

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.48/VIZ/2016
(निर्धारण वर्ष/Assessment Year:2008-09)

The Asst. Commissioner of Income Tax Vs. M/s Bharat Heavy Plates &
Circle-1(1), Visakhapatnam Vessels Ltd.,
BHPV Post
Visakhapatnam
[PAN :AAACB7076N]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri Debakumar Sonowal, DR
प्रत्यर्थी की ओर से / Respondent by : Shri I Kama Sastry, AR
सुनवाई की तारीख / Date of Hearing : 20.12.2017
घोषणा की तारीख/Date of Pronouncement : 10.01.2018

आदेश / ORDER

PER D.S. SUNDER SINGH, Accountant Member:

1. This appeal is filed by the Revenue against the order of the Commissioner of Income-Tax (Appeals) [CIT(A)]-1, Visakhapatnam vide ITA No.139/2010-11/Addl.CIT,R-3, VSP/2015-16 dated 22.12.2015 for the

A.Y. 2008-09. The revenue has raised the following grounds of appeal related to the prior period expenses which were claimed by the assessee and the assessing officer (AO) made the addition.

1. The order of the Ld. CIT(A)-1, Visakhapatnam is erroneous on the facts of the case and in law
2. The Ld. CIT(A) erred in deleting the entire addition of Rs. 382.76 lakhs made by the Assessing Officer on account of disallowance of prior period expenses on the ground that the amount in fact represents prior period income and not prior period expenses.
3. The Ld. CIT(A) ought to have upheld the action of the Assessing Officer in disallowing prior period expenses to the extent of Rs. 31.39 lakhs, which was adjusted against prior period income of Rs. 382.76 lakhs and the net prior period income was credited in the P & U a/c.
4. The Ld. CIT(A) failed to appreciate that merely because the assessee has offered prior period income, prior period expenses cannot be set off against such income under the provisions of the Income Tax Act when there is no nexus between prior period income and prior period expenses.
5. The Ld. CIT(A) ought to have considered that prior period expenses can be claimed as deduction in a succeeding year only on the basis of accrual/crystallization of expenditure during such succeeding year and not otherwise and in the present case, assessee failed to establish that the liability of Rs. 31.39 lakhs, which was adjusted against prior period income of Rs. 382.76 lakhs, got crystallized in this year.
6. The appellant craves leave to add or amend or alter or delete any ground at the time of hearing of the appeal.
7. For these and other grounds that may be urged at the time of appeal hearing, the appellant prays that the impugned addition made by the AO be restored to the extent of prior period expenses Rs. 31.39 lakhs.

2. The assessee is a public sector undertaking filed its return of income declaring loss of Rs. 11,12,26,084/- and subsequently revised the return of

income on 19.01.2010, revising the loss to Rs.11,40,78,493/-. During the assessment proceedings, the AO found that the assessee had claimed prior period expenses amounting to Rs.382.76 lakhs as a reduction in the return of income. Since the prior period expenses were not admissible reduction and required to be claimed as reduction in the year in which it was accrued the AO made the disallowance of Rs.382.76 lakhs and added back to the returned loss of the assessee. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the addition holding that the company itself has taken net credit of Rs.351.37 lakhs and the company has considered both the prior period income as well as the prior period expenses in the year under consideration, hence, directed the AO to delete the addition.

3. Aggrieved by the order of the CIT(A), the revenue filed appeal before the Tribunal. During the appeal hearing, the Ld.DR argued that the prior period expenses are not allowable in the year under consideration as the income has to be assessed independently, assessment year wise. The expenditure of the prior period is required to be considered in the year in which it was incurred or accrued. Since the assessee has claimed the earlier year expenditure, the same is not allowable and further argued that

the expenditure is not crystallized in the year under consideration. Hence, requested to confirm the addition made by the AO.

4. On the other hand, the Ld.AR submitted that on the same facts in the assessee's own case for the assessment year 2007-08, the Hon'ble ITAT, Vizag Bench allowed the appeal of the assessee which is pending before the Hon'ble High Court. The Ld.AR of the assessee has argued that the assessee's case is squarely covered by the order of this Tribunal.

5. We have heard both the parties and perused the material placed on record. The Ld.CIT(A) allowed the appeal of the assessee following the order of this Tribunal in the case of M/s Hindustan Shipyard Ltd., Visakhapatnam in ITA No.21/Vizag/2006. For the sake of convenience and clarity, we extract the relevant paragraphs of the order of the Ld.CIT(A) which is made available in para No. 4.3 to 4.3.2 as under :

4.3. I have carefully considered the above submissions. From the details filed, the prior period adjustments are as follows

	Debit	Credit
Raw material, Stores etc., consumed - (net of CENVAT unavailed)	31.39 lakhs	
Employees remuneration		0.90
Other expenses		35.49
Interest		246.07
Total	31.39	382.76 lakhs

4.3.1. Thus from the above it can be seen that there is net income out of the prior period adjustments. However, the AO added the same which resulted in taxing the same amount twice / adding the same item twice. Assessee in this regard placed reliance on the Hon'ble jurisdictional Tribunal decision in the case of M/s.Hindustan Shipyard Ltd, Visakhapatnam in ITA No.21/Vizag/2006 dtd.10.02.2011 wherein it is held that once the AO has accepted prior period income it is not proper on his part to disallow the prior period expenditure as he has to take into the account the status as a whole and not to make a pick and choose. The relevant portion of the Hon'ble ITAT's order dtd.10.02.2011 is reproduced hereunder

"Having heard the rival submissions and from a careful perusal of the orders of the authorities below, we find that the assessee has offered the prior period income along with the expenditure during the impugned assessment year. The Assessing Officer has accepted the prior period income in this year but disallowed the prior period expenditure. This action of the Assessing Officer is not proper as he has to take into the account the status as a whole and not to make a pick and choose. We however, carefully examined the order of CIT(A) and we find that CIT(A) has adjudicated the issue in the light of judgement of the Delhi High Court in the case of Additional CIT Vs. Jay Engineering Works Limited 113 ITR 389. Our attention was also invited to the other judgement of the Delhi High Court in the case of CIT Vs. Mobile Pvt. Ltd 328 FIR 17 on the impugned proposition of law. Since the CIT(A) has properly adjudicated the issue and we find no infirmity therein, we confirm his order."

4.3.2 As can be seen from the above, the assessee company itself has taken the net credit of Rs.351.37 lakhs (after taking into account, the prior period expenditure of Rs.3L39 lakhs) and added the same to the total income I loss. Considering the above, I hold that AO is not justified in adding the same again. Accordingly, the AO is directed to delete the addition of Rs.382.76 lakhs."

5.1. The Hon'ble ITAT, Visakhapatnam Bench in its order No.106/Vizag/2012 dated 05.03.2014 for the assessment year 2007-08 dismissed the appeal of the revenue on the same issue. For ready reference, we extract the relevant paragraph of the order of the Hon'ble ITAT as under.

"The Ld.CIT(A) has erred in deleting the addition made on account of prior period expenditure in as much as an appeal was filed on this

issue before Honourable High Court of Andhra Pradesh in the assessee's case for AY2002-03."

2. After hearing rival contentions on a plain reading of the ground, we find that grievance of the Revenue is against the decision of the Tribunal in assessee's case for the earlier assessment year, which is disputed by it in the High Court, h a ground cannot be countenanced. As admittedly the issue is covered in favour of the assesses, by the decision of the Tribunal in assessee's own case for earlier assessment year, we respectfully follow the same and dismiss the al of the Revenue."

5.2. Since the issue is same, respectfully following the view taken by the Coordinate Bench of this Tribunal, we hold that the prior period expenses are to be allowed as deduction in the year under consideration and accordingly, we dismiss the appeal of the revenue.

6. In the result, appeal of the revenue is dismissed.

The above order was pronounced in the open court on 10th Jan 2018.

Sd/-

(वी.दुर्गराव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 10.01.2018

Sd/-

(डि.एस. सुन्दरसिंह)

(D.S. SUNDER SINGH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

L. Rama, SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant- The Asst.Commissioner of Income Tax, Circle-1(1), Visakhapatnam
2. प्रत्यार्थी / The Respondent- M/s Bharat Heavy Plates & Vessels Ltd., BHPV Post, Visakhapatnam
3. The Pr.Commissioner of Income Tax-1, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-1, Visakhapatnam
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM

