

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'D' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.3795/Del./2016
(ASSESSMENT YEAR : 2011-12)**

ACIT, Circle 28 (1),
New Delhi.

vs. Shri Jagdish Prasad Gupta,
A/12, Friends Colony,
New Delhi – 110 029.
(PAN : AAHPG6016D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Ms. Sumangla Saxena, Advocate
Shri Rajiv Saxena, Advocate

REVENUE BY : Dr. Vijay Kumar Chadha, Senior DR

Date of Hearing : 12.09.2019

Date of Order : 04.10.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, ACIT, Circle 28 (1), New Delhi (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 29.04.2016 passed by the Commissioner of Income - tax (Appeals)-10, New Delhi qua the assessment year 2011-12 on the grounds that :-

"1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.2,76,21,6821- which was made by the AO on the ground of holding it a contingent liability.

2. On the facts and circumstances of the case, the Ld.CIT(A) ignored the findings recorded by the AO and the fact that the

assessee received only notice from Northern Railways and no actual payment has been made by the assessee during the year under consideration.

3. On the facts and circumstances of the case, the Ld.CIT(A) has erred in deleting the addition without appreciating the facts:

a) That the assessee had objected before the Railway Authorities against the enhancement of license fee and the Railways initiated legal proceedings against the assessee before the Estate Officer, Northern Railways, New Delhi.

b) That the Estate Office in his judgment restrained the Railways for arbitrary enhancement of license fees and directed them to frame a definite policy for revising the same, keeping in view the principle of nature justice.

c) That the Railways filed an appeal against the above order before the District Court, which was dismissed. Even writ petition file by the Railways was also dismissed on 05.11.2010 by the High Court.”

3. Briefly stated the facts necessary for adjudication of the issue at hand are : Assessee is into the business of providing facilities of storage – liquids and solids on the land allotted by Railways on which storage tanks and warehouse has been built up. Pursuant to the Agreement entered into between the assessee and Railways, the assessee has to pay licence fee on revised rates, revised by the Railways. Assessing Officer (AO) disallowed an amount of Rs.2,76,21,682/- claimed by the assessee on account of rent, rates & taxes of licence fee as per notice enhancing the licence fee being contingent liability and thereby added the same to the net taxable income of the assessee.

4. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has deleted the addition by partly allowing the appeal.

Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Ld. AR for the assessee at the very outset contended that the issue in controversy has already been decided in favour of the assessee by *Hon'ble Delhi High Court in assessee's own case reported in 397 ITR 578* in the appeals filed by the Revenue challenging the order passed by the Tribunal in AYs 1997-98 to 2002-03, 2004-05 & 2009-10, which has been subsequently confirmed by the Hon'ble Delhi High Court in subsequent decisions for AYs 2005-06, 2006-07, 2007-08 & 2008-09. This position of fact and law has not been controverted by the Id. DR for the Revenue.

7. Ld. AR for the assessee drew our attention to the operative part of the judgment of *Hon'ble Delhi High Court in assessee's own case in ITA No.695/2010 & Ors.* wherein the issue in controversy has been set at rest which is extracted for ready perusal as under :-

“47. In the arbitration proceedings, the claim of the Railways includes the claim for the enhanced licence fee as well as the arrears. The arbitration proceedings could end either in favour of the Railways or the Assessee. If it goes in favour of the Assessee it would then have no liability to pay such enhanced licence fee and in the year in which such final decision is rendered, the corresponding reversal of entries will have to take place in terms of Section 41(3) of the Act. All of this, in no way, extinguishes the liability of the Assessee to pay the licence fee.

The Assessee would be justified in claiming the enhanced licence fee as deduction in the year in which such enhancement has accrued even though the Assessee has not paid such enhanced licence fee in that year. This legal proposition is well settled.

48. *In these proceedings, the Court is not required to determine whether the Northern Railway validly enhanced the licence fee from time to time. That would be the subject matter of the arbitration proceedings that are pending. What is to be seen is whether the liability to make that payment arose during the AYs in question. If it did, it would have to be allowed in that very year in which it arose if the Assessee is, as in the present case, following the mercantile system. As already noted the Railways has already filed its claim before the Arbitrator for the arrears of licence fees and 'damages'. As rightly held by the CIT (A), and concurred with by the ITAT in its order dated 31st July 2009, the mere characterisation by the Northern Railway of the amount claimed by it from the Assessee as 'damages' will not, in the context of the present case, make it any less an accrued liability. It is an expenditure incurred by the Assessee corresponding to the income he derives from using the land for the purposes of his business.*

49. *The Court is also not able to agree that the ITAT made a grievous error, in the order passed by it on 22nd November 2004, regarding the claim for enhanced licence fee as a deduction being allowable not in AY 1995-96 but in AY 1996-97. The argument that the ITAT may have exceeded its jurisdiction does not hold since the Revenue has, apart from not challenging the said order, implemented it fully by the consequent appeal effect order.*

50. *Mr Manchanda is not right in contending that the said order dated 22nd November 2004 of the ITAT for AY 1995-96 is in favour of the Revenue. A careful reading of the said order in fact indicates to the contrary. The order dated 22nd July 2008 of the ITAT also does not help the Revenue any more since it has been set aside by this Court by the order dated 11th December 2008. The reason for the remand of the matters to the ITAT by the said order was that, according to this Court, the ITAT had not returned any finding on the issue whether the licence fee payable by the Assessee to the Railways for the use of the land could be regarded as an accrued liability or a contingent liability. This Court noted the specific plea of the Assessee that, for AY 1995-96, the ITAT had decided this issue in favour of the Assessee, by an order dated 25th November, 2004, construing the licence fee to be an accrued liability and, therefore, allowable as expenditure in the year of accrual.*

51. For all of the above reasons the first issue is decided in favour of the assessee and against the Revenue by holding that the liability of the Assessee to pay enhanced licence fees for the AYs in question was an accrued liability which arose in the year in which demand was raised.”

8. Following the decision rendered by *Hon’ble Delhi High Court in assessee’s own case* (supra), which has been further followed by Hon’ble High Court in assessee’s own case for AYs 2005-06, 2006-07, 2007-08 & 2008-09, copy of orders are available from pages 1 to 60 of the case laws paper book, we are of the considered view that the Id. CIT (A) has rightly decided the issue in favour of the assessee by holding that the liability of the assessee to pay the enhanced licence fee qua the year under assessment was an accrued liability which arose in the year in which demand was raised and has rightly deleted the addition made by the AO. So, finding no illegality or perversity in the impugned order passed by the Id. CIT (A), present appeal filed by the Revenue is hereby dismissed.

Order pronounced in open court on this 4th day of October, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the 4th day of October, 2019/TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)- 10, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**