

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri K. Narasimha Chary, Judicial Member

ITA No.1096/Hyd/2018		
Assessment Year:2008-09		
Victory Electricals Ltd Hyderabad PAN:AABCV3115H (Appellant)	Vs.	Income Tax Officer Ward 17(4) Hyderabad (Respondent)
Assessee by:	Sri S. Rama Rao	
Revenue by:	Sri Kumar Aditya, DR	
Date of hearing:	22/06/2022	
Date of pronouncement:	27/06/2022	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 13.03.2018 of the learned CIT (A)-5, Hyderabad relating to A.Y 2008-09.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the learned CIT (A) in confirming the addition of Rs.51,79,590/- made by the Assessing Officer rejecting the claim of write off of the sundry balance.

3. This is the second round of litigation before the Tribunal. Facts of the case, in brief, are that the assessee company is carrying on the business of manufacture and sale of

electrical distribution transformers (domestic), lightning arresters, power transformers and transformer oil. The assessee filed its return of income for the A.Y 2008-09 on 30.09.2008 by admitting income of Rs.14,59,48,066/-. Subsequently, the assessee filed revised return of income on 6.1.2009 declaring therein total income of Rs.9,95,20,558/-.

4. The Assessing Officer completed the assessment determining the total income at 15,27,34,760/- by making various additions including the disallowance of the claim of sundry balance written off to the tune of Rs.2,30,41,697/-. The assessee filed appeal before the learned CIT (A) who vide order dated 13.2.2013 deleted the entire sundry balance written off of Rs.2,30,41,697/-. The Revenue preferred an appeal before the Tribunal and the Tribunal vide ITA No.620/Hyd/2013 order dated 17.10.2014 for the A.Y 2008-09 upheld the action of the learned CIT (A) to the extent of of Rs.1,78,62,107/-. So far as the balance amount of Rs.51,79,590/- which is the subject matter of appeal before us, the Tribunal restored the issue to the file of the Assessing Officer by observing as under:

“13. We have heard the arguments of both the sides and also perused the relevant material on record. It is observed that the disallowance on account of sundry balances written off was made by the Assessing Officer on the basis that the relevant details and documents showing the deduction claimed to be made by Discoms on account of penalty for late delivery, were not furnished by the assessee and also relying on Explanation to S.37(1) of the Act. Although the penalty levied by the Discoms for late delivery was not for infraction of any law, as envisaged in explanation to S.37(1), and this position was also accepted by the Assessing Officer in principle, we find merit in the contention of the Learned Departmental Representative that the claim of the assessee for deduction on account of sundry balances written off was also disallowed by the Assessing Officer for want of details and documents to establish the deductions claimed to be made by the Discoms on account of late delivery charges. No doubt, the assessee furnished such details and documents before the learned CIT(A). But on verification of the said details and documents, the Assessing Officer found that the claim of the assessee for deduction on account of late delivery charges was established only to the

extent of Rs.1,78,62,107. As regards the balance amount of Rs.51,79,590, the required details and documents, however, were not furnished to substantiate its claim, as specifically noted by the Assessing Officer in the remand report. Considering the same, we are of the view that the learned CIT(A) should not have deleted the entire disallowance made by the Assessing Officer on account of sundry balances written off. In our opinion, the onus in this regard is on the assessee to establish its claim for the deduction made by the Discoms on account of late delivery charges, even for the M/s. Victory Electricals Limited, Hyderabad balance amount of Rs.51,79,590. We therefore, restore this issue to the file of the Assessing Officer for giving the assessee one more opportunity to file the relevant details and documents to substantiate its claim for deduction on account of late delivery charges claimed to be levied by Discoms to the extent of balance amount of Rs.51,79,590. The Assessing Officer is directed to verify the same and give appropriate relief to the assessee on such verification. Ground No.4 of the Revenue's appeal is accordingly treated as allowed for statistical purposes".

5. Subsequently, in the order passed u/s 143(3) rws 254 of the I.T. Act, 1965 dated 30.03.2016 the Assessing Officer sustained the addition of Rs.51.79,590/- by observing as under:

"3.Following the directions of the ITAT, notices u/s 142(1) dated 19.02.2016 was issued to the assessee company requesting to submit details of sundry balances written off on account of late delivery charges levied by Discoms to the tune of Rs.51,79,590/- giving time till 29.02.2016. But there was no response from the company. Subsequently, show cause notice dt. 16.3.2016 was served on the assessee on 16.03.2016 informing non receipt of information as per the notice u/s 142(1) issued and requested to submit information as called for vide notice u/s 142(1) dt. 19.02.2016 by giving time upto 21.3.2016. There was no response to the notices issued and no information, bills/vouchers submitted to this office till date.

4. In view of the above, it is compelled to complete the assessment by making disallowance of Rs.51,79,590/- relating to late delivery charges levied by Discoms due to non-submission of detail information and as directed by the ITAT vide order mentioned above".

6. In appeal, the learned CIT (A) confirmed the order of the Assessing Officer by observing as under:

"The Decision:

The appeal in this case has been filed pursuant to order vij«. 143(3) LW.S 254 dated 30.03.2016 which was served on the appellant on 13.04.2016.

The appellant had filed a writ on 16.04.2016 and the Hon'ble High Court dismissed the writ as withdrawn vide order dated 01.06.2016 which was said to have been received by the appellant on 17.06.2016. The appellant filed an appeal on 27.06.2016 and there being a delay as the appeal was to be filed on 12.05.2016.

The matter above being contested by the appellant in the higher judicial forum, which indicates a conscious decision towards the order and the method of pursuing it legally in a different forum, therefore in view of the peculiar facts, the delay is condoned.

In this case, the order under appeal has been passed pursuant to the directions of ITAT which have been reproduced in the para 2.3 of the order of the Aa. The directions of the ITAT are explicit and requires that the appellant should file the requisite details along with supporting documents before the Aa for the allowance of the amount of Rs. 51,79,590/-. The appellant did not produce the same before the Aa and thus after giving adequate opportunity the Aa added back the same amount by disallowing the said quantum.

The case pertains to A.Y. 2008-09 and the appellant had failed to furnish the evidences in the original assessment proceedings, as well as before the CIT(A) and the ITAT. The appellant did not do the same in the 143(3) r.w.s 254 proceedings pursuant to the direction of the ITAT.

The appellant in its written submission also has expressed its failure to submit the evidences and has again deliberated on the quality of the issue and the circumstances of such claim. The directions of the ITAT are explicit and in absence of the supporting documents the same has to be disallowed. The appellant during the course of the present appeal proceedings failed to furnish any evidence in support of its claim and was given an opportunity till 26.02.2018 and further on 07.03.2018 but there is no response from the appellant. The appellant has already expressed its inability to furnish evidences. Therefore, there is no relief granted to the appellant and the ground no. 1 is dismissed accordingly.

The appellant has been granted enough opportunities through the initial stages of the case and the plea of the appellant that in the proceeding before the AO subsequent to the directions of the ITAT, proper opportunity was ,not given, is a complete farcical ground and therefore is dismissed accordingly”.

7. Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal.

8. The learned Counsel for the assessee submitted that he has filed all the relevant details during the appeal proceedings before the learned CIT (A) in the first round. Further, it is not known which are the balance details that is required to be filed. He accordingly submitted that the order of the learned CIT (A) be set aside and the grounds raised by the assessee be allowed.

9. The learned DR, on the other hand, drew the attention of the Bench to the findings given by the Tribunal in the first round of litigation and the order of the Assessing Officer and the CIT (A) subsequent to the order of the Tribunal. He submitted that despite given sufficient opportunities, the assessee failed to file any details. Therefore, now the assessee cannot say that which are the details required to be filed. He submitted that both the lower authorities have given sufficient opportunity to the assessee to substantiate his claim which the assessee failed to avail. He accordingly submitted that the order of the learned CIT (A) be upheld and the grounds raised by the assessee be dismissed.

10. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT (A) and the Paper Book filed on behalf of the assessee. We find the Assessing Officer in the instant case had made addition of Rs.2,30,41,697/- being the sundry balance written off by the assessee. We find in the first round the learned CIT (A) deleted the entire addition of Rs.2,30,41,697/-. We find in appeal filed by the Revenue before the Tribunal, the Tribunal upheld the order of the learned CIT (A) in giving relief to the extent of Rs.1,78,62,107/-

only but restored the issue to the file of the Assessing Officer with certain directions for the balance amount of Rs.51,79,590/-. A perusal of the assessment order shows that the Assessing Officer gave enough opportunities to the assessee during the set aside proceedings after the order of the Tribunal but the assessee failed to respond to the notices issued by the Assessing Officer. We find that although the learned CIT (A) had also given opportunities to the assessee, however, the assessee failed to furnish any evidence in support of its claim. Thus, in the absence of any details given before the lower authorities and even before the Tribunal now, the claim of the assessee to allow the write off of the balance amount of Rs.51,79,590/-cannot be allowed. Accordingly the order of the learned CIT (A) on this issue is upheld and the grounds raised by the assessee are dismissed.

11. In the result, appeal filed by the assessee is dismissed.
Order pronounced in the Open Court on 27th June, 2022.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (R.K. PANDA) AsCCOUNTANT MEMBER
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Hyderabad, dated 27th June, 2022.

Vinodan/sps

Copy to:

S.No	Addresses
1	Victory Electricals Ltd, Plot No.8 Sy. No.855, Medchal 501401, Secunderabad
2	Income Tax Officer Ward 17(4) Signature Towers, Kondapur, Hyderabad
3	CIT (A)-5, Hyderabad
4	Pr. CIT-5, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order