

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'H' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.4352/Mum/2010 to 4354/Mum/2010
(Assessment Year :2001-02 to 2003-04)**

M/s. Siemens Ltd., Birla Aurora Towers Level-21, Plot No.1080 Dr. Annie Besant Road Worli, Mumbai- 400 030	Vs.	Commissioner of Income Tax-7 Room No.611, Aayakar Bhavan Mumbai- 400 020
PAN/GIR No.AAAS0764L		
(Appellant)	..	(Respondent)

Assessee by	Shri P.J. Pardiwala / Shri Nitesh Joshi
Revenue by	Shri Prakash Mane
Date of Hearing	13/09/2022
Date of Pronouncement	29/09/2022

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

This appeal in ITA No.4352/Mum/2010 to 4354/Mum/2010 for A.Y.2001-02 to 2003-04 preferred by the order against the revision order of the Id. Principal Commissioner of Income Tax-8, Mumbai u/s.263 of the Act dated 30/03/2021 & 24/03/2010 respectively for the A.Y.2001-02 to 2003-04.

1.1. Identical issues are involved in both these appeals and hence, they are taken up together and disposed of by this common order for the sake of convenience.

1.2. With the consent of all the parties, the appeal of the assessee for A.Y.2001-02 is taken as the lead case and the decision rendered thereon would apply with equal force for A.Yrs. 2002-03 and 2003-04 also except with variance in figures in view of identical facts.

2. Though the assessee has raised several grounds of appeal before us, the effective issue to be decided in these appeals is as to whether the Id. Administrative CIT (Ld. CIT) was justified in invoking revisionary jurisdiction u/s.263 of the Act in the facts and circumstances of the instant case by treating the order of the Id. AO as erroneous in as much as it is prejudicial to the interest of the Revenue.

3. We have heard the rival submissions and perused the materials available on record. We find that the assessee company is engaged in the business of manufacture and supply of electrical products, systems and solutions, electronic goods, healthcare systems like X-ray machines, power generation and transmission equipments, transport equipment like signalling equipment for railways and related industrial and commercial activities. The assessee also undertakes turnkey projects in industrial and infrastructure sectors including the concept, engineering, supplies, execution, commissioning and after sale services. The Id. AR placed on record the list of dates and events for better adjudication of the appeal which also contained his arguments:-

1	30.10.2001	The assessee filed its return of income for assessment year 2001 -02 declaring a total income of Rs.36,48,02,020. The said return of income was selected for scrutiny.
2	25.02.2004	The assessee, during the pendency of the assessment proceedings, filed an application before the Settlement Commission under section 245C of the Act for settlement of its cases relating to the assessment years 1997- 98 to 2003-04.
3	01.03.2005	The settlement application filed by the assessee was admitted by the Settlement Commission by an order passed under section 245D(1) of the Act.
4	14.06.2007	Pursuant to directions given by the Settlement Commission, the then CIT filed reports under section 245D(3) of the Act.
5	10.09.2007 & 21.09.2007	The then CIT thereafter filed reports before the Settlement Commission under rule 9 of the Income-tax Settlement Commission (Procedure) Rules, 1997(the Settlement Commission Rules). In the said reports, a request was made to the Settlement Commission to consider various other issues relating to the assessment
6	07.01.2008	The Settlement Commission disposed of the assessee's application determining an additional income of Rs.9,78,68,175 as assessable for the assessment year 2001-02. Referring to the reports filed by the CIT under section 245D(3) of the Act and under Rule 9 of the Settlement Commission Rules, they identified a list of 35 items which required further consideration. They did not adjudicate any of the aforesaid 35 items but directed the Assessing Officer to consider the said issues and disposed of the application only with respect to the additional disclosure as made by the assessee in the settlement application.
7	22.02.2008	The assessee filed detailed submissions before the A.O. in response to notice dated 19.02.2008 issued under section 143(2) of the Act while giving effect to the order dated 07.01.2008 passed by the Settlement Commission. In the said letter the assessee has also made its submissions as to why no addition/ disallowance should be

		made in respect of the 35 issues as raised by the Revenue before the Settlement Commission.
8	25.02.2008	The A.O. passed an order under section 143(3) read with section 245D(4) of the Act determining the assessee's total income for assessment year 2001-02 at Rs. 118,04,09,077. Out of the 35 issues as identified before the Settlement Commission, additions/ disallowances were made in respect of certain items by rejecting the submission made vide letter dated 19.02.2008. This discloses that there was thorough application of mind by the AO while passing the assessment order giving effect to the Order dated 07.01.2008 of the Settlement Commission.
9	12.06.2009	The Settlement Commission disposed of rectification applications filed by the Assessee as well as the Revenue. It was urged by both the parties that the 35 issues as identified by the Revenue ought to have been decided by the Settlement Commission rather than restoring the same to the AO. The said application was dismissed as infructuous as the AO had already passed the order dated 25.02.2008 giving effect to the Order of the Settlement Commission. Thus, neither in the course of the proceedings before the Settlement Commission nor in the rectification application, the Revenue which was represented through the CIT, ever referred to any issues other than the 35 as identified by them. Based thereon, the assessee submits that it is not now open to the CIT in the revision proceedings to expand the controversy beyond such issues.
10	06.11.2008	The CIT issued notice under section 263 of the Act inter-alia alleging that in the order dated 25.02.2008 passed by the AO giving effect to the Settlement Commission's order dated 07.01.2008 he could go beyond the 35 issues as identified in the settlement proceedings. In so far as is relevant, the notice also refers to claim for deduction in respect of loss by way of liquidated damages on account of delay in execution of contracts, provision towards warranty obligation, change in the method of recognizing revenue and disclosure in respect of quantitative details relating to raw materials and finished goods etc. There is no discussion

		therein with respect to adjustment under section 145A of the Act. The said issue was also not discussed at any stage of the 263 proceedings.
11	10.02.2010 23.02.2010 & 09.03.2010	The assessee filed detailed submissions before the CIT inter-alia urging that it was not open to the AO to go beyond the 35 issues as identified in the settlement proceedings. Further, effectively the present CIT was seeking to revise the view taken by the then CIT in the course of proceedings before the Settlement Commission which was not permissible in law. Detailed submissions have also been made in respect of each of the issues as raised in the show cause notice dated 06.11.2008 issued by the CIT under section 263 of the Act explaining as to why no addition / disallowance should be made in respect thereof.
12	24.03.2010	The CIT passed the impugned order under section 263 of the Act inter-alia revising the assessment order 25.02.2008 passed by the A.O. with respect to the adjustment to be made under section 145A of the Act, modification of the method to recognize revenue, quantitative details in respect of raw materials and finished goods and deduction in respect of provision for loss by way of liquidated damages and warranty obligation. The present appeal has been filed against this order.
13	31.12.2010	The A.O. passed an order giving effect to the impugned Order dated 24.03.2010 passed by the CIT under section 263 of the Act inter-alia determining the assessee's total income for the assessment year 2001-02 at Rs. 105,86,64,353. The additions as made by the A.O. in the said order and as relating to the 263 proceedings are in respect of valuation of stock in terms of section 145A of the Act and disallowance of deduction of provision towards liquidated damages and warranty obligation. Therefore, the grievance in the present appeal is now only restricted to these issues.

3.1. It was vehemently argued that the primary assumption of jurisdiction by the Id. CIT u/s.263 of the Act is patently illegal and bad in law as the order of the Id. AO in the instant case could not be termed as erroneous at all as he had originally passed the order in accordance with the directions of the Hon'ble Income Tax Settlement Commission (ITSC)

which directed the Id. AO to examine 35 items. We find from the aforesaid list of dates and events and also from the paper book submitted by the assessee, the Id. AO had indeed examined all the 35 items that were mandated by the ITSC to examine and the assessee also had furnished all the details pertaining to those 35 items before the Id.AO during the course of assessment proceedings. The Id.AO on examination and verification of the details furnished by the assessee in respect of 35 items had accepted the same for majority of the issues and had made certain disallowances in respect of some issues. These facts are not in dispute before us. We find that the Id.CIT is seeking to invoke revision jurisdiction u/s.263 of the Act in respect of the following items:-

- a) Claim of deduction in respect of loss by way of liquidated damages on account of delay in execution of contracts
- b) Claim of deduction towards provision for warranty
- c) Adjustment u/s.145A of the Act in respect of MODVAT.

3.2. We find that the list of 35 items which the Revenue wanted the Hon'ble Settlement commission to consider while passing their final order are listed in pages 27 & 28 of the paper book which is nothing but the order passed by the Settlement Commission u/s.254D(4) of the Act dated 07/01/2008. From the said list, we find that the then CIT wanted to consider the issue of loss of delay in execution of projects which is nothing but the liquidated damages for the A.Yrs. 2001-02 to 2004-05 vide Item No.22 listed in page 27 of the Settlement Commission's order and Section 145A impact of MODVAT for A.Y.2004-05 which is listed in Item No.33 listed in page 28 of the paper book of the Settlement Commission's order. We find that pursuant to the directions of the Hon'ble Settlement Commission, the Id. AO had indeed examined the 35

issues listed in the said order while framing the assessment giving effect to Settlement Commission's order. In fact in the said order, the Id. AO after due examination had accepted to the stand of the assessee for certain items and wherever he is not in agreement with the contentions of the assessee, the Id. AO had resorted to make suitable disallowances / additions. Hence, this goes to prove that the Id. AO had indeed made thorough examination and enquiries with regard to 35 items listed in the Settlement Commission's order. This also would be in due consonance with the directions of the Settlement Commission. Hence, it could be safely concluded that the order giving effect to Settlement Commission's order was passed by the Id. AO u/s.143(3) r.w.s. 245D(4) of the Act on 25/02/2008 as per the directions of the Hon'ble Settlement Commission. When an assessment order has been framed by the Id. AO pursuant to the directions of the Hon'ble Settlement Commission by giving effect to the said order, the said assessment order loses its independent status of getting construed as an assessment order passed by the Id. AO on his own volition and in his independent capacity without getting influenced by the order of any higher authority. It is not in dispute that the Administrative Commissioner (Ld. CIT) had been given due opportunities for making necessary enquiries in terms of Section 245D (3) of the Act and furnish Rule 9 report before the Settlement Commission as per Settlement Commission Rules. It is also not in dispute that the Settlement Commission had passed an order dated 07/01/2008 u/s.245D(4) of the Act after considering the various contentions raised by the Administrative CIT in Rule 9 report. The Settlement Commission order is being passed by the Officers of the Income Tax department who are in the rank of the Chief Commissioners of Income Tax (CCIT). When an Assessing officer passes an order giving effect to the said Settlement Commission order framed by the Officers in the rank of CCITs, then it loses the status of the

order passed by the Id. AO simplicitor. Now, the legal question arises whether this order could be subject matter of revision u/s.263 by the Id. CIT. In our considered opinion, the answer would be an emphatic "No". It is very clear from the provision of the Act that Section 263(1) of the Act clearly mandates the Id. CIT to invoke revision jurisdiction only in respect of orders passed by a subordinate authority. As stated supra, the order passed by the Id. AO u/s.143(3) r.w.s. 245D(4) of the Act dated 25/02/2008 could not be construed as an order passed by a subordinate authority in view of the fact that the Settlement Commission order has been passed by the Officers in the rank of the Chief Commissioner. Hence, we have no hesitation to hold that revision jurisdiction invoked u/s.263 of the Act by the Id. CIT seeking to make adjustment in respect of (a) claim of deduction in respect of loss by way of liquidated damages on account of delay in execution of contracts (b) adjustment u/s.145A of the Act in respect of MODVAT as *void ab initio* as the same was already the subject matter of consideration by the Id. AO while passing an order giving effect to Settlement Commission proceedings. Hence, due enquiries had been carried out by the Id. AO on these two items. In respect of aforesaid two items, revision jurisdiction invoked by the Id. CIT u/s.263 of the Act is unsustainable in the eyes of law.

3.3. In view of the aforesaid decision, the various arguments made by the Id. AR on the merits and other legal submissions in respect of the aforesaid two issues, need not be gone into and they are left open as adjudication of the same would only be academic in nature.

3.4. Moreover, with regard to impact of Section 145A of the Act of MODVAT, we find that the Settlement Commission had directed the Id. AO to look into the same only for A.Y.2004-05. Hence, for the A.Y.2001-02,

the Id. AO could not have looked into that aspect as he is merely passing an order giving effect to the directions of the Hon'ble Settlement Commission. Hence, an order passed by the Id. AO as per the directions of the Hon'ble Settlement Commission cannot be construed as erroneous and prejudicial to the interest of the Revenue warranting revision jurisdiction u/s.263 of the Act by the Id. CIT. Hence, the revision jurisdiction u/s.263 of the Act by the Id. CIT fails on this count also in respect of adjustment sought to be made u/s.145A of the Act on MODVAT and its impact on business profits for the A.Y.2001-02. At the cost of repetition, we would like to state that the Id. AO in the instant case had passed an order giving effect to the directions of the Settlement Commission. The Settlement Commission had indeed directed the Id. AO to examine 35 items that are listed in pages 27 & 28 of the Settlement Commission order for various years. Hence, the Id. AO does not have jurisdiction to travel beyond those 35 items listed in the Settlement Commission Order. The examination of those 35 items alone would be in direct consonance and compliance with the directions of the Hon'ble Settlement Commission. This is what has been done by the Id. AO in the instant case. How the Id. CIT could expect the Id. AO in the aforesaid scenario to look beyond 35 items. Hence, the order of the Id. AO cannot be treated as erroneous in respect of the issues that were not forming part of 35 items listed in the order of the Settlement Commission. To this extent, the revision order passed by the Id. CIT u/s. 263 of the Act is quashed. Hence, the observations made by the Id. CIT in his order u/s.263 of the Act in respect of (a) impact of taxable income as a consequence of change in the method of recognition of the Revenue and (b) quantitative details in respect of raw materials and finished goods are dismissed and quashed.

3.5. Now what is left is exercise of revision jurisdiction u/s.263 of the Act by the Id. CIT in respect of claim of deduction towards provision for warranty. Admittedly this issue was not included in the list of 35 items which the Id. CIT wanted the Settlement Commission to consider in his Rule 9 report. In this regard, we have already held that the Id. AO could not travel beyond the list of 35 items that were listed in the order of the Settlement Commission. Hence, not looking into the allowability for provision of warranty while giving effect to the directions of the Settlement Commission, would not make his order erroneous. Moreover, the Id. PCIT in page 7 of his order had narrated the basis on which the provision for warranty has been made in the books by debiting to profit and loss account which is carried regularly in the normal course of business of the assessee. His only grievance is that whether the said provision has been reversed in the subsequent year is required to be verified by the Id. AO, for which purpose, he is invoking revision jurisdiction u/s.263 of the Act. Nowhere in the order the Id. CIT even whispers that the provision for warranty has not been made on scientific basis by the assessee. Hence, we find that the Id. CIT had only resorted to invoke his revision jurisdiction u/s. 263 of the Act by directing the Id. AO to make fishing and roving enquiries in respect of claim of deduction for provision for warranty. In our considered opinion, revision jurisdiction u/s.263 of the Act cannot be invoked by the Id. CIT for directing to make fishing and roving enquiries by the Id. AO. Moreover, the Id. CIT had not stated as to how the claim for provision of warranty made by the assessee is incorrect or erroneous, as admittedly reply was given before the Id. CIT by the assessee in response to show-cause notice. Hence, it is incumbent on the part of the Id. CIT to atleast make preliminary enquiry on the submissions made by the assessee before concluding that the order passed by the Id. AO is erroneous in respect of this issue. Hence,

we hold that the revision jurisdiction u/s.263 of the Act invoked by the Id. CIT fails in respect of this issue also.

3.6. In view of the aforesaid observations, revision order passed by the Id. CIT u/s.263 of the Act is hereby quashed. Accordingly, the grounds raised by the assessee challenging validity of assumption of jurisdiction by the Id. CIT u/s.263 of the Act are allowed. The other grounds raised by the assessee on merits of the issues need not be adjudicated as they would be academic in nature and they are left open.

4. In the result, appeal of the assessee for A.Y.2001-02 in ITA No.4352/Mum/2010 is allowed.

5. As stated at the beginning of the order, both the parties agreed that the same issues are the subject matter for A.Yrs. 2002-03 and 2003-04. Hence, the decision rendered by us hereinabove for A.Y. 2001-02 shall apply mutatis mutandis for A.Ys. 2002-03 and 2003-04 also except with variance in figures.

6. In the result, all the appeals of the assessee are allowed.

Order pronounced on 29/09/2022 by way of proper mentioning in the notice board.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 29/09/2022
KARUNA, Sr. PS

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai