

आयकर अपीलिय अधिकरण] पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं / ITA No.1776/PUN/2017
निर्धारण वर्ष / Assessment Year : 2012-13

The Dy.Commissioner of Income Tax,
Circle – 5, Pune.

..... अपीलार्थी /
Appellant

बनाम v/s

Rathi Transpower Pvt. Ltd.,
Rathi Chambers,
7, Deccan College Road,
Yerwada, Pune – 411 006.

..... प्रत्यर्थी /
Respondent

PAN : AAACR8221P.

Assessee by : Shri Kiran Sanman Naniwadekar & Co.,

Revenue by : Shri Houshang Boman Irani.

सुनवाई की तारीख / Date of Hearing : 20.12.2019	घोषणा की तारीख / Date of Pronouncement: 20.12.2019
---	---

आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the Revenue is emanating out of the order of Commissioner of Income Tax (A) – 4, Pune dated 20.02.2017 for the assessment year 2012-13.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a company stated to be engaged in the business of manufacturing of coupling power and generation through windmill. The assessee filed its return of income for A.Y. 2012-13 on 27.09.2012

declaring total income at Rs.9,16,78,050/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 20.02.2015 and the total income was determined at Rs.11,27,79,760/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dated 20.02.2017 (in appeal No.PN/CIT(A)-4/638/2014-15/106) granted partial relief to the assessee. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us and has raised the following grounds :

“1. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) has erred in allowing the expenditure on account of discount given to dealers by ignoring the fact that the assessee has inflated expenditure on account of accelerated discount to adjust the profit, without having any fixed policy or consistency.

2. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) has erred in allowing the disallowance of late delivery charges as the assessee has defaulted in not adhering to the terms and conditions of agreement and delivering orders in time.

3. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) has erred in allowing depreciation on civil work and electrical installation @ 80% instead of 10% and 15% respectively.”

3. First ground is with respect to deleting the addition on account of disallowance of discount given to dealers.

3.1. During the course of assessment proceedings, AO on perusing the Profit and Loss account noticed that assessee had claimed Rs.2,01,41,391/- on account of discount. The assessee was asked to prove the genuineness of expenditure to which the assessee gave the details. On perusing the details, AO noticed that assessee had given discounts at various rates but however the rate of discount was not reflected in its policy manual and the discount ranged between 5 to 10% to few selected customers. AO was of the view that normally higher discount is offered for non standard products where the prices

are quoted on higher price and the margin was also good. The submission of the assessee of offering discount on the product range was not found acceptable to the AO. AO was of the view that there was neither any compelling necessity to incur the expenditure on account of discount nor had the other parties claimed the discount. He was of the view that assessee has inflated the expenditure by offering accelerated discount. He accordingly disallowed the claim of the discount to the extent of Rs.2,01,41,391/- and added it to the income. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who deleted the addition by inter-alia following the decision of his predecessor for A.Ys.2010-11 and 2011-12 by observing as under :

Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us.

4. Before us, Ld. D.R. took us through the order of AO and supported the order. Ld. A.R. on the other hand reiterated the submissions made before lower authorities and further submitted that Ld.CIT(A) had followed the decision of his predecessor for A.Y. 2010-11 and 2011-12 and the identical issue has been decided in favour of the assessee by the Co-ordinate Bench of the Tribunal vide order dated 24.10.2017 in ITA Nos.873 to 875/PUN/2015. He placed on record the copy of the aforesaid decision. He therefore submitted that no interference to the order of Ld.CIT(A) is called for.

5. We have heard the rival submissions and perused the material on record. The issue in the present ground is disallowance of expenditure on account of discount. We find that Ld.CIT(A) while allowing the claim of assessee had followed the decision of his

predecessor in assessee's own case for A.Y. 2010-11 and 2011-12 and also the decisions of various High Courts. We further find that against the order of Ld.CIT(A) for A.Ys. 2010-11 and 2011-12, the issue was carried before the Tribunal in A.Ys. 2010-11 and 2011-12 and the Coordinate Bench of the Tribunal has upheld the order of Ld.CIT(A) vide its order dated 24.10.2017 (supra) by observing as under :

"24. We have heard the rival contentions and perused the record. The assessee for the year under consideration in addition to other businesses carried on by it has also carried on the business of manufacture and sale of couplings. The said item manufactured by the assessee is consumable item, which is utilized in different fields, industries and in order to sell its goods, the assessee had established a distribution network. The assessee was operating in very highly competitive field, where the life cycle of the product which was manufactured by the assessee, was between one to three years. In other words, the manufactured items had to be sold as quickly as it was manufactured. So to boost its sales, the assessee had a distribution policy in place, which was applicable to all the distributors all over India which were engaged in selling couplings. The role of the distributors was not only to sell the goods but to collect the payments and also to provide pre and after sales services, carried out sales promotion activities and gave feedback about the business prospects of the items, competition and sales activities to the assessee. The assessee was dealing in certain standard products and it was offering discounts ranging from 5% to 15% of the sales price to its distributors and the dealers. There were certain non standard products which had higher price and even had higher profit margins, on which the assessee was giving higher percentage of discount to the extent of 25%. The said policy was followed by the assessee across the country in respect of all its distributors and dealers. The assessee had furnished complete details in respect of sale price, profit cost and other costs, discount allowed and the profit made before taxes, which are reproduced by the Assessing Officer at pages 11 to 14 of the assessment order. The Assessing Officer had also reproduced distribution policy manual at pages 15 to 22 of the assessment order, which provides complete and exhaustive list of the responsibilities of the distributors which would enable them to earn the aforesaid discount. Though rate of discount is not mentioned but the understanding that the rates would be finalized on transaction basis could not be rejected on mere surmises. The perusal of the details would reflect that in none of the cases even after paying discount which the Assessing Officer felt was higher, the assessee had made the profits. The total turnover of the assessee for the year under consideration was about Rs.32 crores and the total expenditure booked by the assessee on account of discount is Rs.1 crore which less than 5% of the total sales. The assessee as businessman had taken business decision to make a policy for the distribution of its goods and to pay discount to different dealers in this regard. Such business decision cannot be negated by the Assessing Officer on the surmise that as per the Assessing Officer, the discount paid by the assessee was higher. The assessee is best judge of its business arrangement and in the absence of any evidence found that the expenditure has not been incurred, merely on the ground that the rate of discount paid is higher, the expenditure cannot be disallowed in the hands of assessee.

25. We find support from the ratio laid down by the Hon'ble Supreme Court in CIT Vs. Walchand & Co. Pvt. Ltd. (supra). Accordingly, we find no merit in the order of Assessing Officer in this regard. Upholding the order of CIT(A), we dismiss the ground of appeal No.2 in assessment years 2010-11 and 2011-12 raised by the Revenue."

Before us, Revenue has not pointed out any distinguishing feature in the facts of the case for the year under consideration and that of earlier years and nor has pointed out any fallacy in the findings of Ld.CIT(A). We therefore find no reason to interfere with the order of Ld.CIT(A). **Thus, the ground of the Revenue is dismissed.**

6. 2nd ground is with respect to deleting the disallowance of late delivery charges.

6.1. During the course of assessment proceedings, AO noticed that assessee had claimed Rs.3,02,411/- on account of late delivery charges. It was assessee's submission that the amount was on account of non-delivering the orders within the time agreed with the parties. AO was of the view that the amount was not eligible for deduction u/s 37(1) of the Act. He accordingly made its addition. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who decided the issue in favour of the assessee by observing as under :

"8.3 DECISION: I have perused the assessment order and the submission of the appellant carefully. I do not find any reason to disagree with the contention of the appellant and also the findings and decision given by my colleague in A.Yrs. 2010-11 & 2011-12. Following the said decision, I delete the addition of Rs.3,02,411/- on account of late delivery charges disallowed by the AO. Ground No.4 raised by the appellant is allowed."

Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us.

7. Before us, Ld. D.R. supported the order of AO. Ld.A.R. on the other hand reiterated the submissions made before AO and Ld.CIT(A) and further submitted that identical issue arose in assessee's own case for A.Y. 2010-11 & 2011-12 in Revenue's appeal and the Co-ordinate Bench of the Tribunal vide order dated 24.10.2017 has dismissed the Revenue's appeal. He thus supported the order of Ld.CIT(A).

8. We have heard the rival submissions and perused the material on record. We find that identical issue arose before the Co-ordinate Bench of the Tribunal in assessee's own case for A.Ys. 2010-11 and 2011-12 and the issue was decided in favour of assessee by observing as under :

“35. In the totality of the above said facts and circumstances and after hearing both the learned Authorized Representatives, we find no error in the order of CIT(A) in holding that the late delivery charges paid by the assessee were in the nature of expenditure carried out during the course of carrying on the business. The said late delivery charges were levied by the OEM customers, who were given specific orders to the assessee for delivery within time frame, but because of the delay in the project, clause for L.D. charges was applied and the amount was recovered from the assessee. In the totality of the above said facts and circumstances, we are of the view that the said expenditure is duly allowable in the hands of assessee. Accordingly, we hold so. The ground of appeal No.4 raised by the Revenue in assessment years 2010-11 and 2011-12 is thus, dismissed.”

Before us, Revenue has not pointed any distinguishing feature in the facts of the case for the year under consideration and that of earlier years and nor has pointed out any fallacy in the findings of Ld.CIT(A). We therefore find no reason to interfere with the order of Ld.CIT(A).

Thus, the ground of the Revenue is dismissed.

9. 3rd ground is with respect to deleting the disallowance of depreciation.

9.1 AO on perusing the Profit and Loss account noticed that assessee had claimed depreciation of Rs.46,168/- on windmill at 80% as it was commissioned on 09.08.2007. On perusing the details of the break-up statement, AO noticed that high rate of depreciation was also claimed on civil work and installation of electrical lines. AO was of the view that the civil work and installation of electrical lines cannot be considered to be part of the windmill. He accordingly worked out the excess depreciation to the extent of Rs.4,626/- and disallowed the same. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who granted partial relief to the assessee by noting as under :

"5.3 DECISION : I have perused the assessment order and the submission made by the appellant as above carefully. The appellant in the written submission submitted that on the similar issue for AY 2009-10, AY 2010-11 and AY 2011-12, in case of depreciation on Electrical line for transmission of power generate, the Hon'ble CIT (A)-4, Pune vide order dated 03/03/2015 had decided the issue in favour of the appellant in its own case, thereby observing as below:-

"I have perused the submission made and examined the details relating to the civil foundation and electrical items that are claimed to be wind mill components. Cost of reinforced cement foundation and labour charges, incurred for erection and commissioning of windmill have been held by the jurisdictional High Court & ITAT to be an integral part of the windmills and it has been held that there is no functional differentiation between the two. Therefore the cost incurred on the above items is entitled for the same rate of depreciation as that for the wind mills. The Hon'ble Bombay High Court in Cooper Foundary Pvt. Ltd., (ITA No. 1326 of 2010) and the Pune ITAT in the cases of Western Precicast Pvt. Ltd. in ITA no. 1495/PN/2011 and J. Sons Foundary Pvt. Ltd in ITA no. 2349/PN/2012 have decided accordingly. However, the Hon'ble Pune ITAT in the above referred cases and also in the case of Poonawalla Finvest & Agro Pvt. Ltd. (118 IT) 68) has gone by the functional test and the intention of the legislature in holding that civil work such as construction of control room, site development, internal road development, being structures that surround the windmill have no relation with the foundation/erection/commissioning/installation of the windmill and since they are not specially designed devices which run on the windmill, these items are not entitled for higher depreciation. In the case of Poonawalla Finvest

& Agro P. Ltd. (118 IT) 68) the ITAT Pune took a view that the electrical transformer and internal lines were required in order to transfer and transmit the electricity so generated to the MSEB substation, without which the electrical power generated by the windmill would be a waste and therefore these items were entitled to depreciation at the rates applicable in wind mills. Applying the same test to the electrical component, installation charges and material charges towards the electrical line installed for power transmission and metering, the Pune ITAT in their subsequent decision in the case of Western Precicast Pvt. Ltd (ITA no. 1495/PN/2011) for the A. Y. 2007-08 and 2008-09, allowed the entire expenditure on account of supply of electrical items, labour charges for installation of the electrical line, etc., as forming an integral part of the windmill and therefore entitled to higher depreciation at the rate applicable to renewable energy device/windmill. Keeping in view the decisions of the jurisdictional ITAT and High Court cited supra, it is held that the appellant was entitled to higher depreciation @80% only on cost of reinforced cement foundation and labour charges incurred for erection and commissioning of windmill since they form integral part of the wind mills. However any expenditure incurred on civil work, construction of control room, site development including temporary approach roads, internal lines, sensing or such structures surrounding the wind mills that cannot be said to be integral part of the wind mills would not be entitled to depreciation of the higher rate of 80% and such depreciation would only be allowed @ 10%. Keeping in view the decisions of the jurisdictional ITAT cited supra, it is held that the appellant was entitled to higher depreciation on the electrical line for transmission of the power generated. The Assessing Officer is directed to call for the breakup of each of these items of expenditure and allow accelerated depreciation on the items mentioned supra. Ground no.2 for A. Ys. 2009-10 & 2010-11 & Ground no.1 for A. Y. 2011-12 are held to be partly allowed, subject to the above remarks.

5.3.1 Following the finding and decision taken by my brother calling in AYrs 2009-10 to 2011-12, I hold the similar view and direct the AO to allow depreciation as indicated in the said order for this year also, thereby allowing the ground raised by the appellant partly. Ground NO.1 raised by the appellant partly. Ground No.1 raised by the appellant is accordingly partly allowed.”

Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us.

10. Before us, Ld. D.R. supported the order of AO. Ld.A.R. on the other hand reiterated the submissions made before AO and Ld.CIT(A) and supported the order of Ld.CIT(A).

11. We have heard the rival submissions and perused the material on record. We find that Ld.CIT(A) while deciding the issue had followed the order of his predecessor for A.Y. 2010-11.

12. Before us, Revenue has not pointed any distinguishing feature in the facts of the case for the year under consideration and that of earlier years and nor has pointed out any fallacy in the findings of Ld.CIT(A). We therefore find no reason to interfere with the order of Ld.CIT(A). **Thus, the ground of the Revenue is dismissed.**

13. **In the result, the appeal of Revenue is dismissed.**

Order pronounced on 20th day of December, 2019.

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 20th December, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A) – 4, Pune. .
4. Pr.CIT-3, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “बी” / DR,
ITAT, “B” Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,स

// TRUE COPY //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.