IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER, AND
SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.5844/Del/2016
Assessment Year : 2012-13

ACIT, Circle-1(1), Gurgaon	Vs.	M/s Bellsonica Auto Component India Private Limited, Plot No.1, Phase-3A, IMT Manesar, Gurgaon, Haryana PAN:-AACCB9442Q
(Revenue)		(Assessee)

ITA No.5946/Del/2016
Assessment Year : 2012-13

M/s Bellsonica Auto Component India Private Limited, Plot No.1, Phase-3A, IMT Manesar, Gurgaon, Haryana PAN:-AACCB9442Q	Vs.	ACIT, Circle-1(1), Gurgaon
(Assessee)		(Revenue)

Revenue by	:	Sh. S.L. Anuragi, Sr. DR.
Assessee by	:	Sh. Vasudevan Subhashshree
Date of hearing	:	06/02/2020
Date of pronouncement	:	28/02/2020

ORDER

PER R.K. PANDA, AM

These are cross appeal. The first one is filed by the Revenue and the second one filed by the assessee and are directed against the order

dated 14/09/2016 of the CIT(A)-1, Gurgaon, relating to Assessment Year 2012-13.

ITA No.5844/Del/2016 (By the Revenue)

2. The ground of appeal no.1 by the Revenue is as under:-

> *1. Considering the facts and circumstances of the case, the Ld. CIT(A) erred in treating the 75% of the expenses on royalty payment for technical "know how" as revenue expenditure without any basis for such percentage, whereas the total expenditure was capital in nature being incurred on technical "know how" as defined in Explanation-4 to Section 32(1) of the Income Ta Act, 1961.*

3. The ground of appeal no.2 and 2.1 by the assessee which are co-related with the above ground raised by the Revenue are as under:-

> *2. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on facts and in law in not deciding the disallowance of expenditure incurred by the appellant towards payment on account of running royalty.*
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> *2.1 That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on facts and in law in not considering the submissions made and the judicial precedents cited by the Appellant to show why the preceding years order ought not to be followed as a good precedent.*

4. The facts of the case, in brief, are that the assessee company is engaged in the business of manufacturing of various body parts for small vehicles, including the side bumper frame works, rear frame work, cener pillar, etc for Maruti Suzuki India Ltd. It filed its return of income on 28/11/2012 declaring loss of Rs.52,48,917/-. The Assessing Officer during the course of assessment proceedings noted that the assessee has debited an amount of Rs.3,73,97,245/- on account of royalty on sales to the Profit & Loss Account. He asked the assessee to explain as

to why royalty paid during the year should not be capitalized treating the same as intangible assets. In absence of any explanation from the assessee and following the order of his predecessor for assessment year 2011-12 on the same issue, where the Assessing Officer had allowed depreciation @ 25%, the Assessing Officer allowed the depreciation of Rs.93,49,311/- being 25% of Rs.3,73,97,245/- and added the balance amount of Rs.2,80,47,934/-.

5. In appeal, the Ld. CIT(A) following the order of his predecessor in assessee's own case for assessment year 2011-12 treated 25% of the total royalty payment as capital expenditure and held the balance amount as revenue in nature.

6. Aggrieved by such order of the CIT(A), the Revenue is in appeal before the Tribunal.

7. We have considered the rival arguments made by both the sides, perused the orders of the authorities below and the paper book filed on behalf of the assessee. We find the Assessing Officer, in the instant case, following the order of his predecessor treated the entire royalty expenses of Rs.3,73,97,245/- as capital in nature and after allowing depreciation of Rs.93,49,311/- made addition of Rs.2,80,47,934/- to the total income of the assessee. We find in appeal, the Ld. CIT(A), following the order of his predecessor in assessee's own case for assessment year 2011-12, treated 25% of such royalty payment as capital in nature and

held the balance amount to be revenue in nature. We find identical issue had come up before the Tribunal in assessee's own case in the immediate preceding assessment year. We find the Tribunal in ITA No.2210/Del/2016 and ITA No.2329/Del/2016, order dated 27/07/2018 has discussed the issue and allowed the entire royalty payment as revenue in nature by observing as under:-

> *"11. The facts of the assessee's case are similar to these decisions. The ld. CIT(A) has relied on Supreme Court Decision in the case of Southern Switchgear Ltd. vs. CIT, 232 ITR 359 is not applicable in the present case because in that case agreement was made for a period of five years and it was expressly stipulated that after expiry of agreement, themethod, production, procedure etc. would remain with the Indian assessee, whereas no such stipulation is made in the agreements made in the case before us so as to observe any benefit of enduring nature with the assessee. In the present case, the assessee has acquired only right to use of technical knowledge of the foreign company. Thus, respectfully following the decision of Hon'ble Delhi High Court and of the coordinate bench of Tribunal, we are of the considered opinion that the royalty paid by the assessee in the peculiar facts and circumstances of the present case, was in the nature of revenue expenditure incurred by the assessee. Therefore, we set aside the orders of the authorities below on this issue and decide it in favour of the assessee. Accordingly, ground No. 3 of assessee is allowed and ground No. 1 of the Revenue is dismissed."*

8. Since, the Ld. CIT(A) has allowed only 75% of the royalty payment as revenue in nature, therefore, respectfully following the decision of the Tribunal in assessee's own case in the immediately preceding assessment year, we hold the entire royalty payment as revenue in nature. Accordingly the ground raised by the assessee is allowed and the ground raised by the Revenue is dismissed.

9. In the result, ground raised by the Revenue is dismissed and the grounds raised by the assessee are allowed.

ITA No.5946/Del/2016(By the assessee)

10. The grounds of appeal no.1 and 1.1 by the assessee read as under:-

> *"1. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on facts and in law in confirming the disallowance of Rs.1,17,38,409/- which the assessing office had treated as a prior period expenditure but the Appellant contended to be a bad debt written off.*
>
> *1.1. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on facts and in taking an adverse view on the ground that the Appellant had offered different arguments against the disallowance."*

11. The facts of the case, in brief, are that the Assessing Officer during the course of assessment proceedings noted that the assessee had debited certain amount under the head discount and deductions. On being asked by the Assessing Officer to explain the same, the assessee replied that this amount was deducted by Maruti Suzuki Ltd. out of which an amount of Rs.1,17,38,409.98 is related to financial year 2010-11 which was not claimed in that financial year and Rs.3,48,356.58/- is related to FY 2011-12. Since, the amount of Rs.1,17,38,409/- pertains to the earlier year, being not allowable in the current year under reference, the Assessing Officer disallowed the same and added to the total income of the assessee.

12. In appeal, the Ld. CIT(A) upheld the action of the Assessing Officer by observing as under:-

> *"4.3 I have carefully considered the appellant's submissions. The appellant has made three different submissions on the same issue, one during the course of assessment proceedings, second in the course of appeal proceedings and the third in the submissions made vide letter dated 20.07.2016. The deduction amounting to Rs. 1,17,38,409/- was a part of the total deduction of Rs. 3,48,35,658/- claimed in the return of income under the head discounts and deduction. This fact has been clearly mentioned by the A.O, in the assessment order. The appellant has not controverted these findings of fact in his written submissions. During the course of assessment proceedings the appellant submitted that the amount of Rs. 1,17,3 8,409/- was the amount deducted by Maruti Suzuki Ltd. in F.Y 2010-11 which was not claimed in that financial year. Thus, as per the appellant's submissions before the A.O the amount of Rs. 1,17,38,409/- represented prior period expenses which were not claimed in the earlier year and were therefore being claimed in the year under reference. However, in the grounds of appeal the appellant submitted a different fact that the debit notes amounting to Rs. 1,17,38,409/- although related to F.Y 2010-11 were actually raised by M/s Maruti Suzuki Ltd during the year under reference. This contention was never raised before the A.O, thereafter, in the written submissions dated 20.07.016, the appellant once again changed the contention and submitted as under:-*
>
> > *"2.5 It was in these circumstances, that when the issue of balance outstanding for considerably a long period was broached with Maruti, it said that according to it there was no outstanding with reference to those balances as it had already made full payment against invoices after taking into account the price variation that had taken place from time to time. Therefore when it became clear that Maruti would not be making any more payments against the outstanding balances shown in the books of accounts of the Appellant, the Appellant had no other go than to write off the outstanding balances against which Maruti stated that they would not be making, any further payments against those balances.*
> >
> > *2.6 Immediately upon coming to know this, the Appellant wrote off the receivable outstanding against Maruti and claimed deduction in the income tax- return for the Assessment Year under consideration i.e. A.Y. 2012-13. Since the entire price receivable against supplies made to*

Maruti was already accounted for and offered to tax, the amount written off was in reality a debt that was not recoverable and was allowable under section 36(l)(vii) of the Act on writing off. ”

4.4 Thus, in the written submissions the appellant has once again changed his contention and submitted that the amount was allowable as bad debts u/s 36(l)(vii) of the Income Tax Act.

4.5 It is evident from the facts discussed above that the expenditure of Rs. 1,17,38,409/- represent the prior period expenses i.e. expenditure pertaining to F.Y 2010- 11 and the subsequent submissions in the grounds of appeal as well as in the written submissions are merely an afterthought and mere self-serving statements. The A.O was therefore fully justified in disallowing this expenditure the disallowance made by the A.O. is confirmed. This ground of appeal is dismissed.”

13. Aggrieved by such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

14. The Ld. Counsel for the assessee submitted that the assessee has claimed the expenditure in the current year, whereas the Assessing Officer treated the same as a prior period expenditure. He submitted that the assessee raised bills against the suppliers and was receiving periodically amount from Maruti Suzuki India ltd. Since certain outstanding amounts were not received even after considerable long time, it approached the said company who replied that no such outstanding is there with reference to those balances as it had already made full payment against invoices after taking into account the price variation that had taken place from time to time. Therefore, when it became clear that Maruti Suzuki Ltd. would not be making any more payments against the outstanding balances shown in the books of account of the assessee, the assessee wrote off the same. He submitted

that the amount is otherwise deductible as bad debt. Referring to the decision of the Hon'ble Supreme Court in the case of TRF Limited vs CIT [2010] 190 Taxman 391 (SC), he submitted that only the act of writing off bad debts as irrecoverable is sufficient. The assessee need not prove that it is irrecoverable. Referring to the decision of the Delhi Bench of the Tribunal in Fujitsu Consulting India (P.) Ltd. vs ACIT [2019] 110 taxmann.com 172(Del. Trib.), he submitted that the duty of the first appellate authorities to pass a speaking order after proper appreciation of facts. Referring to the decision of the Hon'ble Supreme Court in the case of Indian Tube Co. (P) Ltd. vs CIT [1992] 60 Taxman 399 (SC), he submitted that the Hon'ble Supreme Court has held that true nature and character of the disputed claim must be determined with reference to the substance of the matter and not by the mere entry or nomenclature which the assessee had chosen to give. Relying on various other decisions placed in the paper book, he submitted that the amount should be allowed as bad debt and cannot be disallowed as prior period expenditure. He further submitted that the tax rates for the current year as well as preceding year are the same and the assessee is not going to derive any benefit, therefore, the amount of Rs.1,17,38,409/- should be allowed as deduction to the assessee.

15. The Ld. DR on the other hand heavily relied on the order of the Assessing Officer and Ld. CIT(A). He submitted that the assessee is changing its stand time and again. Before the Assessing Officer, the

assessee has mentioned that the amount was deducted by Maruti Suzuki Ltd. and before the Ld. CIT(A), the assessee has made a submission that the debit notes amounting to Rs.1,17,38,409/- although related to F.Y. 2010-11 were actually raised by M/s Maruti Suzuki Ltd. during the year under reference. Thus, the assessee in his submissions before the Ld. CIT(A) has changed its stand, for which he upheld the action of the Assessing Officer. He accordingly submitted that the order of the Ld. CIT(A) should be upheld.

16. We have considered the rival arguments made by both the sides, perused the orders of the authorities below and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case made addition of Rs.1,17,38,409/- treating the same as prior period expenditure. We find before the Ld. CIT(A), the assessee submitted that the debit notes amounting to Rs.1,17,38,409/- were actually raised by M/s Maruti Suzuki Ltd. during the year under reference although related to F.Y. 2010-11. We find the Ld. CIT(A) sustained the addition made by the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the Ld. counsel for the assessee that the amount so claimed should be allowed as bad debt u/s 36(1)(vii) of the Income Tax Act, 1961. We find the assessee is changing its stand from time to time. He has made one statement before the Assessing Officer whereas before the Ld. CIT(A) he

has come out with another theory. In any case the assessee has not substantiated the reasons for changing its stand before the two lower authorities. It is not coming out from the record as to when and how Maruti Suzuki Ltd. Company has stated or written to the assessee that they are not going to make any more payments against the outstanding balance. Since, nothing is coming out from the record, therefore, considering the totality of the facts of the case and in the interest of justice, we deem it appropriate to restore this issue to the file of the Assessing Officer with a direction to give one more opportunity of hearing to the assessee to substantiate the claim of deduction of Rs.1,17,38,409/-. The Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are allowed for statistical purposes only.

17. The ground raised by the assessee read as under:-

> *3. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on facts and in law in confirming the disallowance of the expenditure incurred by the appellant, on staff welfare to the extent of Rs.8,55,000/- on the ground that the expenditure to this extent did not appear to be in accordance with the attendance policy of the appellant.*

18. The facts of the case, in brief, are that the Assessing Officer during the assessment proceedings noted that the assessee has claimed staff welfare expenditure of Rs.1,89,54,834/-. From the details furnished by the assessee, he noted that the amount of Rs.25,74,500/- has been

withdrawn in its account on various dates without any description/merits and nature of expenses. Since the assessee could not substantiate evidence to his satisfaction regarding the withdrawal of such huge amount towards staff welfare expenses, the AO made addition of Rs.25,74,500/- treating the same as expenditure otherwise than wholly and exclusively incurred for business purposes.

19. In appeal, the Ld. CIT(A) restricted such disallowance to Rs.8,55,000/- by observing as under:-

"6.4. I have carefully considered the appellant's submissions. I have also perused the BACI attendance policy a copy of which was submitted by the Ld. AR of the appellant. As per the policy, there was a concept of monthly yearly attendance reward as under:-

Monthly	*Leave Days*	*BACI Policy Amount (Rs.)*
	100% attendance (Zero Leave)	*500*
	0.5 to 2 day (Planned Leave)	
Yearly	*100% attendance (Zero Leave)*	*Certificate, Gift and Cash Reqad (Rs.10,000/-)*
Yearly	*99% attendance (0.5% to 1 Leave)*	*Certificate, Gift and Cash Reqad (Rs.5,000/-)*

6.5 *It is therefore evident that the concept of attendance reward was prevalent in the working system of the appellant and the expenses incurred are allowable as business expense. The appellant also filed detailed break up of expenses claimed amounting to Rs. 25,74,500/- on account of the rewards. The details submitted are enclosed as Annexure-1 to this order.*

6.6 *It is seen from the details filed by the appellant that in addition to the yearly attendance reward and the monthly attendance reward, the appellant has also claimed reward for Sunday working as per the following details:-*

S.No.	*Date*	*Amount*
1.	*13.03.2012*	*97,200/-*
2.	*20.02.2012*	*84,000/-*
3.	*05.03.2012*	*1,35,600/-*
4.	*17.03.2012*	*1,04,800/-*
5.	*17.03.2012*	*50,000/-*
6.	*27.03.2012*	*1,67,200/-*
7.	*29.03.2012*	*2,16,200/-*
	Total	***8,55,000/-***

> 6.7 *It is further seen from the details submitted by the appellant that these expenses have been claimed only in the month of February and March, 2012. Apparently these expenses claimed by the appellant are neither uniform nor in accordance with the attendance policy of the company. Such expenses cannot be considered as being staff welfare expenses. The appellant has not been able to furnish any satisfactory explanation with regard to the claim of these expenses. The disallowance made by the A.O on this account is accordingly restricted to the amount of Rs. 8,55,000/- being the Sunday working rewards. This ground of appeal is partly allowed."*

20. Aggrieved by such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

21. The Ld. Counsel for the assessee referring to page 100 of the paper book drew the attention of the Bench to the attendance reward policy of the assessee company. Referring to page 101 of the paper book drew attention of the Bench to the monthly attendance reward of the assessee company which is debited under the staff welfare expenses. Referring to page 103 to 239 of the paper book, he drew attention of the Bench to the date wise and month wise attendance reward which is as per policy of the assessee company. He submitted

that the expenditure being wholly and exclusively incurred for the purpose of business should not have been disallowed.

22. The Ld. DR on the other hand heavily relied on the order of the Ld. CIT(A).

23. We have considered the rival arguments made by both the sides, perused the orders of the authorities below and the paper book filed on behalf of the assessee. We find the AO in the instant case made addition of Rs.25,74,500/- out of the staff welfare expenses of Rs.1.89,564,834/- which was restricted by the Ld. CIT(A) to Rs.8,55,000/-. The reasons of such relief granted by the Ld. CIT(A) has already been reproduced in preceding paragraphs and the Revenue is not in appeal against the same. So far as the disallowance of Rs.8,55,000/- is concerned, the Ld. counsel for the assessee brought to our notice the attendance reward policy of the assessee company giving date wise, name wise and department wise, the payment made for the entire year. It is the industry policy that when the staff works for some extra time, different companies give incentives to their employees which the assessee in the instant case has followed. Under such circumstances, we are of the considered opinion that the entire amount should have been allowed as deduction and the Ld. CIT(A) is not justified in sustaining Rs.8,55,000/-. We, therefore, set-aside the order of the Ld. CIT(A) and direct the AO to

delete the disallowance. The ground raised by the assessee is accordingly allowed.

24. In the result, the appeal filed by the Revenue is dismissed and the appeal filed by the assessee is allowed for statistical purposes as indicated above.

Decision pronounced in the open Court on 28/02/2020.

Sd/-	Sd/-
(BHAVNESH SAINI) JUDICIAL MEMBER	(R.K. PANDA) ACCOUNTANT MEMBER

Dated: 28th February, 2020
S.S.

Copy forwarded to: -

1. Appellant : ACIT,
   Circle-1(1),
2. Respondent : M/s Bellsonica Auto Component
   India Private Limited
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar
ITAT, Delhi