

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'के' मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "K", MUMBAI**

सर्वश्री आर.एस. स्याल, लेखा सदस्य एवं श्री विवेक वर्मा, न्यायिक सदस्य, के समक्ष ।

**Before Shri R.S.Syal, AM and Shri Vivek Varma,
JM**

**ITA No.7720/Mum/2011
Asst.Year 2007-08**

M/s.Tecnimont ICB Ltd. Tecnimont ICB House, 504, Chincholi Bunder, Link Road, Malad (W), Mumbai - 64 PAN:AAACI 2628B	बनाम/ Vs.	The DCIT 9(3), Aaykar Bhavan, MK Road, Mumbai - 20.
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri M.P.Lohia

प्रत्यर्थी की ओर से/Respondent by : Shri Ajeet Kumar Jain/
Shri Praveen Kumar

सुनवाई की तारीख / Date of Hearing :17.01.2013	घोषणा की तारीख / Date of Pronouncement : 23 .01.2013
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आदेश / O R D E R

Per R.S.Syal (AM) :

This appeal by the assessee is directed against the order passed by the Assessing Officer under section 143(3) r.w.s. 144C(13) of the Income Tax Act,1961 (the Act) on 28.9.2011 in relation to the assessment year 2007-08.

2. First ground of the appeal, being general, was not pressed by ld. AR. The same is, therefore, dismissed.

3. The second ground is against the levy of mark-up of 5% on reimbursement of cost recovered by the assessee from its Associated Enterprises(AEs).

4. At the very outset the ld. AR contended that similar issue was raised before the Tribunal in assessee's own case for A.Y 2005-06 and the Tribunal was pleased to restore this matter to the file of AO / TPO for restricting the transfer pricing adjustment to the agreed mark-up as per the Arrangement between the assessee and its AEs. In the said order for the assessment year 2005-06, like the assessment year under consideration, there existed an arrangement for mark-up on cost at 2% and 5%, whereas the TPO applied 5% mark-up on flat basis. The ld. DR was fair enough to accept that the facts and circumstances of the instant ground are similar to those for the said earlier year. In view of the order passed by the Tribunal in assessee's own case for the earlier year, we set aside the impugned order and remit the matter to the file of the AO/TPO for deciding it in accordance with the directions given by the Tribunal in the said earlier year.

5. Ground No.3 is against levy of mark-up of Rs.1,35,885/- towards interest on delay in receipt of reimbursement of expenses from AEs. Briefly stated, the facts of this ground are that the assessee recovered expenses from AEs. On being called upon to provide details of the date of incurring of expenses and dates of receipt of same from AE, the assessee submitted the details. On perusal of such details, the TPO noticed that in some cases expenses incurred on behalf of AEs were recovered after a delay of substantial period without charging any interest. As per Annexure-1 to his order, the TPO proposed adjustment of Rs.1,35,885/- on this score, which addition finally came to be made in the assessment order.

6. The ld. counsel for the assessee contended that the computation of delay by the TPO was not correct inasmuch he ignored the credit period allowed by the assessee as agreed. He raised no objection if the

addition was restricted to the charge of interest beyond the agreed period. The ld. DR was fair enough to accept this contention.

7. In view of the rival but common submissions, we set aside the impugned order on this issue and remit the matter to the file of the AO/TPO for restricting the amount of adjustment on account of interest to the period beyond the agreed credit period. We want to make it clear that this decision has been rendered on the concession made by the ld. AR.

8. Ground No.4 is against not allowing credit for 'Tax relief u/s Sec. 90' which was inadvertently mentioned as "Advance tax" in the Electronically filed tax return. The assessee argued before the AO that instead of putting the eligible amount of double taxation credit of Rs.12,05,837/- under section 90 of the Act, the same was inadvertently shown as "Advance tax" in the return and accordingly proper tax credit may be given. Following the judgment of the Hon'ble Supreme Court in the case of *Goetze India Ltd., 151 Taxmann 1 (SC)*, the AO rejected the assessee's contention on the ground that no claim shall be allowed otherwise than by way of return or revised return of income.

9. We have heard the rival submissions and perused relevant material on record. It is observed that the claim of the assessee about wrong classification of double taxation credit was rejected by the AO because the assessee did not file a revised return. This view was canvassed by the AO on the basis of the afore-referred judgment in the case of *Goetze India Ltd.* However, it is pertinent to note that para - 4 of this judgment provides that operation of this judgment is restricted to the AO and it does not, in any way, affect the powers of the Tribunal under section 254 of the Act. We, therefore, direct the AO to examine and allow assessee's claim about the eligible amount of double taxation credit as per law after allowing a reasonable opportunity of being heard to the assessee.

10. Ground No.5 is against giving credit of only Rs. 1,79,44,144/- as against claim of Rs.1,96,04,867/- without assigning any reason and without providing any opportunity to the assessee. On this issue again we direct the AO to examine this aspect of allowing of short credit of the tax as per law and decide it afresh after allowing a reasonable opportunity of being heard to the assessee.

11. The last ground about the charging of interest u/s 234B and 234C is consequential.

12. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 23rd day of January, 2013.

आदेश की घोषणा दिनांक: को की गई ।

Sd/-

Sd/-

(Vivek Varma)

न्यायिक सदस्य / JUDICIAL
MEMBER

(R.S.Syal)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 23rd January, 2013.
V.M

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The DRP-1, Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.

Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai