

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI ABRAHAM P GEORGE, ACCOUNTANT MEMBER
and
SHRI VIJAY PAL RAO, JUDICIAL MEMBER**

ITA No.728/Bang/2014
(Assessment year: 2009-10)

Vijaya Bank,
Central Accounts Department,
Head Office: 41/2, M.G Road,
Bangalore-560001. ... Appellant
PAN: AAACV4791J

Vs.

Commissioner of Income-tax(LTU),
Bangalore. ... Respondent

Appellant by: Smt. Lalitha Rameswaran, CA.
Respondent by: Shri Anurag Sahay, CIT(DR).

Date of hearing : 15/08/2015
Date of pronouncement: 30/09/2015.

ORDER

Per VIJAY PAL RAO, JM:

This appeal by the assessee is directed against the revision order dated 25/3/2014 passed by the CIT, u/s 263 of the IT Act, 1961 for the assessment year 2009-10.

2. The assessee has raised the following grounds:

1 "The order of the learned Commissioner of Income tax (LTU) is bad in law and against the facts of the case.

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2 *The Learned Commissioner of Income Tax (LTU) erred in invoking the provisions of section 263 of the Income Tax Act, 1961.*

2.1. *The learned Commissioner of Income Tax (LTU) erred in initiating proceedings in respect of a debatable issue.*

2.2. *The learned Commissioner of Income Tax (LTU) failed to appreciate that no revision proceedings can be initiated if the Assessing Officer adopts one of the possible views.*

3 *Learned Commissioner of Income Tax (LTU) erred in taxing Rs.1,11,49,569/- as prior period expenses.*

3.1. *Learned Commissioner of Income Tax (LTU) failed to appreciate the fact that these expenses were crystallized during the Previous Year relevant to assessment year 2009-10.*

3.2. *Learned Commissioner of Income Tax (LTU) erred in disallowing the prior period expenditure while taxing the prior period income included by the appellant in the taxable income.*

3.3. *Learned Commissioner of Income Tax (LTU) erred in not following the ratio laid down by the Tribunals.*

For all these and other grounds which may be urged at the time of hearing, the appellant prays that its appeal be allowed. "

3. The assessment in this case was completed u/s 143(3) on 30/8/2011 whereby the taxable income of the assessee was determined at Rs.1205,90,31,409/-. Subsequently, on perusal of the assessment records, the CIT observed that the assessee claimed prior period expenses of Rs.1,11,49,569/- for which details of the nature of expenditure were not furnished and accordingly the issue has not been dealt with by the AO while passing the assessment order. The CIT was of the opinion that the assessment order is erroneous and prejudicial to the interest

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of the revenue and accordingly initiated proceedings u/s 263 by issuing the show cause notice dated 7/2/2014. The CIT noted that the AO has not considered the issue of allowability of prior period expenses and accordingly the order was to be held erroneous and prejudicial to the interest of the revenue. The assessee filed its reply to the show cause notice and submitted that the assessee's bank has more than 1000 branches spread all over the country. Various expenses are incurred at branch level which has been treated as prior period and reported in the tax audit report. These expenses were crystallised in the previous year relevant to assessment year 2009-10 and accounted for. It was also explained that though the nature basically is prior period expenses, however, in reality these are not the prior period expenses as the liability has been crystallised in the previous year relevant to assessment year under consideration. Therefore, the assessee contended that these are allowable expenditure during the previous year relevant to the assessment year under consideration. The CIT did not accept the contention of the assessee and observed that in order to decide the issue whether prior period or not one has to go into the nature of the expenditure and then decide the allowability of the expenditure. He further observed that in order to verify genuineness of the expenditure claimed, it is necessary that the assessee produce complete details, which in the present case, were not furnished. Rather, the assessee expressed its inability to produce the same

even during the proceedings before the CIT. Accordingly, the CIT has held that the order passed by the AO dated 30/4/2011 is erroneous in so far as it is prejudicial to the interests of the revenue since no proper inquiry has been made on this issue. Accordingly, the issue was remanded to the file of the AO to verify the genuineness of the expenditure incurred.

4. Before us, the learned AR of the assessee has submitted that the expenditure in question is allowable revenue expenditure as it was incurred by various branches of the assessee across the country. These expenses include travel bills, hotel bills, motor, repair, maintenance, telephone bill, electricity bills, water charges, property dues etc. The learned AR of the assessee submitted that various of these expenses were incurred by the site officials of the assessee bank situated in different parts of India. Therefore, final communication of incurring these expenditure was transmitted to the head office quite belatedly and after the assessee consolidated those expenditure at Head Office level. It is quite necessary there would be an amount of overflow of information after the closing of the accounting year, therefore, to certain extent the claim of the assessee with details of such expenditure were raised only after the close of the accounting year should be accepted. It is continuous process to incur expenditure and to account in the books of account though they are treated technically as prior period expenses which relate to continuous flow of expenditure. Therefore, there is no

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justification in disallowing such expenditure. In support of his contention he has relied upon the following decisions;

- i. Union Bank of India (16 Taxman.com 304(Mum),*
- ii. Bank of India (27 Taxmann.com 335(Mum),*
- iv. UP Projects Corporation Ltd. 2015(1)TMI 105 – ITAT Lucknow,*
- v. Winsome Yarns Ltd. 2014(12) TMI 433 – ITAT Chandigarh.*

The learned AR of the assessee submitted that in the case of *UP Projects Corporation Ltd (Supra)*, Lucknow bench of this Tribunal has observed that the addition made by the AO on account of prior period expenses is not justified when the assessee has offered prior period income also. It was also held that even if the prior period income offered to tax by the assessee and until the differential amount has to be excluded. When the prior period income is more than prior period expenses and the net income property is offered to tax no addition is justified.

6. On the other hand, the learned departmental representative has submitted that there is no examination and verification of the issue about the allowability of these expenses. Thus there is a lack of investigation as well as non-application of mind on the part of the AO on this issue while passing the assessment order u/s 143(3). He further submitted that the CIT remanded the issue to the record of the AO for proper inquiry and consideration of the issue as per law. Therefore, the impugned order of the CIT

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cannot be held as bad in law or without any jurisdiction. He has relied upon the order of the impugned order.

7. We have considered the rival submissions as well as the relevant material on record. There is no dispute that while passing the assessment order in question dated 30/8/2011, the AO has not given any finding on this issue. Rather, the AO has not taken up this issue for examination and verification specifically on the issue of allowability of the expenditure and nature of the expenditure. Before the CIT, in the revision proceedings, assessee contended that the expenditure was incurred by the branches of the assessee across the country and therefore, the expenditure is allowable as revenue expenditure. It was also contended that the liability is in fact crystallised in the year under consideration and the payment was also made during the previous year relevant to assessment year under consideration. Therefore, it was urged that in reality, this is not a prior period expenditure. Alternatively, the assessee has contended that when the assessee has also offered prior period income, then the prior period expenditure cannot be disallowed. We find that the AO has not taken up this issue for examination and verification and therefore, no finding has been given on this issue. When this issue was not taken up for scrutiny and examination by the AO then the contentions raised by the assessee before the CIT in revision proceedings are merely the

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submissions without verification of the fact from the examination of the record. It is admitted by the assessee that complete details of the expenditure were not furnished before the AO as well as before the CIT on the ground that it is a huge/large number of details which is not possible to be furnished. We find that the CIT had not given a concluding finding about allowability of the expenditure but has observed that the AO has not examined the issue from the point of allowability and the nature of expenditure. Even genuineness of the expenditure has not been examined by the AO while passing the impugned order. Thus it is clear that it is a case of lack of inquiry on the part of the AO while passing the impugned assessment order u/s 143(3). Further, neither the AO has raised any query nor the assessee furnished the relevant record and details pertaining to the issue under consideration. There is no quarrel that complete lack of inquiry on the part of the AO renders the order of the AO erroneous and so far as prejudicial to the interest of the revenue. Thus, in the facts and circumstances of the case, we find that when there is a lack of inquiry on the part of the AO as well as non-application of mind while passing assessment order and particularly on the issue which is the subject matter of the revision proceedings, then the CIT was justified in invoking the jurisdiction u/s 263 of the Act. Though the learned AR of the assessee has contended that when the assessee has offered the prior period income to tax, then prior period expenditure cannot

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be disallowed. However, this contention of the assessee is also required to be verified and examined on the point that how much and whether any such prior period income has been offered by the assessee to tax. The CIT has not given any concluding finding on the allowability of the said expenditure for want of complete details and record therefore, the issue was remitted to the AO with the direction to be decided in accordance with law. When the assessee has not furnished complete details of this expenditure, we do not find any error or illegality in the impugned order of the CIT remanding the issue to the record of the AO for making proper inquiry and verification. The appeal of the assessee is devoid of any merit.

8. In the result, the appeal of the assessee is dismissed.

Pronounced in the open court on 30th September, 2015.

sd/-
(Abraham P George)
ACCOUNTANT MEMBER

sd/-
(Vijay Pal Rao)
JUDICIAL MEMBER

eksrinivasulu

Copy to:

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

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore