

IN THE INCOME TAX APPELLATE TRIBUNAL  
PANAJI BENCH :: PANAJI

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER &  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER  
(Through virtual hearing)

ITA No.76/PAN/2020  
(A.Y. 2009-10)

Pentair Water India Pvt. Ltd., L-52-55, Verna Industrial Estate, Phase-II, Verna, Salcette, Goa.  PAN: AABCS 8856 L	vs	JCIT, Margao Range, Margao, Goa.
Appellant		Respondent

Assessee by	:	Shri Rakesh Agrawal, FCA
Revenue by	:	Shri N. Shrikanth, DR
Date of hearing	:	16/08/2023
Date of pronouncement	:	22/08/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of Commissioner of Income Tax (Appeals)-1, Panaji, dated 16.03.2020 for A.Y.2009-10 as per the grounds of appeal on record.

2. In this case, assessee had filed its return of income declaring total income at Rs. 59,78,52,750/-. The AO passed the order u/sec. 154 of the Act dated 04/04/2013 making an addition amounting to Rs.13,21,000/-.

3. Being aggrieved, the matter was taken before the Id. CIT(A). Before the Id. CIT(A), the assessee had filed detailed written

submissions, the relevant part of which is extracted as follows:-

*"During the course of hearing in the referred case on 03.03.2020, a query has been raised by your goodself as to whether the expense of Rs 13.21 lakh has been disallowed by assessee in its computation of income as the expense was of the nature of provision. To this the appellant explains as under:-*

1. *An amount of Rs 13.20 lakh was provided for in the books by passing following entry*

<i>Installation &amp; Commissioning A/c</i>	
<i>(an Expense A/c)</i>	<i>Dr 13,20,000/-</i>
<i>Accrued Commissions a/c (a Liability A/c)</i>	<i>Cr 13,20,000/-</i>

2. *Since the identity of payee (recipient) and exact amount of expense was known to the appellant, the aforesaid amount of expense was only provided for in the books during the FY 2008-09 but was never paid to any service provider. This amount was reversed in FY 2010-11 by passing reversal entry in books.*

3. *On reversing the entry, the amount was taken in the income and tax .was paid it in FY 2010-11.*

4. *The net effect of both entries is tax neutral - because in FY 2008-09 expense was claimed as deduction and the same was offered to tax in FY 2010-11. Assessment for both the years have already been completed. In case this expense is disallowed u/sec. 37 (on account of provisional expenditure) in A.Y. 2009-10, directions are required to be issued to AO for rectifying the order of AY 2011-12 failing which the same amount is taxed twice.*

5. *The AO had disallowed the expenditure U/s 40(a) and not U/s 37. The appellant had contented before you that disallowance is not called for U/s 40(a) because there is no applicability of TDS on amounts which is not paid and payee is not is not known.*

*It is requested that relief be allowed to the appellant."*

3.1 Considering the submissions of the assessee and the assessment order passed by the AO, the Id. CIT(A) held as follows:-

*"6.3 I have gone through the appellant's submission and it is noticed that the appellant has itself admitted that the expense was an unascertained liability and was never paid to any service provider. Thus while the A.O. has disallowed the same on account of non-deduction of commission, the fact as stated by appellant show that it was an unascertained liability and therefore was liable to disallowed. Therefore the addition of Rs.13,20,000/-*

*is sustained in view of submission of appellant that it is an unascertained liability and consequential interest u/s 234B&C is mandatory and has to levied accordingly. Therefore the grounds of appeal are dismissed.*

*6.4 In respect of the appellant's alternate plea that the entry was suo-moto reversed in A.Yr.2011-12, the appellant can approach the A.O. u/s 154/155 of the Act for necessary rectification."*

4. We observe from the facts and circumstances and the submissions made by the assessee before the Id. CIT(A) that the identity of the payee (recipient) and the exact amount of expense was not known to the assessee. The said amount of expense was only provided for in the books during the F.Y. 2008-09 relevant to the A.Y. 2009-10, but was never paid to any service provider. This amount was reversed in F.Y. 2010-11 relevant to the A.Y. 2011-12 by passing reversal entry in books. On reversing the entry, the amount was taken in the income and tax was paid on it in F.Y. 2010-11 relevant to A.Y. 2011-12. Therefore, the net effect of both entries is tax neutral because in F.Y. 2008-09, expense was claimed as deduction and the same was offered to tax in F.Y. 2010-11. Assessments for both the years have already been completed. The assessee had further submitted that in case this expense was disallowed u/sec. 37 in A.Y. 2009-10, then directions are required to be issued to AO for rectifying the order of A.Y. 2011-12 failing which the same amount would be taxed twice. Now, the Id. CIT(A) while dismissing the appeal of the assessee has not dealt with this issue whether as per the submission of the assessee, is it correct that for A.Y. 2009-10 expense was claimed as deduction, whereas the tax was offered in A.Y. 2011-12.

The Id. CIT(A) has not given any specific finding in this regard and has also not brought on record whether any verification was carried out regarding the submissions placed on record by the assessee. We observe that the findings arrived at by the Id. CIT(A) are cryptic, vague, ambiguous and devoid of factual analysis. In view thereof, we set aside the order of Id. CIT(A) and remand the matter back to his file for re-adjudication as per law complying with the principles of natural justice and come out with speaking order dealing with the submissions placed on record by the assessee and whether there is any issue of double taxation involved, in case in the relevant assessment year, the amount is disallowed. The Id. CIT(A) shall conduct all necessary verification of facts and then come out with specific findings. The grounds of appeal stands allowed for statistical purposes.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in open Court on 22<sup>nd</sup> August, 2023.

Sd/-  
(INTURI RAMA RAO)  
ACCOUNTANT MEMBER

Sd/-  
(PARTHA SARATHI CHAUDHURY)  
JUDICIAL MEMBER

Dated : 22<sup>nd</sup> August, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
5. The DR, ITAT, Panaji Bench, Panaji.
6. Guard File.

By Order

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Senior Private Secretary  
ITAT, Pune.