

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

**ITA No.838/Bang/2015
(Assessment year: 2009-10)**

Deputy Commissioner of Income-tax,
Circle 4(1)(2),
Bangalore. ... Appellant

Vs.

M/s.Measurements & Controls India Ltd.,
No.17/A, Electronics City,
Hosur Road,
Bangalore-560 100. ... Respondent
PAN: AACCM 9793 P

**Cross Objn.No.189/Bang/2015
(In ITA No.838/Bang/2015)
(Assessment year: 2009-10)
(by the assessee)**

Revenue by: Shri Praveen Kumar, JCIT(DR).
Assessee by: Shri D.S.Vivek, CA.

Date of hearing : 11/01/2016
Date of pronouncement: 10/02/2016

O R D E R

Per VIJAY PAL RAO, JM :

This appeal by the revenue and the cross objections by the assessee are directed against the order dated 2/3/2015 of the CIT(A) arising from the order passed u/s 154 of the IT Act, 1961 [‘the Act’ for short] for the assessment year 2009-10.

2. In this case, assessment was completed u/s 143(3) on 13/12/2011 determining the total income at Rs.1,25,09,850/-. Subsequently, the AO proposed to rectify a mistake in the order by invoking the provisions of sec.154 on the issue of claim of bad debts written off of Rs.98,00,327/-. The assessee objected to the contemplated action of the AO in disallowing the claim of bad debts written off by the assessee by filing the letter dated 18/11/2013. The AO did not accept the contention of the assessee and disallowed the claim of Rs.98,00,327/- by passing the order dated 20/1/2014 u/s 154.

3. The assessee challenged the action of the AO before the CIT(A) and submitted that this amount of Rs.98,00,327/- was part of the provisions for bad and doubtful debts made by the assessee in the assessment year 2004-05 though no claim of bad debts was made by the assessee in the said assessment year. Thus, in the current year, assessee written off the said amount out of the total provision made during the assessment year 2004-05 and claimed the same while computing income of the assessee. The CIT(A) accepted the explanation of the assessee and allowed the claim of the assessee in respect of the said amount. It was also observed that this issue cannot be examined in proceedings u/s 154.

4. Before us, learned Departmental Representative submitted that the CIT(A) has considered fresh material and documents

without giving an opportunity to AO before allowing the claim of the assessee. Thus, learned Departmental Representative has submitted that the assessee failed to furnish requisite details in support of the claim before the AO in the proceedings u/s 154, whereas before CIT(A), assessee has filed new evidence in support of the claim which was accepted by the CIT(A) without giving an opportunity to AO. Therefore, there is a violation of rule 46A of the IT Rules. He has relied upon the order passed u/s 154.

5. On the other hand, learned AR of the assessee has submitted that nothing new has been filed by the assessee before the CIT(A) except written submissions wherein assessee has explained the fact that this amount of Rs.98,00,327/- was part of the provisions of bad and doubtful debts made by the assessee in the assessment year 2004-05 and was written off during the year under consideration. Thus, during the year under consideration, assessee has reversed the provisions to the extent of Rs.98,00,327/- in the books of account. However, same amount has been claimed as bad debt written off in the computation of income. He has also referred to the affidavit filed by the assessee in this respect and submitted that the assessee has stated on solemn oath that no new document or evidence was filed in support of the claim before the CIT(A) but the documents and evidence which were filed before the assessing authority were placed before the CIT(A). Thus, learned AR of the

assessee has submitted that the entire relevant document and details were produced before the AO.

6. Having considered rival submissions as well as relevant material on record, we find that in response to the notice by the AO to rectify the assessment order u/s 154 for withdrawal of claim of bad debts of Rs.98,00,327/-, assessee filed his submissions vide letter dated 18/11/2013 which has been reproduced by the AO in para.2 of the impugned order passed u/s 154 as under:

- a. "During the Financial year 2003-04 ('A. Y.2004-.05) the assessee company made a provision for bad and doubtful debts for Rs. 1,32,94,610/- 'and debited the same to the Profit and Loss account and credited to provision for and doubtful debts and shown in the Balahce sheet on the Liability d . At the tine of tax computation, the entire provision made for bad and doubtful debts debited to the profit and loss account was added to the profit shown in the profit and loss account and taxes on the same was paid. We are enclosing herewith the computation of total and taxable income for the A. Y.2004-05 marked as annexure-2.
- b. In the A. Y. 2009-10 the assessee company out of the total provision made for bad and doubtful debts of Rs. 1,32,94,610/- during F. Y. 2003-04 (A. Y.2004-05(reversed an amount of Rs;98,00,3271- being the debts not recoverable and passed the entry (a) debited to provision for Bad and Doubtful Debts (b) Credited to the profit and loss account. We are enclosing herewith the computation of total and taxable income for the A. Y. 2004-05 marked as annexure-3.
- c. To treat the amount as bad debts, as per the accounting principles, the amount' created as provision earlier has to be reversed and the same amount has to be charged off to profit and loss account. The company has adopted the same principles and accordingly reversed the earlier

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provisions made towards the doubtful debts amounting to Rs.98,00,327/- by crediting the same to profit and loss account under the other income and at the same time written off the debtors who have become bad from the books by transferring the same to profit and loss account as bad debts.

- d. The effect of the above entries in the profit and loss account is contra since it is already accounted as an expense in the earlier year.
- e. However, under the income tax act, a provision made in the books is not considered as an allowable expenditure and the same is disallowed in the computation of total and taxable income. As mentioned in point No. 4(a) supra, the company even though has debited the amount towards the provision for bad debts in the profit and loss account during the A.Y.2004-05 has actually not availed any tax benefit since the same was added back in the computation of income.
- f. Since, a provision is not an allowable expenditure under the I.T. Act, any provision reversed would also be not an income which would be chargeable to tax under the Income Tax Act. Accordingly, the Assessee has adopted the same yard stick in the computation of total income for A.Y.2009-10 by reducing the provision reversed and credited to the Profit and Loss account from the profit shown as per the profit and loss account.
- g. Any provision made in the books and the reversal thereof in any of the years, is income neutral under the Income Tax Act.
- h. The company during the A. Y. 2009-10 has written off debtors amounting to Rs.98,00,327/- since the same were no longer recoverable. The actual write off is an allowable expenditure under the income tax act. Hence, the claim of the Assessee is in order.
- i. Since, the assessee has claimed the actual bad debts as an expense in the year, in the computation we have again not shown as reduction of profit on reversal of provision. An alternate way to represent would have been to show

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as reduction from taxable profit the Reversal of Provision of Rs.98,00,327/- and not claim a deduction in computation of the Bad debts written off of Rs.98,00,327/-. The net effect of the final taxable income/loss would have been the same. Thus, there is no error in the taxable income/loss computed as per the assessment order".

It is clear from the reply filed by the assessee that the assessee has duly explained that during the financial year 2003-04 relevant to assessment year 2004-05, assessee-company made a provision for bad and doubtful debts of Rs.1,32,94,600/- and debited same to the profit and loss account but the assessee did not claim said amount in the return of income at the time of computation of income and the entire provision made for bad and doubtful debts debited to profit and loss account was added to the income shown in the profit and loss account in the computation of income. The AO has not disputed this fact while passing the impugned order u/s 154. Even before us, revenue has not disputed these facts explained by the assessee. During the year under consideration, the assessee has written off a sum of Rs.98,00,327/- out of the total provision made for bad and doubtful debts of Rs.1,32,94,610/-. Thus, in the books of account, the assessee has reversed provision to the extent of said amount which was not recoverable and passed entries by debiting provision for bad and doubtful debts and credited to the profit and loss account. This treatment of reversing provision in the books of account cannot effect the allowability of the claim of the assessee in respect of bad debts written off during the year. The AO has

disallowed the claim of the assessee on the ground that the submissions are not supported by contemporary evidence. It is pertinent to note that the entire record was available with the AO and particularly the ledger accounts of the debtors wherein entries for bad debts written off has been carried out by the assessee along with provision for bad and doubtful debts made during the financial year 2003-04 relevant to assessment year 2004-05. Therefore, as per provisions of sec.36(1)(vi), the assessee is not required to establish that debts actually gone bad once the assessee has written off the amounts in the books of account. The CIT(A) has allowed the claim of the assessee by taking note of the fact that in the books of account, assessee has made entries in respect of reversal of provision for bad and doubtful debts made in the assessment year 2004-05. Therefore, in view of the above facts and circumstances of the case, we do not find any error or illegality in the impugned order of the CIT(A). The same is upheld.

7. In the cross objections the assessee has raised the only ground as under:

"The Commissioner of Income-tax-Appeals has erred in not giving an order in respect of ground No.3 of Form 35 (filed with CIT(A)-III dated 21st February 2014) which was 'Learned Assessing Officer passed the order u/s 154 without giving any opportunity of being heard', thus the order of CIT Appeals is bad in law."

Thus it is clear that the assessee has raised a ground regarding non-grant of appropriate opportunity of hearing by the AO while passing

the order u/s 154. In view of our finding on the merits of the case, the cross objections become infructuous.

8. We further note that there is a delay of 5 days in filing cross-objections by the assessee. The assessee has filed a petition for condonation of delay which is supported by an affidavit wherein the cause for delay has been explained. After going through the contents of the affidavit, we are satisfied that the assessee was having a reasonable cause for filing cross objections delayed by 5 days. Accordingly, we condone the delay of 5 days in filing cross objections.

9. In the result, both the appeal as well as the cross objections are dismissed.

Pronounced in the open court on 10th February, 2016.

sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER
eksrinivasulu,sps

sd/-
(Vijay Pal Rao)
JUDICIAL MEMBER

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore