

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.779/Bang/2016
Assessment year : 2011-12

HP India Sales Pvt. Ltd., (formerly known as Hewlett-Packard India Sales Pvt. Ltd.,) 24, Salarpuria Arena, Hosur Main Road, Adugodi, Bengaluru-560 030. PAN – AAACC 9862 F	Vs.	The Jt. Commissioner of Income-tax, LTU, Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Percy Pardiwala, Sr. Advocate
Revenue by	:	Shri Pradeep Kumar, CIT(DR)

Date of hearing	:	24.03.2022
Date of Pronouncement	:	30.03.2022

ORDER

Per Padmavathy S, Accountant Member

This appeal by the assessee is directed against the order of JCIT,
LTU, Bengaluru dated 15/02/2016 passed u/s. 143(3) r.w.s. 144(13) of
the Income Tax Act 1961 (the Act) for the asst. year 2011-12.

2. The assessee company filed its return of income on 15/11/2011 and it got revised on 24/11/2011 and on 28/3/2015 admitted a final total income of Rs.3,12,87,11,705/-. The return was selected for scrutiny u/s 143(2) of the Income-tax Act (the Act). Since the assessee had international transactions exceeding the prescribed limits, the case was referred to TPO who made adjustment of Rs.595,97,63,824/-. The AO, besides the TP adjustment, made several additions on the corporate tax front while passing the draft assessment order.

3. Aggrieved, the assessee raised its objections before the DRP who gave relief with regard to the transfer pricing adjustments directing the AO to delete the proposed adjustments. On the corporate taxes aspects, the DRP gave partial relief to the assessee. With regard to the additions on account of disallowance of claim u/s 40a(ia), the DRP gave a direction to the AO to examine the details furnished by the assessee with regard to subsequent TDS deduction and remittance, and to give relief as appropriate. With regard to deferred revenue, the DRP noted that in the draft assessment order no addition has been proposed (due to negative movement in the deferred revenue / Cost) and hence DRP did not issue any directions. The AO issued a final assessment order based on the directions of the DRP. In the final assessment order the AO retained the disallowance made u/s 40a(ia) and the observations made towards deferred revenue expenditure. There was mistake apparent on record in the order passed by the TPO u/s 92C of the Act and the assessee preferred a rectification application. As a

result of the rectification of the said mistake, the AO passed a revised order giving effect the rectification done in the order u/s 92CA r.w.s 154 passed by the TPO.

4. Aggrieved by the order of the AO, the assessee is in appeal before the Tribunal.

5. The assessee raised five grounds and several sub grounds before the Tribunal. Ground No.1 is general in nature and does not require separate adjudication and therefore dismissed. During the course of hearing, the Ld AR did not press for ground No.4 hence, the same is dismissed. Ground No.5 is consequential in nature.

6. In this appeal we will adjudicate ground No.2 and 3 which is reproduced below

2. Disallowance of claim under section 40(a)(ia) of the Income tax Act 1961 ("the Act")

2.1 The Ld. AO has erred in law and on facts in disallowing an amount of Rs 552,789,460 being the expenses claimed as deduction on remittance of Tax Deduction At Source ("TDS") in accordance with section 40(a)(ia) of the Act.

2.2 The Ld. AO has erred in law and on facts in referring to the appellate order passed for Assessment Year ("AY") 2009-10 and stating that the Appellant had not furnished one to one correlation of provision created with the invoices subsequent raised, while in fact such details were duly furnished during the assessment stage.

2.3 *The Ld. AO has erred in law and on facts in disallowing the claim of deduction under section 40(a)(ia) of the Act without considering the directions of the Honourable Dispute Resolution Panel ("DRP"), without considering the submission and details submitted by the Appellant (post receiving the directions), and merely stating that the details submitted were already verified at the time of passing the draft assessment order.*

2.4 *The Ld. AO has erred in stating that the Appellant had not furnished any evidence as directed by the Hon'ble DRP, without examining the details furnished by the Appellant pursuant to the directions of the Hon'ble DRP.*

2.5 *Without prejudice to the above, the Ld.AO and the Hon'ble DRP has erred in law and on facts in not appreciating the fact that the appellant had suo motu disallowed the amount under section 40(a)(ia) of the Act in AY 2010-11 and the proposed non grant of claim in AY 2011-12 shall lead to denial of eligible claim of expenses for both the years.*

3. Consequent relief on account of Deferred revenue

3.1 *Without prejudice and notwithstanding the Appellants grounds on taxability of Deferred Revenue made in AY 2009-10, the Ld.AO and the Hon'ble DRP has erred in law and on facts not granting any relief to the Assessee with respect to the negative movement of Deferred Revenue account, as the positive movement of the same has been assessed to tax in earlier tax assessments (i.e. in AY 2008-09, AY 2009-10); and*

3.2 *The Ld. AO and the Hon'ble DRP has erred in law and on facts on one hand upholding the principles of taxation of amount of deferred revenue pronounced by the erstwhile AO in the assessment order of earlier AY's and on the other hand not granting the credit in respect of income recognized by the Appellant in AY 2011-12.*

3.3 *Without prejudice to the above, the Ld.AO and the Hon'ble DRP has erred in law and facts in not appreciating the fact that non-grant of relief in respect of negative movement of Deferred Revenue results in double taxation of same income in different years which is not permissible under the taxation laws.*

3.4 *The Hon'ble DRP and the Ld. AO, has erred in law and in facts in holding that the DRP is not empowered to issue any direction in relation to granting consequential relief to the Appellant where such claim is not made in the return, without appreciating that such a claim could not have been made in the return of income.*

Disallowance of claim u/s 40(a)(ia) of the Act (Ground No.2)

7. During the year under consideration the assessee claimed a sum of Rs.55,27,89,460 u/s.40(a)(ia) of the Act. The said amount was disallowed suo moto by the assessee in the previous year relevant to assessment year 2010-11 for non-deduction of tax at source. The AO, in the course of assessment called for the details of the amount claimed as a deduction u/s.40(a)(ia) for which the assessee submitted the party wise details along with the details of tax deducted at source. The AO disallowed the deduction claimed stating that the assessee did not furnish a one-to-one correlation of the provisions created with the invoices subsequently raised and TDS is remitted

8. Aggrieved by the draft order of AO, the assessee raised objections before the DRP. The DRP gave a direction to the AO stating that -

Having considered the submissions, It is noticed by us from the para 2 of the draft assessment order that the AO has mentioned that the assessee failed to furnish one to one correlation with the relevant evidences and therefore, he disallowed such expenses. In our view, in accordance with the provisions of sec. 40(a)(ia), the deduction in respect of an expense in respect of which the TDS was to be made is allowed only if it is deducted in the specified time period. Having considered, we direct the AO to examine the details furnished with the submission dated 20.3.2015 and if it is found that the claim is in accordance with the provisions of sec.40(a)(ia), the same should be allowed, for which we also direct the assessee to furnish necessary evidences before the AO within 10 days of receipt of this order.

9. However in the AO in the final order sustained the disallowance stating that no new details were made available for verification except what was already shared by the assessee at the time of assessment proceedings.

10. The assessee is in appeal before us against the final order passed by the AO.

11. The Ld AR submitted that the sum of Rs. 55,27,89,460 was suo moto disallowed by the assessee u/s.40(a)(ia) in the computation of income of the previous financial year and the same amount is claimed as a deduction in the year under consideration u/s.40(i)(ia) based on the

fact that tax is deducted and is remitted on the entire amount. The Ld AR also submitted that the party-wise detail of tax deduction at source (TDS) along with remittance with the acknowledgement for filing e-TDS returns is furnished before the lower authorities (**Page 147 to 216 of paper book**). The Ld AR also submitted that in the proceedings initiated u/s.201(1) / 201(1A) for the previous year relevant to assessment year 2010-11, the same party-wise details of TDS remittance was submitted and is being perused by the ITO TDS (LTU) for computing the interest chargeable u/s.201(1A) as per the direction of the CIT(A) -14 (**OGE in page 75 of the paper book**). The Ld AR therefore contented that the details of TDS remittance on the sum of Rs. 55,27,89,460, is duly verified by ITO TDS (LTU) and hence the assessee is eligible to claim for deduction u/s.40(a)(ia) in the year under consideration.

12. The Ld DR relied on the written submissions.

13. We heard the rival submissions and perused the material on record. The provisions of Section 40(a)(ia) provides that -

40. Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",—

(a) in the case of any assessee—

(ia) thirty per cent of any sum payable to a resident, on which tax is deductible at source under Chapter XVII-B and such tax has not

been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139:

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, thirty per cent of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid:

14. As per the provisions as extracted herein above the assessee is entitled for the deduction of the amount which was disallowed earlier, in the year in which the TDS is deducted and paid. In the given case, the amount which was disallowed earlier by the assessee is claimed as a deduction u/s.40(a)(ia) in the year under consideration based on the fact that the assessee has deducted and remitted the TDS on the amount in year under consideration. There is no other condition attached while claiming the expenditure in the year of TDS remittance under the law. Hence the reasons given by the AO for disallowance that one-to-one matching with the provision made for the previous not done and that the invoices pertain to previous year are not tenable. The fact as submitted by the AR that the said details are duly verified and taken into account for computation of interest u/s.201(1A) in the previous assessment 2010-11 also merits consideration. Considering the provisions of the Act and the facts we are of the considered view that the assessee has rightly claimed the deduction of Rs. 55,27,89,460 under section 40(a)(ia). The AO is directed to give relief to the assessee accordingly. This ground of the assessee is allowed.

Consequent relief on account of deferred revenue (Ground 3)

15. The assessee has various integrated information technology infrastructure contracts entailing delivery/supply of materials/services/solutions over multiple geographical locations of the customers and the span over a long period of time (from 3 to 10 years) with various delivery/supply milestones as agreed with the customer. The pattern for transfer of risks and rewards to the customers and billing arrangements is determined as per the terms of the contract entered into with each customer. Given the significant size of the contracts, the long span of time for delivery/supply of services, terms for transfer of risks and rewards and billings, the cost and revenue in relation to such contracts are recognized in profit and loss account in accordance with the applicable accounting standards issued by the Institute of Chartered Accountants of India. The assessee separately tracks the amounts in respect of such contracts and the same are included in the financial statement under various heads like 'project in progress', 'finished goods inventory', 'stores and spare parts' and 'deferred revenue'. The assessee has been recognizing revenue expenses under the mercantile system of accounting in accordance with principle laid down by accounting standard 9 and the same has been consistently followed in its computation of taxable income as per the provisions of sec. 145 of the Act.

16. During the assessment year 2009-10, the accounting treatment followed by the assessee was not accepted by the AO and an addition was made which was upheld by the CIT(A). In the course of assessment for the year under consideration, the AO followed the principle laid down in assessee's own case for the asst. year 2009-10 which was upheld by the CIT(A) and concluded that the same principle should be applied. The movement with respect to deferred revenue and the corresponding deferred cost for the year under consideration are as follows:-

Deferred revenue	Amount (Rs in Cr)
Opening balance – April 1, 2010	1317.70
Closing balance – March 31, 2011	1179.91
Net Movement	(137.91)

Deferred costs – project in progress	Amount (Rs in Cr)
Opening balance – April 1, 2010	782.59
Closing balance – March 31, 2011	712.25
Net Movement	70.33

Since there is a negative movement, the AO did not make any specific additions with respect to deferred revenue / cost in the draft assessment order.

17. The assessee raised objections before the DRP stating that the assessee is following mercantile system of accounting and has been consistent in recognizing the revenue as per the accounting standard. The assessee raised an alternate plea before the DRP stating that if the the principle as laid down by the CIT(A) is to be followed, then the AO ought to have given relief to the assessee for the negative movement. The DRP in the order did not issue any directions on ground that no addition was made by the AO in the draft assessment order and DRP in such circumstances is not empowered to issue any directions. In the final asst. order, the AO confirmed his earlier decision mentioning that since the end movement of the deferred revenue is negative for the year under consideration and no addition was made in the assessment order.

18. The Id.AR made written submissions before us giving us the history of the issue of treatment of deferred revenue for various assessment years from assessment 2008-09. As per the written submissions no addition towards deferred revenue is made for the assessment year 2008-09 and assessment year 2014-15 onwards. For these years, the issue has reached finality as both revenue and the assessee have not preferred any appeal on this matter. For assessment year 2009-10 there was an addition made and both revenue and the assessee are in appeal before the coordinate bench of the Tribunal. From assessment year 2010-11 till assessment year 2012-13, including the year under consideration (assessment year 2011-12) the issue of

negative adjustment is in appeal before the coordinate bench of the Tribunal and assessment year 2013-14, the matter is pending before the CIT (A). The Ld AR prayed for a direction to be given to lower authorities to give relief to the assessee towards TDS credit and for negative movement of deferred revenue account based on the outcome of the appeals pending before the coordinate bench of the Tribunal.

19. We have heard the rival submissions and perused the material on record. We notice that the same issue is pending before the coordinate bench of the Tribunal for adjudication against the order of the CIT(A) for various assessment years from 2009-10 in assessee's own case. The issue can be decided for the year under consideration only based on the outcome of the other appeals pending for the earlier years as the decision will have a cascading effect on the issue for the year under consideration. At this point in time we can only issue a direction to the AO to follow the decision that would be adjudicated by the coordinate bench of the Tribunal for assessment year 2009-10 & 2010-11 on this issue. The AO is directed to grant consequential relief in accordance with the decision of the coordinate bench of the Tribunal in terms of adjustment of TDS credit and negative movement in the deferred revenue. The AO is directed accordingly and that a reasonable opportunity of being heard to be given to the assessee before the final decision. This ground of the assessee is allowed for statistical purposes.

20. In the result, the appeal of the assessee is allowed

Order pronounced in court on 30th March, 2022

Sd/-

(GEORGE GEORGE K)
Judicial Member

Sd/-

(PADMAVATHY S)
Accountant Member

Bangalore,
Dated, 30th March, 2022
/ vms /

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.

1. Date of Dictation
.....
2. Date on which the typed draft is placed
before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
.....
4. Date on which the fair order is placed
before the dictating Member
5. Date on which the fair order comes back to the Sr.
P.S.
6. Date of uploading the order on
website.....
7. If not uploaded, furnish the reason for doing so
.....
8. Date on which the file goes to the Bench Clerk
.....
9. Date on which order goes for Xerox &
endorsement.....
10. Date on which the file goes to the Head Clerk
.....
11. The date on which the file goes to the Assistant
Registrar for signature on the order
.....
12. The date on which the file goes to dispatch section
for dispatch of the Tribunal Order
.....
13. Date of Despatch of Order.
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