

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.1922/Bang/2018
Assessment Year: 2008-09

HP India Sales Pvt. Ltd. (Formerly known as Hewlett Packard India Sales Pvt. Ltd.) No.24, Salarpuria Arena Hosur Main Road Adugodi Bangalore 560 030 PAN NO :AAACC9862F	Vs.	JCIT (LTU) Bengaluru
APPELLANT		RESPONDENT

ITA No.1986/Bang/2018
Assessment Year: 2008-09

Addl. CIT (LTU) Bangalore	Vs.	HP India Sales Pvt. Ltd. (Formerly known as Hewlett Packard India Sales Pvt. Ltd.) Bangalore 560 030
APPELLANT		RESPONDENT

Appellant by	:	Shri Percy Pardiwala, Sr. A.R.
Respondent by	:	Shri Sumer Singh Meena, D.R.

Date of Hearing	:	24.11.2021
Date of Pronouncement	:	06.01.2022

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

These cross appeals are directed against the order dated 31.3.2018 passed by Ld. CIT(A)-5, Bengaluru and they relate to the

assessment year 2008-09. The grounds urged by the assessee give rise to following issues:-

- a) Validity of reopening of assessment
- b) Direction issued by Ld. CIT(A) with regard to the pre-sale and post-sale discount.
- c) Disallowance of other reconciliation items Rs.167.58 crores.
- d) TDS credit.

2. At the time of hearing, the ld. A.R. advanced his argument with regard to the issue relating to disallowance of "other reconciliation items only. With regard to the ground relating to reopening of assessment, the Ld. A.R. requested the bench to keep the same open. Accordingly, the ground relating to validity of reopening of assessment is kept open. The grounds relating to other two issues are dismissed as not pressed.

3. The revenue is in appeal assailing the decision of Ld. CIT(A) in deleting the addition relating to miscellaneous accrual entries amounting to Rs.88.01 crores.

4. The assessee company is engaged in the business of manufacturing, trading and maintenance of computer equipments, printers and accessories. It also renders services relating to the same. The assessment in the hands of the assessee were originally completed u/s 143(3) of the Income-tax Act, 1961 ['the Act' for short] on 25.11.2011. Subsequently, the A.O. reopened the assessment by issuing notice u/s 148 of the Act on 25.3.2013. The A.O. completed the assessment by making various additions. In the appellate proceedings, the assessee got partial relief and hence both the parties have filed these appeals on the issues mentioned above.

5. We shall first take up the appeal filed by the assessee. The only issue that remains for our consideration relates to the issue relating to disallowance of “other reconciliation items. The facts relating to the same are discussed in brief. During the course of assessment proceedings, the A.O. asked the assessee to reconcile the turnover reported in sales tax and service tax returns with the turnover reported in the income tax return. The assessee reconciled the same as under:-

Sales as per VAT return	7683,58,29,741
Service income as per service return (services on which only service tax is leviable)	647,44,48,692
Total	8331,02,78,433
Less: Movement in deferred revenue	(153,06,33,861)
Less: Movement in income received in advance	(211,33,60,879)
Add: Movement in unbilled revenue	8,72,89,261
Less: Post sale discount	(884,84,55,391)
Less: Write off/refund/return reserve	(95,93,91,564)
Less: Sale of capital assets and raw material included in VAT return but not in product sales	(6,47,59,479)
Less: Credit notes posted to revenue account but excluded in VAT return	(16,56,61,853)
Less: Booking in discount accounts	(40,78,23,481)
Less: Other item/reconciliation item	(7,82,41,309)
Net sales on product and services	
Sales Rs.6185,34,98,551	
Service Rs.737,57,41,325	6922,92,39,876

The aggregate amount of items marked in “bold letters” is Rs.167.58 crores, which are relevant to the issue under consideration. It can be noticed that the assessee has deducted above said amount of Rs.167.58 crores from the Sales turnover reported in VAT return in order to arrive at the sales turnover figure as per books of account. Hence the AO asked the assessee to furnish details relating to Rs.167.58 crores. Since the assessee did not submit any evidence, the AO assessed the above said amount of

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Rs.167.58 crores as income of the assessee. The Ld CIT(A) also confirmed the same.

6. The Ld A.R submitted that the assessee has furnished explanations with regard to the above said claim before the AO as well as before Ld CIT(A). Since the details called for by the AO were more than five years old, the assessee could not furnish full details as sought by the AO. He submitted that the assessee furnished certain details before Ld CIT(A) and hence he called for a remand report from the AO. The assessing officer furnished the report as under:—

“Return/ reverse/write-back, Toners, cartridge and third party payouts, forgiveness of debt (FOD), excise duty, sale of assets, credit noted posted to revenue accounts, booking in discount account

– *Details in respect of miscellaneous accruals*

Remark:-It is noted that total adjustments on the above-mentioned categories made in assessment was Rs.167.59 crores. However, the assessee submitted details totalling to Rs.159.56 crores leaving the difference of Rs.10.21 crores. The ARs submitted that, it is nothing but difference due to reclassification.

	<i>Addition as per assessment order</i>	<i>Amount as per submission</i>	<i>Difference</i>
<i>Toner & Cartridge</i>		<i>12,02,05,485</i>	
<i>Excise duty</i>		<i>54,57,83,616</i>	
<i>Forgiveness of debt</i>		<i>30,85,75,018</i>	
<i>Sub total</i>	<i>95,93,91,564</i>	<i>97,45,64,146</i>	
<i>Sale of Capital asset</i>	<i>6,47,59,479</i>	<i>6,80,85,398</i>	<i>33,25,915</i>
<i>Credit note</i>	<i>16,56,61,853</i>	<i>16,57,22,276</i>	
<i>Discount account</i>	<i>40,78,23,481</i>	<i>38,72,35,346</i>	<i>2,05,88,135</i>
<i>Other item</i>	<i>7,82,41,309</i>		<i>7,82,41,309</i>
<i>Total</i>	<i>167,58,77,686</i>	<i>159,56,07,166</i>	<i>10,21,55,359</i>

Further stated that in respect of other adjustments and miscellaneous accruals, the submission is very voluminous and it is very difficult to comment on each item in such short time, after verification. Therefore, more time required to verify this information.”

He submitted that the assessee has furnished details for an amount of Rs.159.56 crores as against the claim of Rs.167.58 crores. Thus,

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there is a difference of Rs.8.02 crores only, even though the difference was mentioned as Rs.10.21 crores in the table given in the remand report. The Ld A.R submitted that the details relating to above said difference of Rs.8.02 crores could not be furnished due to passage of time only. He submitted that the considering the volume of the business activities of the assessee and also the reputation of the company, the information furnished by the assessee may be accepted and the addition may be deleted.

7. We heard Ld D.R on this issue and perused the record. We notice that the AO has made the impugned addition for want of details. Before Ld CIT(A), the assessee has furnished details to the extent of Rs.159.56 crores, as against the disallowance of Rs.167.58 crores. It has been tabulated above in the remand report. A perusal of the same would show that the details furnished for all items (except relating to 'Discount Account' and 'Other item') are more than that addition made by the AO, meaning thereby, the assessee has furnished details, even though it could not make one to one tally. In respect of 'Discount Account', the assessee could not furnish details to the tune of Rs.2,05,88,135/-. Similarly in respect of 'Other item', the assessee could not furnish details to the tune of Rs.7,82,41,309/-. The total of both these amounts works out to Rs.9,88,29,444/-.

8. Despite furnishing details, we notice that the Ld CIT(A) has confirmed disallowance of Rs.167.58 crores. In our view, this is not justified. Accordingly, we are of the view that the disallowance should have been restricted to the amount for which details could not be furnished by the assessee. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to restrict the addition to Rs.9,88,29,444/- on this issue.

9. We shall now take up the appeal filed by the revenue, wherein the revenue is aggrieved by the decision of Ld. CIT(A) in deleting the addition of Rs.88.01 crores relating to accrual entries.

10. The A.O. noticed that the assessee company has posted accrual entries in all expenses account in order to match the ledger amount with the amount shown in the P&L account. The assessee explained that it has passed accrual entries in respect of liabilities which crystallised on or before 31.3.2008. The A.O. noticed that the aggregate amount of accrual entries worked out to Rs.88.01 crores. He took the view that the assessee should have deducted tax at source u/s 40(a)(ia) of the Act. However, the A.O. noticed that the assessee has disallowed a sum of Rs.48.14 crores only in the computation of total income u/s 40(a)(ia) of the Act. In the absence of details, the A.O. took the view that the accrual entries are contingent liabilities and accordingly disallowed the above said amount of Rs.88.01 crores.

11. Before Ld. CIT(A), the assessee submitted that the above said amount of Rs.88.01 crores consisted of the following items:-

- a) Year end accrual adjustment -Rs. 6,98,78,916/-
- b) Reclassification of expenditure-Rs.81,02,13,709/-

The assessee also submitted that year end accrual adjustment of Rs.6.98 crores referred above would have been considered appropriately for disallowance u/s 40(a)(ia) of the Act. Accordingly, the assessee contended that the above said disallowance is not warranted. The Ld. CIT(A) deleted the disallowance with the following observations:-

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13.1 Further, the Addl. CIT LTU has given his comments after verification of the details in respect of miscellaneous accruals as under:

- Details in respect of miscellaneous accruals

Remark:- It is noted that total adjustments on the above mentioned categories made in assessment was Rs.167.59 crores. However, the assessee submitted details totalling to Rs.159.56 crores leaving the difference of Rs.10.21 crores. As submitted that, it is nothing but difference due to reclassification.

	Addition as per assessment order	Amount as per submission	Difference
Toner & Cartridge		12,02,05,485	
Excise duty		54,57,83,616	
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Other item	7,82,41,309		7,82,41,309
Total	167,58,77,686	159,56,07,166	10,21,55,359

The submission is very voluminous and it is very difficult to comment on each item in such short time, after verification. Therefore, more time required to verify this information. Based on the above observation, your goodself may consider to decide the issue.

13.2 The copy of the remand report has been provided to the appellant on 28.3.2018 for the rejoinder if any, and the appellant has submitted that details of miscellaneous accruals furnished by the appellant vide its submissions dated 11.5.2015, has been verified by the Assessing Officer and found to be in order. The appellant further submitted that as mentioned in paragraph 5 of the remand report dated March 28, 2018, the Assessing Officer has verified and confirmed the details with respect to the

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*miscellaneous accrual entries. It is seen that the disallowance of a sum of Rs.88,01,13,420/- representing accrual entries in various expenses ledger on the contention that the same ought to be disallowed u/s 37 of the Act as contingent liability. **During the appellate proceedings the appellant has demonstrated that the said amount has already been disallowed in the determination of taxable income for AY 2008-09 and therefore, such addition leads to double disallowance of the same amount. In view of the same the grounds taken are hereby allowed.***

12. We notice that the remand report furnished by the assessing officer is placed at page nos.264 to 267 of the paper book. A perusal of the same would show that the A.O. has not furnished any specific comment with regard to the disallowance of Rs.88.01 crores relating to accrual entries. The AO has made general observation in respect of "other reconciliation item" and miscellaneous accruals by stating that the time given to him was not sufficient in order to verify voluminous details. However, the Ld. CIT(A) has observed that the A.O. has offered his comments in respect of this item also. However, the Ld CIT(A) has extracted the reconciliation statement with regard to the "other reconciliation items" (referred as 'miscellaneous accruals') which is not relevant to the present issue. Further, in paragraph 13.2, extracted above the Ld. CIT(A) has observed that the assessee has demonstrated that the above said amount has already been disallowed in determination of taxable income for assessment year 2008-09. However, it appears that the assessee has not submitted so before Ld. CIT(A). Accordingly, there was confusion in the mind of Ld CIT(A) on this issue.

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13. Be that as it may, the assessee has stated that a sum of Rs.81.02 crores out of the disallowance of Rs.88.02 crores represents only "reclassification" of the expenditure, i.e., it is a case of transfer of expenditure from one head to another head. According to the assessee, the remaining amount of Rs.6.98 crores only relate to accrual adjustment. In these factual aspects, we are of the view that the disallowance to the extent of Rs.81.02 crores relating to reclassification of expenditure is not justified. In respect of year end accrual adjustment, the case of the A.O. is that the same is liable for disallowance u/s 40(a)(ia) of the Act for non-deduction of tax at source even though the assessee has submitted that it has considered the year-end accruals appropriately for disallowance u/s 40(a)(ia) of the Act. From the computation statement filed by the assessee, which is placed at page 107 of the paper book, we notice that the assessee has made disallowance of Rs.4,44,10,397/- u/s 40(a)(i) and Rs.48,14,64,824/- u/s 40(a)(ia) of the Act. However, no details were furnished to support the claim that the yearend provisions, that attract TDS liability have been included in the above said disallowances. We noticed earlier that the Ld CIT(A) has granted relief to the assessee on this issue without properly appreciating the facts. Accordingly, we are of the view that this issue requires examination at the end of the A.O. Accordingly, we partially confirm the order passed by Ld. CIT(A) on this issue and restore the matter relating to applicability of provisions of sec. 40(a)(ia) on the amount of Rs.6.98 crores to the file of the A.O for examining the same in accordance with law. The relief granted by Ld CIT(A) is sustained to the extent of Rs.81.02 crores.

14. In the result, the appeal filed by the assessee and revenue are partly allowed.

Order pronounced in the open court on 6th Jan, 2022.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 6th Jan, 2022.
VG/SPS

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.