

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.:2089 & 1461/CHNY/2019

निर्धारण वर्ष /Assessment Years: 2007-08 & 2012-13

The ACIT (OSD)

Corporate Range-1,
Chennai.

vs.

Danfoss Industries Pvt. Ltd.,

Plot A, 19/2, Sipcot Industrial
Growth Centre,
Oragadam Village,
Sriperumbudur – 602 105.

(अपीलार्थी/Appellant)

PAN: AABCD 0321M

(प्रत्यर्थी/Respondent)

&

C.O. No.: 90/CHNY/2019

[in I.T.A. No.2089/Chny/2019}

Assessment Year: 2007-08

Danfoss Industries Pvt. Ltd.,

Plot A, 19/2, Sipcot Industrial
Growth Centre,
Oragadam Village,
Sriperumbudur – 602 105.

vs.

The ACIT,

Corporate Range-1,
Chennai.

PAN:AABCD 0321M

अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by

: Shri Raghav Rajeev Menan,
Advocate

राजस्व की ओर से /Revenue by

: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 12.07.2022

घोषणा की तारीख/Date of Pronouncement

: 20.07.2022

आदेश / O R D E R**PER MAHAVIR SINGH, VICE PRESIDENT:**

These two appeals by Revenue and cross objection by the assessee for assessment year 2007-08 are arising out of different orders of Commissioner of Income Tax (Appeals)-1, Chennai in New No.3/CIT(A)-1/2015-16 & ITA No.82/CIT(A)-1/2016-17, orders dated 29.03.2019 & 31.01.2019. The assessments were framed by the ACIT / DCIT (OSD), Corporate Range-1, Chennai for the assessment years 2007-08 & 2012-13 u/s.143(3) r.w.s. 147 of the Income-tax Act, 1961 (hereinafter the 'Act') for the assessment year 2007-08 and u/s.143(3) r.w.s. 92CA of the Act for the assessment year 201213 vide orders of dated 24.02.2015 & 18.03.2016 respectively.

Assessment year 2007-08

2. At the outset, the Id.counsel for the assessee stated that he is not interested in prosecuting the first issue of reopening of assessment raised in assessee's C.O. No.90/Chny/2019 and hence, the same is dismissed as "not-pressed".

3. The first common issue in the appeal of Revenue in ITA No.2089/Chny/2019 and cross objection of assessee in CO

No.90/Chny/2019 is as regards to the order of CIT(A) allowing the claim of sales tax provision to the extent of Rs.48,41,510/- as against total disallowance made by AO at Rs.88,16,054/-. The Revenue is in appeal against the deletion of amount of Rs.48,41,510/- and assessee is in cross objection for allowance of entire amount of Rs.88,16,054/-. For this Revenue has raised the following ground:-

b) Whether on facts & circumstances of the case and in law learned CIT(A) is correct in holding that out of the disallowed amount of Rs. 88,16,054 w.r.to Disallowance of Sales Tax Provision, an amount of Rs.48,41,510/- has to be deleted, as it has already been disallowed by assessee in Income computation, whereas in reality it was never been part of the addition as it has been clearly bifurcated in the assessment order and shown by audit party (RAP slip attached), hence, order of the CIT(A) is factually wrong.

Similarly, assessee has raised the following ground:-

2. Disallowance of provision for sales tax

2.1 The learned CIT(A) while allowing the appeal in favour of the Respondent ought not to have issued directions stating that disallowance of INR 48,41,510 pertaining to current year provision which was already disallowed is deleted.

4. Briefly facts relating to this issue are that the AO during the course of assessment proceedings noted that the amount reflected in the breakup of sales tax provision forming part of accrued expenses i.e., other sums rates and taxes amounting to

Rs.89,48,272/-, Rs.5,00,000/-, Rs.9,73,459/- and Rs.16,05,677/-, which have merely sales tax provision and assessee has not taken into account in the computation of income disclosed. According to AO specifically this amount of Rs.88,16,054/- being purely provision need to be added back. On query from the AO, the assessee replied that this sum represents closing balance of the account as on 31.03.2007, which are grouped under accrued expenses and does not constitute the provision amount created during the year. The AO verified the balance sheet and details including profit & loss account and noted that the assessee has not produced any evidence to show that the payment have been made before the due date of filing of return in regard to these sales tax so as to claim deduction. Therefore, the AO invoking the provisions of section 43B of the Act made this disallowance. Aggrieved, assessee preferred appeal before CIT(A).

5. The CIT(A) after considering the submissions of the assessee noted that the sales tax amount shown in the closing balance as provision amounting to Rs.88,16,054/- mostly pertains to the provision written off in earlier years and had formed part of the closing balance of Rs.80,87,301/- as on 31.03.2007. He noted that

the assessee itself disallowed a sum of Rs.48,41,510/- as provision for sales tax in the computation of income. Hence, he deleted the disallowance already disallowed by assessee amounting to Rs.48,41,510/- and balance, he confirmed. Aggrieved, Revenue as well as assessee came in cross appeals before the Tribunal.

6. We have heard rival contentions and gone through facts and circumstances of the case. We noted that even now before us, the Id.counsel for the assessee stated that the assessee has already included this amount of Rs.48,41,510/- in the computation of income. The Id.counsel for the assessee drew our attention to paper-book pages 91-101, wherein the assessee has enclosed the ledger copies of provision for bonus and sales tax. The Id.counsel for the assessee also filed written submissions filed before AO during the course of appeal effect given by AO, wherein it was claimed that the amount of Rs.88,16,054/- is part of closing balance of the provisions of sales tax account as on 31.03.2007 and does not constitute the provision created during the year. He also made submissions that this amount of Rs.48,41,510/- which was created during the year as already been disallowed by the assessee in the computation of income and the same need not be disallowed again.

When these documents were referred to the Id. Senior DR, he could not controvert the above fact situation. We confirm the finding of CIT(A) on this.

7. As regards to assessee's cross objection and claim that the overall breakup of sales tax provision and sales tax account along with the details of the movement in that account i.e., opening balance, provision created during the year, provision written off during the year and payment made during the year was provided before the AO and even now in assessee's paper-book at page 100 vide Annexure-2, we noted that these details are filed and when these were confronted to Id. Senior DR, he stated that these are not verified by the AO and hence, can be remanded back to the file of the AO. Hence as regards to balance amount out of Rs.88,16,054/-, remaining amount after deduction Rs.48,41,510/-, the AO will examine and decide afresh.

8. The next common issue in both the appeals of Revenue in ITA Nos.2089 & 1461/Chny/2019 is as regards to the order of CIT(A) deleting the disallowance made by AO in regard to software license expenses. The facts and circumstances are exactly identical in both

the years and hence, we will take the facts from assessment year 2007-08 and decide the issue. The relevant grounds raised by Revenue in assessment year 2007-08 reads as under:-

C) Whether on facts & circumstances of the case and in law learned CIT(A) is correct in holding the expense, towards Software license for SAP ERP related IT Help Desk Fee, as revenue expenditure without appreciating the fact that the software provides enduring benefit over a period of time to the assessee by performing integration of Sales, Logistics, Finance, Administration, Training, Communication etc where the analytical and historic data gathered by the software in present can be utilised for maximising profit/ finding market opportunities in future.

d) Whether on facts & circumstances of the case and in law learned CIT(A) is correct in holding the expense, towards Software license for SAP ERP related IT Help Desk Fee, as revenue expenditure by relying on the ITAT referred Judgement of the Hon'ble Bombay High Court in the case of CIT Vs Raychem RPG Ltd (2011) where it has been held by applying functionality test that ERP Software is not a profit making apparatus and decided further that-

Where enterprise resource planning (ERP) package software facilitated assessee's trading operations or enabling management to conduct assessee's business more efficiently or more profitably but it was not in nature of profit-making apparatus, software expenditure was allowable as revenue expenditure, Whereas in current scenario of cutting age Information Technology, SAP like ERP System does integration of Sales, Logistics, Finance, Administration, Human Recourse, Data Analytics etc apart from facilitating environment routine book keeping and accounting which has replaced a lot of manual workforce, like a machinery replaces human labour, for the enormous task mentioned above and is now a days not only a value addition to profit but also a necessity tor optimizing human resource, material management, sales & Distribution aspect of large enterprises hence should be regarded as a profit making apparatus

9. The Id.counsel for the assessee stated that in assessment year 2004-05 exactly on same facts, the Tribunal in ITA

No.1131/Mds/2016 dated 23.02.2017 had allowed the claim of disallowance vide paras 7 to 10 as under:-

7. The next ground of appeal is with regard to disallowance of Rs.33,63,810/- towards software expenses. 8. Shri R. Durai Pandian, the Ld. Departmental Representative, submitted that the Assessing Officer disallowed Rs.33,63,810/-. According to the Ld. D.R., MATFLOW software was used by the assessee-company to handle electronic ordering, materials management, logistics, inventory, accounts receivables and payable, etc. MATFLOW software acts as a platform to integrate individual systems into EDI. The software requires yearly upgradation with significant versions. According to the Ld. D.R., the ownership test is more important than the functionality test. Therefore, even though the assessee may not own the software but only pays licence fees, in view of functional and economic role the software plays in the business, the same has to be treated as capital expenditure. Accordingly, the addition made by the Assessing Officer to the extent of Rs.33,63,810/- has to be confirmed.

9. On the contrary, Shri Raghunathan Sampath, the Ld.counsel for the assessee, submitted that in the assessee's own case, for the assessment years 2005-06, 2007-08 and 2008-09, this Tribunal had an occasion to consider the same. By an order dated 9th May, 2012 and 28th June, 2013, the assessee treated software expenditure as revenue in nature. The CIT(Appeals) by placing his reliance on the assessee's own case, directed the Assessing Officer to delete the addition towards capitalization of software expenses.

10. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee claims Rs.33,63,810/- towards software expenses. It is not in dispute that MATFLOW software was used by the assessee-company to handle electronic ordering, materials management, logistics, inventory, accounts receivables and payables, etc. MATFLOW software, in fact, is acting as a platform to integrate individual systems into EDI. The expenditure was for the purpose of utilising the application service and compensation received from Danfoss A/S, Denmark. The CIT(Appeals) by placing his reliance on the order of this Tribunal in the assessee's own case, for the assessment years 2005-06, 2007-08 and 2008-09, allowed the claim of the assessee. Therefore, this

Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

9.1 We noted that neither the AO nor CIT(A) has doubted the genuineness of the expenditure, only the AO holds the same as capital in nature. The assessee has given details in regard to purchase of additional SAP license which aids in day to day accounting and reporting process. The details given by assessee before CIT(A) and before AO reads as under:-

Nature	Services Provided	Basis of charge
DSI	Danfoss India will be provided with basic standard administrative workplace environment with decided tools such as hourly E-mail, Intranet and Internet access, applications and data storage in the server such as group drive and personal drive and a IT Service and support desk.	Charges for a particular transaction is billed on an hourly basis taking into account the overall time spent in resolving each issue.
DSD	To implement a uniform SAP platform for all sales companies covering sales, finance and logistical integration, for the related access.	User fee is determined based on the number of users and validity is for one year post which the same has to be renewed upon payment of additional licence fees.
	To provide a bundle of pre- determined services and activities and licenses enabling Danfoss to continuously improve the Business processes, Business integration and Coordination between business activities. The ERP seats are divided into: The seats are divided into:	IT help desk charges – Charges for a particular transaction is on an hourly basis taking into account the overall time spent in resolving each issue User fee Determined based on the number of users and the validity is for one year post which the same

	<ul style="list-style-type: none"> • Application and integration • Facility Management • Information architecture • ERP Support 	has to be renewed upon payment of additional licence fees.
LEX	To provide an extension of services offered in the basic Danfoss Standard Infrastructure Package (DSI). It ensures that services not included in DSI can be offered to meet IT needs of a given business unit. It primarily covers all IT which supports the administrative processes such as Local telephone systems, Input to IT budgeting, User training, Ad hoc tasks, Local administration support, Maintain and guidance in use of IT conference equipment, Continuous maintenance of set-up (eg. Upgrade of applications) etc.	Charges for a particular transaction are billed on an hourly basis taking into account the overall time spent in providing each service.

9.2 The CIT(A) in view of the above and following the decision of Hon'ble High Court of Bombay in the case of CIT vs. Raychem RPG Ltd., 346 ITR 138, allowed the claim of assessee by observing as under:-

4E(3) CIT(A)'s Inference and decision

The submissions of the appellant were considered vis-a-vis the findings of the A.O. In this case, the AO disallowed a sum of Rs.1,08,85,000/- on the grounds that it was capital in nature.

During the appellate proceedings, the appellant claimed that the said expenditure satisfied all the conditions laid down under section 37 of the Act as they were not personal or capital in nature and because no enduring

benefit was derived by the appellant. Moreover, it was stated that in the appellant's own case for the A.Y's 2005-06,2006-07, 2007-08, 2008-09, 2010-11 and 2011-12, the Hon'ble ITAT, Chennai allowed the claim of the appellant. The relevant extracts of the ITAT's order in ITA Nos. 369 & 270/Mds/2013 in the order dated 28/06/2013 are as follows:

"In the present case, when the assessee has acquired the license to use the software and the license is valid only for one year, it may be useful to the assessee for various functions like sales, finance, logistics operations and use of ERP system and it may confer certain benefit to the assessee. Therefore, respectfully following the decision of the Hon'ble Bombay High Court in the case of CIT vs. Raychem RPG Ltd. (supra) and taking into consideration of the facts of the case, we are of the considered opinion that the expenses incurred by the assessee to acquire the software licenses is of revenue expenses"

Respectfully abiding by the decision of the jurisdictional tribunal in the Appellant's own case as cited supra regarding the nature of software expenses, I declare herewith that the software expenditure amounting to Rs.1,08,85,000/- should be treated as revenue expenditure. Hence, this ground of appeal is allowed.

9.3 Now, the Id. Senior DR could not controvert the above fact situation. Hence respectfully following the Tribunal decision in assessee's own case and various High Court decisions, particularly in the case of Raychem RPG Ltd., *supra*, we dismiss this issue of Revenue's appeal in both the years.

10. In the result, the appeals filed by the Revenue in ITA Nos.2089 & 1461/Chny/2019 are dismissed and cross objection filed by the assessee in C.O. No.90/Chny/2019 is partly allowed for statistical purpose.

Order pronounced in the open court on 20th July, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 20th July, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- | | | |
|------------------------|-------------------------|------------------------------|
| 1. निर्धारिती/Assessee | 2. राजस्व/Revenue | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |