

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.6728/Del/2019
(Assessment Year : 2012-13)

ACIT Circle – 8(1) New Delhi – 110 002 PAN No. AADCR 2107 F (APPELLANT)	Vs.	Elentee India Pvt. Ltd. (formerly known as Ripe Components Technologies Pvt. Ltd.), B-8/14, FF, Vasant Vihar, New Delhi (RESPONDENT)
---	-----	---

Assessee by	Shri S. K. Chaturvedi, C.A.
Revenue by	Shri Shyam Manohar Singh, Sr. D.R.

Date of hearing:	17.05.2023
Date of Pronouncement:	30.05.2023

PER ANIL CHATURVEDI, AM :

This appeal filed by the Revenue is directed against the order dated 31.05.2019 passed by the Commissioner of Income Tax (Appeals) - 34, New Delhi for Assessment Year 2012-13.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a company stated to be engaged in the business of manufacturing of mobile components & Accessories and related activities. Assessee filed its return of income for A.Y. 2012-13 declaring loss of Rs.9,48,55,207/-. The case of the assessee was

selected for scrutiny and, thereafter assessment was framed u/s 143(3) of the Act vide order dated 21.03.2016 and the loss income was determined at Rs.189,41,162/-.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) vide order dated 31.05.2019 in Appeal No.260/16-17 granted partial relief to the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal before the Tribunal and has raised the following grounds:

- “1. *Ld. Dy. Commissioner of Income Tax (AO) has erred on facts & in law in making an addition of Rs. 5,68,22,267/- on account of 5% of material consumptions as being excess consumption of Raw Material.*
2. *Ld. Dy. Commissioner of Income Tax (AO) has erred on facts & in law in making an addition of Rs. 94,28,002/- on account of foreign exchange fluctuation as being beyond financial year 2011-12 and no narration given for claim*
3. *Ld. Dy. Commissioner of Income Tax (AO) has erred on facts & in law in making an addition of Rs. 18,11,088/- on account of 50% of the guest house expenses*
4. *Ld. Dy. Commissioner of Income Tax (AO) has erred on facts & in law in making an addition of Rs. 43,23,320/- on account of 25% of the Repair and Maintenance expenses of Rs. 1,72,93,277/-.*
5. *Ld. Dy. Commissioner of Income Tax (AO) has erred on facts & in law in making an addition of Rs. 23,29,368/- on account of 10% of the Royalty of Rs. 2,32,93,678/- an agreement not being on Stamp paper as the name of Agreement is Technical Support Agreement.*
6. *Ld. Dy. Commissioner of Income Tax (AO) has erred on facts & in law in making an addition of Rs. 12,00,000/- on account of job work expenses.*
7. *The appellant craves leave to add, alter or amend any ground of appeal raised above at the time of hearing.”*

5. **Ground No.1** is with respect to the deletion of addition of Rs.5,68,22,267/- on account of excess consumption of Raw Material.

6. During the course of assessment proceedings, AO noted that assessee had incurred huge losses despite the fact that it was supplying to only one party i.e. Samsung India Ltd. Assessee was asked to furnish the details, copies of agreement with Samsung and other details and to justify the trade results. Assessee *inter alia* submitted that assessee was engaged in manufacturing of Mobile parts for Samsung and was operating on 69% capacity due to which it was unable to earn profit. Assessee was asked to furnish the details called for by AO. AO was not satisfied with the explanation furnished by assessee. AO concluded that assessee has failed to furnish documentary evidences to support its results and consumption of raw material. He therefore, rejected the books of accounts of the assessee u/s 145(3) of the Act and made addition of 5% of the material consumption on account of excess consumption of raw material claimed in the books of account and thus made an addition of Rs. 5,68,22,267/-.

7. Aggrieved by the order of AO, assessee carried the matter before CIT(A).

8. CIT(A) after considering the submissions of the assessee, the remand report from AO, assessee's submissions to the remand report deleted the addition made by AO by observing as under:

"5.5 I have considered the facts of the case, finding of the AO, remand report and submissions of the appellant. AO has made the addition of Rs.5,68,22,267/- by invoking provision of sect 145(3) as assessee company has failed to furnish documentary evidence in support of

trading results and consumption of raw material. The appellant has furnished the complete details of CENVAT register, CENVAT return, excise reconciliation which was examined by the AO. Appellant has also furnished month wise raw material consumption against sale and during the year under consideration raw material consumption to sales is 77.12%, whereas in the previous year 2011-12 and 2010-11 it was 78.04% and 77.67% respectively. The appellant has also provided the list of trade payables and confirmation of overseas creditors, all the evidences have been examined by the AO during the remand proceedings and no adverse comments was offered by the AO. The AO has made the addition without any adverse material on record and no such addition on this issue was made in the previous year when the assessment was completed u/s 143(3). The appellant was subject to VAT and Excise and both the departments have accepted the financial result of the appellant. The appellant has furnished the complete detail of month wise sales and consumption of raw material and this year consumption of raw material is on the lower side compared to previous years, thus AO is not justified in making the addition by rejecting books of accounts u/s 145(3) and adding 5% of the raw material i.e. Rs.5,68,22,267/-. Hence addition made by the AO is not sustainable and it is hereby deleted.”

9. Aggrieved by the order of CIT(A), Revenue is now in appeal before us.

10. Before us, Learned DR took us through the order of AO and supported the order of AO and submitted that CIT(A) was not justified in deleting the addition.

11. Learned AR on the other hand reiterated the submissions made before lower authorities and further submitted that CIT(A) after considering the remand report and assessee's submissions has deleted the addition. He thus supported the order of CIT(A).

12. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the addition made by AO on account of excess raw material

consumption but deleted by CIT(A). We find that CIT(A) after considering the material before him, the remand report and other details furnished by assessee had given a finding that assessee had furnished the complete details of month wise sales and during the year under consideration the consumption of raw material to sales was 77.12%, whereas in the previous year 2011-12 and 2010-11 it was 78.04% and 77.67% respectively meaning thereby that the consumption of raw material in the year under consideration was on the lower side as compared to previous years. He further noted that assessee was subject to VAT and Excise and both departments has accepted the financial result of the assessee. He therefore held that the AO was not justified in making addition by rejecting of books of accounts u/s 145(3) of the Act. CIT(A) has noted that in the remand proceedings, no adverse comments were offered by AO. Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue. In such a situation, we find no reason to interfere with the order of CIT(A) on this issue and **thus the ground of Revenue is dismissed.**

13. **Ground No.2** is with respect to the addition of Rs.94,28,002/- on account of foreign exchange fluctuation.

14. During the course of assessment proceedings, AO noticed that assessee has claimed loss on foreign exchange to the extent of Rs.5,43,03,735/-. The assessee was asked to furnish the details and justify the foreign exchange losses. Assessee furnished the details. On perusing the details, AO noticed that in respect of foreign exchange loss of Rs.30,17,279.10, the date of transaction was 31.03.2011, which was beyond the financial year 2011-12, relevant to the assessment year under consideration and in respect of loss of

Rs.64,10,723.37, no narration was given for claiming of loss. AO therefore concluded that the aggregate foreign exchange loss of Rs.94,28,002/- to be without any basis and accordingly, disallowed the same.

15. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who deleted the addition by observing as under:

“6.5 I have considered the facts of the case, finding of the AO, remand report and submissions of the appellant. The AO has made the addition of Rs.94,28,002/- in respect of the transaction which are related to exchange loss on capital goods and appellant has made the adjustment in the cost of assets and depreciation as per provisions of section 43A. Appellant has not claimed any expenses on account of foreign exchange fluctuation loss on capital goods and not debited the same in the profit and loss account. AO did not find any discrepancy in respect of foreign exchange fluctuation loss claimed by the appellant in the return i.e. Rs.5,43,03,735/-. The disallowance was made by the AO out of the amount on account of exchange loss on capital goods i.e. Rs.4,17,58,843.81/-. In remand report, AO has not given any adverse finding on the accounts furnished by the appellant in support of its contention. Since appellant has not claimed any expenses which was disallowed by the AO therefore addition made by the AO at Rs.94,28,002/- is not sustainable and it is hereby deleted.”

16. Aggrieved by the order of CIT(A), Revenue is now before us.

17. Before us, Learned DR supported the order of AO.

18. Learned AR on the other hand reiterated the submissions made before lower authorities and submitted that CIT(A) before deciding the issue has called for remand report from the AO and after considering the entire material including remand report deleted the addition. He therefore submitted that no interference to the order of CIT(A) is called for.

19. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the disallowance of foreign exchange loss made by AO but deleted by CIT(A). CIT(A) while deciding the issue has given a categorical finding that with respect to the loss of Rs.94,28,002/- it was on account of capital goods and the assessee had made the adjustment to the cost of assets and had not claimed any expense on account of foreign exchange fluctuation on capital goods. We further find that CIT(A) has noted that in the remand report, AO has not given any adverse finding on the submissions made by assessee. We therefore find force in the conclusion of CIT(A) that since assessee has not claimed any expenses the disallowance by AO was not sustainable, Before us, Revenue has not pointed to any fallacy in the findings of CIT(A) and **thus the ground of Revenue is dismissed.**

20. **Ground No.3** is with respect to the addition of Rs.18,11,088/- on account of disallowance of Guest House Expenses.

21. During the course of assessment proceedings and on perusing the details of expenses filed by assessee, AO noticed that assessee had debited Rs.36,22,176/- on account of "guest house expenses". Assessee was asked to justify the expenses. Assessee *inter alia* submitted that the expenses were incurred in respect of foreign technicians visiting India for whom only the boarding, lodging and stay expenses were incurred and rest expenses were borne by respective technicians. The submissions of the assessee was not found acceptable to AO. AO noted that majority of the expense were incurred in cash and assessee had not controverted the fact that the guest house expenses was not used for the stay and residence of the

Directors. He therefore disallowed 50% of the guest house expenses amounting to Rs.18,11,088/-.

22. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who granted partial relief to the assessee by observing as under:

“7.4 I have considered the facts of the case, finding of the AO, remand report and submission of the appellant. The appellant has filed the detail of expenses and it includes guest house rent paid at Rs.27,48,368/- and guest house expenses at Rs.8,73,807/- totalling to Rs.36,22,175/-. During the course of appellate proceedings, appellant has enclosed the address of the owner of the guest houses and file the ledger account of the guest house expenses. Remand report is called for from the AO on the submissions of the appellant and it is submitted by the AO that no supporting evidence and proof of any perquisite value and whether any benefit was extended to the Directors have been furnished. The appellant has furnished only rent agreements without any supporting bills and usages facility by the personnel. The appellant has not produced the bills and vouchers in support of rent paid for guest houses and expenses incurred thereon even during the appellate proceedings before the AO. Otherwise also when the books of accounts are audited appellant is required to maintain bills and vouchers and produce the same for the verification. In the absence of these evidences genuineness of the expenses could not be adjudged. Considering the above facts, disallowance made by the AO is justified but it appears to the higher side hence it is restricted to the 20% of the disallowance of the expenses and addition made by the AO is confirmed to the extent of Rs.7,24,435/- and appellant will get relief of Rs.10,86,652/-.”

23. Aggrieved by the order of CIT(A), Revenue is now before us.

24. Before us, Learned DR supported the order of AO. Learned AR on the other hand reiterated the submissions made before the AO and CIT(A) and supported the order of CIT(A).

25. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to

the adhoc disallowance of guest house expenses that was made by AO but partly deleted by CIT(A). CIT(A) while granting partial relief to the assessee has noted that in the remand report that was called from AO, AO has noted that no supporting evidences were furnished by assessee and assessee had furnished only rent agreement. CIT(A) after considering the factual position held that the disallowance made at 50% by AO to be on higher side and restricted the disallowance to 20% thereby confirming the addition to the extent of Rs.7,24,435/-. Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue nor is the assessee aggrieved by partial relief granted by CIT(A). In such a situation, we find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

26. **Ground No.4** is with respect to the disallowance of repair and maintenance expenses which was deleted by CIT(A).

27. AO noticed that during the year under consideration, assessee has debited Rs.1,72,93,277/- on account of "repair and maintenance expenses". Assessee was asked to justify the expenses to which assessee made the submissions which was not found acceptable to AO. AO noted that assessee has failed to produce the copies of the bills to substantiate its claim of expenses. He was of the view that possibility of debiting expenses of capital nature cannot be ruled out. He therefore considered 25% of Repair and maintenance amounting to Rs.43,23,320/- to be not allowable and accordingly disallowed the same.

28. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who deleted the addition by observing as under:

“8.4 I have considered the facts of the case, finding of the AO, remand report and submissions of the appellant. The appellant has filed the ledger account of repair and maintenance and some of the supporting bills in respect of repair and maintenance expenses. The AO has made the disallowance without pointing any defects in the books of account and bills and vouchers maintained by the appellant. The expenses were incurred for business purposes and allowable as per the provisions of section 37(1), thus AO is not justified by making adhoc disallowance of the expenses at Rs.43,23,320/- i.e. 25% of repair and maintenance expenses. Thus addition made by the AO is hereby deleted.”

29. Aggrieved by the order of CIT(A), Revenue is now before us.

30. Before us, Learned DR supported the order of AO. Learned AR on the other hand supported the order of CIT(A).

31. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the disallowance of repair and maintenance expenses made by AO but deleted by CIT(A). We find that CIT(A) while deleting the addition has given a finding that AO has made the disallowance without pointing out any defects in the books of accounts of the assessee and that the expenses were incurred for the purpose of business and allowable u/s 37(1) of the Act. He therefore deleted the addition made by AO. Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue. In such a situation, we find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

32. **Ground No.5** is with respect to the deletion of addition made on account of royalty payment.

33. AO noticed that assessee had debited Rs.2,32,93,678/- on account of “royalty expenses” to the Profit and Loss Account. Assessee was asked to justify the business expediency and also produce the agreement pursuant to which the royalty was paid. In response to the query of AO, assessee furnished the ‘Technical Support Agreement’. AO noted that the agreement filed by the assessee was not made on stamp paper and therefore according to AO it had no legal sanctity. He further noted that the agreement entered by assessee was for ‘Technical Support Agreement’ and not for the ‘Royalty’ or for the technical know-how for which royalty was paid. AO therefore held the payment of royalty to be without any cogent basis. He thereafter disallowed 10% of the royalty payment amounting to Rs.23,29,368/- and made its addition.

34. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) deleted the addition by observing as under:

“9.4 I have considered the facts of the case, finding of the AO, remand report and submissions of the appellant. The appellant has made the payment of royalty to Ripe Korea its holding company at Rs.2,32,93,678/-- The appellant has paid the royalty as per the technical support agreement dated 01.08.2006. The AO has allowed the royalty expenses to the extent of 90% and disallow the 10% of expenses as royalty agreement was not made on stamp papers and appellant has failed to justify the quantification of royalty expenses. During the appellate proceedings, remand report is called for from the AO and in which AO after examining the technical support agreements signed between Ripe Component Technologies Pvt. Ltd. and Ripe Korea Pvt. Ltd. found the contention of the appellant acceptable. Since AO has found the royalty payment genuine and appellant has also furnished necessary evidences in support of royalty payments, addition made by the AO at Rs.23,29,368/- is sustainable and it is hereby deleted.”

35. Aggrieved by the order of CIT(A), Revenue is now before us.

36. Before us, Learned DR supported the order of AO. Learned AR on the other hand reiterated the submissions made before AO and CIT(A) and supported the order of CIT(A).

37. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the disallowance of royalty expenses made by AO but deleted by CIT(A). CIT(A) while deleting the addition has noted that AO had allowed royalty expenditure to 90% and disallowed 10%. He noted that the royalty payment made by assessee was not found to be bogus and since the assessee had furnished necessary evidence for making royalty payment, the adhoc disallowance could not be made. He thus deleted the addition made by AO. Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue. In such a situation, we find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

38. **Ground No.6** is with respect to the deletion of addition of Rs.12,00,000/- on account of Jobwork expenses.

39. AO noticed that assessee had debited Rs.12,00,000/- as "Jobwork charges". The assessee was asked to justify the business expediency and furnish the details of the Jobwork charges paid. AO noted that assessee did not file any deposits of expenses nor produced copy of the bills and vouchers. He accordingly disallowed the entire Jobwork charges and made its addition.

40. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who deleted the addition observing as under:

“10.3 During the course of appellate proceedings, appellant has submitted that job work charges were at Rs.1,82,20,156/- and appellant has enclosed the details as page no. 165 to 210 of the paper book. It is submitted by the appellant that details clearly mentioned the nature of charges and have been duly in compliance of provision of chapter XVII-B of Income Tax Act. It is not clear from where AO has picked the figure of Rs. 12 lacs.

10.4. I have considered the facts of the case, finding of the AO, remand report and submissions of the appellant. The appellant has debited job work charges at Rs. 1,82,20,156/-, whereas AO has disallowed the job work charges of Rs.12 lacs as appellant has not furnished the bills and vouchers and justify the expenses. During the appellate proceedings, AO has submitted the remand report and after verifying the detail of expense along with bills and vouchers he found the expenses acceptable. It is stated by him that appellant has deducted TDS on contractual payments. Considering the above facts and remand report of the AO, addition made by the AO at Rs. 12 lacs is not sustainable and it is hereby deleted.”

41. Aggrieved by the order of CIT(A), Revenue is now in appeal before us.

42. Before us, Learned DR supported the order of AO. Learned AR on the other hand reiterated the submissions made before AO and CIT(A) and supported the order of CIT(A).

43. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the disallowance of Jobwork charges made on adhoc basis by AO but deleted by CIT(A). We find that CIT(A) after considering the details and remand report furnished by assessee has given a finding that during the course of remand proceedings, AO had verified the details of expenses that were filed by assessee and he has accepted the payments made and had also given a finding that assessee had deducted TDS on contractual payment. Considering the totality of the

facts, CIT(A) directed that the addition be deleted. Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue. In such a situation, we find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

44. **In the result, appeal of Revenue is dismissed.**

Order pronounced in the open court on 30.05.2023

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 30.05.2023

PY*

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI