

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

**SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.596/Del/2020  
Assessment Year: 2016-17

DCIT, Circle-7(1), New Delhi	<b>Vs.</b>	D. Light Energy Pvt. Ltd., Unit No. 504-507, 5 <sup>th</sup> Floor, JMD Megapolis Building, Sohna Road, Gurgaon
		<b>PAN :AABCJ9318G</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. Ved Jain, Advocate Sh. Aman Garg, CA
Department by	Sh. T. James Singson, CIT(DR)

Date of hearing	12.02.2024
Date of pronouncement	14.02.2024

**ORDER**

**PER AMIT SHUKLA, JM**

This appeal has been filed by the Revenue against the order dated 20.11.2019 passed by learned Commissioner of Income Tax (Appeals), Delhi, for the quantum of assessment passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2016-17.

2. In the grounds of appeal, the Revenue has raised the following grounds:

1. On the facts and in circumstances of the case and in law, the CIT(A) has erred in deleting the addition on account of increase in cost of material consumed of Rs. 7,88,64,219/- made by the Assessing Officer.
2. On the facts and in circumstances of the case and in law, the CIT(A) has erred in deleting the addition on account of increase in commission expenses of Rs. 3,54,58,395/- made by the Assessing officer.
3. On the facts and in circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.1,07,33,756/- by disallowance expenses on which TDS has not been deducted.
4. The appellant craves to add, amend or forgo any ground(s) of appeal at any time before or during the hearing of this appeal.

3. The brief facts qua the issue raised is that the assessee company is engaged in trading of lights, lighting and related electronic components parts, fitting accessories etc. The assessee has filed the return of income declaring loss of Rs. (-)7,08,26,184/- After noticing this, the Assessing Officer asked the assessee to justify the increase in manufacturing and other expenses and increase in cost of material consumed from Rs.70,28,15,113/- to Rs.1,06,08,91,844/-. The assessee contended that one of the main reasons for increase in the cost was forex rate INR/USD, which was on average of 7% and increased cost of material purchased. The assessee also pointed out that there has been increase in Revenue by 39.72% as compared to previous year. He noted that increase in forex rate is only 1.01 crores as compared to previous

year. Therefore, he rejected the assessee's contention that increased cost of material consumed is due to increase of forex rate. He further observed that the assessee has not submitted any evidence whatsoever for increased cost of raw material consumed. Accordingly, he made the addition of Rs.7,88,64,219/- in the following manner:

“Therefore increased cost of material consumed remains unexplained to the extent of 11.23% [50.95%-39.92%] and hence disallowance works out of Rs. 7,89,26,137/- (11.23% of Rs. 70,28,15,113/-). Above addition stands further corroborated by fall in Gross Profit by 4.68% on total revenue of Rs. 168,51,32,899/-. This gives figure of Rs. 7,88,64,219/- No explanation what so ever has been furnished by assessee on this account. Considering the same, profit of accounts are not reliable and hence rejected. Therefore net addition on account of low G.P. of Rs.7,88,64,219/- is made. The Assessee has furnished inaccurate particulars of income. Hence the Penalty proceedings u/s 271(1)(c) of the Act are initiating separately.”

4. Further, he made ad-hoc disallowance on account of commission paid to selling agents/dealers incentive after observing as under:

“2. Perusal of profit & loss account reveals that Assessee has paid commission to selling agents/ dealers incentive and in the year under Assessment Total amount claimed is Rs. 29,80,72,244/- as against 17.22 crores resulting in whopping increase by 73% of Rs. 12,58,72,173/- against increased revenue by 39.72% or say 40%. No justification with evidence has been submitted. It is crystal clear that 33% of commission is excessive and therefore Rs.3,54,58,395/- is disallowed. The Assessee has furnished inaccurate particulars of income. Hence, the Penalty proceedings u/s 271(1)(c) of the Act are initiating separately.”

5. Lastly, he made disallowance under section 40(a)(ia) of the Act by observing as under:

“Perusal of clause 21(b) Assessee of Tax Audit Report indicates the detail on which tax is not deducted. Tax auditor under various heads report tax has not been deducted on Rs.401,94,089/- and 30% of the same comes to Rs. 1,20,58,2261- which is disallowed u/s 40(a)(ia) But perusal of detail reveals that following amount on which tax is not deducted comes to Rs. 153,33,936/- as detailed below:

41,87,800  
2,67,881  
1,08,79,055  
**1,53,33,936**

Less 30% already disallowed 46,00,180

**1,07,33,756**

This amount pertain to non-resident u/s 40(a) (ia) limit of disallowance restriction to 30% is not applicable. Hence entire amount is disallowed. Total Disallowance comes to Rs. 1,07,33,756/- . The Assessee has furnished inaccurate particulars of income. Hence the Penalty proceedings u/s 271(1)(c) of the Act are initiating separately.”

6. Before the learned CIT(A), the assessee has submitted the calculation of ratio of cost of sales for the assessment years 2016-17 and 2015-16 in the following manner:

<b>Particulars</b>	<b>AY 2016-17</b>	<b>AY 2015-16</b>
Purchases of stock-in-trade	112,56,61,167	69,61,96,541
Changes in inventories of stock-in-trade	(6,47,69,323)	66,18,572
<b>Total cost of sales</b>	<b>106,08,91,844</b>	<b>70,28,15,113</b>
<b>Revenue from operations</b>	<b>168,51,32,899</b>	<b>120,60,67,883</b>
<b>Ratio of cost of sales to revenue from operations</b>	<b>62.96%</b>	<b>58.27%</b>

8. Thus, it was submitted that the difference is only marginal. Apart from that, it is stated that gross revenue from operations has increased around 40% and since the assessee has earned revenue from sale of imported products and there was corresponding increase in the amount of purchases as well as the purchases were made by the assessee in USD and USD has increased from INR 61 per USD in assessment year 2015-16 to 65.50 per USD in assessment year 2016-17 in terms of INR 61,000 in FY 2014-15 resulting in increase of 7% . This was the main reason for increase in these years. Further, there was certain increase of percentage of expenses in each of the year which were very marginal. Learned CIT(A) has deleted the addition after holding as under:

*“6.3 I have considered the facts of the case and the submission made by the AR. On perusal of the complete facts, it is observed that the AO has not questioned the genuineness of the expenses claimed and has restricted the expenses allowed on adhoc basis by comparing the gross revenue receipts of the current year with the previous year. The AR has rightly contended that the expenses can never increase or decrease exactly in the same ratio as the business receipts and the AO cannot step into the shoes of the appellant for conducting business. The AR has also furnished the explanation for the increase/decrease in cost of material. It is also observed that the AO did not raise any further query from the appellant after obtaining the basic details and did not provide opportunity to the appellant to explain the reason for increase in expenses. Moreover, the submission made by the appellant was not properly considered by the AO. I*

*am of the opinion that the AO has made the addition purely on adhoc basis without doing any factual verification. As no defect has been pointed out specifically about the genuineness of the expenses and it is also not established by the AO that the expenses have not been incurred for the purposes of the business, the addition made by the AO on ad-hoc basis is deleted and the ground of appeal is allowed.”*

9. After hearing both the parties and on perusal of materials placed on record, we find that the only reasons given by the Assessing Officer is that there is increase in the cost of purchase and materials as compared to earlier year. Nowhere, he has found any defect in the purchase of materials/products or in the sales, nor he has pointed out any discrepancy in the books of account. Increase in ratio of cost of material consumed, viz-a-viz, revenue has been stated to be on account of higher exchange rate, on which the assessee has purchased goods as compared to earlier years. For instance, average exchange rate of INR/USD prevailing during the earlier year, i.e., AY 2015-16 was INR 61 per USD. In other words, materials amounting to Rs. USD 1000 were purchased with a total cost of Rs.61,000/-. During the relevant assessment year 2016-17, the average exchange rate increased to Rs.65.50 per USD, i.e., the cost of material amounting to USD 1000 was Rs.65,500/-. This has to increase of 7% of actual increase. This fact has not been disputed at all and has been

explained before the AO and CIT(A). It has also been further stated that overall profitability of the assessee has improved from (-) 3.45% to (-) 2.49 % in this year. Once, the assessee has submitted the details of increase for manufacturing and other expenses, statements showing change in the forex rate, details of increase in ratio of expense, revenue in comparison with the preceding year and details on gross profit and net profit for the last three years, then without any such defect, addition of Rs. 7,88,64,219/- cannot be made. Accordingly, we do not find any reason to deviate from the finding of the CIT(A) and the same is upheld. Consequently, ground no. 1 raised by the Revenue was dismissed.

10. Insofar as disallowance on account of commission expenses, the AO has made addition simply on the ground that there is 73% increase in commission expenses paid to the selling agents/dealers as against increase in revenue of 39.72%. Accordingly, he has treated 33% of the commissions as excessive. Before the learned CIT(A), it has been contended that increase of 47.91 crores in revenue has been achieved by appointing new partners, dealers and distributors, aggressive commission model

etc. Further, it has been submitted before us that following highlights have been made before the AO about the increase in expenses:

*“(b) Having said the above, it is pertinent to mention that the Appellant is dependent on such MFIs for wider accessibility to its target customers since such institutions facilitate finance for the Appellant's products to make them affordable to low income individuals. It is thus incumbent upon the Appellant to pay commission to the MFIs in accordance with the terms and conditions as agreed upon mutually by the parties. Further, the Appellant does not have principal influence over the commission paid on the sale of its products, since it is dependent upon such institutions for wider accessibility to its customer base. MFIs are third party institutions which in turn collect the amounts from poor rural households in small tranches. The Appellant does not have direct access to such rural households. Accordingly, as per the terms of the arrangement, the Appellant pays commission to such MFT's after duly deducting taxes at source as per the provisions of the Act.*

*(c) The details of expenses on which comission is paid along with the applicable rate and amount of taxes deducted and deposited were submitted vide submission dated September 11, 2018 (refer pages 126 to 233 of the paperbook) in response to the specific query raised by the Ld. AO during the course of assessment proceedings. Further, the complete details of amounts paid as well as taxes deducted appear in the underlying withholding tax returns along with name and PAN of the parties. No further details were called for from the Appellant.*

*d) The aforesaid expenditure is genuine and the Appellant has duly discharged its liability for withholding tax on the impugned payments in respect of commission which can be further corroborated from the tax audit report duly verified by the tax auditors of the Appellant (refer pages 581 to 593 of the paperbook). Further, any disallowance on account of late deposit or non-deduction of TDS has already been disallowed for the purpose of computing taxable income as per provisions of section 40(a)(ia) of the Act.”*

11. Learned CIT(A) has deleted the additions after observing as under:

*“7.3 I have considered the facts of the case and the submission made by the AR. It has been contended that the basic details with respect to various expenses were called for by the AO and the same were furnished and the AO did not specifically ask the appellant to produce any further clarification or evidence and has made the addition without issuing any show cause notice which is mandatory as per Board Instructions. It is further submitted that the addition has been made on adhoc basis. The AR has also explained the reason for increase in commission expenses and has submitted that the same was due to the increase in size and scale of the operations of the appellant. On perusal of the complete facts, I am of the opinion that the AO has made the addition without any application of mind and without giving proper opportunity/show cause notice to the appellant. The addition has been made without any justification. The AO has not brought on record any material to doubt the genuineness of the expenses and it is also not established by the AO that the expenses have not been incurred for the purposes of the business. In view of these facts, the ad-hoc addition made by the AO is deleted and the ground of appeal is allowed.”*

12. On perusal of materials placed on record and the findings given, we are unable to appreciate the approach of the AO who made ad-hoc disallowance of commission simply on the basis that the increase in commission does not correspond with the increase of revenue. At least, he should have brought something on record to reject the explanation of the assessee as incorporated above. If the assessee has given the reason, as to why commission expenses are increased, then such an ad-hoc disallowance without finding any defect in such submissions, such ad-hoc disallowance cannot be made. Thus, the aforesaid finding of the CIT(A) without any proper adverse materials on record to show that the commission expenses incurred by the assessee were not

genuine, such an addition cannot be sustained. Accordingly, order of learned CIT(A) deleting the addition is upheld. Ground no. 2 is dismissed.

13. Lastly, on the issue of disallowance under section 40(a)(ia), the AO has made the disallowance assuming that payments have been made to the non-resident foreign exchange. First of all, the break-up of the provisions mentioned is as under:

<b>Particulars</b>	<b>Amount (in Rs.)</b>
<i>Provision towards contractors</i>	41,57,800
<i>Provision towards professional services</i>	2,67,881
<i>Provision towards commission</i>	1,08,79,055
<b>Total</b>	<b>1,53,34,736</b>

14. Further, the assessee has already offered disallowance of 30% for non-deduction of tax in the return of income. The learned CIT(A) has deleted the addition in the following manner:

*“10.3 I have considered the facts of the case and the submission made by the AR. It has been contended that the expenses relate to resident contractors, professional services and commission and all these payments are related to resident payees and the AO has assumed that these relate to non-residents. It is observed that the AO did not appreciate the complete facts mentioned in the tax audit report and has simply assumed that these expenses pertain to non-resident payees and that too without making any query from the appellant. The AR has furnished the complete details related to these expenses. As all these payments are related to resident payees and the appellant has already made disallowance @ 30% amounting to Rs. 46,00,180/- in the computation of income as per section 40(a)(ia) of the Act, no further disallowance is warranted as per law. Accordingly, the addition made by the AO is deleted and the ground of appeal is allowed.”*

15. Once the commission has been paid to the resident payees which AO himself has misconstrued as if payment made to non-resident, apart from that, once the fact that the assessee has already made a disallowance of 30% in the computation of income, there was no reason for making any disallowance. Accordingly, order of learned CIT(A) is upheld. Ground raised by the Revenue is dismissed.

16. In the result, the appeal is dismissed.

***Order pronounced in the open court on 14<sup>th</sup> February, 2024***

***Sd/-***  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

***Sd/-***  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Dated: 14<sup>th</sup> February, 2024.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi