

आयकर अपीलीय अधिकरण "E" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 7324/Mum/2012

(निर्धारण वर्ष / Assessment Year : 2008-09)

Sulzer India Ltd., Gate No. 304, Kondhapuri, Tal- Shirur, Dist. Pune - 412 209.	बनाम/ v.	Addl. Commissioner of Income Tax - 8(3), Room No. 212, 2 nd floor, Aayakar Bhavan, M.K. Road, New Marine Lines, Mumbai - 400 020.
स्थायी लेखा सं./PAN : AAACS 7876D		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee Company by	Shri Ronak Doshi
Revenue by :	Shri Ritesh Misra,DR

सुनवाई की तारीख / **Date of Hearing** : 07-03-2016

घोषणा की तारीख / **Date of Pronouncement** : 16.05.2016

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee company, being ITA No. 7324/Mum/2012, is directed against the order dated 01-10-2012 passed by learned Commissioner of Income Tax (Appeals)- 18, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2008-09, the appellate proceedings before the CIT(A) arising from the assessment order dated 27-12-2011 passed by the learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income Tax Act, 1961 (Hereinafter called "the Act").

2. The grounds raised by the assessee company in the memo of appeal filed with the Income Tax Appellate Tribunal, Mumbai (hereinafter called "the Tribunal") reads as under:-

"GROUND I: DISALLOWANCE OF LEGAL AND PROFESSIONAL FEES OF RS. 11,15,000/-"

1. On the facts and in circumstances of the case and in law, the Id. CIT(A) erred in confirming the action of Addl. Commissioner of Income tax - 8(3), Mumbai ("the Assessing Officer") and disallowing the provision of legal and professional fees of Rs. 11,15,000/- by treating it as contingent in nature.

2. The Appellant humbly prays that the order of the Id. CIT (A) be set aside and the disallowance of aforesaid provision for expense be deleted.

"GROUND II: ADDITION OF LEGAL AND PROFESSIONAL FEES IN COMPUTING BOOK PROFIT U/S 115JB."

1. On the facts and in circumstances of the case and in law, the Id. CIT (A) erred in upholding the action of Assessing Officer and adding the provision for legal and professional fees of Rs. 11,15,000/- while computing 'book profit' u/s 115JB of the Act by treating it as contingent in nature.

2. The Appellant humbly prays that the order of the Id. CIT (A) be set aside and the disallowance of aforesaid expense be deleted while computing the book profit u/s 115JB of the Act.

"GROUND NO. III; LEVY OF INTEREST"

1. On the facts and in circumstances of the case and in law, the Id. CIT(A) erred in directing the A.O. to levy interest u/s 234B and 234C of the Act."

3. The brief facts of the case are that the assessee company is engaged in the business of manufacturing hi-tech engineering equipments and components.

4. It was observed by the A.O. in the course of assessment proceeding u/s 143(3) r.w.s. 143(2) of the Act that the assessee company has claimed a sum of Rs. 96,53,731/- on account of legal and professional fees incurred during the previous year relevant to the assessment year and out of the above an amount of Rs. 11,15,000/- was a provision made by the assessee company in the books of account and the same was disallowed by the A.O. and added to the total income of the assessee company as well as to the Book Profit of the assessee company u/s 115JB of the Act , as per the assessment order dated 27th December, 2011, passed u/s. 143(3) of the Act.

5. Aggrieved by the assessment order dated 27th December 2011 , passed u/s 143(3) of the Act by the A.O., the assessee company filed the first appeal before the learned CIT(A).

6. Before the learned CIT(A), the assessee company submitted that the assessee company has made provision for legal and professional expenses of Rs.11,15,000/- at the year end , since the bills were not received by the assessee company till the end of the previous year relevant to the assessment year. The assessee company submitted that the assessee company is following mercantile system of accounting and therefore based on the services rendered before the last day of the financial year for which bills have not been raised by the vendors/service providers, the assessee company made a reasonable provision for expenditure. The assessee company submitted that if no provision is made and the expenditure is booked only in the next financial year in which the bill is received, it may amount to prior period expenditure and disallowed by the Revenue. These provisions are made on a best estimate basis and once the invoices are received from the concerned parties, the assessee company has passed the entries of the exact amount of the invoice, after reversing the entry for provision on the first day of the month following the month in which the provision is made. The assessee

company referred to the Accounting Standard (AS) -1 relating to disclosure of accounting policies issued by the CBDT u/s 145 of the Act which provides that the tax-payer should adopt such accounting policies that represents a true and fair view of the state of affairs of the business in the financial statements prepared and presented and one of the major consideration in selecting and application of accounting policies is "Prudence" which means that provisions should be made for all known liabilities and losses even though the amount cannot be determined with certainty and provisions are made on the basis of the best estimate. The assessee company referred to the Accounting Standards AS-29 issued by the ICAI dealing with 'Provisions, Contingent Liabilities and Contingent Assets' and notified under the Companies(Accounting Standard) Rules, 2006 which defines a 'provision as a liability' which can be measured only by using a substantial degree of estimation and the same should be recognized when (i) an enterprise has a present obligation as a result of past event , (ii) it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation and (iii) a reliable estimate can be made of the obligation . The assessee company submitted that the assessee company is following mercantile system of accounting and keeping in view the matching concept, the revenues for a period have to be matched with the costs incurred. The assessee company submitted that provision of Rs.11,15,000/- for the year end expenses are made on a 'best estimate' basis for services availed although invoices / debit notes have not been received by the year end. The assessee company relied upon the decision of Hon'ble Supreme Court in the case of Metal Box Company of India Ltd. v. Their workmen, 73 ITR 53 (SC) and Kedarnath Jute Mfg. Co. Ltd. v. CIT, 82 ITR 363 (SC). The assessee company also submitted that the learned CIT(A) has allowed the ground in the assessment year 2007-08. Without prejudice to the above, it was submitted that if provisions of Rs.11,15,000/- made for legal and professional fee are disallowed in the impugned assessment year, then the AO be directed to allow

the actual expenditure on legal and professional fee incurred by the assessee company in the subsequent assessment year inclusive of the said amount of Rs.11,15,000/- of which the invoices from vendors were received in the immediately succeeding year.

The learned CIT(A) noticed that the assessee company had made a provision of Rs. 11,15,000/- under the head legal and professional fees payable and the A.O. has disallowed the same treating it as a contingent liability. The assessee company has stated that the learned CIT(A) has allowed the claim of the assessee company for the assessment year 2007-08 , but the learned CIT(A) observed that the claim of the assessee company was allowed by the then learned CIT(A) for the assessment year 2007-08 , because the assessee company itself has added back the provision made in its computation of income u/s 40(a)(ia) of the Act. But in the present case the provision made of Rs. 11,15,000/- on account of legal and professional fees has not been added back in the computation of income chart. Thus, it was held by the learned CIT(A) that it is a contingent expenditure and the disallowance made by the A.O. was upheld as provisions made is not allowable as an expenditure under the Act, vide orders dated 01.10.2012, by relying on the judgment of Hon'ble Supreme Court in the case of CIT v. Swadeshi Cotton & Flour Mills Private Limited , 53 ITR 134 wherein it was held that only ascertained liability and business liability is allowable as deduction while computing income of the tax-payer.

7. Aggrieved by the orders dated 01.10.2012 of the learned CIT(A) , the assessee company is in second appeal before the Tribunal.

8. The ld. Counsel for the assessee company submitted before the Tribunal that the assessee company has made provision of Rs. 11,15,000/- towards legal and professional expenses which has been disallowed by the

A.O. and confirmed by the CIT(A). The similar disallowance has been made by the AO u/s 115JB of the Act. The ld. Counsel submitted that the turnover of the assessee company is Rs. 146 crores and the export turnover is Rs. 51 crores. The assessee company is an engineering company and the assessee company has made provision of Rs.11,15,000/- for the expenses on best estimate basis keeping in view the actual services provided by the vendor to the assessee company by the end of the previous year relevant to the assessment year. The ld. Counsel for the assessee company submitted that Accounting Standard-29 issued by ICAI has clearly provided that provisions are to be made for all known liabilities and hence the assessee company made the provisions for expenses incurred for services availed based on services utilized till the year end. The ld. Counsel submitted that the provision of expenses of Rs. 7,75,000/- is fee payable to M/s. Exim Management for services availed for getting excise rebate claim of the assessee company from the government authorities for which services were availed of from M/s Exim Management who was handling the excise rebate claims on behalf of the assessee company. The invoices of M/s Exim Management for their fee for rendering services for getting excise rebate claim of the assessee company approved and disbursed by the Government Authorities were received by the assessee company from M/s. Exim Management in April 2008. The invoices of M/s. Exim Management were approved and paid by the assessee company in the month of April, 2008. The details of the invoices of M/s. Exim Management and the services rendered by M/s Exim Management towards excise rebate claims of the assessee company handled by them on behalf of the assessee company are placed in paper book pages 1-6 filed with the Tribunal. The ld. Counsel for the assessee company submitted that since the invoices were received subsequently in the financial year 2008-09 , the provision for liability towards fee payable to M/s. Exim Management has been made on the best estimate basis keeping in view the services actually performed by the said vendor M/s Exim Management till the year end. It was

submitted that there is another provision of Rs. 3,40,000/- which is towards technical services provided by Godrej Infotech Ltd. for upgradation of existing BAAN IV C4 to INFOR ERL software and the bill has been received in the month of May, 2008 for Rs.13,48,320/-, against which the provision of Rs.3,40,000/- was made based on the actual work performed by Godrej Infotech Limited by the year end. It is also stated that the technical services provided in connection with the Software by the Godrej Infotech Limited has been allowed as revenue expenditure in the succeeding year and there is no dispute about the allowability of said technical services rendered by Godrej Infotech Limited as being a revenue expenditure under the provisions of the Act. The ld. Counsel submitted that the provisions made on the year end are reversed on the very next day i.e. on 1st April and the actual invoices received have been accounted for in the succeeding assessment year. He relied on the AS-1 to contend that the assessee company's books of account reflect the true and fair picture, and Revenue can compute correct income which is to be brought to tax. The ld. Counsel relied on the decision of Hon'ble Supreme Court in the case of Rotork Controls India (P) Ltd. v. CIT, 314 ITR 62 (SC), Bharat Earth Movers v. CIT, 245 ITR 428 (SC), Calcutta Co. Ltd. v. CIT, 37 ITR 1 (SC) and Yum! Restaurants (I) P. Ltd. v. ACIT, 33 Taxmann.com 633(Delhi HC). The ld counsel also relied upon decisions in the case of CIT v. Hero Management Services Limited 360 ITR 68(Del), CIT v. Armour Consultants Private Limited, 355 ITR 418(Mad.) , CIT v. Rajasthan State Bridge and Construction Corporation Limited 346 ITR 53(Raj.) , CIT v. Nagri Mills Co. Ltd 33 ITR 681(Bom.) and CIT v. Triveni Engineering & Industries Limited, 196 Taxman 94(Del.). Thus the ld. Counsel submitted that provisions for expenses of Rs.11,15,000/-- should be allowed as the provisions for expenses of Rs.11,15,000/- are made on best estimate basis based on Prudence by making an estimate on the basis of services actually availed by the assessee company till the end of the year. It was submitted that to the extent of provisions for expenses of Rs.11,15,000/- so made in the impugned

assessment year, the assessee company has reversed the same in the next year and to that extent expenditure is claimed lower by that amount of Rs.11,15,000/- in next year and hence the impact is revenue neutral and no prejudice is caused to the Revenue. It is submitted that if the provisions for expenses of Rs.11,15,000/- are not allowed in the impugned assessment year, then the entire expenses shall be allowed in the subsequent assessment year.

9. The ld. D.R., on the other hand, supported the orders of authorities below.

10. We have considered the rival contentions and also perused the material available on record including case laws relied upon. The assessee company is consistently following mercantile system of accounting for which there is no dispute between the rival parties. We have observed that the assessee company have made provisions for expenses of Rs.11,15,000/- towards legal and professional expenses as per details set out above stated to based on the 'Prudence' on the basis of the best estimates made by the assessee company keeping in view the services stated to be actually availed by the assessee company from these relevant vendors prior to the end of the relevant previous year, although invoices from the relevant vendors were received by the assessee company after the end of the relevant previous year i.e. in the succeeding assessment year 2009-10. Thus, it is stated that the best estimates are made by the assessee company on the basis of Prudence, keeping in view the actual availment of the services by the assessee company before the end of the relevant previous year. The assessee company has relied upon the Accounting Standards-29 issued by the Institute of Chartered Accountants of India to contend that provision for expenditure of Rs.11,15,000/- was rightly made as it is an ascertained liability. It is stated before us that the assessee company received the invoices from the relevant

vendors in the immediately succeeding assessment year 2009-10 as submitted in the paper book, page 1-6 and there-after these invoices were approved and paid for in the immediately succeeding assessment year i.e. 2009-10. The assessee company is stated to have passed the entries for the exact amount of invoices in the succeeding assessment year 2009-10 in the books of accounts , after reversing the provisions of Rs.11,15,000/- so made in the relevant previous year , on the very first day of April 2008 in its books of accounts .Thus, it is claimed that actual expenses incurred by the assessee company for availing of services from these relevant vendors were claimed lower by the amount of Rs.11,15,000/- in the succeeding assessment year 2009-10 as the claim for allowability of provisions for expenses towards legal and professional expenses of Rs.11,15,000/- is made in the impugned assessment year 2008-09.

Honb'le Supreme Court has elaborated on the 'Provisions' for expenses and tests to be conducted before which the provisions for expenses shall be allowed as an expenditure while computing the income chargeable to tax under the Act of the taxpayer in the case of Rotork Controls India Private Limited v. CIT , (2009) 314 ITR 62(SC) and held as under:

“Findings

10. *What is a provision? This is the question which needs to be answered. A provision is a liability which can be measured only by using a substantial degree of estimation. A provision is recognized when: (a) an enterprise has a present obligation as a result of a past event; (b) it is probable that an outflow of resources will be required to settle the obligation; and (c) a reliable estimate can be made of the amount of the obligation. If these conditions are not met, no provision can be recognized.*

11. *Liability is defined as a present obligation arising from past events, the settlement of which is expected to result in an outflow from the enterprise of resources embodying economic benefits.*

12. *A past event that leads to a present obligation is called as an obligating event. The obligating event is an event that creates an obligation which results in an outflow of resources. It is only those obligations arising from past events existing independently of the future conduct of the business of the enterprise that is recognized as provision. For a liability to qualify for recognition there must be not only present obligation but also the probability of an outflow of resources to settle that obligation. Where there are a number of obligations (e.g., product warranties or similar contracts) the probability that an outflow will be required in settlement, is determined by considering the said obligations as a whole. In this connection, it may be noted that in the case of a manufacture and sale of one single item the provision for warranty could constitute a contingent liability not entitled to deduction under section 37 of the said Act. However, when there is manufacture and sale of an army of items running into thousands of units of sophisticated goods, the past event of defects being detected in some of such items leads to a present obligation which results in an enterprise having no alternative to settling that obligation. In the present case, the appellant has been manufacturing and selling Valve Actuators. They are in the business from assessment years 1983-84 onwards. Valve Actuators are sophisticated goods. Over the years appellant has been manufacturing Valve Actuators in large numbers. The statistical data indicates that every year some of these manufactured Actuators are found to be defective. The statistical data over the years also indicates that being sophisticated item no customer is prepared to buy Valve Actuator without a warranty.*

Therefore, warranty became integral part of the sale price of the Valve Actuator(s). In other words, warranty stood attached to the sale price of the product. These aspects are important. As stated above, obligations arising from past events have to be recognized as provisions. These past events are known as obligating events. In the present case, therefore, warranty provision needs to be recognized because the appellant is an enterprise having a present obligation as a result of past events resulting in an outflow of resources. Lastly, a reliable estimate can be made of the amount of the obligation. In short, all three conditions for recognition of a provision are satisfied in this case.”

These services for which provisions for legal and professional expenses of Rs.11,15,000/- was made by the assessee company during the relevant previous year was stated by the ld. Counsel for the assessee company to have actually been rendered prior to the closure of the relevant previous year for which the assessee company was stated to have become obligated to pay to the relevant vendors for the services so actually rendered by them for which the invoices were stated to be received and approved in the immediately succeeding year for which payments were also stated to be disbursed in the succeeding assessment year i.e. 2009-10. In our considered view , the assessee company is entitled for claiming expenses for all known and ascertained liabilities which have crystallized prior to the closure of the relevant previous year as per the mandate of the Act based on actual rendition of services prior to the closure of the relevant previous year and also keeping in view the principles of matching concept and the decision of the Hon'ble Supreme Court in the case of Rotork Control India Private Limited(supra), which is also the assertion of the ld counsel for the assessee company. But, these are all findings of fact which can be arrived at or appreciated based on the examination and verification of the facts on merits.

In our considered view based on the peculiar facts and circumstances of the case and in the interest of justice, the matter needs to be set aside and restored to the file of the A.O. for de-novo determination of the issue by the AO after examination and verification of the claim of the assessee company on merit with regard to actual rendition of the services to the assessee company by the afore-stated relevant vendors namely M/s Exim Management and M/s Godrej Infotech Limited prior to the closure of the financial year and the adequacy and justification of making the provisions of expenses of Rs.11,15,000/- so made by the assessee company claimed to be based on actual rendition of the services to the assessee company by these relevant vendors prior to the closure of the relevant previous year 2007-08 . The AO shall also examine and verify that there is no double deduction of the claim of the same expenses of Rs.11,15,000/- as claimed by the assessee company in the impugned assessment year towards provision for legal and professional expenses, also in the succeeding assessment year for which the services are stated to be provided in the relevant previous year. Needless to say that the assessee company shall be allowed proper and adequate opportunity of being heard by the AO in accordance with the principles of natural justice in accordance with law and shall be allowed to adduce necessary and relevant evidences/explanations in its defense .This will dispose of the Ground no. I raised by the assessee company. We order accordingly.

11. Ground no II is with respect to the allowability of the provisions of expenses of Rs.11,15,000/- while computing book profit u/s. 115JB of the Act. Our above decision in Ground No. I shall apply mutatis mutandis to this ground no II raised by the assessee company. We order accordingly.

12. Ground No III is relating to chargeability of interest u/s 234B and 234C of the Act which is consequential to Ground No. I and II and hence disposed of

accordingly as per our decision with respect to Ground No. I and II. We order accordingly.

13. In the result, the appeal filed by the assessee company in ITA NO. 7324/Mum/2012 for the assessment year 2008-09 is treated as allowed for statistical purpose.

Order pronounced in the open court on 16th May , 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 16-05-2016 को की गई ।

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 16-5-2016

I

व.नि.स./ R.K., Ex. Sr. PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai