

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

I.T.A. No. 1630/HYD/2016

Assessment Year: 2004-05

The Deputy Commissioner
of Income Tax,
Circle-3(2),
HYDERABAD

M/s.Speck Systems Limited,
Vs HYDERABAD
[PAN: AADCS4067M]

(Appellant)

(Respondent)

For Revenue : Shri Sunil Kumar Pandey, DR

For Assessee : Shri A.V.Raghuram, AR

Date of Hearing : 03-02-2021

Date of Pronouncement : 22-02-2021

ORDER

PER BENCH :

This Revenue's appeal for AY.2004-05 arises from the CIT(A)-3, Hyderabad's order dated 26-09-2016 passed in appeal No.1150/CIT(A)-3/14-15, in proceedings u/s.143(3) r.w.s. 254 of the Income Tax Act, 1961 [in short, 'the Act'].

2. The Revenue has proposed the following substantive grounds in the instant appeal :

"1. The learned CIT(A) erred both in law and on facts of the case.

2. The learned CIT(A) erred in deleting the disallowance of sales returns of Rs.1,85,16,690/- without appreciating the fact that the Ministry of Defence has denied the purchase of any thing from the assessee vide invoice no.184 dated 31-03-2013.

3. *The learned CIT(A) ought to have considered the fact that, in the event of sales proved to be unverifiable by the Assessing Officer, there cannot be any question of sales returns.*

4. *The Learned CIT(A) in allowing the appeal observing that the disallowance made by the AO is by mere suspicion, in light of the fact that the assessee could not provide any cogent evidences for the entries made in the ledgers for Ays:2003-04 & 2004-05.*

5. *The learned CIT(A) erred in taking into consideration the order of sales tax authorities without appreciating the fact that the sales tax authorities have allowed the sales returns only on the ground that the product is a tax exempt product and does not impact their revenue.*

6. *Any other ground(s) that may be urged at the time of hearing”.*

3. We come to the CIT(A)'s lower appellate order and notice that he has discussed the entire issue as under:

“3. The appellant is engaged in manufacture and supply of digital film recorders used in satellites for topographical mapping. He Supplied the equipment and software used in satellites for mapping earth to Ministry of Defence, Government of India. For A.Y.2004-05, he admitted income of Rs.4,49,97,566/-. Original assessment u/s 143(3) dated 22.12.2006 determining the income at Rs.7,44,51,846/- making several additions. One of the addition made was disallowance of 'sales return' of Rs.1,85,16,690/-.

The facts pertaining to such disallowance are, during F.Y.2002-03 (A.Y.2003-04), the company had supplied 'photo rights software' for a value of Rs.1,92,50,000/- vide invoice No.184 dated 31.3.2013 to Ministry of Defence. The same was included in sales for A.Y.2003-04. Sales register was credited by Rs.1,92,50,000/- and Ministry of Defence account was debited with Rs.1,85,16,690/- (after adjusting credit note of Rs.7,33,310/- received from the party). For F.Y.2003-04 (A.Y.2004-05) the assessee reduced 'sales return' of Rs.1,85,16,690/- on the ground that the Ministry of Defence did not accept the product as the same did not meet criteria of Ministry of Defence.

4. *In the original scrutiny assessment dated 22.12.2006, the Assessing Officer did not allow the 'sales return' of Rs.1,85,16,690/- for the reasons*

(a) There is no documentary evidence that the sales were returned.

(b) There is no basis for arriving at value of software at Rs.1,92,50,000/-.

- (c) That the assessee failed to furnish 'Copies of agreement with the Ministry of Defence in respect of supply of software.
- (d) There is no evidence that such software was delivered to the Ministry of Defence.
- (e) There is no finding in the sales tax assessment order regarding 'sales return'.
- (f) that the assessee failed to furnish confirmation from the Ministry of Defence(MOD) as to whether the software against invoice No.184 dated 31.3.2003 is returned by it.

5. In first appeal the CIT(A) in his order dated 15.2.2008 confirmed disallowance made on the ground that

“the appellant has not been able to prove the incidence of the 'debt' itself as the Invoice was never received or acknowledged by the MOD. It, therefore, remains unproved as to what was sold by way of Invoice No.184 and to whom in financial year 2002-03. Since the debtor itself remains unidentified, any amount written off in the subsequent year firstly cannot be considered as a 'bad debt', Secondly, in the absence of any evidence and co-relation the appellant has not been able to prove as to (1,85,16,690/- being claimed as bad debt in asst. year 2004-05 is part of the same (1,92,50,000/- as was offered for taxation in the asst. year 2003-04. Under the circumstances, the claim of the applicant of bad debts written off is also not allowable. The addition of Rs.1,85,16,690/- is, therefore, confirmed”

6. On further appeal, the Hon'ble ITAT vide its order dated 10.12.2010 restored the issue to the file of the Assessing Officer with the following comments

"We have considered the submissions of the rival parties and perused the material available on record. We find that the whole accounting treatment given to the transaction is against the general principles of accountancy. The assessee company, on one hand, credited the purchaser/debtor in its books of account without there being any acknowledgement of the sale affected in one year and on the other hand, in the subsequent year the said sale itself is being claimed as returned merely on the basis of the accounting entries. The learned counsel for the assessee, even before us, not in a Position to furnish any evidence with regard to the delivery of software to the Ministry of Defence or in support of its return. The nature and the value of said software has not been established by furnishing any concrete evidence before the department. Even the letter dated 27-3-2007 issued by the Directorate of Military Intelligence does not establish the fact that what was supplied by the assessee company to them as to whether it was software or services or its value. We find that it is an unacceptable charge over the current year's profitability. We also find that there are so many queries to be clarified as pointed out by the appellant authority in his order. In our considered opinion, to allow the claim of the assessee company, either as sales return or bad debts, requires in depth Investigation. Accordingly, we feel It proper and just to remit this matter to the file of the assessing officer for fresh consideration in accordance with law after affording an opportunity of being heard to the assessee on this issue. We also direct the assessee company to furnish all the

necessary evidence in support of Its claim before the assessing officer. Hence, this ground is allowed for statistical purpose”.

7. In order u/s.143(3) r.w.s.254 of IT Act dated 30.12.2011, the Assessing Officer observed that as per the letter of the Ministry of Defence dated 23.3.2007, the Ministry of Defence stated as under:

“1. No supply order pertaining to invoice no.184 has been issued by this office.

2. No record of receipt of above invoice is held with us.

3. No bill/invoice pertaining to the referred invoice has ever been forwarded to PCDA.

4. No record of any payment made (Rs.1,92,50,000) by the PCDA with reference to the above invoice is held with us”.

Based on the above letter, the Assessing Officer concluded that

(a) That the sale of Rs.92,50,000/- vide invoice dated 184 dated 31.3.2003 was not made to Ministry of Defence. If there was no sale there cannot be sale return from Ministry of Defence. Therefore it remains unproved as to what was sold and to whom vide invoice No.184, as the Ministry of Defence denied having given any supply order.

(b) Since the debtor remains unverifiable, there cannot be any bad debt.

(c) It is possible that sale of Rs.92,50,000/- vide invoice No.184 dated 31.3.2003 was actually made to unknown party and consideration from the same might have been received out of books.

8. On the other hand the appellant submitted that Defence Ministry is its major customer, in earlier years it supplied equipment which is fitted in satellites to take photos of earth, for better efficiency of equipment, during the year 2003-04, appellant supplied 'application software' to Ministry of Defence. The Ministry of Defence has stringent procurement process involving substantial time, therefore the software is developed first and was provided to the Ministry of Defence without any formal order. However since Ministry of Defence was not satisfied with software, no procurement order was issued.

9. Information on record is carefully considered, The crux of the issue is Whether any software was supplied to Ministry of Defence or not? If not, to whom such software was supplied" if so whether the software returned related to software supplied to Ministry of Defence? From the sales ledger of A.Y.2003-04, an amount of Rs.1,92,50,000/- was credited as sales made to

MI-17(Military Intelligence) vide invoice No.184 dated 31.3.2003 and an amount of Rs.1,85,16,690/- was reduced from the sale as 'sales return' from sales ledger of A.Y.2004-05 with description 'MI-17 software'. From sales registers of both years it is evident that appellant company made lot of supplies to Defence Ministry, both equipment & software. In fact it is also pertinent to mention that even the sales tax authorities in their final sales tax assessment for A.Y.2003-04 dated 27.2.2007 did allow the sales return of 'application software' of Rs.1,85,16,690/- and to that extent sales were reduced for the purpose of sales tax. Therefore keeping in view the above facts, it is only mere suspicion that 'sales returns' were not out of the same sales made to Ministry of Defence. Therefore the Assessing Officer is directed to allow Rs.1,85,16,690/-.

In result ground No.1 to 3 are allowed & Ground No.4 does not arise and treated as dismissed”.

4. We have given our thoughtful consideration to rival pleadings against and in support of the impugned sales write-off of addition of Rs.1,85,16,690/-. Suffice to say, the assessee's claim throughout is that it had been supplying equipments to the Ministry of Defence, Govt. of India on routine basis since long. Learned counsel invited our attention to assessee's detailed paper book running into 126 pages to this effect.

5. Coming to merits, Mr. Raghuram sought to clarify before us that although there is no evidence of the supply order from ministry of defence regarding the impugned software; which was sent by hand to the authorities concerned, this taxpayer had recorded sales subject to approval in the earlier assessment year followed by the software's rejection in the relevant previous year. This taxpayer therefore had mistakenly recorded the impugned sum of the sale in the earlier year and reversed in the relevant previous year. He has also made a strong endeavour to come to the assessee's books/

corresponding ledgers to the effect that the customer's confirmation denying its claim during the course of consequential assessment goes against the records.

6. Mr.Pandey places a very stray reliance on assessment findings disputing the assessee's sales as well as the impugned write-off. All these arguments from the latter side appear to be convincing at the first blush. The fact, however, remains that the departmental stand disputing the write-off goes contrary as the sales(s) duly accepted in preceding assessment year. Learned assessing authority ought to have rejected the sales as well otherwise it amounts to adopting mutually contradictory stands *qua* the twin aspects of sale and reversal thereof. We are also very much conscious of the fact that although Section 155 duly enables us to direct the authorities to reverse the sale itself in AY.2003-04, it would amount to unsettling the settled position on the issue after much water having flown downstream. Faced with this peculiar situation, we deem it appropriate to uphold the CIT(A)'s impugned findings under challenge deleting the impugned write-off therefore.

7. This Revenue's appeal is dismissed.

Order pronounced in the open court on 22nd February, 2021

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Hyderabad,
Dated: 22-02-2021

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Copy to :

1.The Deputy Commissioner of Income Tax, Circle-3(2), Hyderabad.

2.M/s.Speck Systems Limited, B-49, Electronics Complex, Kushaiguda, Hyderabad.

3.CIT(Appeals)-3, Hyderabad.

4.Pr.CIT-3, Hyderabad.

5.D.R. ITAT, Hyderabad.

6.Guard File.