

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD BENCH

**Before: Shri Amarjit Singh, Accountant Member  
And Ms. Madhumita Roy, Judicial Member**

**ITA No. 1892/Ahd/2014  
Assessment Year 2005-06**

Panasonic Energy India Co. Ltd., GIDC, Makarpura, Vadodara-390010 PAN: AAACL3332K (Appellant)	Vs	The Additional Commission of Income Tax, Range-4, Vadodara-390007 (Respondent)
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**Revenue by: Shri Dilip Kumar, Sr. D.R.  
Assessee by: Shri Bhavin Marfatia, A.R.**

Date of hearing : 13-11-2019  
Date of pronouncement : 22-01-2020

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

This assessee's appeal for A.Y. 2012-13, arises from order of the CIT(A)-4, Vadodara dated 21-06-2017, in proceedings under section 154 of the Income Tax Act, 1961; in short the Act.

2. The assessee has raised following grounds of appeal:-

"1. The learned Commissioner of Income Tax (Appeals) - III, Vadodara (hereinafter referred to as the "CIT(A)") erred in fact and in law in confirming the action of the Additional Commissioner of Income Tax, Range - 4, Baroda (hereinafter referred to as the "AO") and the Additional Commissioner of Income Tax (TPO) - I, Ahmedabad (hereinafter referred to as the "TPO") in making upward adjustment u/s. 92C rws 92(1) of the Income Tax Act, 1961 (hereinafter

*referred to as the "Act") in respect of sale price of plant and machinery amounting to Rs. 1,23,27,565/-.*

*2. The learned CIT(A) erred in fact and in law in confirming the addition made by the AO to the extent of Rs. 21,61,176/- on the ground that the Appellant has suppressed sales despite the fact that the entire sales were accounted in the books of accounts.*

*3. Without prejudice to above, the learned AO erred in fact and in law in making addition of gross amount of sales of Rs. 21,61,176/- instead of profit included therein.*

*4. The learned CIT(A) erred in fact and in law in confirming the action of the AO in charging interest u/s 234B of the Income Tax Act, 1961.*

*5. The learned CIT(A) erred in fact and in law in confirming the action of the AO in charging interest u/s 234D of the Income Tax Act, 1961*

*6. The learned CIT(A) erred in fact and in law in confirming the action of the AO in initiating penalty proceedings u/s 271(l)(c) of the Income Tax Act, 1961."*

3. The fact in brief is that return of income declaring income of Rs. 7,78,09,540/- was filed on 28<sup>th</sup> October, 2005. The case was selected for security by issuing of notice u/s. 143(2) of the act. The assessee company was mainly engaged in manufacturing of batteries of various types under the brand name Novino. The assessment order u/s. 143(3) of the act was passed on 31<sup>st</sup> December, 2008 after making various additions/disallowances and total income was assessed at Rs. 14,83,97,545/-.

4. The first ground of appeal of the assessee is against the decision of Id. CIT(A) in sustaining the action of the assessing officer of making upward adjustment u/s. 92C r.w.s. 92(1) in respect of sale price of plant and machinery amounting to Rs. 1,23,27,565/-. The TPO has stated in his order that the assessee has sold old plant and machinery to its associate concern at Rs. 7,30,40,500/- whereas its written down value as per books of account was at Rs.8,53,68,065/-. It was also stated that the assessee had taken in his books of account cost of foreign exchange fluctuation and after capitalization the depreciation was also claimed on such cost. The TPO has show caused the assessee why the WDV of the plant and machinery sold to its associate concern should not be taken as arms length price. The assessee

had explained that the machinery was originally imported in the year 1991 for Rs. 9,39,68,186/-and subsequently further amount of Rs. 9,10,60,056/- was capitalized on account of foreign exchange losses. It was contended that the cost of machinery had been increased only because the money was paid in foreign exchange and during intervening period there was exchange loss. It was further stated that the written down value of the machinery as per its original cost of acquisition was Rs. 3.15 crores as against which the sale had taken place at Rs. 7.3 crores. The assessee has also submitted that it had obtained certificate for net realizable value of the machinery sold from the independent valuer as per which fair value was Rs. 6,86,43,750/-. The TPO has not accepted the submission of the assessee. He was of the view that written down value was a comparable price, therefore, the TPO had taken written down value as arms length price and made the upward adjustment of Rs. 1,23,27,565/- and added to the total income of the assessee.

5. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee stating that adoption of written down value of Rs. 8,53,68,065/- by the TPO as arms length price of the sale price of the machinery was quite reasonable.

6. During the course of appellate proceedings before us, Id. counsel has contended that assessing officer was not justified in adopting the written down value of the machinery as arms length price because for the purpose of computing the arms length price there were so many factors which were required to be considered i.e. conditions of machine at the time of sale,

useful life of the machine, whether machine was properly maintained by the user, number of year for which the machinery was used etc. The ld. counsel has also submitted that written down value in books cannot be considered as comparable uncontrolled price as the same is the internal price of the machine and not an uncontrolled price. The ld. counsel has also submitted paper book containing various judicial pronouncements on the issue contested in the appeal wherein it is held that arms length price taken on the basis of written down value without identifying any comparable cases is not justified. On the other hand, the ld. departmental representative has supported the order of ld. CIT(A).

7. We have hard both the sides and perused the material on record. The assessee had sold plant and machinery to its associated enterprise at Rs. 7,30,40,500/- whereas its written down value as per books of account was at Rs. 8,53,68,065/-. On the basis of TPO's report, the assessing officer has taken written down value as arms length price and made upward adjustment of Rs. 1,23,27,565/-. After considering the material on record, it is noticed that TPO has computed arms length price of the sale of machinery on the basis of written down value of the asset and the TPO has not taken into consideration any other comparable to determine the uncontrolled price of the sold machine. In this regard, we have gone through the judicial pronouncements referred by the ld. counsel in the case of ACIT vs. M/s. Interpump Hydraulics India Pvt. Ltd. vide ITA No. 839/Mds/2015 dated 19-05-2015 wherein it is held written down value cannot be a determining factor to decide the arms length price. The value of the machinery has to be

compared with identified transaction in the un-controlled market. The relevant part of the decision is reproduced as under:-

*“5. As rightly submitted by the Id. Representative for the assessee, depreciation is provided for all machineries used for production of an article or thing and other capital asset under the Income-tax Act. A machinery would automatically depreciate when it was put to use in the manufacturing activity. When the machinery was sold, the buyer of the machinery would naturally look for the efficiency and life of the machinery after the purchase. Therefore, the written down value may be one of the factor to be taken into consideration for determining the value of the machinery. However, in view of the specific provision in Rule 10B(l)(a) of the Income-tax Rules, written down value cannot be a determining factor to decide the ALP. The value of the machinery has to be compared with identified transaction in the uncontrolled market. Since such an exercise was not done by the TPO, this Tribunal is of the considered opinion that the DRP has rightly found that the sale price between the two parties cannot be merely on the basis of the written down value. Therefore, the DRP has rightly found that adopting written down value as ALP under the CUP method is not justified. Hence, this Tribunal do not find any reason to interfere with the order of the lower authority. Accordingly, the same is confirmed.”*

7.1 We have also gone through the decision of ITAT Delhi in the case of ACIT vs. M/s. Sarens Heavy Lift (I) Pvt. Ltd. vide ITA No.1027/Del/2015 dated 02-04-2018 holding that the written down value of Cranes in the books of associated enterprise of the assessee cannot be considered as arms length price and it is not derived from the transaction between enterprise other than the associated enterprises. Therefore, the Co-ordinate Bench of the ITAT has justified the decision of DRP on the basis of price paid in accordance with the valuation done in the independent chartered engineering or custom authorities or determined under DCF method. We have also gone through the judicial pronouncement in the case of ACIT vs. Koch Chemical Technology Group (India) Ltd. (2015) 64 taxman.com 464 (Mumbai-Trib) wherein it is held that when assessee submitted a report from approved value indicating fair market value of machineries purchased, before rejecting such valuation report, TPO was duty bound to refer valuation of machineries to DVO as per procedure laid down under statute - Moreover, there being no

other material brought on record by TPO demonstrating that he made enquiry of any kind to ascertain fair market value of machineries.

In the light of the above facts and judicial findings, we observed that assessing officer is not justified in taking written down value without considering any comparable cases in the uncontrolled transaction and simply taken the arms length price on the basis of written down value of the machinery. Even, the TPO has not carried out any exercise to determine the arms length price of the machinery on the basis of comparable cases in the uncontrolled market. Therefore, we consider that Id. CIT(A) is not justified in sustaining upward adjustment made by the assessing officer by adopting written down value as ALP under the cup method and this ground of appeal of the assessee is allowed.

8. Second & third grounds of appeal pertained to the issue of confirming the addition made by the assessing officer to the extent of Rs. 21,61,16,176/- on the ground that assessee has suppressed sale.

9. During the course of assessment, the assessing officer stated that on verification of the detail given on page no. 15 of the cost audit report and the details of production given in the return filed before the Central Excise there was difference in quantity manufactured as under:-

<i>Quantity manufactured as per Central Excise, including free samples to distributors</i>	23,95,42,769
<i>Quantity claimed to be manufactured in cost audit report page No. 15</i>	23,86,70,000
<i>Difference</i>	8,72,769

From the above analysis, the assessing officer observed that there was difference in the quantity to the amount of Rs. 8,72,769/-, therefore, the

same was treated as unaccounted sale by taking average cost of batteries @ Rs. 4/- and the assessing officer has determined the total value of suppressed sale at Rs. 34,91,076/- and the same was added to the total income of the assessee.

10. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has partly allowed the appeal of the assessee. The relevant part of decision of Id. CIT(A) is reproduced as under:-

"8.5 I have considered the appellant's submission and the AO's observations. The table given in the excise return is produced below for reference:

**"4. Details of income**

(i) Total Sales Value (Gross) as per profit & Loss a/c. [Domestic Rs. 12043.93 + Export Rs. 180.51] Rs. 12224.44

(ii) Value and quantity of each major manufactured

(iii) Finished goods sold

**Dry Battery**

Please mention description and Chapter Sub-heading Finished Good 'A'

	Quantity (Please specify the unit also)	Value (Excluding Taxes) Rs.
Opening stock of finished goods	11543566 pcs. (incl. 5405098 pcs of depot)	462.89
(+) Production of finished goods	238338363 pcs.*	10701.58
(-) Closing stock of finished goods	7672224 pcs. (incl. 5557424 pcs.- Of depot.)	329.83
*Finished goods sold at Depot.	241006637 pcs.*	11767.99

\* 1. Excludes 1338 PCS. Of Education Centre & (2) 1203068 pcs. Towards sales sales schemes/samples/free replacement damages and shortages during transit (duty paid goods).

FINISHED GOODS 242363369 PCS. CLEARNACE ON PAYMENT OF DUTY FROM FACTORY. DATA provided on the base of ANNUAL REPORT as required by dept."

8.5.1. From the copy of excise return submitted by the appellant, it is seen that the production of finished goods has been mentioned at 23,83,38,363 pieces. Against this figure an astrix had been marked and it has been mentioned as a foot note as excludes 1388 pcs. of Education Centre and 1203068 pcs. towards sales schemes/samples/free replacement/damages and shortages during transit (duty paid goods).

*Thus such pieces of numbering 1203068 were duty paid goods. The computation given in the excise return is for the purpose of computing the number of finished goods sold at depot. But the fact remains that the pieces totaling 1204406 has also been produced by the appellant and the appellant has not provided complete explanation in this regard regarding of discrepancy of this production figure and the production figure given in the Cost Audit Report. The appellant has been able to reconcile only 332475 pieces on account of explanation furnished for production of dry batteries. But, still discrepancy of 542094 pieces remains which have not been explained by the appellant. Hence, the addition @ Rs. 4 of 542094 pieces amounting to Rs. 21,61,176/- is upheld and balance addition directed to be deleted."*

11. During the course of appellate proceedings before us, the ld. counsel has referred page no. 200 of the paper book pertaining to the quantity detail given on annexure 4 of the cost audit report. The assessing officer has also referred page no. 163 of the paper book pertaining to the detail of cost reflected in the statement furnished to the Central Excise Authority. He has also referred page no. 151 and 166 of the paper book submitted before the ld. CIT(A) explaining that there was no suppression of sale. The ld. counsel has also referred judicial pronouncements in the case of CIT-III vs. Shakti Industries of Honøble Gujarat High Court (2013) taxman.com 16 (Guj) dated 22<sup>nd</sup> March, 2013 wherein it is held that where addition was made without rejection of books of account of the assessee and further amount added were shown in the audited account, the addition made by the assessing officer could not be sustained. On the other hand, ld. departmental representative has supported the order of assessing officer.

12. We have heard both the sides and perused the material on record on this issue. During the course of assessment, the assessing officer has noticed difference in quantity manufactured as per the return filed with the Central Excise and as per the quantity shown in the cost audit report mentioned in preceding para. We have gone through the form no. 24 annual financial information statement for the F.Y. 2004-05 filed with the Central

Excise Authority and noticed that at para 4(ii) production of finished goods was shown at 23,83,38,363 pieces. In the excise return in the summary note, it is stated that 1338 pieces of education center and 12,03,068 pieces of sales schemes were excluded. We have also gone through the cost audit report placed in the paper book from 197 to 287, it is noticed that at page no. 200 of this report the detail of production during the year is given at serial 4 to 6 as under:-

Sr. No.	Particulars	2004-05
4	<i>Production during the year</i>	
	(a) <i>Self manufactured</i>	
	<i>1U/1D/1P/1PB</i>	160.29
	<i>2U/2P</i>	15.24
	<i>3U/15V</i>	63.15
	<i>Total</i>	238.67
	(b) <i>third party on job work etc.</i>	0
	(c) <i>loan license basis</i>	0
5	<i>Total production quantity= (a)+(b)+(c)</i>	238.67
	<i>Production as per Excise Records 1U/1D/1P/1PB</i>	160.29
6	<i>2U/2P</i>	15.24
	<i>3U</i>	63.15
	<i>Total</i>	238.67

The assessee has brought to the notice of the Id. CIT(A) that there was no difference in production as per excise register and as per cost audit report. The difference has arised only on account of action of the assessing officer for adding batteries distributed free of cost towards sales scheme. These submissions made by the assessee are placed at page no. 151 of the paper book and at para 5.21 of the submission it has been submitted that the batteries distributed towards sales schemes has already been considered in the excise record, therefore, further addition is not required to be made, the same are not excisable. Further these were distributed free to educational institutions and sales samples were not sold out of the books of account. In the light of the above facts, it is noticed that assessing officer himself has

worked out the production as 23,95,42,769 pieces as against 23,83,38,363 pieces reported in the return filed with the Central Excise after duly excluding the pieces distributed free of cost towards sale samples. In the light of the above facts and detailed submission of the assessee placed in the paper book furnished before the lower authorities, we consider that Id. CIT(A) is not justified in partly sustaining the disallowance, therefore, this ground of appeal of the assessee is allowed.

13. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 22-01-2020

**Sd/-**  
**(MADHUMITA ROY)**  
**JUDICIAL MEMBER**  
**Ahmedabad : Dated 22/01/2020**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

**आदेश क० त० ल० म अ० षत / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपील अथ अधिकरण,  
अहमदाबाद