

आयकरअपीलीयअधिकरण, 'ए' न्यायपीठ,चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवंश्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 865/Mds/2017

निर्धारण वर्ष/Assessment Years : 2010-11

Deputy Commissioner of Income Tax,
Corporate Circle -1(1),
Chennai – 600 034.

M/s. Dr. Agarwal's Eye Hospital
Vs. Limited,
No. 19, Cathedral Road,
Gopalapuram,
Chennai – 600 086

[PAN: AAACD 2373G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Shri. Sreenivasan, JCIT

प्रत्यर्थीकीओरसे/Respondent by

: None

सुनवाईकीतारीख/Date of Hearing

: 07.06.2017

घोषणाकीतारीख/Date of Pronouncement

: 05.09.2017

आदेश / O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The Revenue filed this appeal against the order of the Commissioner of Income Tax (Appeals)-1, Chennai in ITA No. 391/CIT(A)-1/2015-16 dated 31.01.2017.

2. M/s. Dr. Agarwal's Eye Hospital Ltd., the assessee, is in the business of running nursing homes, clinics, medical research and other related activities primarily towards eye care. In the re-assessment made for assessment year 2010-11, the Assessing Officer added net prior period expenditure debited to P&L account at Rs. 49,77,664/-. Aggrieved, the assessee filed an appeal before the CIT(A). The CIT(A) relying on the decision of CIT vs. Jagatjit Industries Limited of the Delhi High Court in ITA No. 848/2010 dated 06.09.2010 allowed the appeal. Aggrieved against that order, the revenue filed this appeal, inter alia, with the following grounds of appeal:

2.1 The learned CIT(A) erred in deleting the addition made under the head "Prior Period Expenses" without appreciating the fact that the expenses so claimed does not belong to the relevant accounting year of the assessment year 2010-11, but relates to the previous financial years.

2.2 The learned CIT(A) erred in holding that the prior period Expenses are deductible expenses for the relevant accounting year of the assessment year (2010-11) without appreciating the fact that the assessee is following mercantile system of accounting and the prior period expenses if any ought to have been claimed in the relevant financial years by way of making provisions.

2.3 The learned CIT(A) erred in law by holding it contrary, in as much as the settled principle that deduction can be allowed in respect of only those expenditure which are incurred in the relevant accounting year for the purpose of computing the profits and gains of a particular financial year."

3. The DR relying on the decision of Supreme Court in the case of CIT vs. Kalinga Tubes Ltd., 218 ITR 164 (SC), the decision of Kerala High Court in CIT vs. St. George Motors, 161 ITR 444 (Kerala) and the Punjab and Haryana High Court decision in the case of Cebon India Ltd., vs. CIT, 387 ITR 502 (P&H) assailed the order of the CIT(A). None appeared from the assessee's side.

4. We heard the DR's submissions and gone through the orders of the lower authorities. In all the cases, where the DR was relying, the respective assessee's were following mercantile system of accounting. They have not provided the Central Sales Tax or the tax payable under the Kerala Motor Vehicles Taxation of Passengers and Goods Act, 1963 or non-charging of certain portion of interest in the P&L account, as the case may be, and hence, the respective courts held that the liability arose as per the provisions of the respective Act. In the case of CIT vs. Kalinga Tubes Ltd., (supra) the SC held that the sales tax liability would accrue the moment sales are effected and any dispute as regards quantum of tax liability would not affect accrual of such liability. In the case of CIT vs. St. George Motors the Kerala High Court held that the liability for payment of tax under the taxation of passengers and goods act had accrued by force of the stature itself and the agreement referred to by the tribunal by which the state government had permitted the operators of motor vehicles to discharge the liability in instalments did not in any way effect the accrual of liability and such accommodation granted by the

Government was only with respect to its discharge. The tribunal was not, therefore, justified in upholding the contention of the assessee that the payment made during the accounting period in discharge of liability of the tax under the taxation of passengers and goods act accrued during the earlier years was a permissible deduction under the Act, for the assessment year under consideration. In the case of Cebon India Ltd., vs. CIT, the Punjab & Haryana High Court held that the interest paid by assessee to IFCI in earlier years but not charged to profit and loss accounts of those years as assessee was entitled to certain rebate on such interest on fulfilling its export obligations, could not be said to have been crystallized in relevant assessment year when IFCI refused to grant any rebate for non-fulfilment of export obligations by assessee. In the assessee's case, the impugned liability is neither arising by virtue of any statute nor it is an interest liability. Hence, on the facts and circumstances of this case, the ratios relied on by the DR are not applicable. In this case, the issues involved are (i) whether the accounting practices had been consistently followed by the assessee and (ii) whether the nature and genuineness of the expenditure is examined. Let us examine them as under:

5. The CIT(A) has observed as under:

"6. -----
-----, *In the mercantile system of accounting, the liability crystallizes as soon as the entire transaction was effectuated. Examination of the plea made by the appellant shows that the amount in*

question now being debited to the P&L a/CIT(A) relate to certain bills and invoices which were either received or settled or both in the year of claim. Further, keeping in view the volume and multiplicity of transactions involved and taking into consideration the past business practice, it is also observed that expenditure spilled over to the next year. In such cases for some reasons or other the bills were not taken to have been settled. The said accounting practice has been consistently followed by the appellant and does not suffer on account of inconsistency. To that extent it is unlikely to distort the P&L for the year under consideration. This method of accounting is also in conformity with the observation made by the AO that only those expenses which are incurred in the relevant accounting year for the purpose of computing profits and gains should be allowed in keeping with the mercantile system of accounting."

From the above, it is clear that the assessee had been following this accounting practices consistently. In the light of the ratio settled by the Delhi High Court in the case of CIT vs. Jagatjit Industries in ITA No. 848/2010, the issue no. (i), supra, is in favour of the assessee. Now, let us examine whether the nature and genuineness of the expenditure has been examined or not. In this regard, the relevant portion of the assessment order is extracted as under:

" 4. The assessee filed a reply dated 12.10.2015, in this regard which is reproduced as follows:

The disallowances mentioned in your order relates to prior period expenditure (expenditure pertaining to previous assessment year claimed during ay 2010-11). The assessee

runs chain of ophthalmology hospitals and has over 25 branches across India. On account of the volume of transactions, certain bills could be accounted only after the year end. Though the assessee is a company and require to maintain books of accounts on accrual basis, provision for expenditure cannot be made based on estimates since estimate cannot be accurate.

In such high volume low value transaction, the liability in respect of certain bills would not have crystallized as at the year-end on account of various factors.

We have already filed an appeal before Commissioner of Income Tax (Appeals)-1 for ay 2012-13 on similar grounds.

In CIT vs. Vishnu Industrial Gases (In the High Court of Delhi, ITR No. 229/1988, Decided on: 6th May, 2008) where the department had not disputed that the expenditure was deductible in principle but was only disputing the year in which the deduction could be allowed HELD."

5. *The submission of the assessee has been considered and is not accepted as the said amount is not an allowable expenditure under the provisions of the Act. The assessee is following mercantile system of accounting and the deductions can be allowed in respect of only those expenses which are incurred in the relevant accounting year for the purpose of computing the profits and gains. Hence the said amount is disallowed and added to the total income of the assessee."*

From the above, it is clear that the AO has not examined the nature and genuineness of the impugned expenditure. He has simply disallowed for the reason that the assessee is following mercantile system of accounting and the deduction can be allowed in respect of only those expenses which are

incurred in the relevant accounting year of computing the profits and gains. Thus, he had not examined the nature and genuineness of the expenditure at all. In the view of that we are of the considered opinion that the AO has to examine the nature and genuineness of the expenditure and decide the issue in accordance with law following the ratio of the Delhi High Court (supra). To that extent, the revenue's appeal is treated as allowed.

6. In the result, the revenue's appeal is treated as partly allowed for statistical purposes.

Order pronounced on Tuesday, the 5th day of September, 2017 at Chennai.

Sd/-
(एन.आर.एस. गणेशन)
(**N.R.S. GANESAN**)
न्यायिकसदस्य/**Judicial Member**

Sd/-
(एसजयरामन)
(**S. JAYARAMAN**)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 5th September, 2017

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF