

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

| आ.अपी.सं / ITA No. | निर्धारण वर्ष / A.Y. | अपीलार्थी / Appellant | प्रत्यर्थी / Respondent |
|-----------------------|-------------------------|--|--|
| 721/Hyd/2019 | 2012-13 | M/s.Satyam Venture Engineering Services Private Limited, Secunderabad [PAN: AAFCS3287D] | Asst.Commissioner of Income Tax, Central Circle-3(2), Hyderabad |
| 866/Hyd/2019 | 2012-13 | Deputy Commissioner of Income Tax, Central Circle-3(2), Hyderabad | M/s.Satyam Venture Engineering Services Private Limited, Secunderabad [PAN: AAFCS3287D] |

निर्धारिती द्वारा/Assessee by: Shri C.S.Subrahmanyam, AR
राजस्व द्वारा/Revenue by: Shri Y.V.S.T.Sai, CIT-DR

सुनवाई की तारीख/Date of hearing: 27/06/2022
घोषणा की तारीख/Pronouncement on: 18/07/2022

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order(s) dated 16/01/2019 passed by the learned Commissioner of Income Tax (Appeals)-11, Hyderabad (“Ld. CIT(A)”), in the case of M/s.Satyam Venture Engineering Services Pvt. Ltd., (“the assessee”) for the assessment year 2012-13, both the assessee and the Revenue preferred these appeals.

2. Brief facts of the case as could be culled out from record and also the submissions on either side, are that the assessee company was promoted as 50:50 joint venture by Satyam Computer Services Ltd and Venture Global Engineering LLC, US, by entering into a shareholders agreement that provided for the royalty payment from the assessee company to both the constituents of the joint venture, in accordance with which a separate sales commission agreement was entered into where under the assessee is under an obligation of paying commission to JV constituents.

3. For the assessment year 2012-13, assessee filed the return of income on 29/06/2013 declaring a total income of Rs.28,40,38,800/- under the normal provisions of the Income Tax Act, 1961 (for short “the Act”) and Rs.62,89,57,902/- under the provisions of section 115 JB (MAT) of the Act.

4. During the course of assessment, it was found that the assessee credited an amount of Rs.35,94,06,780/- to the P&L Account towards the liabilities no longer required written back and submitted that the amount so credited offered to tax in earlier assessments, as they were disallowed and the matter was pending before the Tribunal. On this ground the

assessee submitted that, if the same amount is disallowed then, it would amount to double taxation. On this submission learned Assessing Officer did not make any addition on this score. In the order dated 31/01/2017 passed under section 143(3) of the Act. Subsequently, the orders of the ITAT were received for the assessment years 2004-05 to 2008-09 wherein the ITAT deleted the additions made on account of disallowance of sale commission paid to venture global and, therefore, basing on such the learned Assessing Officer opined that the income chargeable to tax has escaped assessment to the tune of Rs.35,94,06,780/- as the same was not offered to tax on cessation of liability. Learned Assessing Officer further noted that the provision created towards contingencies as stated in notes to accounts is not on asset and liability. In these circumstances, learned Assessing Officer while proposing to reassess the income of the assessee for the assessment year 2012-13, issued notice under section 148 of the Act, to which the assessee responded by requesting that the original return of income may be treated as the return filed in response to the notice issued under section 148 of the Act.

5. By order dated 12/12/2017 passed under section 143(3) read with section 147 of the Act, learned Assessing Officer noted that the assessee had admitted other income of Rs.35,94,06,780/- on account of "liability no longer required written back" and, therefore, it is akin to cessation of liability. Learned Assessing Officer referred to the contention of the assessee that it is not cessation of liability but only change of trading liability to provision liability in the books and observed that it is misleading because the assessee is conveniently changing the stance from year to year, that for assessment years 2010-11 and 2011-12 the amounts were

not claimed as claimed in the earlier years, but paid taxes voluntarily. According to the learned Assessing Officer the inconsistency in maintaining the accounts is not properly resolved and not factually irreconcilable. In these circumstances learned Assessing Officer brought the entire amount of Rs.35,94,06,780/- to tax by disallowing the “provision for contingency”.

6. In the appeal preferred by the assessee against the action of the learned Assessing Officer, it was noted by the Ld. CIT(A) that the assessee in principle agreed that the amount of sale commission allowed by the Tribunal to the tune of Rs.17,61,71,209/-for the assessment years 2006-07 to 2008-09 is a cessation of liability and only contention remained for adjudication was in respect of the amounts relating to the assessment years 2009-10 to 2011-12 to be reduced from the total disallowance of Rs.35,94,06,780/-. After considering the assessment record relating to the years 2009-10 to 2011-12, Ld. CIT(A) convinced that a sum of Rs.15,17,75,297/- relatable to the assessment years 2010-11 and 2011-12 was to be reduced from the total disallowance and to that extent Ld. CIT(A) gave relief to the assessee.

7. Challenging such an action of the Ld. CIT(A), both the Revenue and the assessee are in these appeals, Revenue challenging the deletion of disallowance to the tune of Rs.15,17,75,297/- whereas assessee challenging the sustaining the disallowance for the balance amount.

8. It is the argument of the Ld. AR that there is no cessation of liability as such, but the authorities below mistook that there was cessation liability whereas it is only change of trading liability to provision liability in the books of accounts of the assessee in view of the continuing litigation

amongst the shareholders of the assessee. Ld. AR submitted that the entire amount of Rs.35,94,06,780/- has to be allowed. He further submitted that it is a fact that for the assessment years 2010-11 and 2011-12 the assessee did not make the similar claim in respect of the sales commission but offered the same to tax by way of revised income.

9. Per contra, Ld. DR submitted that it is quite evident from the orders of the authorities below that, as noted in page No. 7 of the assessment order, the assessee in principle agreed that the amount of sale commission allowed by the Tribunal to the tune of Rs.17,61,71,209/- for the assessment years 2006-07 to 2008-09 was cessation of liability and during the course of 1st appellate proceedings the assessee confined the contest to the extent of the quantum of disallowance relating to the assessment years 2009-10 to 2011-12. Ld. DR further referred to the resolution of the board meeting held in 2011-12 to say that even according to the assessee company there was no need to continue with the accrual of sales commission and such unpaid accumulated amount representing the accrual from financial year 2005-06 to financial year 2010-11 to the tune of Rs.35,94,06,780/- was written back as other income in the statement of P&L. In these circumstances, Ld. DR submitted that the contention of the assessee that the change of trade liability to provision liability in the books was mistaken by the authorities as a cessation of liability.

10. We have gone through the record in the light of the submissions made on either side. It could be seen from the record that the amount under sales commission was debiting in the books of the assessee till the financial year 2005-06. Subsequently owing to the arbitration proceedings by one of the constituents in London and also due to the change of

management of the assessee company, the newly constituted Board approved payment of sale commission, pending finalisation of litigation. Subsequently in its meeting, the Board held that there was no need to continue with the accrual of sales commission and such un-paid accumulated amount representing the accrual from the financial year 2005-06 to financial year 2010-11 amounting to Rs.35,94,06,780/- was to be written back as other income in the statement of profit and loss, but as a prudent measure, the company has provided an equivalent amount as a provision for contingency which, in the opinion of the management, is adequate to cover any possible outflow that may arise in respect of the above matter. It was further held that for the year 2011-12, the company has reversed sales commission accounted up to December, 31, 2011 and made provision of Rs.16,97,35,029/- towards contingency to cover any possible outflow for the year ended 31/03/2012 that may arise in respect of the above matter, and presented the same under "other expenses". Pursuant to this resolution, the assessee in the financial year 2011-12 created an amount of Rs.35,94,06,780/- as "liability no longer required written back" under the head "other income", and in the notes to the audited report, the assessee reduced the same amount as "exceptional item-provision for contingency".

11. There is no dispute as to the Board resolution in the assessment year 2011-12 referred to above. It is also not in dispute that it is the case of the assessee that they did not make similar claim in respect of the assessment years 2010-11 and 2011-12. As a matter of fact, before the Ld. CIT(A) the assessee did not contest the claim to the tune of Rs.17,61,71,209/- relatable to the assessment years 2006-07 to 2008-09

and the entire order of the Ld. CIT(A) went on the premise that the contest is relatable only in respect of the sale commission for the assessment years 2009-10 to 2011-12. When nothing contrary to the Board resolution is produced before us, and on the face of the Board resolution referred to above is not open for the assessee now to contend that as a matter of fact there is no cessation of liability but it is only a change of trade liability to provision liability in their books. Board resolution is clear in its purport that the Board taken cognizance of the fact that there was no need to continue with the accrual of sales commission and such unpaid accumulated amount representing the accrual from financial year 2005-06 to financial year 2010-11 to the tune of Rs.35,94,06,780/- was written back as other income in the P&L Account. We are not prepared to accept anything to the contrary to this factual position.

12. Now coming to the plea of the assessee that this amount of Rs. 35,94,06,780/- includes the amount of Rs.23,53,95,444/- which was already taxed in the earlier years of 2009-10 to 2011-12, Ld. CIT(A) considered the following factual position relating to the opening liability for venture commission so also the closing liability including the payments made during the year. Ld. CIT(A) further took into consideration the fact that the assessee was contending before the learned Assessing Officer that in respect of the sum of Rs.8,56,73,154/- the same was not declared but included in the TP adjustment of Rs.9,43,17,839/-, in respect of which an appeal is pending as on the date.

13. Ld. CIT(A) considered the assessment record for the assessment years 2009-10 to 2011-12. In respect of assessment year 2009-10 the order was passed under section 143(3) read with section 144C of the Act and the

TP adjustment to the tune of Rs.9,43,17,839/- included a sum of Rs.8,56,73,154/- towards the payment of sale commission and though the learned Assessing Officer added the same, assessee does not accept it and in that respect an appeal is pending therefore, basing on the facts obtaining as on the date the same cannot be deleted and has to be included in the disallowance amount.

14. Likewise in respect of the assessment years 2010-11 and 2011-12 the Ld. CIT(A) verified the record and found that the sums of Rs.11,48,54,944/- and Rs.15,41,65,494/- included the sums of Rs.7,07,19,678/- and Rs.8,10,55,619/- respectively towards the sale commission to the Global Ventures. Ld. CIT(A) recorded that the said amounts were considered by the learned Assessing Officer in the orders passed under section 143(3) read with section 144C of the Act. Since the addition of Rs.8,56,73,154/- is under dispute and the assessee never offered the same for tax as they had done in respect of the assessment years 2010-11 and 2011-12, Ld. CIT(A) held that the same has to be included in the disallowance amount. However, inasmuch as the assessee himself accepted the sums to the tune of Rs.7,07,19,678/- for the assessment year 2010-11 and Rs.8,10,55,619/- for the assessment year 2011-12 and the same was considered in the revised return of the assessee by the learned Assessing Officer, Ld. CIT(A) rightly directed the learned Assessing Officer to delete the same.

15. Having considered the factual position in a comprehensive way, as against the Board resolution in 2011-12, we find no merit in the contention of the assessee that there is no cessation of liability but it is only a change of trade liability to provision liability in the books of account. We do not

find anything illegality or irregularity in the findings of the Ld. CIT(A) in considering the plea of the assessee for the assessment years 2010-11 and 2011-12 and directing the deletion of the addition relatable to the sales commission for these years, because it was already offered to tax by the assessee in those years by way of revised return of income and considered by the learned Assessing Officer while passing the order under section 143(3) read with section 144C of the Act. For similar reasons, we do not find any merit in the contentions of the Revenue also to the effect that the entire amount of Rs.35,94,06,780/- has to be disallowed, because it militates against the factual finding of the Ld. CIT(A). As a matter of fact, there is nothing contrary on record to the findings of the Ld. CIT(A) in respect of those two years.

16. With this view of the matter, we do not find any merit in the contentions of both the Revenue and the assessee to challenge the merits of the findings of the Ld. CIT(A). We accordingly uphold the findings of the Ld. CIT(A) and dismiss the grounds of appeal of both the Revenue and assessee.

17. In the result, appeal of the Revenue as well as the assessee are dismissed.

Order pronounced in the open court on this the 18th day of July, 2022

Sd/-
(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

TNMM

Hyderabad, Dated: 18/07/2022

Copy forwarded to:

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2. Dy.Commissioner of Income Tax, Central Circle-3(2), Hyderabad.
3. Asst. Commissioner of Income Tax, Central Circle-3(2), Hyderabad.
4. CIT(Appeals)-11, Hyderabad.
5. Pr.CIT(Central)-Hyderabad.
6. DR, ITAT, Hyderabad.
7. GUARD FILE

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