

IN THE INCOME TAX APPELLATE TRIBUNAL “K” BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, JM AND SHRI N. K. PRADHAN, AM

आयकर अपील सं/ I.T.A. Nos.6100 & 6101/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2009-10 & 2011-12)

Cameo Global Communication Pvt. Ltd. (Earlier known as STS Infotechnologies India Pvt. Ltd.) 50/101, Sea Woods Estate, NRI Complex, Phase-2, Nerul Navi Mumbai-400076.	बनाम/ Vs.	ITO-10(3)(4) Aayakar Bhavan, M. K. Marg, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAJCS1639R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Pranav Shah
Revenue by:	Shri Anand Mohan (DR) Shri Sush Kr. Mishra

सुनवाई की तारीख / Date of Hearing: 03/12/2020
घोषणा की तारीख /Date of Pronouncement: 03 /12/2020

आदेश / O R D E R

PER AMARJIT SINGH, JM:

These appeals filed by the assessee against the order dated 10.08.2016 passed by the Commissioner of Income Tax (Appeals)-24 Mumbai [hereinafter referred to as the “CIT(A)”] and pertains to A.Ys.2009-2010 & 2011-12.

ITA. NO. 6100/M/2016

2. The assessee has raised the following grounds:-

- “1. That on the facts and in the circumstances of the case, the Ld. CIT(A), Mumbai-24 has erred in law and on facts in upholding the action of the Ld. Assessing Officer of levying penalty of Rs.8,93,018 under section 271(1)(c) read with explanation 1 of the I. T. Act, 1961 on addition of Rs.29,76,725 to the receipt/ sales recognized in books of account by charging 26.5% mark up on conveyance/transportation expenses incurred of Rs.23,53,143 for transport facilities provided by the appellant to its employees.
2. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in holding that the appellant had furnished inaccurate particulars of the income and explanation furnished by the appellant was false and not bonafide. The Ld. CIT(A) ought to have appreciated the following:



ITA Nos. 6100 & 6101/M/2016
A.Ys.2009-10 & 2011-12

- a) *The appellant has recognized revenue during the year under appeal based on actual contract (without charging mark up of 26.5% on transportation facilities provided to employees) with its parent company STS International Inc. (here-in-after referred to as 'ST US') which is consistent with global transfer pricing policy of STS Group.*
- b) *The Proposed Contract i.e. the proposal made by the appellant to STS us to charge mark u p of 26.5% on transportation facilities provided to employees, was never agreed and finalized between the appellant and STS US as proposal of appellant was not in accordance with global transfer pricing policy of STS Group.*
- c) *The proposed Contract based on which addition made by the ld. AO to receipt /sales recognized in books of account was erroneously submitted by appeal during the assessment proceedings of AY 2009-10.*
- d) *The difference in pricing methodology between revenue authorities and appellant and addition made thereby does not lead to concealment of income and furnishing of inaccurate particulars of income.*
- e) *Mere confirmation of addition made in quantum proceedings by the CIT(A) and acceptance of the addition by the appellant to buy peace and avoid protracted litigation does not iso facto leads to concealment of income and furnishing of inaccurate particulars of income.*

ITA. NO. 6101/M/2016

3. The assessee has raised the following grounds.

- “1. *That on the facts and in the circumstances of the case, the Ld. CIT(A), Mumbai-24 has erred in law and on facts in upholding the action of the Ld. Assessing Officer of making addition of Rs30,89,049 in the assessment order passed u/s 143(3) of the I. T. Act, 1961 to the receipt/sales recognized in books of account by charging 26.5% mark-up on conveyance transportation expenses incurred of Rs.24,41,936 for transport facilities provided by the appellant to its employees.*
2. *That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in disregarding the fact that the appellant has recognized revenue during the year under appeal based on Actual Contract (without charging mark up of 26.5% on transportation facilities provided to employees) with its parent company STS International Inc. (here-in-after referred to as 'STS US'), which is consistent with global transfer pricing policy of STS Group.*
3. *That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in disregarding the fact that the Proposed Contract i.e. the proposal made by the appellant to STS US to charge mark up of 26.5% on transporation facilities provided to employees was never agreed and*



ITA Nos. 6100 & 6101/M/2016

A.Ys.2009-10 & 2011-12

finalized between the appellant and STS US as proposal of the appellant was not in accordance with global transfer pricing policy of STS Group.

4. *That on the facts and in the circumstances of the case, the Ld. CIT(A) has failed to appreciate that while passing the order for the year under appeal, the Ld. AO has not applied his mind at all and has blankly followed the Assessment order passed for AY 2009-10 wherein during the assessment proceedings of the said year the appellant through oversight, submitted the Proposed Contract based on which addition was made by the Ld. AO to receipt/sales recognized in the books of account of that year. The Ld. CIT(A) has also failed to appreciate that the Ld. AO has heavily relied on the fact that the appellant has not filed second appeal before the Hon'ble Income tax appellate Tribunal against order of CIT(A) passed for Assessment Year 2009-10.*
5. *That on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in relying upon the order passed by Ld. CIT(A)-15 for Assessment Year 2009-10. The Ld. CIT(A) ought to have appreciated that decision of finding given in assessment year 2009-10 has no binding force upon income-tax authorities as the principle of res-judicata has no application to income-tax authorities.*
6. *That on the facts and in the circumstances of the case and without prejudice to the above ground no. 1,2,3,4 and 5 taken above, the Ld. CIT(A) has erred in law by not taking cognizance of the fact that transaction between the appellant and STS US is at Arm's Length Price as per the provisions of section 92C of the Act as per Transfer Pricing Study Report. The Ld. CIT(A) ought to have appreciated that pricing methodology as adopted by the Ld. CIT(A) ought to have appreciated that pricing methodology as adopted by the Ld. AO for making addition u/s 92C of the Act during AY 2009-10 as well as in AY 2011-12, is not in accordance with law.*

4. When these appeals were called out for hearing, the Id. Counsel of the assessee submitted that he has filed the necessary declaration under Direct Tax Vivad se Vishwas Act, 2020 (Act 3 of 2020) and is awaiting for final resolution of the matter under the said scheme. He submitted that upon completion of the necessary formalities, he will withdraw the appeals. In response to the suggestion from the Bench, he fairly accepted that he has no objection to the appeals being dismissed as withdrawn as long as his right for revival of the appeals are protected, in the event of, for some unfortunate reason, the matter being not settled under the *Vivad se Vishwas scheme*.



ITA Nos. 6100 & 6101/M/2016
A.Ys.2009-10 & 2011-12

5. The Ld. DR also did not object to disgrace so suggested.
6. In view of the above, we dismiss the appeals as withdrawn, subject to be rider that in the unlikely event of matter not being resolved under the *Vivad se Vishwas scheme*, the assessee shall have liberty to approach the Tribunal for restoration of his appeals.
7. In the result, the appeals are dismissed as withdrawn – subject to the observation above.

Order pronounced in the open court on 03/12/2020

Sd/-

(N. K. PRADHAN)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 03/12/2020

Vijay Pal Singh (Sr.PS)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

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