

**IN THE INCOME TAX APPELLATE TRIBUNAL "G"
BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, AM &
SHRI RAM LAL NEGI, JM**

आयकरअपीलसं./ I.T.A. No. 2018/Mum/2011
(निर्धारणवर्ष / Assessment Year: 1997-98)

M/s Siemens Ltd. 130, Pandurang Budhkar, Worli, Mumbai-400 018	बनाम/ Vs.	ACIT Range – 7(2), Aayakar Bhavan, M. K. Road, Mumbai-400 020
स्थायीलेखासं./जीआइआरसं./PAN No. AAACS0764L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Nitesh Joshi, AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri T. Kipgen, DR

सुनवाईकीतारीख/ Date of Hearing	:	25.09.2019
घोषणाकीतारीख / Date of Pronouncement	:	10.12.2019

आदेश / ORDER

PER S. RIFAUR RAHMAN (JUDICIAL MEMBER):

The present Appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals)-13 in short 'Ld. CIT(A)', Mumbai, dated 26.10.10 for AY 1997-98 on the grounds mentioned herein below:-

1. (a) *The Commissioner of Income Tax (Appeal) - 13 [hereinafter referred to as the CIT(A)] erred in treating Rs.55,58,590 being 50% of expenditure incurred by appellants under the head " Expenditure on refreshment to clients and staff accompanying them" as entertainment expenditure.*

(b) *The CIT(A) erred in inadvertently allowing Rs.42,56,167 being 50% of expenditure incurred by the appellants on Lunch, dinner expenses by staff members outside office premises as against 85% of expenditure allowed by Income-tax Appellate Tribunal in appellants own case for the assessment years 1989-90 to 1992-93.*

(c) *The CIT(A) erred in advertently not giving any specific direction on the ground of appeal of "expenditure of Rs. 56,250 incurred on refreshments offered to the invitees at the Annual General Meeting and there is no element of entertainment involved in such expenditure."*

(d) *The CIT(A) erred in disallowing Rs. 16,84,373 being 10% of welfare expenses of Rs. 1,68,43,733 by treating the same as being in the nature of entertainment.*

2.(a) The CIT(A) ought to have directed the AO to delete the addition made to closing stock on account of MOD VAT credit.

(b) The CIT(A) erred in not appreciating that since the appellants were following the treatment with respect to accounting of MOD VAT as per the recommendation of the ICAI, no adjustment was required to be made on this account.

(c) The CIT(A) erred in holding that an addition was required to be made to the value of MOD VAT closing stock on account of unutilized credit and in directing the Assessing Officer [hereinafter referred to as the AO] to compute the amount as per his directions.

(d) The CIT(A) erred in holding that the opening stock was not required to be adjusted on account of unutilized MOD VAT credit.

(e) The CIT(A) erred in holding that opening stock of the subsequent assessment year i.e. assessment year 1998-99 was not required to be adjusted on account of unutilized MODVAT credit.

3. The CIT(A) erred in upholding the action of AO in holding that interest totaling to Rs.4,80,57,000 is assessable under the head "Income from Other

Sources" as against the appellants contention that it is assessable under the head " Business Income".

4.The CIT(A) erred in upholding the action of AO in disallowing loans and advances written off amounting to Rs. 10,19,238 (i.e. Rs. 60,19,238 - Rs. 50,00,000).

5. (a) The CIT(A) erred in upholding the action of AO in disallowing bad-debts written off amounting to Rs.46,85,460.

(b) Without prejudice the CIT(A) ought to have directed the AO to allow bad debts pertaining to the Telecommunication Division (TCM Division), which has been sold by the appellant as a loss on sale of current assets of the division.

6. The CIT(A) ought to have directed the AO to allow depreciation on machinery shifting charges of Rs. 1,00,29,640 treated as capital in nature.

7. (a) The CIT(A) erred in upholding the action of AO in disallowing consultancy fees of Rs.3,00,000 paid to Colliers Jardine towards broking and real estate consultancy for business premises at Worli, Prabhadevi and Andheri, by treating the same as a capital expenditure.

The CIT(A) ought to have directed AO to allow this amount under section 37(1) of the Act.

(b) Without prejudice to the above, the CIT(A) ought to have directed AO to grant a deduction for the same in the year of sale of property.

8. (a) The CIT(A) erred in upholding the action of AO in treating the transfer of the TCM Division as a transfer of itemized assets constituting the TCM Division. The CIT(A) ought to have held that what had been transferred by the appellants was the undertaking of the TCM Division as such and hence the capital gains/loss arising therefrom had to be computed by reducing from the full value of the consideration of Rs.83.8 crores accruing as a result of the transfer, the indexed cost of acquisition.

(b) Without prejudice to above, the CIT(A) having held that the transfer was of itemized asset ought to have held that since out of the total consideration of Rs.83.8 crores, a sum of Rs.54,00,20,000 had been allocated by the AO to the transfer of depreciable assets, land and capital work-in-progress, the balance consideration of Rs.29,10,42,153 (after reducing consideration for sale of capital advances of Rs.69,37,847) was for the transfer of the net current assets the cost whereof was Rs.36,26,76,576 and hence ought to have directed the AO to allow the business loss of Rs. 7,16,34,423.

9. The CIT(A) ought to have directed the AO to delete wrongful additions made to returned income for such issues covered in Grounds of Appeal, wherein the department itself has accepted appellant's claim in verification report submitted to the Settlement Commission.

Your appellants crave leave to add, alter, amend, vary or omit the aforesaid ground of appeal or add a new ground or grounds of appeal at any time before or at the time of hearing of the appeal as they may be advised.

Ground No. 1 (a)

2. This ground raised by the assessee relates to challenging the order of Ld. CIT(A) in treating expenditure on refreshment of client and staff accompanying them as entertainment expenditure.

3. At the outset, Ld. AR appearing on behalf of the assessee submitted before us that Ld. CIT(A) has treated 50% of such expenditure as incurred on the employees and hence to that extent cannot be treated as entertainment expenditure. He further

submitted that this ground is squarely covered by the consolidated order of Coordinate Bench of Hon'ble ITAT for AY 1985-86 to AY 1988-89 in assessee's own case on merits.

4. On the other hand, Ld. DR fairly conceded that this ground is covered by the order of ITAT.

5. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the identical ground raised in the present appeal has already been decided by the Coordinate Bench of ITAT for AY 1985-86 to AY 1988-89 in assessee's own case on merits, which is mentioned in para no. 3 to 5 of the said order.

Therefore, respectfully following the decision of the coordinate bench of ITAT which is applicable *mutatis mutandis* in the present case, we **allow** this ground raised by the assessee.

Ground No. 1 (b)

6. This ground raised by the assessee relates to challenging the order of Ld. CIT(A) in disallowing expenditure incurred on lunch, dinner by staff members outside premises as entertainment expenditure.

7. Before us, Ld. AR submitted that Ld. CIT(A) has allowed relief only to the extent of 50% of such expenditure, whereas Coordinate Bench of ITAT has given relief to the extent of 85% in assessee's own case for AY 1989-90 to AY 1992-93. He further submitted that this ground is squarely covered by the consolidate order of Coordinate Bench of Hon'ble ITAT for AY 1989-90 to AY 1992-93 in assessee's own case on merits.

8. On the other hand, Ld. DR fairly conceded that this ground is covered by the order of ITAT.

9. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the identical

ground raised in the present appeal has already been decided by the Coordinate Bench of ITAT for AY 1989-90 to AY 1992-93 in assessee's own case on merits, which is mentioned in para no. 7 & 8 of the said order.

Therefore, respectfully following the decision of the coordinate bench of ITAT which is applicable *mutatis mutandis* in the present case, we **allow** this ground raised by the assessee.

Ground No. 1 (c)

10. This ground raised by the assessee relates to challenging the order of Ld. CIT(A) in disallowing expenditure incurred on refreshments offered to invitees at the Annual General Meeting.

11. Before us, Ld. AR submitted that this ground is squarely covered by the consolidate order of Coordinate Bench of Hon'ble ITAT for AY 1985-86 to 1988-89 and AY 1989-90 to 1992-93 in assessee's own case on merits.

12. On the other hand, Ld. DR fairly conceded that this ground is covered by the order of ITAT.

13. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the identical ground raised in the present appeal has already been decided by the Coordinate Bench of ITAT for AY 1985-86 to 1988-89 in para no. 6 to 8 of its order and also in AY 1989-90 to 1992-93 at page no. 40 of its order in assessee's own case on merits.

Therefore, respectfully following the decision of the coordinate bench of ITAT which is applicable *mutatis mutandis* in the present case, we **allow** this ground raised by the assessee.

Ground No. 1 (d)

14. This ground raised by the assessee relates to challenging the order of Ld. CIT(A) in disallowing welfare expenditure as entertainment expenditure.

15. Before us, Ld. AR submitted that this ground is squarely covered by the consolidate order of Coordinate Bench of Hon'ble ITAT for AY 1989-90 to AY 1992-93 in assessee's own case on

merits. He further submitted that in the said order the following expenses are held to be allowed:-

Expense	Para	Pg.No
Silver Jubilee	44	13
Marriage Gifts	50	15
Deutsche Schule [German School)	60	19
Staff Sports Club	61	19
Siemens Employees Co-op Society	60	19

He further submitted that other expenses towards employee welfare have been incurred only on account of business expediency and only towards employees. Hence the said expenditure cannot be treated as entertainment expenditure.

16. On the other hand, Ld. DR fairly conceded that this ground is covered by the order of ITAT.

17. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the identical ground raised in the present appeal has already been decided by

the Coordinate Bench of ITAT for AY 1989-90 to AY 1992-93 in assessee's own case on merits, which is mentioned in para no. 11 & 12 of the said order at page no. 43 & 44 of the paper book.

Therefore, respectfully following the decision of the coordinate bench of ITAT which is applicable *mutatis mutandis* in the present case, we **allow** this ground raised by the assessee.

Ground No. 2 (a) to (e)

18. These grounds raised by the assessee are inter related and inter connected and relates to challenging the order of Ld. CIT(A) in addition on account of unutilized MODVAT credit to value of closing stock, therefore we thought it fit to dispose of the same by this common order.

19. Before us, Ld. AR submitted that Hon'ble Supreme Court in the case of CIT vrs. Indo Nippon Chemicals Co. Ltd. 261 ITR 275 (SC) has held that such adjustment to the value of closing stock is not permissible. He further submitted that these grounds are squarely covered by the consolidate order of Coordinate

Bench of Hon'ble ITAT for AY 1989-90 to AY 1992-93 and AY 1993-94 to AY 1996-97 in assessee's own case on merits.

20. On the other hand, Ld. DR fairly conceded that this ground is covered by the order of ITAT.

21. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the identical ground raised in the present appeal has already been decided by the Coordinate Bench of ITAT for AY 1989-90 to AY 1992-93 in para no. 36 and AY 1993-94 to AY 1996-97 in para no. 9 in assessee's own case on merits. We also notice the Hon'ble Supreme Court in the case of CIT vrs. Indo Nippon Chemicals Co. Ltd.(supra) has held that such adjustment to the value of closing stock is not permissible.

Therefore, respectfully following the decision of the coordinate bench of ITAT and Hon'ble Supreme Court which is applicable *mutatis mutandis* in the present case, we **allow** these ground raised by the assessee.

Ground No. 3

22. This ground raised by the assessee relates to challenging the order of Ld. CIT(A) in upholding the action of AO in holding that interest is assessable under the head 'Income from other sources'.

23. Before us, Ld. AR submitted that interest on overdue outstanding is earned from debtors to whom sales have been made. He further submitted that since such income is directly arising from the activity of sale, income therefrom should be business income and relied upon the following case laws.

- i) CIT v. Vidyut Corporation 324ITR 221 [Bom)
- ii) ITAT's decision in the assessee's own case for AY 1993-94 to AY 1996-97 has decided this issue in favour of the assessee
- ii) ITAT's decision in Assessee's own case for AY 1998-99.
- iv) ITAT's decision in Assessee's own case for AY 2000-01.

He further submitted that loans were given by the assessee to its staff in the course of its business and interest earned on such loan should be regarded as business income. In this regard, relied upon the following case laws:-

- i) DCM Estates & Infrastructure Ltd v. DCIT 110 TTJ 605 (Del)
- ii) ITAT's decision in Assessee's own case for AY 1998-99
- iii) ITAT's decision in Assessee's own case for AY 2000-01.

He further submitted that miscellaneous interest income as well as income from UTI and HDFC has also been derived by the assessee in the course of carrying on its business and hence should be treated as business income.

24. On the other hand, Ld. DR relied upon the orders passed by the lower authorities.

25. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the identical ground raised in the present appeal has already been decided by the Coordinate Bench of ITAT for AY 1993-94 to 1996-97 in para no. 15 and for AY 1998-99 in para no. 6 and AY 2000-01 in para no. 2.3 of its order in assessee's own case has decided this issue in favour of the assessee on merits.

Therefore, respectfully following the decision of the coordinate bench of ITAT which is applicable *mutatis mutandis* in the present case, we **allow** this ground raised by the assessee.

Ground No. 4

26. This ground raised by the assessee relates to challenging the order of Ld. CIT(A) in upholding the action of AO in disallowing loans and advances written off.

27. Before us, Ld. AR submitted that the total amount of loans and advances written off during the year stood at Rs. 60,19,238/-

and before the settlement commission the assessee had itself disallowed an amount of Rs. 36,07,540 representing the amounts which had become irrecoverable on account of merger of Siemens Telematiks Ltd and Siemens Business Communication Systems Ltd with itself. However, the Settlement Commission made a disallowance to the extent of Rs. 50,00,000 out of the total write off of Rs. 60,19,238 i.e. allowed deduction of Rs. 10,19,238/-. He further submitted that on contrary to the Order of Settlement Commission, Assessing Officer has denied the deduction of Rs. 10,19,238/- for reasons which are irrelevant.

He further submitted that disallowance has been made by the Assessing Officer despite Revenue arguing before the Settlement Commission that the said issue has to be decided in favour of the Appellant and brought to our notice a chart at page no. 97 of the paper book.

28. On the other hand, Ld. DR relied upon the orders passed by the lower authorities.

29. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities. We notice that AO disallowed the loan and advances write off by the assessee and Assessment Order was passed on 24.03.2000. Subsequently, the assessee approached the Settlement Commission and Settlement Commission analyzed the plea of the assessee and directed that Rs. 50 lakhs is allowed as allowable written off amount. This direction of Settlement Commission was passed on 07.01.2008. But this piece of information was placed before Ld. CIT(A) and Ld. CIT(A) has disallowed the whole amount citing the findings of AO and in reference to Sec. 36(1)(vii) of the Act. In our view, the action of Ld. CIT(A) is not proper and the order passed by authority u/s 245D is binding on the Ld. CIT(A) and AO. Therefore, we are directing AO to allow the deduction as per the direction of Settlement Commission. Accordingly, ground raised by assessee is **allowed**.

Ground No. 5 (a) & (b)

30. These grounds raised by the assessee are inter related and inter connected and relates to challenging the order of Ld. CIT(A) in upholding the action of AO in disallowing bad debts written off amounting to Rs. 46,85,460/-.

31. Before us, Ld. AR submitted that write-off of the bad debts has been made before the transfer of the Telecommunications business. He relied upon the decision of the Madras High Court in case of South India Surgical Co Ltd v ACIT 287 ITR 62 is concerned in that case the debtor had acknowledged the debt but was unable to pay due to paucity of the funds. In the present case, in respect of the said debts, the debtors have withheld the payments in view of other commercial reasons. He further submitted that the party-wise details of amount written-off above Rs. 2 lakhs is at Pg 82 of the paper book. He further submitted that recovery has been made in a later year in respect of bad debt written off during the year it would result in double taxation. He further submitted that after the amendment in section 36(l)(vii) of the Act by the Direct Tax Laws (Amendment) Act, 1987 with

effect from 01.04.1989, the only requirement in the said section for claiming a deduction is that the debt should be written off in the books of account which condition is fulfilled in the assessee's case. In this regard, relied upon the following case laws:-

- > TRF Ltd. v. CIT 323 ITR 397 (SC)
- > CIT v. Samara India Pvt. Ltd. 356 ITR 12 (Del)
- > ITAT's decision in assessee's own case for AY 1998-99
- > ITAT's decision in assessee's own case for AY 2000-01.

32. On the other hand, Ld. DR relied upon the orders passed by the lower authorities.

33. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the identical ground raised in the present appeal has already been decided by the Coordinate Bench of ITAT for AY 1998-99 in para no. 8-9 and AY 2000-01 in para no. 6 of its order in assessee's own case on merits.

Therefore, respectfully following the decision of the coordinate bench of ITAT which is applicable *mutatis mutandis*

in the present case, we **allow** these grounds raised by the assessee.

Ground No. 6

34. This ground has not been pressed by the assessee, therefore this grounds becomes infructuous as not pressed and **dismissed**.

Ground No. 7

35. This ground raised by the assessee relates to challenging the order of Ld. CIT(A) in upholding the action of AO in disallowing the consultancy fees paid to Colliers Jardine.

36. Before us, Ld. AR submitted that assessee has filed a rectification application before the Assessing Officer on 11.04.2000 and direction may be issued to him disposing of said application, which is at page no. 92 of the paper book. He further submitted that before Settlement Commission, revenue had urged that this deduction should be allowed, which is in 6th item at page no. 96 of the paper book.

37. On the other hand, Ld. DR relied upon the orders passed by the lower authorities.

38. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities. Since the assessee has filed rectification petition before AO on 11.04.2000. Even though the validity to disposal of the rectification petition is expired, therefore we still direct the AO to consider the plea of the assessee and rectify the mistake apparent on record. Accordingly, ground raised by the assessee is **allowed for statistical purposes.**

Ground No. 8 (a) & (b)

39. These grounds raised by the assessee are inter related and inter connected and relates to challenging the order of Ld. CIT(A) in upholding the action of AO in denial of business loss of Rs. 7,16,34,423 upon slump sale of telecommunication division.

40. Before us, Ld. AR submitted that assessee had computed long term capital loss on transfer of TCM division as a slump sale. However, the Assessing Officer had treated the said transaction as an itemised sale of assets. He further submitted that before the CIT(A), the assessee submitted that assuming without admitting that the transaction was to be treated as that of itemised sale, sale consideration relatable to net current assets should work out to be at Rs. 29,10.42,153/- (from total consideration of Rs. 83,80,00,000, consideration as quantified by the Assessing Officer as relatable to depreciable assets, land, capital work-in-progress and capital advances of Rs. 54,69,57,847 has been reduced). Since the book value of the net current assets as on 30.09.1996 i.e. immediately before the transfer was Rs. 36,26,76,576, the assessee has incurred a business loss of Rs. 7,16,34,423 (Rs. 36,26,76,576 - Rs. 29,10,42,153). He further submitted that Id. CIT(A) has not accepted the assessee's claim as the Balance-sheet of the TCM division was not certified by the Auditors. He further submitted that there is no such requirement in the Act and the quantum of net current assets has been taken from the books of account and

not a single discrepancy has been pointed out by the CIT(A) in the amount of net current assets.

41. On the other hand, Ld. DR relied upon the orders passed by the lower authorities.

42. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities. We notice that assessee had transferred the Telecommunication division and incurred long term capital loss by treating the sale as slump sale, whereas the AO treated the same on the basis of itemized sale. Ld. CIT(A) refused to consider the alternate plea of the assessee to treat the net current asset after deducting the capital assets value from the sale consideration at Rs. 29,10,42,153/-. Since, there is no dispute with regard to sale consideration, in our view the value for net current asset can be ascertained by the AO or by any authority.

43 The next issue is the value of net current asset as on the date of transfer. As the assessee filed the unaudited balance sheet

before Ld. CIT(A), which was rejected. We direct the AO to verify the documents for ascertaining the sale consideration. The value is ascertained only based on the balance sheet or any valuation submitted before the Management. We cannot blindly refuse to accept the balance sheet just because it is not audited. The important thing is, when the business is transferred or acquired, it is based on valuation either based on independent valuation or adopting the latest available balance sheet and it is certified by the directors not the auditors. Therefore, we are remitting this issue back to AO to verify the above information and pass the appropriate order. Accordingly ground raised by the assessee is **allowed for statistical purposes.**

Ground No. 9

44. This ground raised by the assessee is general in nature, therefore, requires no specific adjudication.

45. In the net result, the appeal filed by the assessee stands **allowed for statistical purposes.**

Order pronounced in the open court on 10th Dec 2019.

Sd/-

(Ram Lal Negi)

न्यायिकसदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated :

Sr.PS. Dhananjay

Sd/-

(S. Rifaur Rahman)

लेखासदस्य / Accountant Member

10.12.2019

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/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai