

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "C" BENCH: NEW DELHI**

**(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI G.S.PANNU, PRESIDENT &  
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.1110/Del/2018**

**[Assessment Year : 2012-13]**

DCIT Cirlce-11(1) New Delhi	vs	Haier Appliances India Pvt. Ltd. Building No. 1, Okhla Phase-III, Near Modi Mill, New Delhi PAN-AABCH3162L
<b>APPELLANT</b>		<b>RESPONDENT</b>

**C.O No. 21/Del/2021**

**[In ITA No. 1110/Del/2018]**

**[Assessment Year : 2012-13]**

Haier Appliances India Pvt. Ltd. Building No. 1, Okhla Phase-III, Near Modi Mill, New Delhi PAN-AABCH3162L	vs	DCIT Cirlce-11(2) New Delhi
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Sh. Umesh Takyar, Sr. DR	
<b>Respondent by</b>	Sh. Tarandeep Singh, Adv	
<b>Date of Hearing</b>	01.04.2022	
<b>Date of Pronouncement</b>	29.04.2022	

**ORDER**

**PER KUL BHARAT, JM :**

This appeal filed by the Revenue and cross objection filed by the assessee pertaining to the assessment year 2012-13 are directed against the order of the of Ld. CIT(A)-35, New Delhi dated 09.11.2017. Both appeals of Revenue and cross-objection of assessee is being disposed off by this consolidated order for the sake of brevity and convenience.

**FACTS OF THE CASE:-**

2. Facts giving rise to the present appeal are that that assessee company is engaged in the business of Hi Tech Consumer electronics products and is owned by Haier Electrical Appliances Corp. Ltd., China. The assessee filed its return of income on 29.11.2012 declaring total income at NIL. The case was picked for scrutiny assessment. Subsequently, the assessment u/s 143(3) of the Income Tax Act, 1961 ("the Act") was framed vide order dated 28.03.2016. Thereby, the Assessing Officer ("AO") assessed the income at Rs.6,48,35,150/- against the NIL income declared by the assessee. The AO made addition on account of adhoc disallowance of telecom expenses @ 5 % of Rs.9,45,712/-; deferred grant of Rs.2,42,47,861/- and disallowance of expenses claimed in respect of inventory obsolescence amounting to Rs.3,96,41,576/-.

3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions and material placed on record, sustained the addition qua deferred grant and rest of the two additions were deleted.

4. Aggrieved against this, both the Revenue and the assessee challenged the impugned order by way of appeal and cross-objection respectively.

5. First, we take up Revenue's appeal in **ITA No.1110/Del/2018** pertaining to **Assessment Year 2012-13** wherein the Revenue has raised following grounds of appeal:-

1. *“Whether on the facts and circumstances of the case, Id. CIT(A) is justified in deleting the addition made of Rs. 3,96,41,576/- made on account of provision for inventory obsolescence despite the failure on the part of the assessee to furnish necessary details and documentary evidences before AO?”*
2. *Whether on the facts and circumstances of the case, Id. CIT(A) has not erred in admitting the additional evidences without affording an opportunity to AO to examine them?*
3. *Whether on the facts and circumstances of the case, Id. CIT(A) has not erred in deleting the disallowance of Rs. 9,45,712/- being 5% of the Repair & Maintenance Building & Others without appreciating that the said expenses were not fully supported with documentary evidence?”*

6. Ground No.1 raised in the Revenue's appeal is against the deletion of addition of Rs.3,96,41,576/- by Ld.CIT(A) as was made on account of provision for inventory of obsolescence.

7. Ld. Sr.DR vehemently argued that Ld.CIT(A) was not justified in deleting the addition. He submitted that the AO had rightly made addition as the assessee could not give justification regarding provision made by the assessee.

8. On the contrary, Ld. Counsel for the assessee submitted that Ld.CIT(A) has rightly deleted the addition. He drew our attention to page 94 of the Paper Book wherein working of the provision is enclosed. Further, he submitted that the assessee company has its own internal policy for working out the inventory valuation. To buttress this contention, Ld. Counsel for the assessee drew our attention to page 96 to 98 of the Paper Book. Ld. Counsel for the assessee submitted that this expenditure is allowable as a provision and is squarely covered by the decision of Hon'ble Karnataka High Court rendered in the case of *CIT, Bangalore vs IBM India Ltd. [2015] 55 taxmann.com 515 (Karnataka)*. Further, he placed reliance on the judgement of Hon'ble Delhi High Court rendered in the case of *CIT, New Delhi vs Hotline Teletube & Components Ltd. [2008] 175 Taxman 286 (Delhi)*. Ld. Counsel for the assessee placed reliance on the judgement of the Hon'ble Supreme Court rendered in the case of *Rotork Controls India (P.) Ltd. vs CIT, Chennai [2009] 180 Taxman 422 (SC)*.

9. We have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. We find that Ld.CIT(A) deleted the addition by observing as under:-

*4.2.3. "In the present case, the appellant is a Pvt.Ltd. Company with audited books of accounts and the AO has made adhoc disallowances without rejecting the books of accounts. In view of the submissions filed by the Appellant, the addition is deleted, Hence, the Ground No.1 is allowed."*

10. We find that there is no dispute with regard to the fact that the assessee has claimed provision for inventory of obsolescence as allowable expenditure. The AO disallowed the same being a provision and not the actual expenses. As per the Assessing Officer, the expenses being uncertain is not allowable expense u/s 37(1) of the Act. We find that this reasoning of AO is contrary to ratio laid down by the binding precedents. Hon'ble Delhi High Court in the case of *CIT, New Delhi vs Hotline Teletube & Components Ltd.*(supra) has held as under:-

5. *“In the instant case we find that the principle for valuing stock at cost or realizable market price whichever is lower is applicable. The assessee has demonstrated that the stock being obsolete did not move for over three years and also the fact that it could only be sold if at all as scrap. As a matter of fact, the assessee also established that in the event it is sold as scrap the burden of excise duty would be much more than what it could realize on sale of the said stock as scrap. The Tribunal has returned this as a finding of fact. In view of these findings, it is quite clear that, all that the assessee has done by making the provision for diminution in value of stock is to anticipate the loss in the value of stock.”*

11. Further, the Hon'ble Karnataka High Court in the case of *CIT, Bangalore vs IBM India Ltd.*(supra) has held as under:-

7. *“The said provision is created essentially in a situation, where the market value of the stock and spares in hand as on the last date of the financial year, is lower than the cost of such stock and spares. The said accounting treatment is in compliance with the provisions of Accounting Standard-2 issued by the Institute of Chartered Accountants of India which states that the closing stock would need to be valued at cost or net realizable value whichever is lower. It is*

*also on record that a similar provision for obsolescence aggregating to Rs.6,06,27,459/- has been created in the earlier years too.*

8. *The grievance is, in the profit and loss account, net realizable value is not taken into account. On the contrary, the cost price of obsolete item is taken and in the provision made for obsolescence, net realizable value is given which finds a place in the balance sheet and therefore, it was contended that though the net result is the same, the way accounts are reflected is not proper.*

9. *We do not see any substance in the said contention. Accounting Standards notified under Section 145(2) in particular Accounting Standard-I categorically states that the accounting treatment and presentation in financial statements of transactions should be covered by a substance and not merely by legal form. Further Section 145(A) provides notwithstanding anything to the contrary contained in section 145, the valuation of purchase and sale of goods and inventory for the purposes of determining the income chargeable under the head "Profits and gains of business or profession" shall be-(a) in accordance with the method of accounting regularly employed by the assessee.*

10. *Therefore, what is to be seen is how the assessee is maintaining the accounts regularly in the course of his business and the accounting treatment and presentation of financial statement of transactions should be covered by the substance and not merely by the legal form. It is the principle which is to be kept in mind by both the appellate authorities. The aforesaid material clearly demonstrate instead of showing cost price as nil in the profit and loss account, cost price of the items are given in profit and loss account and a provision is made for obsolescence in inventory showing that the market value is nil and that is the mode in which the assessee was also following even for the previous years. Under these circumstances, we do not see any justification to interfere with the*

*well considered order passed by both the authorities. Accordingly, substantial questions of law are answered in favour of the assessee and against the revenue. No merit. The appeal is dismissed.”*

12. In the light of the above binding precedents, we do not see any reason to interfere in the finding of Ld.CIT(A), the same is hereby affirmed. Thus, Ground No.1 raised by the Revenue is dismissed.

13. Now, coming to Ground No.2 raised by the Revenue is against the admitting the additional evidences without affording an opportunity to AO.

14. At the outset, Ld. Counsel for the assessee submitted that no additional evidences were filed before Ld.CIT(A). Therefore, there was no reason to call for Remand Report from the AO.

15. Ld.Sr.DR supported the orders of the authorities below.

16. We have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. We find that Ld. Sr. DR could not point out that what were the additional evidences filed before Ld.CIT(A) which was not confronted to the AO. Therefore, in the absence of specific averment regarding additional evidences, we do not see any merit in the ground of Revenue's appeal. Thus, Ground No.2 raised by the Revenue is dismissed.

17. Ground No.3 raised by the Revenue is against the deletion of disallowance of Rs.9,45,712/-.

18. Ld. Sr. DR supported the order of the AO.

19. On the contrary, Ld. Counsel for the assessee supported the impugned order on this issue and submitted that the disallowance was made purely on adhoc basis. The AO has not pointed out any specific instance of the expenditure being personal in nature and not allowable.

20. In re-joinder, the Ld. Counsel for the assessee submitted that the AO has categorically stated that the assessee fail to produce all the required documentary evidences in support of its claim.

21. We have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. The disallowance was purely made on adhoc basis. The AO has merely stated that the assessee could not justify the business expediency. We are unable to understand that how the AO was convinced in respect of 95% of expenses being incurred as per the business expediency and with regard to 5%, the assessee could not prove business expediency. This approach of the AO is not inconsonance with the settled principle of law. We therefore, do not see any reason to interfere in the finding of Ld.CIT(A), the same is hereby confirmed. Ground No.3 raised by the Revenue is therefore, dismissed.

22. Ground No.4 is a prayer clause hence, needs no separate adjudication.

23. In the result, the appeal filed by the Revenue is dismissed.

**C.O No. 21/Del/2021 [In ITA No.1110/Del/2018]**  
**[Assessment Year : 2012-13]**

24. Now, coming to cross-objection No.21/Del/2021 filed by the assessee pertaining to Assessment Year 2012-13 wherein the assessee has raised following grounds:-

*“That on facts and in law the AO/CIT(A) have erred in making/upholding an addition to total income on account of deferred grant of Rs.2,42,47,861/-.*

*2. That the respondent assessee prays for leave to add, alter, amend or withdraw all or any of the above grounds of cross-objections at or before the time of hearing.”*

25. The assessee is aggrieved by sustaining the addition to the total income on account of deferred grant of Rs.2,42,47,861/-.

26. Ld. Counsel for the assessee submitted that Ld.CIT(A) failed to appreciate the fact that the assessee himself had offered this income in the Assessment Year 2016-17. Therefore, this amount cannot be allowed to be taxed twice.

27. Ld. Counsel for the assessee reiterated the submissions as made before Ld. CIT(A). He submitted that the grantor remit the money to the assessee with a direction that such moneys was required to be spent only for specified purposes and any amount remaining unspent/unutilized shall be held by the assessee in trust for and on behalf of the grantor. He further submitted that since the assessee had not any right over the unutilized amount of grant, the grant received in advance and remaining unutilized during the previous year cannot be taxed as a revenue receipt. He further submitted that without

prejudice to above, the grant was received by the assessee for capital purposes. Since the grant was received for capital purposes and was utilized as such by debiting the capital expenditure to 'current liability' during the relevant Assessment Year 2012-13, and unutilized part of its at the end of the year cannot be treated as revenue in nature. He further submitted that no addition on this account had been made in the Assessment Year 2013-14. Moreover, the balance amount of grant of Rs.2,42,47,860/- has been written back by the assessee to income during the previous year relevant to Assessment Year 2016-17 and offered to tax. He submitted that the income cannot be taxed twice even though it was offered erroneously into different years. In support of this, Ld. Counsel for the assessee placed reliance on the decision of the Co-ordinate Bench of the Tribunal in the case of *R Natrajan v ACIT in ITA No.1058(MDS) of 2010 [2012] (Chennai Tribunal)*. Further, reliance was placed on the judgement of Hon'ble Supreme Court rendered in the case of *Laxmipat Singhania vs CIT 72 ITR 291 (SC)* wherein Hon'ble Supreme Court has held that "*it is a fundamental rule of the law of taxation that, unless otherwise expressly provided, income cannot be taxed twice.....*".

28. Ld. Sr. DR opposed this submissions and supported the orders of the authorities below.

29. We have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. It is the say of the assessee that grant was given with specific direction by the grantor to be utilized for capital infrastructure. Since the amount could not be utilized

during the year, it was booked as liability and same was written back in the Assessment Year 2016-17 and offered for tax. The Revenue could not controvert the fact that the amount was offered for tax in Assessment Year 2016-17. It is settled principle of law that an amount cannot be taxed in the hands of the assessee if it does not partake the character of income. In the present case, the amount of grant was offered for tax in the year 2016-17. It is also equally settled principle of law that the income is required to be taxed in the correct Assessment Year. We therefore, set aside the impugned order on this issue and direct the Assessing Officer to verify and tax the impugned amount in correct Assessment Year. This ground of assessee's cross-objection is allowed for statistical purposes only.

30. In the result, the appeal of the Revenue in ITA No.1110/Del/2018 is dismissed and Cross-objection No.21/Del/2021 of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 29<sup>th</sup> April, 2022.

**Sd/-**

**(G.S.PANNU)**  
**PRESIDENT**

**Sd/-**

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

*\*R. N/Amit Kumar\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI