

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "C", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.381/PUN/2015  
निर्धारण वर्ष / Assessment Year : 2010-11

M/s. Eaton Power Quality Private Limited, 145, Off Mumbai Pune Road, Pimpri, Pune 411 018 PAN : AAACC6943R	Vs.	DCIT, Circle-8, Pune
Appellant		Respondent

Appellant by Shri Vishal Kalra  
Respondent by Shri Krishna Kumar

Date of hearing 18-02-2021  
Date of pronouncement 18-02-2021

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the final assessment order dated 18-02-2015 passed by the Assessing Officer (AO) u/s.143(3) r.w.s.144C(13) of the Income-tax Act, 1961 (hereinafter called 'the Act') in relation to the assessment year 2010-11.

2. The assessee is an Indian resident engaged in the business of trading of Uninterrupted power supply and Direct current power systems, Switch mode power supply, Power Distribution systems

and also providing Maintenance services for these items. A return of income was filed declaring total income at Rs.7.92 crore. Certain international transactions were reported. The AO made a reference to the TPO for determining the Arm's Length Price (ALP) of the international transactions.

3. Ground nos. 2 to 5 deal with transfer pricing addition of Rs.1,96,06,209/- made in respect of international transaction of 'Services received from AEs' with transacted value of Rs.1,96,06,209/-. The TPO observed that the assessee adopted the Transactional Net Marginal Method (TNMM) on entity level covering, *inter alia*, the international transaction in question. He called upon the assessee to prove the factum of receipt of services and also the basis for allocation of costs. The assessee could not furnish evidence demonstrating the receipt of services to the satisfaction of the TPO, who determined Nil ALP, thereby proposing transfer pricing addition of the equal amount. No relief was allowed by the Dispute Resolution Panel (DRP), which found that similar view was canvassed by it in the case of the assessee for the preceding assessment years including the immediately preceding assessment year 2009-10. Consequently, the AO made the addition

in the impugned order, against which the assessee has come up in appeal before the Tribunal.

4. We have heard the rival submissions through Virtual Court and gone through the relevant material on record. It is noted that the DRP relied on its direction for the immediately preceding assessment year for granting seal of approval to the transfer pricing adjustment. Such earlier assessment year came up for consideration before the Tribunal. By its order dated 19-11-2018, the Tribunal in ITA No.599/PUN/2014 has restored the matter to the file of AO/TPO for a fresh determination of the ALP. In reaching this conclusion, the Tribunal also relied on a Coordinate bench decision of the assessee's sister concern, namely, *Eaton Fluid Power Ltd. Vs. ACIT*. Relevant discussion has been made at para 5 of the order. Since the facts and circumstances for the year under consideration are admittedly similar to those of the preceding year, respectfully following the precedent, we set aside the impugned order and remit the matter to the file of AO/TPO for deciding it afresh in conformity with the directions given by the Tribunal for such earlier year.

5. Ground nos. 6 and 7 are against the addition of Rs.92,58,784/- made u/s.37(1) of the Act in respect of the Management fee (Corporate cost allocation). The assessee incurred such expenses to its another Indian sister concern, namely, Eaton Technologies Private Limited. The AO required the assessee to demonstrate the basis for cost allocation of Rs.92.58 lakh and also the factum of receipt of services. The assessee could not prove its point of view to the satisfaction of the AO. He, therefore, made the disallowance u/s.37(1) of the Act. The DRP also did not allow any reprieve to the assessee, which led to the making of the addition in the impugned order.

6. We have heard the rival submissions and gone through the relevant material on record. The AO has made out a case that the assessee could not evidence receipt of services with necessary documents and hence, the expenditure was not allowable. In addition, the AO also observed that the allocation of costs was not properly proved. On a specific query from the Bench, the ld. AR invited our attention towards invoices which show the incurring of expenses by it under different heads. It is elementary that raising of invoice is one thing and demonstrating the factum of receipt of

services is another thing. In the instant case, the assessee has failed to lead proper evidence before the authorities below to prove the receipt of services. The ld. AR contended that the assessee has sufficient evidence to prove the receipt of such services and one more opportunity be granted, which was not seriously objected by the ld. DR. Under these circumstances, we consider it appropriate to set aside the impugned order to this extent and direct the assessee to file such evidence in support of receipt of services to the satisfaction of the AO, who will then examine and decide the issue *denovo*.

7. Ground nos. 8 to 11 are against certain claims made before the DRP for the first time for which a direction of re-examination to the AO was not properly complied with.

8. Factual matrix of these grounds is that the assessee claims that a sum of Rs.17,17,227/- relating to Prior period expenses was inadvertently not reduced from its taxable income at the time of filing of return and also no such claim was made before the AO. Similarly, the assessee claims that there was a reversal of Rent Equalization Reserve amounting to Rs.32,58,808/- that ought to have been reduced, which it omitted to do. In the like manner, the assessee claims that there was reversal of Provision of Anticipated

Installation Cost of Rs.1,36,80,000/-, which was wrongly omitted to be reduced from the total income at the time of filing of the return of income. All the above three items were neither claimed as deductions in the return of income, nor before the AO during the course of assessment proceedings. It was for the first time that the assessee took up this issue before the DRP which initially held in para 5.1 that the claim of the assessee could not be entertained because of the judgment of Hon'ble Supreme Court in *Goetz (India) Ltd. Vs. CIT 284 ITR 323* and thereafter, without prejudice, directed the AO to verify the claim on merits and make specific remarks in the final assessment order for allowing or rejecting the same. The AO in the final assessment order has again relied on the judgment in *Goetz (India) Ltd. (supra)* and did not examine the claims on merits, as was directed by the DRP. There is hardly any need to emphasize that the judgment in *Goetz (India) Ltd. (supra)* applies only to the AO and not to the higher authorities. Once the DRP directed the AO to verify the assessee's claims on merits, it became incumbent upon him to examine the same on merits. Having not done so, we set-aside the impugned order and remit the matter to the file of AO for examining them afresh as per law and then consider their

deductibility or otherwise on merits. Needless to say, the assessee will be allowed reasonable opportunity of hearing.

9. The only other ground about levy of interest u/s. 234A, 234B and 234C is consequential not requiring any specific adjudication.

10. The assessee has raised an additional ground. The crux of such ground is that the order passed by the Additional Commissioner of Income-tax in the capacity of Transfer Pricing Officer (TPO) is invalid as the order, at the material time, could have been passed only by the Joint Commissioner of Income-tax (JCIT) or Deputy Commissioner of Income-tax (DCIT) or Assistant Commissioner of Income-tax (ACIT). It is observed that similar additional ground was raised in the appeal before the Tribunal by another sister concern of the assessee, viz., Eaton Industrial Systems Pvt. Ltd. for the same assessment year. The Tribunal vide its order dated 25-11-2019 in ITA No.505/PUN/2015 has dismissed such additional ground on merits. Since the facts and circumstances of the instant additional ground are similar, following the precedent, we dismiss the additional ground.

11. In the result, the appeal is partly allowed for statistical purposes.

Order pronounced in the Open Court on 18<sup>th</sup> February, 2021.

Sd/-  
**(S.S.VISWANETHRA RAVI)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.S.SYAL)**  
**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 18<sup>th</sup> February, 2021  
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-13, Pune
4. The Pr.CIT-V, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे  
“सी” / DR ‘C’, ITAT, Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	18-02-2021	Sr.PS
2.	Draft placed before author	18-02-2021	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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