

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA Nos.211 & 212/M/2018
Assessment Years: 2011-12 & 2013-14**

Dy. CIT, Circle 8(3)(1), Room No.615, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai - 400020	Vs.	M/s. Maharashtra Agro Ind. Dev. Corp. Ltd., Krushi Udyog Bhavan, Dinakarrao Desai Marg, Aarey Milk Colony, Goregaon (E), Mumbai - 400 065 PAN: AA ACT1546M
(Appellant)		(Respondent)

**ITA No.3069/M/2017
Assessment Year: 2012-13**

M/s. Maharashtra Agro Ind. Dev. Corp. Ltd., Krushi Udyog Bhavan, Aarey Colony, Dr. Dinakar Rao Desai Marg, Goregaon (E), Mumbai - 400 064 PAN: AA ACT1546M	Vs.	Dy. CIT, Circle 8(3)(1), Room No.615, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ashok J. Patil, A.R.
Revenue by : Shri D.G. Pansari, D.R.

Date of Hearing : 20.02.2019

Date of Pronouncement : 05.04.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled appeals two by the Revenue and one by the assessee have been preferred against the order dated 16.10.2017 for A.Y. 2011-12 & order dated 31.08.2016 for A.Y.

2012-13 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)].

ITA No.211/M/2018 (A.Y. 2011-12)

2. The only issue raised by the Revenue is against the order of Ld. CIT(A) holding that the liability on account of 6th pay commission is an allowable deduction without appreciating the fact that the same is unascertained and estimated liability which has not crystallized during the year.

3. The facts in brief are that during the course of assessment proceedings, the AO noticed from the details filed by the assessee that assessee company has created an adhoc provisions to provide for the arrears of salary accordingly to the recommendation of 6th pay commission to the tune of Rs.1254.01 lakh in schedule M of annual audited accounts and the said liability has not been approved by the assessee's board of directors. According to the AO, the said liability is in the nature of unascertained liability and the assessee has also not filed any details thereof. As a result The AO came to the conclusion that the provisions in the profit and loss account are not allowable expense and added the same to the income of the assessee by holding that the said liability was not an ascertained liability but an adhoc estimated provisions and also not approved by the board of directors as also the Government of Maharashtra.

4. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by observing and holding as under:

"4.1 I have considered the submission made by the appellant and the reasons recorded by the AO. It is seen from the submission of the appellant that Board of

Directors of the appellant passed a resolution on 15/2/2013 recommending to the government that the recommendations of 6th Pay Revision Commission may be made applicable to the officers and employees of assessee company and the government vide its resolution dated 21/5/2014 gave its approval for implementing the recommendations of 6th Pay Commission with retrospective effect from 1/1/2006. The facts of the case of the appellant are similar to the facts in the case of Tata Communications is Ltd (supra) wherein the assessee had made provision for salary arrears in the A.Y 1998-99 after setting up of "Commission for revision of pay scales, of PSUs" by the government. The Commission gave its report only in June 1999 for revision of pay w.e.f. 1/1 / 1997. Provisions for arrears were made by the appellant in F.Y 1997-98 itself. In that case the jurisdiction al Tribunal held that deduction was allowable to the appellant in respect of the provisions made because the liability was certain and it was just a matter of time when it would arise. The Hon'ble Tribunal also held that what is important is not the date of signing of the agreement nor the date of approval granted by the DPE, what is important is the effective date of commencement and on that note it held that the liability accrued during the assessment year under consideration (A.Y. 1998-99). Relying on the decision of Hon'ble Supreme Court in the case Bharat Earth Movers v. CIT 245 ITR 428 (SC) the Tribunal held that the provision for salary is not a contingent liability. It was only to be discharged at a future date. In view of the decision of honourable tribunal, it can be concluded that the liability for payment of revised salaries accrued in the case of the appellant on 1/1/2006 and the appellant could have made provisions from that date onwards. However, the appellant started making provisions from A.Y. 2010 - 11 onwards after the Maharashtra Govt. decided to implement the recommendation of 6th pay commission w.e.f. 1/1/2006 as per their Resolution No. VESUR-1209/P.N.20/SEVA-9 dated 2/02/2009. From the data submitted by the appellant it is seen that the total provision made for salary arrears over the years was Rs. 4587.88 lakhs against which actual payment was Rs. 4479.86 lakhs. Provision for the gratuity was Rs. 2240.34 lakhs as against which actual gratuity fund contribution was Rs. 2807.08. Thus the provisions made were reasonable. In view of these facts, respectfully following the decision of Hon'ble Tribunal, the AO is directed to allow the deduction in respect of the provision for 6th Pay Commission arrears made by the appellant amounting to Rs 1254.01 lacs on account of salary and contribution of Rs 277.28 lacs made to Gratuity Fund due to anticipated increase in amount of gratuity on account of implementation of 6th Pay Commission recommendations. Both grounds of appeal are, accordingly, allowed."

5. The Ld. D.R. submitted before the Bench that the liability provided on account of arrears of 6th pay commission in the books of accounts to the tune of Rs.1254.01 lakhs is an adhoc and unascertained liability and therefore not allowable under the Act. The Ld. D.R., therefore, submitted that the order of Ld. CIT(A) is full of infirmities and anomalies and may be reversed by allowing the appeal of the Revenue.

6. The Ld. A.R., on the other hand, relied heavily on the order of Ld. CIT(A) by submitting that the provisions of arrears in the books of accounts of the assessee is an ascertained liability based upon the recommendation of 6th pay commission and thus Ld. CIT(A) rightly allowed the appeal of the assessee by following the decision of Hon'ble Supreme Court in the case of Bharat Earth Movers vs. CIT 245 ITR 428 (SC) and prayed before the Bench that the appeal of the Revenue may be dismissed as the case of the assessee is squarely covered by the decision of the Apex Court.

7. After hearing both the parties and perusing the material on record, we find that the issue before us whether the provisions created in the books of accounts to the tune of Rs.1254.01 lakhs is an ascertained liability or not. After taking into the facts of the case, we are of the view that the liability provided in the books of accounts is an ascertained liability based upon the recommendations of 6th pay commission though not paid during the year and which may be paid in the subsequent date or year but that would not render the liability as unascertained and contingent in nature. We do not find any merits in the arguments of the Ld. D.R. that the provisions created in the books of accounts were adhoc ones and not approved by the Board of Directors and Government of Maharashtra. The order passed by Ld. CIT(A) is a reasoned and speaking one passed after following the decision of Hon'ble Supreme Court in the case of Bharat Earth Movers vs. CIT (supra) wherein it was held that provisions of salary is not contingent liability and is an unascertained liability and therefore an admissible expense under the Act. We, therefore, do not find any reason to deviate

from the findings given by the Ld. CIT(A). Accordingly, the appeal of the Revenue is dismissed.

ITA No.212/M/2018 (A.Y. 2013-14)

8. The issue raised in ground no.1 is identical to the issue as decided by us in Ground No.1 in ITA No.211/M/2018 A.Y. 2011-12 wherein we have dismissed the appeal of the Revenue by holding that the provisions made in the books of accounts of the assessee towards arrears of salary as recommended by the 6th pay commission is an unascertained liability and is an allowable deduction. Accordingly, applying our decision as stated hereinabove, the ground No.1 raised by the Revenue is dismissed.

9. The issue raised in ground No.2 is against the order of Ld. CIT(A) restricting the disallowance to the extent of exempt income under section 14A of the Act.

10. The facts in brief are that during the year AO noticed that assessee has received dividend income to the tune of Rs.20,000/- whereas no corresponding disallowance of expenses incurred for earning the said income was made. Accordingly, the AO after issuing show cause notice to the assessee applied the provision of section 14A read with rule 8D and computed the disallowance at Rs.3,77,190/- comprising Rs.65,112/- as interest under rule 8D(2)(ii) and Rs.3,05,078/- under rule 8D(2)(iii).

11. In the appellate proceedings, the Ld. CIT(A) after following the decision of the co-ordinate bench of the Tribunal in

assessee's own case directed the AO to restrict the disallowance to Rs.20,000/-.

12. After hearing the rival parties and perusing the material on record, we find that the issue is squarely covered in favour of the assessee and against the Revenue by the decision of Hon'ble Jurisdiction Bombay High Court in the case of Pr. CIT vs. Ballarpur Industries Ltd. in ITA No.15 of 2016 dated 13.10.2016 wherein it has been held that the disallowance under section 14A can not exceed the amount of exempt income. Accordingly, we do not find any infirmity in the order of Ld. CIT(A) and ground No.2 raised by the Revenue is dismissed.

13. Ground No.3 & 4 are general in nature and need no adjudication.

14. In the result, the appeal of the Revenue is dismissed.

ITA No.3069/M/2017 (A.Y. 2012-13)

15. The assessee has raised three grounds which are as under:

"1. On the facts and circumstances of the case and in law the Assessing Officer (A.O.) erred in disallowing the provision made with respect to VI pay commission amounting to Rs. 550 lakhs.

2. On the facts and circumstances of the case and in law the A.O. erred in disallowing the provision made with respect to Ex-gratia payments amounting to Rs.100 lakhs.

3. The Appellant craves leave to add, amend and or alter the above Grounds of Appeal."

16. At the outset, the Ld. A.R. of the assessee submitted before the Bench that the appeal of the assessee is barred by 164 days. The Ld. A.R. submitted that the assessee has filed an application for condonation of delay dated 28.11.2017 along with affidavit of

the managing director of the assessee corporation. The Ld. A.R. submitted that the assessee is a government corporation in which the shares were owned and held to the extent of 54.50% by the Government of Maharashtra and 45.50% by the Government of India and thus this is a fully government owned company and is manned and managed by the government offices who are not in any way personally have any interest in the operations and management of the assessee. The Ld. A.R. submitted that the appeal was due to be filed on or before 15.12.2016 but same could not be filed due to oversight in the office of the assessee. The Ld. A.R. also submitted that the assessee is dealing in agro inputs like fertilizers, pesticides, agricultural plants, cattle, processed food products etc. and is primarily operating for the benefit of public at large and the profit motive is not a consideration at all. The Ld. A.R. submitted that the non filing of appeal came to light during the appellate proceedings before Ld. CIT(A) for A.Y. 2013-14 and assessee immediately realizing the mistake filed the appeal. The Ld. A.R. therefore, prayed before the Bench that this being a wholly a government company the case of the assessee, a lenient view may be taken and the delay in filing of appeal may be condoned in the larger public interest.

17. The Ld. D.R., on the other hand, opposed the arguments of the Ld. A.R. by submitting that appeal is filed by 164 days and the Ld. A.R. has not explained the reasons for the delay so the appeal may be dismissed as barred by limitation.

18. After hearing both the parties and perusing the material on record, we are quite convinced with the reasons cited by the Ld.

A.R. for filing the delayed appeal before the Tribunal. Since this is a wholly owned by Government of Maharashtra and Government of India and is being managed by the public servants. Therefore, we are inclined to admit the appeal of the assessee by condoning the delay and the grounds raised by the assessee are adjudicated in the ensuing paras.

19. The issue raised in ground No.1 is against the order of Ld. CIT(A) upholding the disallowance of provisions made with respect to the arrears of 6th pay commission amounting to Rs.550 lakhs and the issue in ground No.2 is against the order of Ld. CIT(A) upholding the disallowance of provisions made with respect to ex-gratia payments amounting to Rs.100 lakh.

20. The issue raised in ground No.1 is identical to one as decided by us in ITA No.211/M/2018. Therefore, our finding in ITA No.211/M/2018 would, mutatis mutandis, apply to this ground as well. Accordingly, ground raised by the assessee is allowed.

21. The issue raised in ground No.2 is that the AO's observed during the course of assessment proceedings that assessee has created provisions for ex-gratia payments amounting to Rs.100 lakh during the year which was not approved by the Board of Directors and Government of Maharashtra and therefore is an unascertained liability. The AO, accordingly, asked the assessee to explain the allowability of the same which was replied by the assessee vide order dated 16.03.2015 by submitting that the proposal for payment of ex-gratia of Rs.100 lakh to the employees of the corporation was under consideration of the

Board and same got approved by the board in its 211th meeting held on 15.02.2013. Subsequently the payment has also been done during the March 2013. However, the submissions of the assessee did not find favour with the AO and he disallowed the same by holding that liability has not crystallized during the year beside being unascertained liability and therefore not allowable.

22. In the appellate proceedings, the Ld. CIT(A) has not adjudicated the issue raised in ground No.1 & 2 by holding that same are not pressed during the appellate proceedings and dismissed the same.

23. The Ld. A.R. filed an affidavit of Shri Suresh Sonawane Dy. Manager of the assessee and submitted that the person who was looking after the affairs of the assessee was under the wrong belief that such claim was not taxable who has just taken over the charge of taxation of MASG and was not familiar with the facts and legal issues of the case . The Ld. A.R. prayed before the bench that both the issues may kindly be decided on merits.

24. After hearing both the parties on the issue and perusing the material on record, we admit that both the issues for adjudication before the Tribunal. The issue in ground no. 1 has been decided by us supra. Since the issue raised in ground no . 2 is not decided by the Ld. CIT(A) and the facts are not before us, therefore we are restoring the issue to the file of the AO to examine the same as per facts and law and decide the same accordingly after affording reasonable opportunity of being heard

to the assessee. The assessee is also directed to file all the necessary documents to prove his contentions and cooperate with the tax authorities. Accordingly, the issue is set aside to the file of the AO.

25. In the result, both the appeals of the Revenue are dismissed and the appeal of the assessee is partly allowed.

Order pronounced in the open court on 05.04.2019.

Sd/-
(Ram Lal Negi)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 05.04.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.