

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad
(Through Video Conferencing)

Before

Before Shri S.S. Godara, Judicial Member
AND
Shri Laxmi Prasad Sahu, Accountant Member

ITA No.1635/Hyd/2018		
Assessment Year: 2014-15		
Electronics Corporation of India Limited, Hyderabad. PAN : AAACE4809L.	Vs.	The Asst. Commissioner of Income Tax, Circle 17(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	None.	
Revenue by:	Shri Y.V.S.T. Sai.	
Date of hearing:	13.01.2022	
Date of pronouncement:	25.02.2022	

ORDER

Per S. S. Godara, J.M.

This assessee's appeal for A.Y. 2014-15 arises from the Commissioner of Income Tax (Appeals) – 5, Hyderabad's order dated 16.05.2018 in case No.0442/2016-17/CIT(A)-5 involving proceedings u/s 143(3) of the Income Tax Act, 1961 [in short, 'the Act'].

Case called twice. None appears at assessee's behest. It is accordingly proceeded exparte.

2. The assessee's sole substantive grievance canvassed in the instant appeal challenges correctness of both the lower authorities' action disallowing its sales tax expenditure charged off to profit and loss account amounting to Rs.1,54,92,359/- in the course of assessment dt.16.12.2016 as upheld in the CIT(A)'s order reading as under :

6. The Decision:

The AO made an addition of Rs. 1,54,92,359/- on account of adjustment in sale tax/service tax difference for want of documentary evidence. The appellant's AR attended from time to time and filed submissions. The submission dated 15.05.2018 explains the background of the case, wherein the demand were raised by the Sales Tax department in the case of the appellant for various years. The appellant paid certain part of the demand for the years under consideration and filed appeals in the matter. The matter is still pending in the High Court.

The appellant's AR further confirmed that during the year under consideration certain provisions for the sale tax were made. The demands paid on account of the notices of the sale tax department were accounted for as current assets and the demand paid under protest. The appellant is still pursuing the litigation in the High Court and the outcome is awaited, nor has the appellant withdrawn the matter.

The above facts clearly indicate that the appellant has made a provision and not considered the liability as final and considered it as contingent to the outcome of appeal. Therefore, this liability cannot be allowed as it is a mere provision in nature and not considered as certain by the appellant. Further the provision has been not of this year under consideration but is pertaining to the years which are of F.Y. 2005-06, 2006-07 and 2007-08 that is more than 7 to 10 years back. Therefore cannot be allowed on a provision basis as such being not of the year under consideration. Therefore considering the above and the justification given by the AO, the said addition is confirmed and therefore the ground no. 2 and 3 are dismissed accordingly.

The appellant has filed the fourth ground of appeal regarding MAT credit, the AO is directed to examine the claim of the appellant and allow the credit as per the said provisions of law governing the said credit. This ground is thus allowed subject to the directions.

The ground no. 1 is general in nature needs not adjudication.

In view of the above, the appeal is partly allowed.

3. We find with the able assistance of both the parties that the assessee had claimed the impugned sales tax expenditure regarding an issue which was stated to be pending before the hon'ble jurisdictional high court. This is coupled with the fact that it had made the actual payment of the impugned sales tax; although in earlier years, as per the CIT(A)'s discussion itself. And sufficiently indicates that it is not a case of mere provision thereof per se as per the Revenue's stand in light of the detailed discussion. Mr. Sai also highlighted the alleged fact that the

assessee has not considered the impugned liability as having attained finality whose sole reason appears for pendency of the corresponding sales-tax litigation in above terms.

4. Faced with this situation, we deem it appropriate to restore the instant issue back to the Assessing Officer to be decided afresh after awaiting final outcome of the assessee's corresponding sales-tax litigation. It is further made clear that it shall be assessee's onus only to apprise the learned Assessing Officer about finality of the foregoing proceedings and thereafter, he shall proceed as per law within three effective opportunities of hearing. Ordered accordingly.

5. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the Open Court on 25th February, 2022.

Sd/- (LAKSHMI PRASAD SAHU) ACCOUNTANT MEMBER	Sd/- (S.S. GODARA) JUDICIAL MEMBER
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Hyderabad, dated 25th February, 2022.

TYNM/sps

Copy to:

S.No	Addresses
1	Electronics Corporation of India Limited, ECIL Post, ECIL, Cherlapally, Hyderabad – 500 062.
2	The Assistant Commissioner of Income Tax, Circle 17(1), Hyderabad.
3	CIT(Appeals) – 5, Hyderabad.
4	PCIT -5, Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order