

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri S.Rifaur Rahman, Accountant Member**

ITA No.1672/Hyd/2016
(Assessment Year: 2012-13)

M/s. Global Logic
Technologies Ltd
Hyderabad
PAN: AADCR5222K
(Appellant)

Vs Asstt. Commissioner of
Income Tax, Circle 2(2)
Hyderabad
(Respondent)

For Assessee : Shri K.C. Devdas
For Revenue : Shri K. Srinivas Reddy, DR

Date of Hearing: 08.05.2018
Date of Pronouncement: 23.05.2018

ORDER

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for the A.Y 2012-13 against the order of the learned CIT (A)-2, Hyderabad, dated 30.08.2016.

2. Brief facts of the case are that the assessee company, engaged in the business of Software Development Agencies, filed its return of income for the A.Y 2012-13 on 29.11.2012 declaring a total income of Rs.16,25,84,070. Subsequently, the assessee filed a revised return on 20.03.2014 declaring income of Rs.8,86,37,400. During the assessment proceedings u/s 143(3) of the Act, the AO observed that in the revised return of income, the assessee has reduced an amount of Rs.7,39,46,648 from the

taxable income towards Directors' remuneration. The assessee was therefore, asked to furnish the reasons for reducing the remuneration paid to the Directors' which was not debited to the P&L A/c for the financial year 2011-12. In response to the same, the assessee, vide letter dated 25.03.2015, explained that the Director's remuneration was not provided in the books of account for the financial year 2011-12 but was provided in the books of account for the financial year 2012-13 and the assessee company has disallowed the said amount in the computation of income as prior period expenses for the financial year 2012-13 as it pertains to the financial year 2011-12 on realizing the mistake, a revised return was filed claiming the Director's remuneration as expenditure. It was also submitted that the company has provided for Director's remuneration for the financial year 2011-12 relevant to the A.Y 2012-13 and that the same is being claimed in the revised return of income for the A.Y 2012-13 and enclosed the computation of the total income for the A.Y 2013-14 for the reference of the AO.

3. The AO, thereafter, asked the assessee to furnish the copies of the Income-tax returns filed by the Director offering the said remuneration to tax. In response to the same, the assessee furnished the copies of returns of income filed by the Directors for the A.Y 2012-13 from which it was observed that the remuneration of Rs.7,39,46,648 had not been offered as income in the hands of the Directors for the A.Y 2012-13. When this was pointed out, the assessee explained that the remuneration has been offered by the Directors to tax for the said A.Y 2013-14. In view of the same, the AO was of the opinion that the same is not

allowable in the A.Y 2012-13 as it was not debited to the P&L A/c and was also not claimed as a deduction in the original return of income. Aggrieved, the assessee preferred an appeal before the CIT (A) who confirmed the order of the AO and the assessee is in second appeal before us.

4. The learned Counsel for the assessee Shri K.C. Devdas, while reiterating the submissions made by the assessee before the authorities below, submitted that the sum of Rs.7,39,46,648 was paid to the Directors towards their remuneration as well as bonus and that the AO has not disputed the rendering of the services by the Directors nor the accrual of the expenditure in the hands of the assessee. He submitted that since the sum was paid to the Directors in the next financial year, the same was debited to the P&L A/c and thereafter, disallowed as prior period expenses. He submitted that the AO in the A.Y 2013-14 had not allowed the expenditure on the ground that the assessee has filed the revised return of income in the A.Y 2012-13 claiming the said expenditure and the AO for the A.Y 2012-13 has disallowed the same on the ground that the Directors have offered the income in their hands in the A.Y 2013-14. He submitted that for considering whether an item is taxable in the hands of the payer, the matter has to be looked at from the point of view of the person paying the amount and not that of the recipients. For this proposition, he placed reliance upon the decision of the Hon'ble Madras High Court in the case of CIT vs. Sarada Binding Works (1976) 102 ITR 187 (Mad.). He submitted that both the payee as well as the recipient may not necessarily adopt the same method of accounting and therefore, the difference in method of

accounting may result in the income in the hands of the recipient not being offered to tax in the same accounting period in which the amount is paid.

5. As regards the AO's finding that the assessee has not debited the amount to the P&L A/c and therefore, is not allowable, he placed reliance upon the decision of the Hon'ble Supreme Court in the case of Kedarnath Jute Manufacturing Co. Ltd v. CIT (1971) 82 ITR 363 and also in the case of Bharat Earthmovers Ltd vs. CIT reported in (2000) 245 ITR 428 (S.C). The learned Counsel for the assessee also submitted that the assessee has filed the revised return of income within the time limit making a fresh claim and that the same ought to have been considered as held by the Hon'ble Apex Court in the case of Goetze (India) Ltd vs. CIT (2006) 284 ITR 323 (S.C). Further, he also placed reliance upon the decision of the Hon'ble Supreme Court in the case of CIT vs. Excel Industries Ltd (2013) 38 Taxmann.com 100 (S.C) for the proposition that there is no specific requirement to disallow the expenditure in the hands of the payer as well as the recipient when the tax rates remain the same. Alternatively, the learned Counsel for the assessee submitted that if the expenditure is considered as not allowable in the A.Y 2012-13, then the same should be allowed as a deduction in the A.Y 2013-14 i.e. in the year in which the same has been actually paid. He placed reliance upon the decision of the Hon'ble Gujarat High Court in the case of Saurashtra Cement & Chemical Industries vs. CIT (1995) 213 ITR 523 (Guj.) wherein it was held that if the liability is crystallized in the current year, the same will be allowed as a deduction even though the liability pertains to another year. He also placed

reliance upon the decision of the Tribunal in the case of Sony India (P) Ltd vs. DCIT 114 ITD 448 to argue that where the expenditure pertaining to a particular A.Y is accounted in another A.Y, the same cannot be disallowed in both the A.Ys. Thus, he prayed that if the expenditure is not to be allowed in the A.Y 2012-13, the same should be directed to be allowed in the A.Y 2013-14.

6. The learned DR, on the other hand, supported the orders of the authorities below and submitted that the assessee has not made the claim in the original return of income and even the recipient has not offered the income during the relevant A.Y and therefore, the same is not allowable in the A.Y 2012-13.

7. Having regard to the rival contentions and the material on record, we find that the undisputed facts that the remuneration is paid to the Directors of the company. The factum of these Directors rendering services to the assessee are also not disputed. The dispute is only with regard to the non-debiting of the expenditure to the P&L A/c during the relevant A.Y and not making a claim in the original return of income filed. It is also not in dispute that the assessee has made the claim by filing a revised return of income within the time frame allowed under the Act. In such circumstances, as held by the Hon'ble Supreme Court in the case of Goetze India Ltd (Supra), the assessee can make a claim only by way of filing a revised return of income and if such revised return is validly filed within the prescribed time limit, then the AO has to consider the same in accordance with law. Therefore, the

reason given by the AO that the assessee has made a fresh claim in the revised return and therefore, is not allowable cannot be sustained.

8. The assessee has admittedly not debited the Directors remuneration to the P&L A/c and therefore, has not claimed it in the original return of income. Admittedly, the assessee has disallowed this expenditure in the A.Y 2013-14 on the ground that it is prior period expenses. Therefore, the stand of the assessee has been consistent that it pertains to the A.Y 2012-13 only. As rightly pointed by the learned Counsel for the assessee, the same accounting policy of the payer as well as the recipient may not be the same. The recipient has offered the income in the year of receipt i.e. A.Y 2013-14, whereas, the assessee has claimed it on accrual basis. As long as the assessee has received the services from the Directors during the financial year 2011-12 the liability of the assessee has arisen in the F.Y 2011-12 only and therefore, on the principles of the accrual, the assessee is liable to pay the Directors remuneration during the financial year 2011-12 only. Therefore, the assessee's claim of expenditure for the A.Y 2012-13 is to be considered by the AO. The fact that the recipients have offered the income in the A.Y 2013-14, should not affect the claim of the assessee in the A.Y 2012-13 as held by the Hon'ble Supreme Court in the case of Kedarnath Jute Manufacturing Co. Ltd (Supra). Therefore, we direct the AO to allow the expenditure in the A.Y 2012-13 in accordance with the revised return of income filed by the assessee.

9. In the result, assessee's appeal is allowed.

Order pronounced in the Open Court on 23rd May, 2018.

Sd/-
(S.Rifaur Rahman)
Accountant Member

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 23rd May 2018.

Vinodan/sps

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- 3 CIT (A)-2 Hyderabad
- 4 Pr. CIT – 2 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order