

OD - 6

ITAT/10/2021
IA No.GA/2/2021

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF
INCOME TAX-1, KOLKATA

-Versus-

M/S. LANDIS GYR

BEFORE :

THE HON'BLE ACTING CHIEF JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 3rd April, 2023

Appearance :

*Mr. Soumen Bhattacharjee, Adv.
...for the appellant*

*Mr. Asim Choudhury, Adv.
Mr. Soham Sen, Adv.
...for the respondent.*

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated October 17, 2018 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the Tribunal) in ITA No.524/Kol/2017 for the assessment year 2012-13.

The revenue has raised the following substantial questions of law for consideration:

- (i) *Whether the Learned Income Tax Appellate Tribunal erred in law in determining the payment under the head of management support service at Arm's Length Price when the provision of Section 92C of the Income Tax Act, 1961, and read with rule 10B & Rule 10C of the Income Tax Rules, 1962, allows for "Reliable and accurate adjustment" to account for difference between intonated transaction and comparable uncontrolled transactions ?*
- (ii) *Whether the Learned Income Tax Appellate Tribunal erred in law in allowing the depreciation on Intellectual property rights under Section 32 of the Income Tax Act, 1961, considering Intellectual property Rights as technical known now ?*
- (iii) *Whether the Learned Income Tax Appellate Tribunal erred in law in treating the provision of obsolescence of inventory or ascertained liability where are no cogent material is unavailable to sustainable the valuation of inventory ?*
- (iv) *Whether on the facts and circumstances of the case and on law the Learned Tax Appellate Tribunal was justified in granting relief to the assessee on the addition of ₹5,03,65,604/- on the issue of "Adjustment in Transfer Pricing in respect of International Transactions" by TPO relied upon the decision in assessee's own case for Assessment Year 2007-08 and 2008-09?*

- (v) *Whether on the facts and circumstances of the case and on law Learned Income Tax Appellate Tribunal was justified in granting relief to the assessee on addition of ₹34,05,322/- on the issue of "Depreciation on Intellectual property Assets"?*
- (vi) *Whether on the facts and circumstances of the case and on law Learned Income Tax Appellate Tribunal was justified in granting relief to the assessee on the addition of ₹10,63,042/- on the issue of "Provision on obsolescence of inventory?"*
- (vii) *Whether on the facts and circumstances of the case and on law Learned Income Tax Appellate Tribunal was justified in granting relief of ₹1,16,000/- to the assessee on account of an unascertained liability, "Provision for Warranty" which is Contingent in nature?*

We have heard Mr. Soumen Bhattacharjee, learned standing counsel assisted for the appellant/revenue and Mr. Asim Choudhury, learned counsel assisted by Mr. Soham Sen, learned advocate for the respondent/assessee.

The above substantial questions of law can be grouped into four categories. The substantial questions of law (i) and (iv) are on the same issue, substantial questions of law (ii) and (v) are on the same issue, substantial questions of law

(iii) and (vi) are on the same issue and (vii) is an individual question.

So far as substantial questions of law (i) and (iv) are concerned, it is a recurrent issue and in the assessee's own case for the financial years 2007-08, 2008-09 and 2012-13, the Tribunal has held in favour of the assessee and those orders have become final. In the impugned order, the Tribunal has followed its decisions and before us the revenue has not been able to point out any distinctive feature for us to take a departure from the consistent manner in which the relief was granted in favour of the assessee. Therefore, substantial questions of law (i) and (iv) having been answered in favour of the assessee in the earlier assessment years, the same is required to be answered in favour of the assessee and against the revenue.

Similarly, substantial questions of law (ii) and (v) have been answered in favour of the assessee for the assessment years 2007-08, 2008-09 and those orders have attained finality and following the said orders the Tribunal has granted relief to the assessee in the impugned order. Thus, in the absence of any distinguishing feature pointed out by the revenue before us, the order impugned passed by the Tribunal on those issues does not call for interference.

With regard to substantial questions of law (iii) and (vi), those deal with the provision of 'obsolescence of inventory'. The Tribunal has examined the facts of the case and found from the workings that the assessee has clearly mentioned the item code, description of item available in the inventories, date of last transaction, quantity, rate per unit and the value together with the time periods from the date of sale to decide the relevant provision percentage. Therefore, the Tribunal concluded that the assessee has made scientific calculation for making provision based on commercially acceptable methods and the Tribunal also found that the valuation of the cost to be in accordance with AS-2 issued by the ICAI being one of the standards recognised under Section 145(2) of the Act wherein the closing stock is to be value at lower of cost or not realizable value. The Tribunal also took note of the decision of the Hon'ble Delhi High Court in the case of *CIT vs. Hotline Teletube & Components Ltd.* reported in (2008) 175 taxmann 286 (Delhi) wherein the Court took note of the more or less identical factual circumstances and dismissed the appeal filed by the revenue on the ground of no substantial question of law arises for consideration as the Tribunal has returned the finding of fact. In our view, the Tribunal having examined the factual position and rendered a decision, we are

of the view that no substantial questions of law arises for consideration in so far as substantial questions of law (iii) and (vi) as suggested by the revenue and accordingly the same are rejected.

This leaves us with substantial question of law (vii) which is a provision for warranty. The Department before the Tribunal objected to the allowability of provision for warranty on the ground that in the agreement the clause only mentioned about guarantee and there is no clause for warranty in the terms and conditions. The Tribunal has examined the relevant clause in the terms and conditions; more particularly condition no.19(a) and (b) and found that the warranty clause is in-built in the guarantee clause itself as the assessee, in the event of any defective supply within a period of 5-1/2 years has to replace the meters and in the event of the meters not getting replaced, the assessee has to pay twice the cost of meters. Therefore, the Tribunal on facts concluded that the assessee had agreed for both warranty (i.e., replacement of defective meters) as well as the guarantee (paying twice the cost of meters if meters are not replaced). Thus, the learned Tribunal was convinced on facts that the clause in the terms and conditions has an in-built warranty clause.

Thus, we are of the view that no substantial question of law arises on the said issue as the Tribunal has decided in favour of the assessee by returning 'finding of fact'.

In the result, the substantial questions of law (i) and (iv) are decided against the revenue following the decision in the assessee's own case for the assessment years 2007-08, 2008-09 and 2012-13. Substantial questions of law (ii) and (v) are decided against the revenue following the decision of the Tribunal in the assessee's own case which has attained finality for the assessment year 2007-09, 2008-09. Substantial questions of law (iii), (vi) and (vii) being entirely factual and the Tribunal having decided in favour of the assessee by returning a finding on fact, we are of the view that no such substantial questions of law arise for consideration.

In the result, the appeal (ITAT/10/2021) stands dismissed.

Consequently, the connected application for stay (IA No.GA/2/2021) also stands closed.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)