

आयकर अपीलीय अधिकरण नागपुर न्यायपीठ, नागपुर में ।
IN THE INCOME TAX APPELLATE TRIBUNAL NAGPUR BENCH, NAGPUR

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.514/NAG/2016

निर्धारण वर्ष / Assessment Year : 2013-14

Deputy Commissioner of Income Tax,
Circle – 2, Nagpur

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Sanvijay Rolling & Engineering Ltd.,
9, Imambada Road, Opp. Bazar Steels,
Nagpur – 440018

PAN : AACCS0217J

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.100/NAG/2018

निर्धारण वर्ष / Assessment Year : 2014-15

Assistant Commissioner of Income Tax,
Circle – 2, Nagpur

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Sanvijay Rolling & Engineering Ltd.,
9, Imambada Road, Opp. Bazar Steels,
Nagpur – 440018

PAN : AACCS0217J

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.161/NAG/2018

निर्धारण वर्ष / Assessment Year : 2015-16

Deputy Commissioner of Income Tax,
Circle – 2, Nagpur

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Sanvijay Rolling & Engineering Ltd.,
9, Imambada Road, Opp. Bazar Steels,
Nagpur – 440018

PAN : AACCS0217J

.....प्रत्यर्थी / Respondent

Assessee by : Shri K.P. Dewani
Revenue by : Shri U.U. Kasar

सुनवाई की तारीख / Date of Hearing : 28-03-2019

घोषणा की तारीख / Date of Pronouncement : 24-05-2019

आदेश / ORDER

PER VIKAS AWASTHY, JM :

These three appeals for the assessment years 2013-14, 2014-15 and 2015-16 have been filed by the Revenue against the order of Commissioner of Income Tax (Appeals)-4, Nagpur for the respective assessment years. ITA No. 514/NAG/2016 is directed against the order of Commissioner of Income Tax (Appeals) dated 05-07-2016 for the assessment year 2013-14. ITA No.

100/NAG/2018 is against the order of Commissioner of Income Tax (Appeals) dated 22-02-2018 for the assessment year 2014-15 and ITA No. 161/NAG/2018 is against the order of Commissioner of Income Tax (Appeals) dated 04-04-2018 for the assessment year 2015-16.

Since, the issues raised in all these appeals are identical and are arising from same set of facts, these appeals are taken up together for adjudication and are being disposed of vide this common order. For the sake of convenience the facts are extracted from ITA No. 514/NAG/2016 (supra).

ITA No. 514/NAG/2016 (A.Y. 2013-14)

2. The brief facts of the case as emanating from records are : The assessee company has set up an industrial undertaking which falls under mega project in terms of Package Scheme of Incentive, 2001 announced by Government of Maharashtra. Under the aforesaid scheme, incentive was given for setting up industrial units under specified zones. The industrial unit set up by the assessee falls in Zone D of Package Scheme of Incentive. Under the scheme, Industrial Promotion Subsidy was granted to the assessee during impugned assessment years. The assessee claimed the subsidy granted by the State Government as capital receipt, not exigible to tax. Per contra, the Assessing Officer held that incentive received by the assessee in the form of subsidy is a revenue receipt and added the same in the hands of assessee. Apart from addition on account of subsidy, the

Assessing Officer inter alia made addition of Rs.10,01,398/- on account of prior period expenditure.

Aggrieved against the assessment order dated 08-03-2016, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) following his own order for assessment year 2012-13 held the subsidy received by assessee as capital in nature and deleted the addition. As regards prior period expenditure, the Commissioner of Income Tax (Appeals) held that since the expenditure crystallized during the year, the same is allowable as business expenditure during the assessment year under appeal. Against the said findings of Commissioner of Income Tax (Appeals) the Revenue is in appeal and has raised following grounds :

- “1. *On the facts and in the circumstances of the case and in law the ld. CIT(A) has erred in holding that the sales tax incentives receipts of Rs.23,50,65,000/- is a capital receipts and hence not chargeable to tax.*
2. *On the facts and in the circumstances of the case and in law the ld. CIT(A) has erred in holding that the prior period expenses amounting to Rs.10,01,398/- are allowable expenses.*
3. *Any other ground of appeal that may be raised from time to time during the course of appellate proceedings.”*

3. Shri K.P. Dewani appearing on behalf of the assessee submitted that the issue, Whether the subsidy received under Industrial Promotion Scheme is revenue or capital receipt has been considered by the Co-ordinate Bench

of Tribunal in assessee's own case titled Assistant Commissioner of Income Tax Vs. M/s. Sanvijay Rolling and Engineering Ltd. in ITA No. 224/Nag/2015 for the assessment year 2012-13 decided on 30-03-2017. The ld. AR further contended that the Commissioner of Income Tax (Appeals) in assessee's own case for assessment year 2012-13 has held that the subsidy received by the assessee under Industrial Promotion Scheme is capital receipt. The Commissioner of Income Tax (Appeals) while coming to such a conclusion has placed reliance on various case laws and after analyzing the facts and various decisions has decided the issue in favour of assessee. Similar view has been taken by the Commissioner of Income Tax (Appeals) in assessment year 2013-14.

3.1 With regard to ground No. 2 of the appeal relating to allowability of prior period expenditure, the ld. AR submitted that the expenditure crystallized during the year under consideration. The ld. AR reiterated his submissions made before the First Appellate Authority. To further buttress his contentions the ld. AR placed reliance on the decision of Hon'ble Bombay High Court in the case of M/s. Ballarpur Industries Ltd. Vs. Commissioner of Income Tax in Income Tax Appeal No. 121 of 2006 decided on 01-02-2018.

4. On the other hand Shri U.U. Kasar representing the Department vehemently defended the assessment order and prayed for reversing the

findings of Commissioner of Income Tax (Appeals). The ld. DR submitted that the incentive received by the assessee in the form of subsidy is a revenue receipt and hence is taxable in the hands of the assessee.

4.1 In respect of ground No. 2 of the appeal the ld. DR submitted that the assessee had claimed prior period expenditure in the assessment year under appeal. It is a well settled law that prior period expenditure are not allowable. The expenditure is allowable only in the assessment year to which it pertain. The ld. DR prayed for reversing the findings of Commissioner of Income Tax (Appeals).

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. We have also considered the decisions on which the ld. AR of the assessee has placed reliance. The first ground of appeal by the Revenue is against the findings of Commissioner of Income Tax (Appeals) holding sales tax incentive received by the assessee under Industrial Promotion Subsidy Scheme as capital receipt. We find that the Co-ordinate Bench of Tribunal in assessee's own case for assessment year 2012-13 in ITA No. 224/Nag/2015 (supra) has considered identical issue and held the incentive received under the aforesaid scheme as capital in nature. Since, the scheme which is subject matter of dispute before us is the same which was subject matter of considered by the Co-ordinate Bench of Tribunal in the preceding

assessment year and not contrary decision or distinguishing fact has been brought to our acknowledge by the Revenue with respect to aforesaid incentive scheme, following the order of Co-ordinate Bench, we hold that the incentive received by the assessee under Industrial Promotion Scheme of the State Government is capital in nature. Accordingly, ground No. 1 of the appeal by Revenue is dismissed being devoid of any merit.

6. The second ground of appeal by the Revenue is against allowing of prior period expenditure amounting to Rs.10,01,398/-. A perusal of impugned order shows that the assessee has claimed following prior period expenditures in the impugned assessment year :

S. No.	Particulars	Amount
1	Freight Charges	1,560/-
2	Material Straightening Charges	95,000/-
3	Testing Charges	14,008/-
4	Legal and Consultancy	30,000/-
5	Group Gratuity Scheme	91,961/-
6	Interest excess credited	2,35,948/-
7	Service Tax credit not taken relating to prior period	5,32,921/-
	Total	10.01,398/-

7. The contention of the assessee is that the liability in respect of aforesaid expenditure was settled and crystallized during the period relevant to the assessment year under appeal. The assessee had purportedly received vouchers and bills pertaining to the earlier assessment years in the period relevant to assessment year under appeal. The same bills after examination were accepted by the assessee during the period relevant to the assessment year under appeal. The Hon'ble Bombay High Court in the case of M/s. Ballarpur Industries Ltd. Vs. Commissioner of Income Tax (supra) had occasion to deal with the issue of allowability of prior period expenditure which crystallized in the subsequent assessment year. The Hon'ble High Court allowed the expenditure by holding as under :

“5. We put a specific question to Shri Bhattad to point out any decision holding that if the statutory expenses covered by Section 43(B) are not actually paid during the year in which those are required to be paid then even if such expenses are actually paid in the subsequent year, the deduction can not be claimed. No such decision is brought to our notice. If the expenses are covered by Section 43(B), there cannot be disputed about its claim for deduction and merely because the deduction was not claimed in the previous year, it would not prevent the assessee from claiming it in the assessment year during which the payment was actually made. The substantial question of law we therefore, answered accordingly.”

8. It is an undisputed fact that the expenditure was not claimed by the assessee in the earlier assessment years as the liability to pay the expenditure crystallized during the period relevant to the assessment year under appeal, even though the expenditure relates to the earlier assessment year. Since, the expenditure crystallized during the period relevant to

assessment year under appeal, the said expenditure though relating to earlier assessment year is allowable. We do not find any infirmity in the order of Commissioner of Income Tax (Appeals) in allowing such expenditure. Accordingly, ground No. 2 of appeal by Revenue is dismissed being without merit.

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

ITA No. 100/NAG/2018 (A.Y. 2014-15)

10. The Revenue in appeal has assailed the findings of Commissioner of Income Tax (Appeals) on following grounds :

- “1. *On the facts and in the circumstances of the case and in law the learned CIT(A) erred in treating the industrial promotion subsidy availed by the appellant during the year under consideration as capital receipt instead of revenue receipt in the light of decision of the Apex Court in Sahney Steel and Press Works Ltd. – vs. – CIT (1985) 152 ITR 39 (AP).*
2. *On the facts and in the circumstances of the case and in law the learned CIT(A) erred in deleting the addition made by the AO on account of Prior Period Expenses inspite of the fact that the assessee was regularly following mercantile system of accounting and these deduction are not allowable for the year under consideration.*
3. *On the facts and in the circumstances of the case and in law the learned CIT(A) erred in interpreting the decision held by the decision of Apex Court in the case of M/s. Alom Extrusion Ltd. & Others reported at 319 ITR 306 (SC) and thereby deleting the addition made by the AO on account of delayed payment of PF & ESIC.*
4. *Any other ground of that may be raised at the time of hearing”*

11. The ld. AR submitted that the ground Nos. 1 and 2 raised in the appeal by Revenue are identical to the one raised in ITA No. 514/NAG/2016 for the assessment year 2013-14. The facts in both the assessment years are also identical. Therefore, the submissions made in respect of issues raised in assessment year 2013-14 would equally hold good for assessment year 2014-15.

12. In respect of ground No. 3 of the appeal the ld. AR submitted that there was delay in payment of Provident Fund and ESIC. However, the aforesaid payments were made before due date of filing return of income for the impugned assessment year. The Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Ghatge Patil Transports Ltd. reported as 368 ITR 749 has held that where the such statutory payments are made before the due date of filing return of income the same is allowable. The Commissioner of Income Tax (Appeals) has allowed relief to the assessee after examining the facts of the case and by following the decision of Hon'ble Supreme Court of India in the case of Commissioner of Income Tax Vs. Alom Extrusions Ltd. reported as 319 ITR 306 and the decision of Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Ghatge Patil Transports Ltd. (supra).

13. The ld. DR fairly admitted that the facts in the present assessment year are identical to the facts in assessment year 2013-14 and the ground of

appeal Nos. 1 and 2 are identical to the one raised in appeal by the Revenue for assessment year 2013-14. However, the ld. DR vehemently defended the assessment order and prayed for reversing the findings of Commissioner of Income Tax (Appeals).

14. Both sides heard. Orders of the authorities below perused. Both the sides are unanimous in stating that the facts in assessment year under appeal are identical to the facts in the appeal by the Revenue in assessment year 2013-14 and the ground Nos. 1 and 2 raised in the appeal by the Revenue are also identical. Thus, the detailed findings given by us while deciding the ground Nos. 1 and 2 of the appeal in assessment year 2013-14 would *mutatis mutandis* apply to the present assessment year, as well. For the reasons aforesaid, the ground Nos. 1 and 2 raised in the present appeal are dismissed.

15. The ground No. 3 of the appeal is a fresh issue raised in the present appeal. Undisputedly, there was delay in deposit of Provident Fund and ESIC in respect of contribution of employee. However, the statutory deposits were made by the assessee before due date of filing return of income. The facts have not been disputed by the Department. Therefore, in the light of decision of Hon'ble Apex Court in the case of Commissioner of Income Tax Vs. Alom Extrusions Ltd. (supra) and the decision of Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Ghatge

Patil Transports Ltd. (supra) statutory contributions made by the assessee before due date of filing return of income is to be allowed. We find no reason to interfere with the well reasoned findings of Commissioner of Income Tax (Appeals) on the above issue. Accordingly, the impugned order is upheld and the appeal of Revenue is dismissed.

ITA No. 161/NAG/2018 (A.Y. 2015-16)

16. The Revenue in appeal has assailed the findings of Commissioner of Income Tax (Appeals) on following grounds :

- “1. *The addition made by A.O. at Rs.17,80,05,000/- on account of industrial promotion subsidy.*
2. *The addition made by A.O. at Rs.6,55,602/- on account of prior period expenses.*
3. *The addition made by A.O. at Rs.75,78,237/- on account of delayed payment of PF & ESIC.”*

17. Both the sides are unanimous in stating that the facts in the assessment year under appeal are identical to the facts in the preceding assessment years i.e. assessment years 2013-14 and 2014-15. We have already given detailed findings on the identical grounds of appeal and identical set of facts in assessee’s own case for assessment years 2013-14 and 2014-15. Since, the facts are identical our detailed findings given in the aforesaid assessment years would *mutatis mutandis* apply to the present

grounds raised in the appeal by the Revenue. Consequently, all the three grounds raised by the Revenue in appeal are dismissed.

18. In the result, all the three appeals by the Revenue are dismissed.

Order pronounced on Friday, the 24th day of May, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

नागपुर / Nagpur; दिनांक / Dated : 24th May, 2019.

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-4, Nagpur
4. आयकर आयुक्त / The CIT-2, Nagpur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर बेंच,
नागपुर / DR, ITAT, Nagpur Bench, Nagpur.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, नागपुर / ITAT, Nagpur