

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

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.884/Bang/2017
AssessmentYear: 2009-10

<p>Tektronix (India) Pvt. Ltd. (erstwhile Tektronix (India) Pvt. Ltd. which merged with Tektronix Engineering Development (India) Pvt. Ltd.; the merged entity's name was subsequently changed to Tektronix (India) Private Limited Survey No.16, Salarpuria Premia Kadubeesana Halli Varthur Hobli Sarjapur Outer Ring Road Bangalore-560103</p> <p>PAN NO :</p>	Vs.	<p>Deputy Commissioner of Income-tax Circle-7(1)(1) Bangalore</p>
APPELLANT		RESPONDENT

Appellant by	:	Shri Sharath Rao, A.R.
Respondent by	:	Shri Rajendra Chandekar, D.R.

Date of Hearing	:	10.03.2020
Date of Pronouncement	:	11.03.2020

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 04.01.2017 passed by Ld. CIT(A)-7,

Bengaluru and it relates to the assessment year 2009-10. At the time of hearing, the Ld. A.R. did not press ground No.2 due to smallness of the amount and made necessary endorsement in the grounds of appeal. Accordingly, ground No.2 is dismissed as not pressed. The remaining grounds give rise to following two issues:

- a) Disallowance of advances written off.
- b) Addition made of on the basis of Annual Information Report (AIR).

2. The assessee is engaged in the business of distribution of electronic goods and is also acting as commission agent for its holding company.

3. The first issue relates to advances written off. The assessee claimed a sum of Rs.86.65 lakhs as deduction under the head "Advances written off". The assessee explained to the AO that these advances represent the amount paid by the assessee to its employees in lieu of Employees Stock Option Plan (ESOP), which was floated by Tektronix Inc. USA for all the employees of group companies of Tektronix, but later on abandoned. It was further stated that the ESOP scheme was withdrawn by Tektronix Inc. USA due to various internal business reasons. The assessee has treated the amount paid to its employees as "advances give to its parent company". Later

it was found that the above said amount will not be paid by the parent company and hence the assessee has written off the same. The A.O. noticed that the advances were recoverable from the parent company and it became recoverable due to change of policy only. Accordingly, he held that the assessee's claim is not allowable. Accordingly, he disallowed a sum of Rs.86.65 lakhs claimed by the assessee. The Ld. CIT(A) also confirmed the same.

4. The Ld. A.R. submitted that the ESOP scheme was abandoned, since 100% shares of Tektronix was sold to another group named Danaher Corporation. Hence the shares of Tektronix were no longer eligible to be traded in the stock exchange. However, the US Company directed the assessee to make cash payments to its employees in lieu of ESOP entitlements and accordingly, the assessee paid a sum of Rs.86.65 lakhs during the immediately preceding assessment year 2008-09. The Ld. A.R. further submitted that the amount so paid was treated as advance recoverable from its parent company and hence it was not claimed as expenditure in assessment year 2008-09. He submitted that the assessee has treated the said payments as perquisites in the hands of employees and tax was also deducted. However, the parent company did not reimburse the amount paid by the assessee to its

employees (which was treated as advance) and hence the assessee has written off the same during the year under consideration. Accordingly, the Ld. A.R. submitted that the advances were written off in the normal course of business out of commercial expediency. Since the amount paid by the assessee to its employees has been taxed in the hands of its employees, the same should be allowed as deduction in the hands of the assessee.

5. We heard Ld. D.R. and perused the record. We notice that the assessee was directed to pay cash to the employees in lieu of ESOP entitlements by its parent company Tektronix Inc., USA. The assessee has obtained a confirmation letter in this regard from its parent company and the same is placed at page 195 of the paper book. The Ld. A.R. submitted that the said confirmation letter was obtained after the completion of the assessment proceedings and the same was furnished before Ld. CIT(A).

6. We notice from the confirmation letter that the assessee was directed to pay cash payment to its employees in lieu of ESOP entitlements. Accordingly, the assessee has paid the amount to its employees during the financial year relevant to assessment year 2008-09. According to the assessee, the amount so paid was

recoverable from its parent company and hence it has treated the same as “Advances recoverable” in AY 2008-09. Though the Ld. A.R. contends that the parent company has refused to reimburse the payments made to the employees, yet no document was produced before tax authorities or before us in support of the said claim. Hence, in our view, the assessee has failed to substantiate as to why the advances amount was written off, particularly under the fact that the same is recoverable from its parent company. We also notice from the assessment order that the parent company has not reimbursed the amount only on account of change of policy of the parent company. The internal decision taken by two related concerns cannot be a ground in allowing the claim of write off. Accordingly, we are of the view that the Ld. CIT(A) has rightly confirmed the disallowance. Accordingly, we uphold the order passed by the Ld. CIT(A) on this issue.

7. The next issue relates to addition made by the A.O. on account of difference between the amount paid by the assessee towards credit card bills and that reported by American Express Bank in the AIR information. The assessee has given credit cards (American Express bank credit cards) to its employees for incurring expenses on behalf of the company. As per AIR information received

by the A.O., the assessee has paid credit card bills to M/s. American Express Bank Corporation to the tune of Rs.3.59 crores. Since the assessee could furnish details to the extent of Rs.1.06 crores only, the A.O. added the difference of Rs.2.52 crores in the hands of the assessee. Subsequently, it was noticed that the amount reported by M/s. American Express Bank Corporation was not correct and accordingly, a supplementary AIR was filed by the above said bank. According to the supplementary AIR, the assessee herein has paid a sum of Rs.1.18 crores only. As stated earlier, the assessee had furnished details to the tune of Rs.1.06 crores. Accordingly, the A.O. passed a rectification order u/s 154 of the Income-tax Act,1961 ['the Act' for short] and sustained disallowance to the tune of Rs.12.47 lakhs as against Rs.2.52 crores initially made in the assessment order. The Ld. CIT(A) confirmed the disallowance of Rs.12.47 lakhs.

8. The Ld. A.R. submitted that the assessee has now collated details of payments made to American Express Bank on account of the credit card transactions. He submitted that the aggregate amount of payment made by the assessee company along with another sister concern named M/s. Tektronix Engineering Development India Private Limited was Rs.2.90 crores. He submitted that the details furnished as per page 155 of the paper book is

Rs.1.06 crores and as per page 174 of the paper book is Rs.1.78 crores. Thus, the aggregate amount of payments explained by the assessee should be considered as Rs.2.84 crores. The Ld A.R submitted that the different amount actually represents expenses incurred by its employees on personal account and hence the assessee was not liable to pay the same. He submitted that the assessee has not got the relevant details and accordingly submitted that the addition may be sustained to the tune of Rs.5.65 lakhs only. Accordingly, he submitted that the addition should be restricted to the difference amount of around Rs.5.65 lakhs only.

9. We heard Ld D.R and perused the record. We notice that the American Express bank has given details of credit cards payments received by it as under:-

Tektronix India P Ltd (AABCT1733D)	- 1,18,87,570
Tektronix Engg. Development India Private Limited	- 1,71,33,268

	2,90,20,838
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The Ld A.R submitted that both the above said companies have been merged and hence the combined total should be taken into account. The assessee has furnished the details of credit card payments made by it in pages 147 to 155 of the paper book for an amount of Rs.1,06,40,130/- and in pages 158 to 174 of the paper book for an amount

of Rs.1,78,15,132/-. The first set of details relates to M/s Tektronix India P Ltd and the second set of details relates to M/s Textronix Engineering Development India P Ltd. Accordingly, it was submitted that the assessee has furnished details to the tune of Rs.2,84,55,262/- in aggregate. Accordingly it was contended that the difference amount of Rs.5,65,576/- may be sustained. We find merit in the said submissions. However, all these details require verification at the end of the assessing officer. Accordingly we restore this issue to the file of the AO for examining it afresh by duly considering the submissions and explanations of the assessee.

10. In the result, the appeal of the assessee is treated as partly allowed for statistical purposes.

Order pronounced in the open court on 11.3.2020

Sd/-

(Beena Pillai)
Judicial Member

Sd/-

(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 11th March, 2020.
/VG/

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed
before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
.....
4. Date on which the fair order is placed
before the dictating Member
5. Date on which the fair order comes back to the Sr.
P.S.
6. Date of uploading the order on
website.....
7. If not uploaded, furnish the reason for doing so
.....
8. Date on which the file goes to the Bench Clerk
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9. Date on which order goes for Xerox &
endorsement.....
10. Date on which the file goes to the Head Clerk
.....
11. The date on which the file goes to the Assistant
Registrar for signature on the order
.....
12. The date on which the file goes to dispatch section
for dispatch of the Tribunal Order
.....
13. Date of Despatch of Order.
.....
14. Dictation note enclosed.....