

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD %SMC+BENCH

**Before: Shri S. S. Godara, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 838/Ahd/2015
Assessment Year 2001-02**

The ACIT, Cir-2(1)(1), Baroda (Appellant)	Vs	M/s. Transpek Industry Ltd. 6 th Floor, Marble Arcn, Race Couse, Baroda- 390007 PAN: AA ACT8639B (Respondent)
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**Revenue by: Shri T. Sankar, Sr. D.R.
Assessee by: Shri Sanjay R. Shah, A.R.**

Date of hearing : 20-02-2018
Date of pronouncement : 16-04-2018

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This Revenue appeal for A.Y. 2001-02, arises from order of the CIT(A)-2, Vadodara dated 30-01-2015, in proceedings under section 143(3) r.w.s. 254 of the Income Tax Act, 1961; in short %the Act+

2. The revenue has raised following grounds of appeal:-

"1. On the facts and in the circumstances of the case, learned CIT(A) has erred in facts and in law in deleting the disallowance of prior period expenses of Rs. 34,83,945/- without appreciating that the A.O. had clearly established that liability on account of quantity discount was crystalized in earlier years from 1997 onwards and the same cannot be treated as liability crystalized during the year.

2. On the facts and in the circumstances of the case, learned CIT(A) has erred in facts and in law in deleting

disallowance on account of: Prior period liabilities Rs. 4,34,216/-, Prior period liability Rs. 2,04,274/- short receipt of material from Prakash chemicals Rs. 1,75,627/- Out of professional charges Rs. 4,50,800/-, without appreciating that the A.O. recorded his finding to the effect that assessee has not been able to prove that these expenses were crystallized during the period under consideration and it had not booked these expenses in earlier years.”

3. In this case, return of income declaring income of Rs. nil was filed on 12th March, 2004. In this case, the hon'ble ITAT vide ITA No. 714/Ahd/2009 dated 30th Dec, 2011 has set aside the issue related to prior period expenses of Rs. 54,27,076/- to the file of assessing officer. Therefore, the assessing officer completed the assessment u/s. 143(3) r.w.s. 254 of the act on 28th March, 2013 by stating that the claim of the assessee pertaining to prior period expenses to the amount of Rs. 34,83,945/- was not found to be tenable. During the course of appellate proceedings, the assessee has submitted two debit notes dated 28th Feb, 2011 claiming that these were received from Transpek Silox Industry Ltd a division which was subsequently merged with the assessee and liability of the said company was taken over by the assessee. The assessing officer has not accepted this explanation on the ground that the liability of Transpek Silox Industry Ltd was for the period of April, 1997 to Sep, 2007. The liability in the hand of Transpek Silox Industry Ltd was also crystalized in earlier year therefore it was prior period claim in the hand of Transpek Silox Industry Ltd. After transfer of business of Transpek Silox Industry Ltd w.e.f. 30th Nov, 2006 prior period liability also got transferred to the assessee. Therefore, the claim of the assessee was not accepted by the assessing officer.

4. Aggrieved assessee filed appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee by stating as under:-

“4.3.1. As per the Article 11 (Title Indemnity) of the agreement entered into by the appellant with Transpek Silox Industries Ltd., for transferring the Sulphoxylates Unit the appellant was required to indemnify Transpek Silox Industries Ltd. for any liabilities pertaining to the period prior to the date of transfer of Sulphoxylates business i.e. prior to 01.10.2000. In pursuance to such indemnity condition, the appellant was required to pay amounts of Rs. 17,23,246/- and Rs. 22,55,976/- representing the discount allowed by Transpek Silox Industries Ltd. to two customers on the sales made prior to 01.10.2000. Such liability crystallized during the FY 2000-01 and accordingly, the appellant has

*debited these payments in its P & L Account. The appellant has established with the help of the relevant debit/credit notes and on the basis of agreement entered into by it with Transpek Silox Industries Ltd that these liabilities crystallized during the AY 2001-02 and they pertain to appellant's business prior to its transfer of its unit to Transpek Silox Industries Ltd and hence, the-same are allowable as a deduction in its computation of income for AY 2001-02, despite, the fact that they have been accounted for as prior period expenditure. The appellant has also relied upon the decision of the Hon'ble Gujarat High Court in the case of **Saurashtra Cement and Chemical Industries (supra)**: In this decision, the jurisdictional High Court has held that it is actually known income or expenses, right to receive or liability to pay which has come to be utilized is to be taken into account under mercantile system of maintaining books of account. Hence, following this decision, the deduction claimed by the appellant is allowed in respect of this payment of Rs. 34,83,945/-“*

5. Regarding disallowance of prior period liability of Rs. 4,34,216/- and Rs. 2,04,274/-, the assessee has claimed that these liabilities were crystalized during the financial year 2000-2001. The assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee by stating that relevant evidences regarding receipt of bills for the amount of Rs. 4,34,216/- in F.Y. 2000-2001 has been filed. Following the decision of Saurashtra Cement and Chemical the Id. CIT(A) has allowed the appeal by stating that the payment has been made during the previous year. Regarding claim of Rs. 2,04,274 the Id. CIT(A) has held that assessee has produced the evidences to show that these expenses were under dispute/negotiation in respect of discount and other relief to the customer/supplier of the assessee which was crystalized only during the F.Y. 2000-2001. Regarding claim of deduction of Rs. 1,75,627/-the Id. CIT(A) has held that since goods were received by the assessee in the current year, therefore, it is rightly accounted as expenses in the current year. Regarding expenses of Rs. 4,50,800/- as professional charges claimed in the current year the Id. CIT(A) has stated that these bills were received during the current year, therefore, following the decision of Saurashtra Cement and Chemical Industries Ltd., the Id. CIT(A) directed the assessing officer to allow this as deduction for assessment year 2001-2002.

6. We have heard both the sides and perused the material on record carefully. After considering the detailed finding of Id. CIT(A) based on the

decision of Hon'ble Jurisdictional Gujarat High Court in the case of Saurashtra Cement and Chemical we observe that the Ld. CIT(A) is justified in directing the assessing officer to allow the expenditure. Accordingly, the appeal of the revenue is dismissed.

7. In the result, both the grounds of revenue are dismissed.

Order pronounced in the open court on 16-04-2018

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER
Ahmedabad : Dated 16/04/2018

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश का प्रतिलिपि अर्पण / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपील अाधिकरण,
अहमदाबाद