

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ 'ए' चण्डीगढ़
**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A', CHANDIGARH**

श्री एन.के. सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
**BEFORE SHRI N.K.SAINI, VICE PRESIDENT
& SHRI SANJAY GARG, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 740/CHD/2018

निर्धारण वर्ष / Assessment Year :2014-15

The ACIT, Panchkula Circle, Panchkula.	Vs. बनाम	M/s Haryana State Electronic Dev. Corp. Ltd., SCO 111-113, Sector 17B, Chandigarh.
स्थायीलेखासं./PAN NO: AABCH1532Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 863/CHD/2018

निर्धारण वर्ष / Assessment Year :2014-15

M/s Haryana State Electronic Dev. Corp. Ltd., SCO 111-113, Sector 17B, Chandigarh.	Vs. बनाम	The DCIT, Panchkula Circle, Panchkula.
स्थायीलेखासं./PAN NO: AABCH1532Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

राजस्व की ओर से/ Revenue by : Smt. Meenakshi Vohra, Sr.DR
निर्धारिती की ओर से/Assessee by : Shri B.K. Nohria, CA

सुनवाई की तारीख/Date of Hearing : 07.03.2019
उद्घोषणा की तारीख/Date of Pronouncement : 08.03.2019

आदेश/Order

PER N.K. SAINI, VP

These cross appeals by the Department and the assessee are directed against the order dated 28.03.2018 of CIT(A) Panchkula.

2. In the departmental appeal in ITA 740/CHD/2018, the

following grounds have been raised :

1. *Whether on the facts and in the circumstances of the case the Ld. CIT(A) has erred to allow the appeal of the assessee and delete the addition of Rs. 2889759/- made on account of prior period expenses as the same is not allowable to the assessee as the assessee has followed mercantile System of accounting?*
2. *Whether on the facts and in the circumstances of the case the Ld. CIT(A) has erred to allow the appeal of the assessee and delete the addition of Rs. 1,02,618/- made on account of disallowance u/s 14A which is not as per law as the assessee has made investments and on the other hand the assessee has paid interest? ,*
3. *Whether on the facts and in the circumstances of the case the Ld. CIT(A) has erred to allow the appeal of the assessee and delete the addition of Rs. 75,07,711/- made on account of WIP which is not as per law as the assessee has shown Rs. 6,25,64,264/- on account of Machinery Work In Progress and on other the hand the assessee has incurred huge interest on various loans amounting to Rs. 1,75,88,235/- during the year?*
4. *It is prayed that the order of the Ld. CIT(A) be set-aside and that of the A.O. be restored.*
5. *The appellant craves leave to add or amend the grounds of appeal before the appeal is heard and disposed off.*

3. The ground raised in assessee's appeal in ITA 863/CHD/2018 reads as under :

“1. That on the facts and in the circumstances of the case the Learned CIT(A) Panchkula has erred in law and facts in upholding the addition of Rs.4,68,184/- out of total disallowance of Rs.33,57,943/-as prior period expenditure without considering the order of the Hon'ble ITAT Chandigarh in appeal no, 1108/CHD/2014 and 226/CHD/2015 vide order dated 01.07.2016 in the case of Haryana Warehousing Corporation though cited in the submissions by the AR of the appellant.”

4. The only ground raised in assessee's appeal and ground No. 1 raised in the departmental appeal relates to the sustenance/deletion of the addition made by the AO on account of prior period expenses. The facts related to this issue are that the AO during the course of assessment proceedings noticed that the assessee had debited to the Profit & Loss Account, prior period expenses amounting to Rs. 33,57,953/-, those were not allowable for the following reasons :

- i) *The assessee is following the mercantile system of accounting and there is nothing to show that liability to pay this expenditure has in any way either arisen or*

crystalized during the Financial Year 2013- 14, The assessee maintains its accounts on mercantile basis and in the mercantile system, expenditure must be charged to the year to which it is relatable. Therefore these expenses should not be allowed.

ii) The assessee did not give any evidence from which it can be fully ascertained that these expenses have been arisen, crystallized and ascertained during the year. In the absence of any reliable evidence, they are not allowable.

iii) This prior period expenses are actually in the nature of contingent liabilities therefore it is not allowable expenditure.

From the above discussion it is clear that these prior period expenses amounting of Rs. 33,57,943/- are not related to the current year and hence, disallowed. Accordingly, an addition of Rs. 33,57,943/- is being made to the returned income.

5. The AO, accordingly, disallowed the aforesaid expenses of Rs. 33,57,953/-.

6. Being aggrieved, the assessee carried the matter to the ld. CIT(A) who sustained the disallowance of Rs. 4,68,184/- and allowed the relief of Rs. 28,89,759/- by observing in para 5.4 to 5.6 of the impugned order as under :

“5.4 Regarding claim of expenses of Rs.29,16,576/- on account of repair and maintenance of building they comprise of expenses of Rs.93,184/- on account of land-scaping expenses, the bill for which was received on 26.03.2013 by Gurgaon branch but the amount paid during the current year. Therefore the amount of Rs.93,184/- is not allowable being prior period expenditure as bill for the same was received by the appellant in earlier year and the amount was not ascertained in current year. Balance expenses of Rs.28,23,392/- is on account of maintenance charges and interest payable upto 31.10.2013 by appellant corporation to HSIIDC against plot at Udyog Vihar, Gurgaon for which demand was raised by HSIIDC, Gurgaon office vide their letter dated 26.04.2013. Therefore, as the liability/amount payable was crystallized/ascertained during the relevant previous year upon raising of demand on 26.04.2013, the expenses at Rs.28,23,392/- are allowable.

5.5 Regarding claim of Rs.3,75,000/- on AMC of software for the prior period June, 2012 to March, 2013, the claim is on account of adjustment/rectification of wrong debit. Thus, as the liability has neither arisen nor crystallized during the year the same is not allowed being prior period expenses.

5.6 Therefore, the appellant gets a relief of Rs.28,89,759/- and balance addition of Rs.4,68,184/- (3,75,000 + 93,184) is confirmed. The ground of appeal is partly allowed.”

7. Now both the parties are in appeal. The assessee is in

appeal against the sustenance of the expenses while the Department is in appeal against the relief allowed to the assessee.

8. The ld. counsel for the assessee submitted that this issue is squarely covered in assessee's own case in ITA No. 1108/CHD/2014 for the assessment year 2010-11 wherein the relevant finding has been given in para 10 to 14 of the order dated 01.07.2016. Copy of the said order was furnished which is placed on record.

9. In her rival submissions, the ld. Sr.DR strongly supported the orders of the authorities below.

10. After considering the submissions of both the parties and the material on record, it is noticed that an identical issue having similar facts has been adjudicated by the ITAT in assessee's own case in ITA No.1108/CHD/2014 for the assessment year 2010-11 wherein vide order dated 01.07.2016 the relevant findings have been given in para 10 to 14 which read as under :

“10. We have considered the rival submissions. We find that Assessing officer has made disallowance by observing that for the prior period expenses cannot be allowed as assessee is following mercantile system of accounting and that the assessee has not submitted any basis for determination as to when they crystallized. In this regard, we find that it is the contention of the assessee that assessee is a public sector undertaking and is a vast organization. The expenses when not reported or identified up to the close of the year are subsequently booked under prior period expenses. This system of accounting of the assessee has been regularly accepted by the Department in the past. There is no change in the facts and circumstance of the case. It has also been submitted that necessary details were duly submitted before the Assessing officer that all of the expenses are supported by proper vouchers supporting evidence. It is not the case of the Assessing officer that any short coming has been noted in the vouchers. This is also not the case that any distortion in profit has been observed as compared to preceding year in view of the above said expenditure. In these circumstances, in our considered opinion, the Revenue has no cogent reason why the prior period expenses claimed by the

assessee which have been consistently so claimed and allowed by the Department in earlier years should be disallowed in the current year.

11 As regards the submissions of Ld. DR that rule of consistency is not applicable in this case. We find that assessee has earlier been assessed in the status of Trust, thereafter, the assessee has been denied exemption. No case has been made out that for any assessment year, prior to assessment year in appeal, there was any addition on account of prior period expenses. For assessment year 2009-10 there was action u/s 263 and no addition was made on account of prior period expenses. In this regard, Ld. Counsel for the assessee submitted that he has shown all the relevant vouchers before the Assessing officer. Hence, in our opinion, Ld. DR's plea that rule of consistency is not applicable in this case is not at all sustainable. Furthermore, we do not approve the above submissions of Ld. Counsel of the assessee that Haryana State Government accounts are maintained on whims and fancies. In our considered opinion it is also a fact that even the State Government Undertakings are subject to proper audit procedures. In these circumstances, in our considered opinion the submissions of Ld. DR do not bring out cogent reasons to depart from the ratio as emanating from the aforesaid case laws.

13. The case laws referred by the Ld. Counsel of the assessee above duly support the above proposition. In this regard we may gainfully refer to the Hon'ble Delhi High Court decision in the case of CIT Vs. Jagjit Industrie Limited (supra). In this case after examining various case laws on the subject, the Hon'ble Delhi High Court concluded as under:-

"16. The present factual matrix has to be tested on the touchstone and anvil of the aforesaid enunciation of law. On a scrutiny of the facts that have been brought on record, it is discernible that the assessee has been claiming prior period of expenses on the ground that the voucher of such expenses from the employees/branch employees were received after 31st March of the financial year. It has also come as a matter of fact that the assessee has branch offices throughout the country. The assessee has been debiting the expenditure spill over to the subsequent years and the assessing officer had been allowing the same. The said accounting practice has been consistently followed by the assessee and accepted by the department. If a particular accounting system has been followed and accepted and there is no acceptable reason to differ with the same, the doctrine of consistency would come into play. The said accounting system has been followed for a number of years and there is no proof that there has been any material change in the activities of the assessee as compared to the earlier years. Nothing has been brought on record to show that there has been distortion of profit or the books of account did not reflect the correct picture in the absence of any reason whatsoever, there was no warrant or justification to depart from the previous accounting system which was accepted by the department in respect of the previous years.

Similarly, we find that Coordinate Bench of ITAT, in the case of DCIT V Heavy Engineering Corporation Ltd, Ranchi in ITA No. 28/Ran/2015 (supra), on

"4.3 We have heard both the counsels and perused the records. We find that the Assessing officer has made the disallowance by observing that for the above items of prior period expenses assessee has not submitted any basis of determination and how they crystallized. In this regard, it is the contention of the assessee that (he assesses is a public sector sunder taking whose accounts are audited by Statutory Auditor as well as the Comptroller and Auditor General of India. It is not necessary that all

expenditures have to be covered by actuarial valuation report. Furthermore, it has been assessee's claim that the assessee has vast organization and expenditures when not reported or identified upto close of the year are subsequently booked under prior period expenditure. This system of accounting of the assessee has been regularly accepted by the Department in the past. There is no change in the facts and circumstances of the case. It has also been submitted that necessary details were duly submitted before the Assessing Officer, It has also been submitted that the relevant vouchers of the expenditures contained the supporting evidence. It is not the case of the Assessing Officer that any short-coming has been noted in the vouchers maintained by the assessee. In these facts and circumstances, it is assessee's claim that the Assessing Officer has erred in making the disallowance and Id. CIT(A) is quite correct in deleting the disallowance.

4.4 Upon careful consideration and hearing both the parties, we are of the considered opinion that the assessee's submissions are cogent. The assessee is a public sector undertaking and it has got a vast organization. In its system of account when expenditures are not reported or identified upto the close of the year in the past. We also agree with the contention that the Assessing Officer has clearly erred in drawing adverse inference on the crystallization of these expenditures. It is not the case of the Assessing Officer that any voucher of the assessee company has been found to be Jacking credibility. Without any change in facts or (aw a regularly followed system of accounting cannot be tinkered with. "

14. In the light of the aforesaid discussion and precedent, we set aside the authorities below and decide the issue in favour of the assessee."

11. So, respectfully following the aforesaid referred to order, the issue is decided in favour of the assessee and against the department.

12. Vide ground No. 2 in revenue's appeal, the issue involved relates to the deletion of disallowance made by the AO u/s 14A of the Act. The facts related to this issue in brief are that the AO during the course of assessment proceedings noticed that the assessee had made investment to the tune of Rs. 1,22,69,000/- and had also shown outstanding secured loan from banks and paid huge interest. He disallowed a sum of Rs. 1,02,618/- by invoking the provisions of Section 14A of the Act read with Rule 8D of the IT Rules, 1962.

13. Being aggrieved, the assessee carried the matter to the ld. CIT(A) who deleted the same by following the earlier order of the ITAT dated 26.07.2017 in ITA No. 1105/CHD/2016. Now the Department is in appeal.

14. We have considered the rival submissions of both the parties and perused the material available on record. It is noticed that an identical issue having similar facts was a subject matter of the departmental appeal in ITA 1105/CHD/2016 for the assessment year 2013-14 wherein vide order dated 26.07.2017, the issue has been decided in favour of the assessee and against the department. The relevant findings have been given in para 19 to 21 of the aforesaid order dated 26.07.2017 which read as under :

“19. The AO noted that the assessee company had made investments of Rs. 1,14,88,000/- and on the other side, assessee has shown outstanding secured loan from banks and paid huge interest on loans. The AO asked the assessee as to why expenses related to income covered u/s 14A should not be disallowed. In the absence of any justification, the AO after making reference to CBDT Circular No.5/2014 concluded that the provisions of section 14A was applicable even in those cases where the exempt income did not arise during the year on the investments. Accordingly, the disallowance of Rs. 1,33,610/- u/s 14A was made as computed in para 3.1 of the assessment order and added to the income

20. Ld. CIT(A) on perusal of the balance sheet noticed that that the investment shown under non-current investments as in Note No. 7 were made in earlier years in equity instruments of other companies. There was no fresh investment made during the year. No dividend or any exempt income has been shown by the appellant during the year nor the AO has recorded about any exempt income received during the year. The interest earned shown under other income is more than the interest debited in the P&L account. Since, there is no exempt income earned during the year and no interest expenditure has been incurred on any loan, therefore, the AO was not justified for invoking the provisions of Section 14A for disallowance of expenditure on investments which were made in earlier years. Thus, the disallowance of Rs. 1,33,610/- is deleted.

21. We have gone through the facts on record, since no exempt income was earned during the year and no interest expenditure has been incurred on any loan the addition made is not called for and the appeal of the Revenue is dismissed on this ground. The order of the CIT(A) is upheld on this ground.”

15. Since the ld. CIT(A) has followed the order of the ITAT and nothing is brought on record that the aforesaid referred to order of the ITAT has been reversed by the higher forum, therefore, we do not see any valid ground to interfere with the findings given by the ld. CIT(A). In that view of the matter, we do not see any merit in this ground of the departmental appeal.

16. Vide ground No. 3, the grievance of the department relates to the deletion of addition made by the AO on account of work in progress. As regards to this issue, the ld. counsel for the assessee submitted that it is covered in favour of the assessee and against the department vide aforesaid referred to order dated 26.07.2017 in ITA 1105/CHD/2016 for the assessment year 2013-14 in assessee's own case.

17. The ld. Sr.DR in her rival submissions supported the order of the AO.

18. After considering the submissions of both the parties and the material on record, it is noticed that an identical issue having similar facts was a subject matter of the departmental appeal for the assessment year 2013-14 in ITA 1105/CHD/2016 wherein vide order dated 26.07.2017 the issue has been decided against the department and in favour of the assessee. The relevant findings are given in para 23 to 26 of the said order which read as under :

23. During the assessment, the AO noted that the assessee in the balance sheet has shown Rs.6,25,64,264/- on account of machinery work in progress on other hand the assessee has incurred huge interest on various loans of Rs. 1,85,78,61 during the year. The AO asked the assessee as to why interest

expenses should not be disallowance and capitalized as the machinery has not been used during the year. The assessee did not file any explanation in this regard. After making reference of section 36(1), the AO concluded that if a capital asset has not been put to use then the related interest expenses should be capitalized. Since the assessee had incurred huge interest expenses on various loans and on other side the capital assets has not been put to use during the year, the AO applied the provisions of section 36(1) and relied on the decision of Hon'ble Punjab & Haryana High Court in M/s Abhishek Industries Ltd., 286 ITR 1. Thus, the proportionate interest of Rs.75,07,711/- @ 12% on Rs.6,25,64,264/- was disallowed and added to the returned income.

24. *During the proceeding before the Ld.CIT(A) it was submitted that from the perusal of the balance sheet it will be observed there is no secured or unsecured borrowing during the year and in the previous year. As per balance sheet of the appellant-the capital work in progress as on 31.03.2012 was Rs. 5,80,66,791 and as on 31.03.2013 was Rs.6,25,64,264/- which means there is additional payments towards capital work in progress of Rs.44,97,473/-during the year under consideration. That as per Note 18 Finance Cost there is interest expenses of Rs. 1,85,78,612/- during the year. During the assessment proceedings the appellant submitted the complete details of this expenditure with submission dated 23.12.2015 as under:-.*

As regards interest payable against in grant in aid a sample copy of the administrative approval dated 28.03.2008 issued by the Ministry of Communications & information Technology Government of India was submitted. In para (xii) of the terms and conditions of the grant-in-aid it has been stated that:

"The grantee institution should maintain separate audited accounts for the project. If it is found expedient to keep a part or whole of the grant in a bank account earning interest, the interest, thus earned should be reported to this Department. The interest so earned shall be treated as a credit to the grantee to be adjusted towards future investment of the grant."

Hence the assessee is paying the interest against grant in aid received wherever required and it is pertinent to note that when the interest is received from the bank it is credited to Interest income which has been shown in note 15 other income Rs. 18,66,91,783/- and TDS is deducted by the bank as per section 194 A of the Act and against this interest on grant in aid has been shown at Rs. 1,85,78,612/- in Note 18 Finance Cost as if it is debited to interest income then the receipt cannot be reconciled with Form 26AS and moreover no TDS is deductible on interest paid against Grant in aid to Government.

25. *It clear that the appellant has complied with the condition of grant- in aid against which the appellant has received interest of Rs. 18,66,91,783/- as can be verified from Note no. 15 other income. That from the perusal of balance sheet as on 31.03.2013, the appellant has share capital of Rs.9,85,76,000/- as per note no. 1 and general reserve of Rs.48,96,00,269/- as per note no. 2(b) and there is no borrowing at all. Therefore, the appellant has not borrowed any funds for capital work in progress. The appellant relied on the decision of Hon'ble ITAT, Chandigarh Bench in ITA No. 820/Chd/2015 in Videotex International (P) Ltd. dated 11.08.2016. Invoking the judgement of the ITAT Chandigarh the Ld. CIT(A) has deleted the addition.*

26. *We have gone through the facts of the case the and the facts reveals that there were no borrowed funds utilized for machinery work in progress*

therefore the AO was not justified in disallowing the proportionate interest attributable to capital work in progress. In view of the decision of this bench in the case of Vidotex International (P) Ltd. (supra) the appeal of the Revenue on this ground stands dismissed.”

19. So, respectfully following the aforesaid referred to order, we do not see any merit in this ground of the departmental appeal.

20. In the result, the appeal of the department is dismissed and that of the assessee is allowed.

Order pronounced in the Open Court on 08th March,2019.

Sd/

(संजय गर्ग)
(SANJAY GARG)
न्यायिक सदस्य/ Judicial Member

Sd/-

(एन.के. सैनी)
(N.K. SAINI)
उपाध्यक्ष/ VICE PRESIDENT

“Poonam”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar