

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH,
MUMBAI**

BEFORE SHRI M. BALAGANESH, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No. 6035/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2014-15)

Ruttonsha International Rectifier Ltd 139/141, B- Wing, 1 st Floor, Solaris Building No.1, Saki Vihar Road, Powai, Andheri (E), Mumbai-400072.	<u>बनाम/</u> Vs.	ITO-13(3)(2) Room No.227, 2 nd Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACR2816E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Homiyar Madan
Revenue by:	Shri Abdul Hakeem

सुनवाई की तारीख / Date of Hearing: 22/11/2021

घोषणा की तारीख /Date of Pronouncement: 18/02/2022

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 24.06.2019 passed by the Commissioner of Income Tax (Appeals)-21, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 2014-15.

2. The assessee has raised the following grounds: -

“1. The CIT(A) erred in upholding the order of the assessing officer wherein the assessing officer added back expenditure failing to appreciate that each item was below the value or Rs.5,000/- and was in the nature of repair and replacement expenditure.



Tax Effect Rs. 43,395

2. *The CIT(A) erred in upholding the order of the assessing officer wherein the assessing officer disallowed advertisement expenditure failing to appreciate that these expenditures were for advertisements in newspapers in connection with publication of financial results as per listing norms of the Mumbai Stock Exchange*

Tax Effect Rs. 99,400

3. *The CIT(A) erred in upholding the order of the assessing officer wherein the assessing officer disallowed payments made to non-residents failing to appreciate that tax was deducted and paid on such expenditure.*

Tax Effect Rs. 1,02,011

4. *The CIT(A) erred in upholding the order of the assessing officer wherein the assessing officer disallowed gratuity which was actually paid to retiring employees.*

Tax Effect Rs. 3,18,550

5. *The CIT(A) erred in upholding the order of the assessing officer wherein the assessing officer disallowed the leave encashment actually paid to the employees.*

Tax Effect Rs. 48,197

6. *The CIT(A) erred in upholding the order of the assessing officer wherein the assessing officer adjusted the demand of AY 2013-14 against the refund for AY 2014-15. The demand represented the*



dividend tax paid for which credit was not granted by the tax department.”

3. The brief facts of the case are that the assessee filed its return of income on 25.11.2014 declaring total income at loss to the tune of Rs.(-) 27,76,248/-. The return was processed u/s 143(1) of the Act. The case of the assessee company was selected for scrutiny under CASS. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee company is engaged in the business activities of Manufacturing of Semiconductor devices like diodes, SCR's (Thyristor) power equipment's and battery charges. The assessee claimed the expenses as under: -

Head of Expenses	Amount (Rs.)
Expenditure of Capital Nature	124413
Expenditure of Advertisement	284975
Payment of non-resident	292464
Gratuity paid	913275
Leave encashment	138181
Total	1753308

Since the assessee failed to prove the claim, therefore, the expenses were declined and added to the income of the assessee and the total income of the assessee was assessed to the tune of Rs.(-)10,22,940/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who also disallowed the claim of the assessee, therefore, the assessee has filed the present appeal.

ISSUE NO.1



4. Under this issue the assessee has challenged the confirmation of disallowance of expenses to the tune of Rs.1,24,413/- made under the head of expenditure of capital nature. The contention of the assessee is that the expenditure was incurred for purchase of different small items costing of Rs.5,000/- each which are consumable and the same were consumed during the year. It is also pleaded that there is no enduring benefit to the assessee and the assessee furnished the chart in support of its claim but the claim of the assessee has wrongly been declined, therefore, the expenses are liable to be allowed in the interest of justice. It is also contended that if the item has been treated as capital expenses then depreciation in accordance with law is liable to be given to the assessee. However, on the other hand, the Ld. Representative of the Department has strongly relied upon the order passed by the CIT(A) in question. The AO declined the claim of the assessee by treating the expenses as capital in nature. The assessee furnished the details of expenses lies at annexure B which were not examined and discussed in the order. The claim of the assessee is liable to be considered in accordance with law. Accordingly, we restore the issue before the AO to examine the expenses in details and to decide afresh by giving an opportunity of being heard to the assessee in accordance with law. Needless to say that if the expenses would be treated as capital expenses then the claim of the assessee in connection with the depreciation is also liable to be considered in accordance with law. Accordingly, we set aside the finding of the CIT(A) on this issue and restored the issue before the AO to decide the matter of controversy afresh in view of the above said observation. Accordingly, this issue allowed for statistical purposes.



ISSUE NO.2

5. Under this issue the assessee has challenged the disallowance of advertisement expenses in sum of Rs.2,84,975/-. The claim of the assessee is that the assessee paid the said amount to Imax Communication Pvt. Ltd., and others for advertisement in Newspapers for publication of Financial results required under the Companies Act, 1956 and Rules of Bombay Stock Exchange by which each company is required to published its quarterly result and annual result. In support of the claim of the assessee relevant documents such as bill, invoices etc., are not on record. The assessee wanted to produce the evidence in support of the claim, therefore, we are of the view that the issue is required to be examined at the end of the AO to decide the matter of controversy afresh in view of the evidences adduced by assessee if any. Accordingly, we set aside the finding of the CIT(A) on this issue and restore the issue before the AO to decide the matter of controversy afresh by giving an opportunity of being heard to the assessee in accordance with law.

ISSUE NO.3

6. The issue no.3 is in connection with the non-deduction of TDS on the payment made to the non-resident. The assessee reported the matter in clause 21(b) in the Form 3CD and also annexed to the form as Annexure-6. The contention of the assessee is that the auditor has certified that the payment was made to the person resident outside India and no tax was deductible as tax residency certificate was received. The payment was in respect of commission on sales which were effected in USA with the



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assistance of the non-resident agent. As such there is no requirement to deduct TDS and the disallowance cannot be upheld. The tax residency certificate is attached as Annexure-D. The claim of the assessee is nowhere discussed and examined. This issue is also required to be examined at the end of the AO to decide the matter of controversy afresh in view of the documents available on record specifically in view of the tax resident certificate of non-resident. Accordingly, we set aside the finding of the CIT(A) on this issue and restore the issue before the AO to decide the matter of controversy afresh by giving an opportunity of being heard to the assessee in accordance with law.

ISSUE NOS. 4 TO 6

7. These issues are not being pressed by the Ld. Representative of the assessee, therefore, these issues are being dismissed being not pressed.
8. In the result, the appeal filed by the assessee is hereby partly allowed for statistical purposes.

Order pronounced in the open court on 18/02/2022

Sd/-

(M. BALAGANESH)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 18/02/2022

Vijay Pal Singh, (Sr. PS)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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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**