

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1402 & 1403/Ahd/2018
Assessment Year 2013-14**

Elecon Engineering Co.Ltd., Anand Sojitra Road, Vallabh Vidyanagar-388120 PAN: AAACE4644D & Elecon EPC Projects Ltd. (Merged with Elecon Engineering Co. Ltd.), Anand Sojitra Road, Vallabh Vidyanagar-388120 PAN: AAACE4644D (Appellant)	Vs	Pr. Commissioner of Income Tax-2, Vaodara (Respondent)
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**Appellant by : Shri M.K. Patel, A.R.
Respondent by : Shri James Kurina, CIT/D.R.**

Date of hearing : 07-07-2022
Date of pronouncement : 13-07-2022

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

These are two different appeals filed by the respective assesseees challenging the Revision order dated 27/03/2018 passed under section 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the Principal Commissioner of Income Tax-2,

Vadodara (for short Pr.CIT) relating to the Assessment Year (A.Y) 2013-14.

2. The facts in the above cases are inter-connected and identical revision orders are passed in both the cases, the same are taken up for disposal together. We will take up the Elecon Engineering Co. Ltd. in ITA No. 1402/Ahd/2018 as the lead case.

3. The brief facts of the case is that the assessee is a company engaged in manufacturing of material handling equipments, industrial gears coupling and Wind Turbine Generator. For the assessment year 2013-14, the assessee filed its Return of Income declaring total income of Rs. 36,21,68,510/-. On 29.11.2013 the same was processed u/s. 143(1) of the Act then selected for scrutiny assessment. The assessee was issued notices u/s. 143(2) and 142(1) on various dates and called for various information from the assessee. After detailed discussion, the assessment was framed u/s. 143(3) dated 22.03.2016 wherein additions made on

- (i) Disallowance of excess claim of depreciation on motor car
- (ii) Excessive claim of depreciation on Energy Saving Device and Wind Turbine Generators and
- (iii) Disallowance u/s. 14A of the Act.

4. This assessment was revised by the Ld. PCIT by issuing a show cause notice u/s. 263 dated 09.03.2018 as follows:

Sir,

Sub: show cause notice u/s. 263 of the Income-Tax Act in the case of Elecon Engineering Company Ltd. A.Y.2013-14

Please refer to the assessment order u/s. 143(3) of the Act passed on 22.03.2016 in your case for A.Y. 2013-14

It is observed that in AY 2013-14, consequent upon the Scheme of Arrangement amongst Elecon Engineering Company Ltd. (assessee), Elecon EPC Projects Ltd., and Emtici Engineering Ltd. sanctioned by the Hon'ble Gujarat High Court, M/s Emtici Engineering Ltd. had transferred income of Rs.54,24,12,511/- and corresponding TDS credit of Rs.3,28,13,759/- to you, and you had transferred income of Rs.24,86,42,464/- and corresponding T.D.S. credit of Rs.1,59,01,794/- to M/s Elecon EPC Projects Ltd. As against the net income of Rs.29,37,70,047/-- (54,24,12,811- 24,86,42,464) received by you, on account of transfer from Emtici Engineering Ltd., and transferred to Elecon EPC Project Ltd., you had offered income of Rs.25,19,38,366/- for taxation and claimed entire TDS credit of Rs. 1,69,11,965/-(3,28,13,759 - 1,59,01,794) thereon, in your return of income for A.Y, 2013-14. You have not disclosed income of Rs.4,18,31,681/- (29,37,70,047 - 25,19,38,366) in your return and this amount has not been added to your income in the asstt. Order.

It therefore, appears that this assessment order is erroneous in so far as it is prejudicial to the interests of the revenue, in terms of section 263 of the Income Tax Act. You are given an opportunity to show cause as to why an order u/s 263 be not passed and the aforesaid amount added to your income. Your reply should be submitted in this office on 15.03.18 at 11.30 AM and you may appear personally, or through an authorized representative. In case, no reply is received on this date, a decision will be taken on the basis of material available on record without providing any further opportunity to you.

Yours faithfully

(RAJ TANDON)

*Pr. Commissioner of Income –Tax-2
Vadodara*

5. The assessee vide interim letter dated 16.03.2018 submitted the assessment order dated 22.03.2016 is neither an erroneous order and nor pre-judicial to the interest of Revenue. In as much as,

there is no such income of Rs.4,18,31,681/- has escaped from assessment. Prima facie, the alleged difference in income shown by assessee and income transferred by Emtici Engineering Ltd. is on account of comparing the amount of income shown by assessee with amount on which TDS is deducted and also the service tax charged on that income. The assessee further submitted pursuant to the scheme of arrangement sanctioned by Hon'ble Gujarat High Court, Gear business of Emtici Engineering Ltd. has been demerged and merged with the assessee Elecon Engineering Co. Ltd. This was implemented is with effect from 1st April, 2012. As per the scheme of arrangement Emtici Engineering Ltd. has transferred income of commission earned on Gear and MHE business to the respective companies. Break up of commission income transferred is as follows:

<i>Break up of commission income transferred by Emtici Engineering Ltd.</i>			
<i>Commission of Gear business transferred to Elecon Engineering Co. Ltd.</i>	<i>A</i>		<i>25,19,38,366</i>
<i>Total commission income of MHE business from Elecon EPC Projects Ltd. and Prayas Engineering Ltd.</i>	<i>B</i>	<i>24,86,42,464</i>	
<i>Less: Commission of MHE business of Prayas Engineering Ltd.</i>	<i>C</i>	<i>1,78,35,662</i>	
<i>Net commission income of MHE business of Elecon EPC Projects Ltd.</i>	<i>D (B-C)</i>	<i>23,08,06,802</i>	<i>23,08,06,802</i>
<i>Total commission income of Gear and MHE business of Elecon Engineering Co. Ltd. and Elecon EPC Projects Ltd.</i>	<i>E (A+D)</i>		<i>48,27,45,168</i>

<i>Add: Service tax at the rate of 12.36%</i>	<i>F</i>		<i>5,96,67,303</i>
<i>Total commission income including service tax on which TDS has been deducted</i>	<i>G (E+F)</i>		<i>54,24,12,471</i>

5.1. Thus the total commission income including service tax on which TDS has been deducted of Rs. 54,24,12,511/-. Thus, there is no case for non disclosure of income of Rs. 4,18,31,681/- as mentioned in the show cause notice. Further the assessing officer has conducted through enquiry after verification of records. Vide assessee replies letter dated 26.11.2015, 27.04.2015 and also filed an Indemnity Bond stating that the TDS credit of Rs. 1,69,11,960/- from Emtici Engineering Ltd. and Rs. 34,90,979/- from Prayas Engineering Ltd. were claimed by the assessee company and the same is not being claimed by the above two companies in their respective Returns of income for the Assessment year 2013-14. Thus, the Id. PCIT is not correct in stating that no proper enquiry is being conducted by the assessing officer, while passing the original assessment order.

6. In response u/s. 142 notice dated 05.02.2016, the assessee made detailed reply on the TDS amount is follows:

<i>Including job work, site activities erection and commissioning services and other service revenue & interest</i>	<i>Elecon Engineering Co.Ltd.</i>	<i>Engineering Co. Ltd. transferred to Elecon EPC Projects Ltd. on transfer of income</i>	<i>Elecon Engineering Co. Ltd.</i>	<i>Engineering Ltd. received on transfer of income</i>	<i>Engineering Ltd. received on transfer of income</i>	<i>Claimed by Elecon Engineering Co. Ltd.</i>
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1	2	3	4(2-3)	5	6	7(4+5+6)
Elecon Engineering Co. Ltd.	24,673,963	13,913,626	10,760,337	3,490,779	16,911,960	31,163,276

Revenue fro operations	Gross value	Elimination of inter company transactions	Net after elimination of inter company transactions	Income transferred to Elecon EPC Protects Ltd.	Net income as per annual report
1	2	3	4 (2-3)	5	5 (4-5)
Elecon Engineering Co. Ltd.	10,688,998,759	0	10,888,998,759	5,472,973,676	5,416,025,083
Prayas Engineering Ltd.	872,553,123	439,866,607	432,686,516	0	
Emtici Engineering Lid.	22,411,753	7,292,475	15,119,278	0	15,119,278
TOTAL	11,783,963,635	447,159,082	11,336,804,553	5,472,973,676	5,863,830,877

7. One more allegation of the Ld. PCIT is that the assessing officer failed to follow section 199 of the Act and Rule 37BA do not provide for any exception in the case of mergers/demergers. Thus, the assessing officer has not made proper enquiry and verification. Therefore invoking Explanantion-2 to section 263 of the Act, this impugned revision order has been passed.

8. The ld. A.R. Mr. Mehul K. Patel submitted this finding of the PCIT is totally baseless. The assessing officer before passing the assessment order and made thorough enquiry of the transaction and also availed an Indemnity Bond from the assessee dated

21.03.2016 which is available at page no. 38 & 39 of the Paper Book.

8.1. As per Clause (iii) of Rule 37BA the deductor shall issue the certificate for deduction of tax at source in the name of the person in whose name credit is shown in the information relating to deduction of tax referred to in sub-rule(1) and shall keep the declaration in his safe custody.

8.2. As per Sub-rule (ii) of Rule 37BA is that the declaration filed by the deductee under clause (i) shall contain the name, address, permanent account number of the person to whom credit is to be given, payment or credit in relation to which credit is to be given and reasons for giving credit to such person.

8.3. As it can be seen from the Indemnity Bond filed by the assessee before the A.O., name of the person, assessment year, PAN No. and amount of TDS claimed and reasons (namely implementation of scheme of arrangement sanctioned by the Hon'ble High Court of Gujarat) are being given by the assessee. Thus, PCIT has not verified the assessment records passed by the assessing officer and wrongly invoked sub-section (2) of Section 263, when proper enquiry was made by the assessing officer before passing assessment order. Thus, the assessment order is not an erroneous order and it is also not prejudicial to the interest of revenue and therefore the entire Revision proceedings itself is bad in law.

8.4. In support of this argument, the assessee relied upon Jurisdictional High Court judgment in the case of Naresh Bhavani Shah (HUF) vs. CIT reported in (2017) 84 taxmann.com 53 (Gujarat) wherein held as follows:

10. It can thus be seen that under sub-rule 2 of Rule 37BA where whole or part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit could be given to such other person and not to the deductee provided the three conditions contained therein are satisfied. These conditions in brief are that the deductee files a declaration with the deductor in this respect, such declaration would contain the details of the person entitled to the credit and the reasons for giving such credit and lastly the deductor issues certificate for deducting tax at source in the name of such a person. In the present case, the petitioner could have applied to RBI in terms of sub- rule 2 of Rule 37BA and completed the procedure envisaged therein. However, one can gather that there is no dearth of power with the department to grant credit of tax deducted at source in such a genuine case. We are not suggesting that the requirements of sub-rule 2 are not to be followed before such benefit can be granted. Invariably in all cases such procedure would have to be completed before a person can rightfully claim credit of tax deducted at source where the TDS certificate shows the name and PAN of some other person.

9. Per contra, the Ld. D.R. Mr. James Kurian appearing for the revenue supports the order of the Ld. PCIT and pleaded to uphold the same.

10. We have given our thoughtful consideration and perused the materials available on record including the Paper Book filed by the assessee. The only reason for revising the assessment order dated 22.03.2016 passed by the assessing officer is that pursuant to the scheme of arrangement sanctioned by the Hon'ble High Court of Gujarat, M/s. Emtici Engineering Ltd. had transferred its income of

Rs. 54,24,12,511/- and corresponding TDS credit of Rs. 3,28,13,759/- to the assessee for the Assessment Year 2013-14. Similarly, Emtici Engineering Ltd. transferred its income of Rs. 24,86,42,464/- with TDS of credit of Rs. 1,59,01,794/- to Elecon EPC Project Ltd. for the Assessment Year 2013-14. As against the net income of Rs. 29,37,70,047/- i.e. (Rs. 54.24 crores – Rs. 24.86 crores) received by the assessee on account of transfer from Emtici Engineering Ltd. and transfer to Elecon EPC Project Ltd., the assessee had offered income of Rs. 25,19,38,366/- for taxation and claimed not TDS credit of Rs. 1,69,11,965/- in the return of income for the Assessment Year 2013-14. Thus there is a difference of income of Rs. 4,18,31,681/- (Rs. 29.37 crores- Rs. 25.19 crores). This income was not considered by the assessing officer while passing the assessment order u/s. 143(3) of the Act, which is erroneous order and prejudicial to the interest of the revenue. It is further seen from record while the original assessment was completed the assessing officer has issued 143(2) notices calling from various details. The assessee have made detailed reply claiming the TDS credit availed by the assessee, the same is already been reproduced in paragraph 6 of this order:

10.1. Furthermore, there is an Indemnity Bond given by the assessee company to the assessing officer, as against the claim of TDS total credit of Rs. 2,04,02,939/- from Emtici Engineering Ltd. and Prayas Engineering Ltd. vide Indemnity Bond dated 21.03.2016. Thus it cannot be said the assessing officer has not conducted proper enquiry before passing the above assessment order. In our considered view the assessing officer has clearly

issued notices u/s. 143(2) from time to time calling for various details and on receipt of the reply from the assessee, with relevant records passed the above assessment order, which cannot be said neither erroneous order nor pre judicial to the interest of the revenue. Further we could see the assessee has followed Rule 37BA procedures by obtaining Indemnity Bond which containing the name, PAN No. of the person to whom credit is to be given amount of TDS and reasons for giving credit to such person.

10.2. As rightly held by the Hon'ble High Court of Gujarat in the case of Naresh Bhavani Shah (HUF) cited (supra) that these conditions in brief are that the deductee files a declaration with the deductor in this respect, such declaration would contain the details of the person entitled to the credit and the reasons for giving such credit and lastly the deductor issues certificates for deducting tax at source in the name of such a person.

10.3. Respectfully following the above judgment of the Hon'ble Jurisdictional High Court, we have no hesitation in quashing the revision order dated 27.03.2018 passed u/s. 263 by the Ld. Pr.CIT-2, Vadodara is not in accordance with law and therefore the same is hereby quashed. The grounds of appeal raised by the Assessee are hereby allowed.

11. The Revision order passed in Elecon EPC Projects Ltd. (ITA No. 1403/Ahd/2018) is also on identical grounds and the same is also quashed following the finding in ITA No. 1402/Ahd/2018.

12. In the result, both the appeals filed by the Assessee are allowed.

Order pronounced in the open court on 13 -07-2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTGANT MEMBER True Copy
Ahmedabad : Dated 13/07/2022

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद