. There are inherent contradictions in the impugned order passed by the Id. CIT(A), so, in these circumstances, we are of the considered view that the issue is required to be remitted back to the Id. CIT (A) to decide afresh after examining the entire details and pleadings made by the assessee that no expenditure has been incurred, nor any fresh investment has been made and that no interest payment has been made on the amount of investment during the years under assessment after providing opportunity of being heard to the assessee. Consequently, Grounds No.2, 3, 4 & 5 of AY 2007-08 and Grounds No.1, 2, 3, 4 & 5 of AYs 2008-09, 2009-10 & 2010-11 are determined in favour of the assessee for statistical purposes.

13. In view of what has been discussed above, all the aforesaid appeals are allowed for statistical purposes.

Order pronounced in open court on this 29th day of November, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 29th day of November, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XXXI, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.