

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC-B” BENCH : BANGALORE**

BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER

ITA No.987/Bang/2019
Assessment year : 2015-16

M/s. BBSI Systems Pvt. Ltd., No.14, 1 st Floor, 36 th Main, 4 th Cross, KAS Officers Colony, BTM Layout II Stage, Bengaluru – 560 076. PAN : AACCV 9878 Q	Vs.	Assistant Commissioner of Income Tax, OSD – 1(1)(3), Bengaluru.
APPELLANT		RESPONDENT
Assessee by	:	Shri. Cyrus Jal Bharucha
Revenue by	:	Shri. Ganesh R. Ghale, Standing Counsel
Date of hearing	:	07.02.2020
Date of Pronouncement	:	20.02.2020

ORDER

This appeal is filed by the assessee and the same is directed against the order of learned CIT(A)-1, Bengaluru, dated 27.02.2019, for the Assessment Year 2015-16.

2. The grounds raised by the assessee are as under:

Sr. No.	Grounds of Appeal	Tax effect relating to each Ground of Appeal (Rs.)
1	The Commissioner of Income-tax (Appeals) erred in holding that the Appellant was liable to tax u/s 28(iv) on goods received on behalf of Mahindra Comviva Limited from BBSI Pte Limited, Singapore, valued at Rs. 38,98,848/- (including Customs Duty).	11,90,204/-
2	The CIT(A) failed to appreciate the fact that the Appellant is not a party to the transaction between BBSI Pte Limited, Singapore and Mahindra Comviva Limited.	
6	The Assessing Officer erred in levying interest under section 234B of Rs.3,97,551/-.	3,97,551/-

3. In the course of hearing, it was submitted by learned AR of the assessee that as per the remand report dated 05.12.2019 submitted by the AO before Tribunal, it is stated by the AO in para 3 of the remand report that there is no mention of the relationship between Mahindra Comviva and M/s. BBSI Systems Pvt. Ltd., Singapore in earlier confirmation dated 27.12.2017 provided by M/s. Comviva Technologies Ltd. However, in the confirmation dated 04.03.2019 provided by the same party before the Tribunal, it is stated that the materials have been received by them from M/s. BBSI Systems Pvt. Ltd. in the month of May, 2014 and on this basis, it is observed by the AO that the mention of M/s. BBSI Systems Pvt. Ltd. in the confirmation dated 04.03.2019 is only an afterthought. He further stated that it is also observed by the AO in the said remand report that as per the Comviva Technologies Ltd., they had received the said goods from M/s. BBSI Systems Pvt. Ltd., Bangalore and the goods / materials are still in the possession of M/s. Comviva Technologies Ltd., Bangalore from May, 2014 but the genuineness of electronic goods / materials put to test, evaluation and demonstration over a period of more than 4 years is questionable. It is held that the confirmation being filed by the assessee company from M/s. Comviva Technologies Ltd., dated 04.03.2019 is more of a self-serving statement in the absence of any documentary evidence to prove the fact stated therein and thus cannot be

relied upon. He submitted that if the matter is restored back to the file of the AO for a fresh decision, assessee will be able to produce the documentary evidence required by the AO in this regard. Learned DR of the Revenue supported the order of CIT(A).

4. I have considered the rival submissions and keeping in view the facts discussed above and in view of the objections of the AO in the remand report about absence of documentary evidence to prove the facts and assertion of learned AR of the assessee that such documentary evidence can be produced before the AO if the matter is restored back to the file of AO, I feel it proper that in the interest of justice, the matter should be restored back to the file of AO for a fresh decision. Accordingly, I set aside the order of CIT(A) and restore the matter back to the file of the AO for a fresh decision after providing reasonable opportunity of being heard to the assessee. In view of this decision, I do not make any comment on the merit of the case.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(A.K. GARODIA)
Accountant Member

Bangalore,

Dated: 20th February, 2020.

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| 1. Appellants | 2. Respondent | 3. CIT |
| 4. CIT(A) | 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.