

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'जे' मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI

श्री आर. सी. शर्मा, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE SHRI R.C.SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.5468/Mum/2013
(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s. Jyoti Controls 412, 4 th Floor, Shree Sai Dham CHS, Tilak Road, Zulelal Chowk, Ghatkopar (W) Mumbai - 400077	बनाम/ Vs.	The Deputy Commissioner of Income Tax Range 22(1) Vashi
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAEFJ7515K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Ravindra Kumar Jain
Department by:	Shri B.S.Bist

सुनवाई की तारीख / Date of Hearing: 03.06.2016
घोषणा की तारीख /Date of Pronouncement: 23.09.2016

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 28.09.2012 passed by the Commissioner of Income Tax (Appeals) 33, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2009-10.

2. The assessee has raised the following grounds:-

- “1. *The appellant prays and submits that the addition of Rs.96,277/- as excise duty has been wrongly treated as income being difference because of entry made by the assessee in the books of account and in the excise books and same has been absorbed by the vendor i.e. Siemens Ltd.*
2. *The appellant prays that disallowance of Rs.1,23,12,500/- being amount written off in respect of discount to Siemens Ltd. is wrong and bad in law as same is to be treated as sales discount. Therefore not justified in disallowing the amount of Rs.1,23,12,500/- with whom the assessee had the total business.*
3. *The appellant prays that the appellant authority has erred in not considering the matter of disallowance of professional fees of Rs.12,39,000/- in the appellate order.*
4. *The assessee has submitted letter for rectification to the appellant authority for supplementary order but not accepted by the authority, therefore it has been sent by Courier to the same and CC to the Assessing Officer.”*

3. The brief fact of the case are that the assessee filed the return of income on 31.03.2010 declaring the total income to the tune of Rs.66,36,290/-. The assessment was completed u/s.143(3) of the Income Tax Act, 1961 (in short “the Act”) on 20.12.2011 determining the total income to the tune of Rs.9,04,89,200/-. The CIT(A) has confirmed the disallowance to the tune of Rs.1,23,12,500/- on account of sale discount to M/s. Siemens Ltd. and also confirmed the disallowance of Rs.12,39,000/- and confirmed

the addition of Rs.96,277/- which was excise duty, therefore the present appeal has been filed before us.

ISSUE NO.1:-

4. The learned representative of the assessee did not press the ground no.1 which is in connection with the addition of Rs.96,277/- of the excise duty. Therefore, in the said circumstances we dismissed this ground of appeal being not pressed.

ISSUE NO.2:-

5. According to issue no.2, the assessee has challenged the confirmation of disallowance to the tune of Rs.1,23,12,500/- being amount written off in respect of discount to Siemens Ltd. The learned representative of the assessee has argued that the Siemens Ltd. has confirmed the retention money to the tune of Rs.2,16,19,897/-. Therefore, in the said circumstances an amount of Rs.1,23,12,500/- which is less than the said retention amount is liable to be allowed in the interest of justice. It is also argued that the details of retention money held by the Siemens Ltd. has also been placed on record therefore, the retention money to the tune of Rs.2,16,19,897/- as on 31.03.2009 is not in dispute but the CIT(A) has wrongly confirmed the disallowance to the tune of Rs.1,23,12,500/- which is required to be allowed in the interest of justice. However, on the other hand learned representative of the department has placed reliance upon the

order passed by the CIT(A) in question. On appraisal of the order on record it came into notice that the Assessing Officer by virtue of letter dated 08.11.2011 requisitioned the relevant record from M/s.Siemens Ltd. and in reply to this letter M/s.Siemens Ltd. was having the retention amount to the tune of Rs.2,16,19,897/- as on 31.03.2009, M/s. Siemens Ltd. also furnished the details of retention money which was held by them. It is not in dispute that the retention money which was held by M/s. Siemens Ltd. was more than the written off amount of Rs.1,23,12,500/-. In view of the said circumstances we are of the view that the CIT(A) has wrongly confirmed the disallowance of Rs.1,23,12,500/- being amount of written off in respect of quantity discount to M/s. Siemens Ltd. Therefore, we set aside the finding of the CIT(A) on this issue and allowed the written off amount of Rs.1,23,12,500/- being amount of written off in respect of quantity discount to M/s. Siemens Ltd. Accordingly, this issue is decided in favour of the assessee against the revenue

ISSUE NO.3:-

6. Issue no.3 is in connection with the disallowance of professional fees to the tune of Rs.12,39,000/-. The Assessing Officer disallowed the professional fees to the tune of Rs.12,39,000/-. The assessee has paid the professional fees to the 14 parties and TDS has been deducted at the time of payment. The TDS has duly been reflected in the return filed by the assessee. There is no plausible

explanation on record as to why the said professional fees has been disallowed. Copy of income tax returns in connection with this professional fees are on record which is reproduced below:-

1. Bakulesh M. Nagarsheth
Rs.50,000/- TDS Rs.5150/-
The copy of ITR and other relevant details enclosed. He is director of instrument Company and he has versed knowledge in computer and all field related to instrument business.
2. Bunt B. Nagarsheth
Rs.1,00,000/- TDS Rs.10,900/-
The copy of ITR and other relevant details enclosed. He is son of the Director of the Company and he has versed knowledge in computer and all field related to instrument business.
3. Mehta & Sons
Rs.12,000/- TDS NIL
Copy of Bill enclosed.
This firm is reputed and doing the consultancy in labour Law ESIC PF etc. He is labour Law consultant.
4. Nayak & Associates (Prop. V. B. Nayak)
Rs.90,000/- TDS Rs.9000/-
His ITR for A.Y.12-13 and copy of invoice enclosed for reference. He is well versed in accounts and doing all types of reconciliation in respect of banks, sales tax, excises, set off of sales tax etc. He is in this field for more than 35 years.
5. Pooja Darshan Nagarsheth
Rs.1,50,000/- TDS Rs.15,450/-

The copy of ITR and bill enclosed. She is well versed in Computer Data Entry and Proceeding.

6. Sunil Nagarsheth

Rs.50,000/- TDS Rs.5150/-

The copy of ITR, copy of bill and other details enclosed. He is well versed in Consultancy and lessening in respect of instrument industry. He is also Director of his Group Company i.e. Altop Industries Limited.

7. The details have been placed on record in which they have been shown to receive the said professional income which have duly been reflected in their return. Copy of bill with regard to other professional fees have also been placed on record on which the TDS have been deducted. The receivers have confirmed the the professional fees by way of receipt of the payment. Therefore, in the said circumstances there is no reason to disallow the said professional fees. Therefore, we allowed the professional fees to the tune of Rs.12,39,000/-. Accordingly this issue is decided in favour of the assessee against the revenue.

8. In the result, the appeal filed by the **assessee is hereby Allowed.**

Order pronounced in the open court on 23rd September, 2016.

Sd/-
(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 23rd September, 2016

MP

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai