

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “SMC” BENCH

**(BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT
MEMBER & SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 278/AHD/2015
(Assessment Year: 2005-06)**

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| Mascon Multiservices Pvt. Ltd. 7th Floor, Galav Chambers, Sayajigunj, Baroda-390005 | V/S | Asst. Commissioner of Income-tax, Circle-4, Baroda |
| (Appellant) | | (Respondent) |

PAN: AABCM 2827R

**Appellant by : Shri Manish J. Shah, AR
Respondent by : Shri Praveen Kumar, Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 14 -02-2019
Date of Pronouncement : 25 -03-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal filed by the Assessee is directed against the order of the Ld. CIT(A)-2, Vadodara dated 28.11.2014 pertaining to A.Y. 2005-06 and following grounds have been taken:

1. *The learned C.I.T.(Appeals) has erred in law in confirming the addition of Rs. 16,24,750/- being expenditure incurred for earning income from EPIC Project.*
2. *The learned C.I.T.(Appeals) has failed to consider the specific direction of Hon'ble I.T.A.T. given in its order dated 15.07.2011.*
3. *The Hon'ble I.T.A.T. in its order dated 15.07.2011 specifically directed the Assessing Officer to examine allowability of expenses incurred for earning income from EPIC project in Asst. Year 2004-05 if same has been offered in the Asst. Year 2004-05.*

2. In this case, addition of Rs. 16,24,750/- was made on account of disallowance of prior period expenses, holding that since this expenditure relates to income booked by the appellant in earlier years, hence, it cannot be allowed as a deduction in the current year. The appellant filed an appeal before Id. CIT(A) who directed A.O. to allow the same in assessment year 2004-05, if the same was incurred for the purpose of if the same was incurred for the purpose of business. Thereafter, department filed an appeal before ITAT against the order of the Id. CIT(A) and ITAT Ahmedabad set aside the issue relating to prior period expenses to file of the AO with following direction :-

"We modify the direction of Ld. CIT(A). We direct the AO to first examine the veracity of this contention of the assessee that income on account of EPIC project was accounted for in assessment year 2004-05 but expenses for the same were not accounted for in that year. Therefore, if it is found that's this contention is correct, then he should examine the allowability of these expenses in that year and allow the same to the extent found allowable and pass necessary order as per law after providing adequate opportunity of being heard to the assessee,"

3. Thereafter Assessing Officer stated in his order as follows:

"2. Now, the Hon. ITAT vide their order in ITA NO.733/AHD/2009 dated 15.07.2011 has set-aside the issue related to Prior Expenses of Rs.16,24,750/-

holding that "We modify the direction of Ld. CIT(A). We direct the AO to first examine the veracity of this contention of the assessee that income on account of EPIC project was accounted for in assessment year 2004-05 but expenses for the same were not accounted for in that year. Thereafter, if it is found that's this contention is correct, then he should examine the allowability of these expenses in that year and allow the same to the extent found allowable and pass necessary order as per law after providing adequate opportunity of being heard to the assessee.

2.1 Accordingly, vide this office letter dated 11.01.2013, the assessee was given an opportunity of being heard. The hearing was fixed on 17.01.2013. The assessee has filed a letter dated 17.01.2013 and requested for adjournment to fix another date in the next week. Therefore, the request for adjournment of the assessee was considered and the hearing was re-fixed on 23.01.2013. But on the said date neither anybody attended nor filed any written submission. No adjournment was also sought for. Further, opportunity of being heard was given to the assessee vide this office notice dated 26.02.2013, fixing hearing on 01.03.2013 at 12.30 PM.

2.2 In response to this, the assessee has furnished its reply vide letter dated 01.03.2013. The crux of the reply of the assessee is as under:

"We hereby produce the project wise working and bifurcation of Income & Expenses for the AY 2004-05 i.e. F.Y. 2003-04 which was already been furnished as the scrutiny assessment. Looking to the worksheet, it is clear that profit from the EPIC Project was recorded Rs.13,96,617/- @ 25.50% G.P ratio (i.e. $13.97/54.80 \times 100$). Assessee has been allotted Work Order called EPIC Project vide different Work Orders. We hereby produce the copies of Work Orders showing work and rate at which EPIC work has been allotted."

2.3 The reply furnished by the assessee was duly considered. However, the same has not been found tenable. Since, the assessee has failed to prove that it has not booked these expenses in earlier years. The submission furnished by the assessee is similar to submission furnished by the assessee at the time of assessment proceedings. Thus, nothing new has been furnished by the assessee, The submission of the assessee also not found in the line of direction given by the Hon'ble ITAT. The details furnished by the assessee is not sufficient enough to prove the contention of the assessee. The Hon'ble ITAT has held at para 10 of its order that "this is something strange that some expenditure are not debited to the P&L account but are included in the value of closing stock of , W.I.P ." Therefore, merely furnishing the G.P. analysis is not sufficient enough to prove the contention of the assessee."

4. Thereafter, assessee preferred first statutory appeal before the ld. CIT(A) who dismissed the appeal of the assessee.
5. We have gone through the relevant record and impugned order. The second round before the ITAT and in earlier order ITAT clearly directed the assessing officer that *“however as regards alternate claim that the expense has been actually incurred for earning the income in 2004-05 therefore, the same should be allowed in that year if not allowed in the current year, I find merit. When the genuineness and business purpose of the expense is not disputed, the claim of expense has to be allowed in the relevant year, if the same is disallowed during the year, if the expense is not allowed at all, then it would be disallowance of genuine business expense. I therefore direct the Assessing Officer to verify the expense and allow the same in A.Y 2004-05, if the same is incurred for the purpose of business.”*
6. As we can see, assessee’s books of account are duly audited and his expenses are not doubted by the revenue. Ld. CIT(A) has also admitted the fact that expenses were incurred during the financial year 2003-04 pertaining to A.Y. 2004-05.
7. In support of its contention, ld. A.R. cited an order of Co-ordinate Bench in ITA No. 26/Ahd/1984 wherein in similar circumstances, appeal of the assessee was allowed and operative para of the judgment is reproduced:
 7. *One another aspect which required the claim to be adjudicated upon by the Revenue authorities. Both the ITO as also the CIT(A) disallowed the claim of the assessee on the basis that the liability in respect of the earlier two years have not been provided or claim could not be allowed in 1979. But then, was it not their duty to grant deduction to the assessee-firm by recourse to s. 154 especially when the payment itself is not doubted and found commensurate with the*

services by the assessee-firm. After all, recourse to s. 154 can also be made suo motu and if in such cases, the discretion is not invoked when the circumstances demand of the same, we fail to understand how the Department is making efforts to ascertain the correct income of the assessee for the purpose of collecting only legitimate taxes by way of revenue.

8. We, therefore, set aside the order of the CIT(A) on both the grounds and direct the ITO to allow the deduction as claimed and modify the assessment in the case of the firm as also pass appropriate orders in the case of partners.

9. In the result, the appeal is allowed.

8. In view of the facts and circumstances of the case and having parity with the judgment of Co-ordinate Bench, we allow the appeal of the assessee.

9. In the result, appeal filed by the Assessee is allowed.

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| Order pronounced in Open Court on | 25 - 03- 2019 |
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Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER True Copy

Ahmedabad: Dated 25/03/2019

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad