

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

**BEFORE SRI AMIT SHUKLA, JUDICIAL MEMBER
AND SRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 3947/Del/2010

AY: 2007-08

ACIT, Circle 10(1)
New Delhi

vs. Diamond International Inex P.Ltd.
J 34A, Central Market
Lajpat Nagar
New Delhi

PAN: AACCD 3252 A

(Appellant)

(Respondent)

Appellant by : Sh. Anil Kumar Sharma, Sr.D.R

Respondent by : None.

ORDER

PER AMIT SHUKLA, JUDICIAL MEMBER

The aforesaid appeal has been filed by the Revenue against the impugned order dt. 15.06.2010, passed by the Ld.CIT(A)-13, New Delhi, for the quantum of assessment passed u/s 143(3) of the Income Tax Act, 1961 (the Act) for the Assessment Year (A.Y.) 2007-08.

2. The Revenue has taken the following grounds of appeal.

“1. On the facts and circumstances of the case and in law, the CIT(A) has erred deleting the addition of Rs.2145,363/- made on account of expenses incurred on advertisement, exhibition and publicity upon which no TDS was deducted without appreciating the fact that assessee failed to deduct TDS on the payments made by it on account of above work.

2. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.2,74,908/- made on account of expenses incurred on exhibitions and reimbursement upon which no TDS was deducted

without appreciating the fact that the assessee failed to deduct TDS on the payments made by it on account of above work.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.1,075,000/- made account of cessation of liability without appreciating the fact that the assessee failed to produce any proof to substantiate its claim.

4. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.685,9001- made on account of previous period expenses claimed without appreciating the fact that assessee claimed these expenses which do not pertain to the year under reference.

5. The appellant craves to leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.”

3. None, appeared on behalf of the respondent assessee, despite several notices. Therefore, we are proceeding to decide the appeal on merits.

3.1. The brief facts qua the addition of Rs.21,45,363/- made on account of advertisement, exhibition and publicity on the ground that no TDS was deducted, is that, the assessee company is engaged in the business of trading in various kinds of items for interior decoration. The Assessing Officer (A.O.) noted that the assessee has debited a sum of Rs.34,13,114/- under the head ‘advertisement, exhibition and publicity expenses’. The A.O. further noted that the assessee has not deducted TDS on some of the items. after examining the details and assessee’s reply, he came to the conclusion that sums aggregating to Rs.21,45,363/- which has been incurred on account of brochures, pamphlets and printed material is to be disallowed on the ground that no TDS has been deducted u/s 194C.

4. Before the Ld.CIT(A), the assessee submitted that the provisions of S.194C of the Income Tax Act, 1961 (the Act) has been amended by the Finance Bill, 2009 w.e.f. 1.10.2009 by which Sub Clause (e) of Clause (iv) of the Explanation and also clarified by Sub Section (3) of S.194C, which now envisages that the tax shall be deducted at source, firstly on the invoice

value excluding the value of material, if such value is mentioned separately in the invoice; or secondly, on the whole of the invoice, if the value of material is not mentioned separately in the invoice. The A.O. has sought to invoke this provision, in this year, but such a provision has been brought in the Statute w.e.f. 1.10.2009 which is not applicable in the A.Y. 2007-08. Further the assessee has not supplied any product or raw material for printing purpose. The Ld.CIT(A) deleted the said addition after observing and holding as under.

“Disallowance on a/c of no TDS on Advertisement, Exhibition and Publicity:-

After going through the appellant submission & assessment order following points are noticed:-

- i. Amended provision of section 194C are applicable for 01.10.09 and not in A.Y. 2007-08*
- ii. Appellant has not supplied any product/raw material for printing purposes.*
- iii. As per circular No.13 dated 13.12.06 of CBDT, if contract is contract for sale then provision of section 194C will not apply.*

In view of above it is quite clear that appellant was not liable to deduct TDS on payment under reference, hence disallowance of Rs.21,45,363/- is liable to be deleted.”

5. After hearing the Ld.D.R. and on perusal of relevant finding given in the impugned order, we find that the assessee's case has been that it has got various brochures, pamphlets etc. printed from various printers for the purpose of business promotion. The disallowance on such a payment has been made by the A.O. on the ground, that the assessee has not deducted TDS u/s 194C of the Act. The A.O. has relied upon the provisions brought by the Finance Bill, 2009 w.e.f. 1.10.2009 and also the CBDT Circular which reads as under.

“The provisions of section 194C has been amended by the Finance Bill, 2009 w.e.f. 01.10.2009, as per sub-clause (e) of clause of clause (iv) of the explanation to 194C the definition of work also include "manufacturing or

supplying a product according to the requirement or specifications of a customer by using material purchased from such customer". However, it has also been further clarified that in subsection (3) of section 194C that "where any sum is paid or credited for carrying out any work mentioned in sub-clause (e) of clause (iv) of the explanation to section 194C, tax shall be deducted at source-

1.on the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or

2.on whole of the invoice, if the value of material is not mentioned separately in the invoice."

6. At the outset it is seen that the particular provision which has been relied upon by the A.O. has been brought w.e.f. 1.10.2009 and the same would not be applicable in the A.Y. 2007-08. Apart from that, the assessee has not supplied any product/raw material for the purpose of printing, therefore, as per the then existing provision it does not fall within the ambit and scope of any "work in pursuance of a contract". Thus, the finding of the Ld.CIT(A) as incorporated above, is legally correct and we do not find any reason to deviate from such a conclusion. Accordingly ground no.1 raised by the Revenue is dismissed.

7. As regards ground no.2 which is on the issue of disallowance of Rs.2,24,908/- on account of expenses incurred on exhibitions and reimbursement on the ground that no TDS has been deducted, the brief facts, in brief are that, the A.O. noted that on the following expenses the assessee has not deducted TDS.

05.07.06 Mahesh Industries	Credit Note Rs 1,62,000/-
Amt credited towards stall charges f or exhibition.	

07.03.2007 Shri Ram Glass & Plywood	Credit Note Rs. 1,12,908/-
Amt credited towards chandigarh Exhibition expo held on 8/2/07 .	

TOTAL	Rs 2,74,908/-
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7.1. The assessee's contention before the A.O. had been that it has only reimbursed its share of expenses incurred by the retailer and it was the liability of the retailer to deduct any TDS and there is no contractual obligation between the assessee and the retailer with respect to the expenses in question. However, the A.O. has made the disallowance after observing as under.

“The submission of the assessee was considered and I found no force in it. The assessee has made payment to above said persons though indirectly but it can't be said that the assessee was free from his liability. At least the assessee though specifically required to produce the details had inquired about the deduction of Tax at source by his retailer and may produce the evidences in this regard. The retailer has since debited his account by say 50% (Assuming 50% was born by the assessee company) and in case on non deduction of tax he will be under obligation of disallowances of 50% only and in being so the ultimate revenue loss will be due to the assessee company. Looking to the entire facts and circumstance of the case the above said amount of Rs 2,74,908/= is disallowed and added back into the income of the assessee company.”

7.2. The Ld.CIT(A) has deleted the said addition on the ground that, firstly, the liability of TDS was on the retailer and not on the assessee; secondly, there is no direct payment made by the assessee; and lastly, in any case the liability to deduct TDS was not on the assessee as it was only reimbursing the expenses.

8. After hearing the Ld.D.R. and on perusal of the relevant submissions as well as the finding given in the impugned order, we find that the assessee has made sales to various retailers who would further sell to the end customers. The retailers would incur expenses towards advertising and promotion of the products of the assessee by taking part in exhibition, getting material printed and incur advertisement expenses in this regard. The cost incurred by such retailers were shared by the

assessee for which the assessee company issued credit notes to the retailers. These credit notes were then adjusted against the future purchases made by such retailers from the assessee company. The assessing officer has made the disallowance by taking 50% of the share of liability of expenses by the assessee on, the ground that no tax was deducted. First of all, it is not disputed that the advertisement expenses has been incurred by the retailers and the liability of any TDS as and when it arises if any, would have become applicable in the case of the retailers and not assessee, because apparently nothing has been brought on record to show that there was any contractual obligation between the assessee and the retailer with respect to incurring of such expenditure. The reimbursement of expenses by way of credit note and thereby adjusting against the future purchases cannot entail any TDS liability which otherwise has been duly met by the retailers as borne out from the explanation before the Ld.CIT(A). Thus, the finding of the Ld.CIT(A) is affirmed and consequently the ground raised by the Revenue is dismissed.

9. In ground number 3 the revenue has challenged the addition of Rs.10,75,000/- made on account of cessation of liability. The A.O. has made addition on the ground that the liability which was appearing on the credit side of the balance sheet, being very old and not paid in the previous year or in the subsequent years, therefore, the said liability is deemed to have been ceased in terms of Section 41(1). The liability of Rs.10,75,000/- was shown in the balance sheet as an outstanding amount in the name of : (i) Captain Sandeep Saraf – Rs.5,75,000/-; (ii) M/s Sagar Sunder Chagrbat Rs.3,00,000/- and iii) Mouchak Foods Products Ltd. Rs.2,00,000/-.

9.1. The Ld.CIT(A) has deleted the said addition on the following grounds.

i. The liability has not been written off by the appellant in his books of accounts.

ii. There is no evidence brought on the record by the AO that there is cessation of liability.

iii. Just because the liability is outstanding for a period, it can not be

resumed that it has ceased to exist.

Therefore the addition made on this account is to be deleted.

10. After hearing the Ld.D.R. and on perusal of relevant finding given in the impugned order, we find that it is an undisputed fact that this liability has been shown in the balance sheet which is coming from the earlier years. The Ld.A.O. without getting any information or making enquiry from the said creditors, as to whether they have given up their claim or not on how they have treated the said amount in their books of accounts. If the assessee has recognised the said liability in its balance sheet and has written off; and without there being any material regarding cessation of liability from such credits, we do not find any reason as to why the Ld.A.O. has deemed about the cessation of liability. The finding of the Ld.CIT(A) is based on correct appreciation of facts and legal proposition and accordingly, we affirm the same. Hence ground no.3 raised by the Revenue is dismissed.

11. Ground no.4 deals with the addition of Rs.6,85,900/- on account of prior period expenses. The brief facts qua the issue are that the assessee has debited 'rebate and discount' of Rs.9,66,505/- in its books of accounts, out of which expenses aggregating to Rs.6,85,900/- relates to Financial Year 2005-06 the details of which are as under:-

1. Mahesh Industries (2,51,444/-)
2. Shriram Glass & Plywood (32,130/-)
3. Southern Designer (11,130/-)
4. Southern Designer (8586/-)
5. Mahesh Industiers (3,82,560/-)

11.1. The Ld.A.O. held that since the assessee is maintaining its books of accounts on mercantile basis, therefore, the expenses of prior period cannot be allowed. Accordingly he disallowed the expenses debited to the extent of Rs.6,85,900/-. The Ld.CIT(A) has deleted the said addition on the following grounds.

“i. These expenses are debited to P&L ale on account of crystallization of liability of expenses during the year and not on account of errors or omission on the part of appellant.

ii. Merely because an expense relates to a transaction of an earlier year, it does not become liability payable in the earlier year unless it can be proved that it was crystallized in the earlier year.

iii. What is more important is the timing of crystallisation of liability and not when actual payment is made.”

11.2. The assessee's case before the Ld.CIT(A) has been that, it used to give incentive and additional discount to retailers on achievement of particular sales target. These incentives and additional sales discounts were given only when the retailers provide exact details of sales affected through or during the period from April to March every year or a particular quarter last ended. The actual sales figure could be arrived at by the retailers for the period from 1st April to 31st March or the last quarter being January to March, only when the books of accounts of such retailers were closed/audited which may happen in the subsequent financial year. Since the incentive and additional discount given by the assessee company for the year under assessment was towards sales effected by the retailers in the preceding A.Y. i.e., A.Y. 2006-07, therefore, as a normal business practice the expenses of the year under assessment is the liability of the assessee to give such rebate and discount after the finalisation of the sales of the retailer on the closure of their books which is after 31st March, 2006 and, therefore, the assessee had claimed the said expenses under this year because the liability as per the assessee has been crystallised in this year. The assessee had also relied upon by the Accounting Standards (A.S.)-V issued by the Institute of Chartered Accountants of India (ICAI).

12. After considering the aforesaid submissions of assessee as appearing in the order of Ld.CIT(A), we find substance in the said explanation of the assessee, because the expenses debited in the profit and loss account were on account of crystallisation of liability of such expenses during the year under assessment, because the retailers have given the figure of sales on which incentives and discounts have been given only in the current assessment year. Merely because the expenses relate to a transaction for an earlier year, it cannot be reckoned as the liability of the earlier year because it has been paid and crystallized in this year only and therefore,

ITA 3947/Del/2010
AY 2007-08
Diamond International Inex P.Ltd.

rightly claimed by the assessee in this year. Thus, the finding of the Ld.CIT(A) does not call for any interference and the same is affirmed. Accordingly, ground number 4 of the revenue is dismissed.

13. In the result in the result the appeal of the revenue is dismissed.

Order pronounced in the Open Court on 28th February, 2017.

Sd/-

(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: the 28th February, 2017

• *Manga*

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR