

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.Nos.79 & 80 /Chny/2020
(निर्धारणवर्ष / Assessment Years: 2010-11 & 2009-10)

The Assistant Commissioner of Income Tax, Non-Corporate Circle-11(1), Room No.208, 2 nd floor, BSNL Building Tower II, 16, Creams Road, Chennai-600 006.	Vs	M/s. Chennai Central Co- operative Bank Ltd., 114/2, Prakasam Salai, Broadway, Chennai-600 108.
		PAN: AAAAC0982C
(अपीलार्थी/Appellant)		प्रत्यर्थी/Respondent/

अपीलार्थीकीओरसे/ Appellant by	:	Mr. S.Bharath, CIT
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. Y.Sridhar, C.A

सुनवाईकीतारीख/Date of hearing	:	02.12.2020
घोषणाकीतारीख /Date of Pronouncement	:	09 .12.2020

आदेश / ORDER

PER BENCH:

These two appeals filed by the Revenue are directed against common order of the learned CIT(Appeals)-13, Chennai dated 09.10.2019 and pertain to assessment years 2010-11 and 2009-10. Since, the facts are identical and issues are common, for the sake of convenience, they were clubbed, heard together and disposed of by way of this consolidated order.

2. The Revenue has more or less raised common grounds of appeal for both the assessment years, therefore, for the sake of brevity, grounds of appeal filed for the assessment year 2010-11 are reproduced as under:-

"i. The Ld. CIT(A) erred in directing the AO to delete the disallowance of wage arrears amounting to ₹ 5,57,77,696/- made u/s 40a(ia) of the Act for AY 2010-11 respectively.

ii. The Id. CIT(A) ought to have appreciated the fact that the assessee created an adhoc provision for wage arrears amounting to ₹ 5,57,77,696/- in the FY 2009-10. However, the said amount had been disbursed only in the FY 2010-11.

iii. The Id CIT(A) ought to have considered the Boards Instruction No.17/2008 dated 26.11-28 before allowing the appeal of the assessee.

iv. The Id. CIT(A) ought to have appreciated the fact that the relied upon decision by him are distinguishable from the facts and circumstances of the present case.

v. The Id. CIT(A) failed to consider the fact that the liability to pay salary arrears did not arise or accrue in the FI 2009-10 relevant to AY 2010-11.

vi. For the above grounds and any other ground that may be adduced during the appellate proceedings, the order of the CIT(A) may be set aside and the assessment order of the AU may be restored."

3. Brief facts of the case are that the assessee a co-operative bank filed its return of income for the assessment year 2009-10 and 2010-11 declaring total income of ₹ 38,55,67,390/- and ₹ 47,42,79,443/- respectively. The assessments were completed for

the impugned assessment years u/s.143(3) by making certain additions. Subsequently, the assessment has been reopened u/s.147 of the Act and the assessment has been completed after making additions towards disallowance of interest paid on fixed deposits for non-deduction of tax at source u/s. 40(a)(ia) of the Act. Subsequently, the Principal CIT vide his order dated 22.08.2017 u/s.263 of the Act set aside the assessment order and directed the Assessing Officer to examine the issue of provision for wage arrears. The assessee filed an appeal against 263 order passed by the PCIT before the Tribunal. The ITAT 'D' Bench, Chennai vide order dated 15.05.2018 in ITA No.2167 & 2168/Chny/2017 dismissed the assessee's appeal. In pursuant to 263 order, the Assessing Officer had taken up the case for assessment and issued notice u/s.143(2) of the Act and called upon the assessee to file necessary details with regard to provision for wage arrears. In response, the assessee submitted before the Assessing Officer that the assessee bank, anticipating wage arrears to its employees had made ad-hoc provision for wage arrears in assessment year 2009-10 and 2010-11 based on certain degree of estimation by knowing the fact that employees union have started negotiation with the management for revision of wages on the basis of recommendation

of pay commission report for State Government employees with effect from 01.01.2006. The assessee further stated that based on the request of various unions of DCCBs, the State Government has requested the Registrar of Co-operative Societies to pursue action by holding negotiation with employees union for a new wage settlement. Consequent to the above, the Registrar of Co-operative Societies constituted a committee on 02.12.2008 for holding negotiation with employees union for a new wage settlement. The committee, after holding negotiation with employees union, submitted its report. The Registrar of Co-operative Societies issued instructions for wage revision under Rule 149(1) of TNSCs Rules, 1988 vide circular No.40/2009 dated 16.11.2009 and circular No.10/2010 dated 23.03.2010. Further, after several rounds of negotiations and deliberations with employees union, settlement between the management of assessee bank and employees union was arrived at in the presence of Commissioner of Labour on 25.08.2010. The said settlement was signed by the management and representatives of employees union on 30.08.2010 and as per the said settlement, the monetary benefits arising out of revision of pay shall be w.e.f 01.01.2007. Therefore, the assessee bank in anticipation of wage revision has made reasonable estimation of

liability for each assessment year and the same has been provided for in the books of account and hence the same cannot be considered as contingent in nature.

4. The Assessing Officer was not convinced with the explanation furnished by the assessee and according to him, liability provided in the books of account for wage arrears is an unascertained liability which cannot be allowed as deduction. The Assessing Officer observed that the essence of accrual is reasonable certainty and possible quantification of liability, in the event of agreement pending finalization, the assessee's calculation for liability accruing to it has not been finalized and hence, the liability has not been crystallized and therefore, it is contingent liability which is not allowable u/s.37(1) of the Act. The Assessing Officer has discussed the issue at length in light of certain judicial precedents and Board instruction No.17/2008 dated 26.11.2008 to come to the conclusion that assessee bank has provided for liability merely based on certain estimates where the final quantum of liability incurred has been paid in subsequent years, therefore opined that amount provided for wage arrears is unascertained liability and the same cannot be allowed as deduction u/s.37(1) of the Act.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the learned CIT(A), the assessee has reiterated its submissions in light of the evidences, including demand from employees union for wage revision and subsequent developments at the level of State Government for constitution of Committee to examine the demands of employees. The assessee further claimed that the liability provided for in the books of accounts towards provision for wage arrears is not contingent liability, but an ascertained liability because the same was accrued for the relevant assessment years, even though the same was quantified and paid in the subsequent financial years. The assessee has also relied upon various judicial precedents including the decision of the Hon'ble Supreme Court in the case of Bharat Earth Movers Ltd. Vs.CIT (245 ITR 428).

6. The learned CIT(A), after considering the relevant submissions of the assessee and taking into consideration of various judicial precedents including the decision of Bharat Earth Movers Ltd(supra) held that the contentions of the Assessing Officer appears to be misplaced both on facts and circumstances of the case and in law, insofar as on both issues relating to contingent

nature of the expenses as well as its certainty, as the Assessing Officer terms it there cannot be two opinions that business liability by way of wage arrears in the instant case being a real one has definitely arisen within the impugned accounting years and it was not contingent on any event /process happening in future and therefore, incurring of liability was clearly certain since services rendered for which wages had to be paid had already occurred and therefore, there was nothing contingent about it. The learned CIT(A) further held that the Hon'ble Supreme Court in the case of Bharat Earth Movers Ltd. Vs.CIT has clearly held that even if a business liability has definitely arisen in the accounting year , deduction should be allowed although the liability may have to be quantified and discharged at future date . Therefore, he opined that amount provided for provision for wage arrears is an ascertained liability which is accrued to impugned assessment years, even though the same has been quantified and paid in subsequent financial years. Accordingly, learned CIT(A) deleted the additions made for disallowance of provisions of wage arrears. The relevant findings of the learned CIT(A) are as under:-

“5. Now, I have carefully gone through the undisputed / uncontroverted facts marshalled and presented by the AO/AR as also the relevant and supporting evidence by the respective rival parties but on a relative and comparative consideration of the same, I

am persuaded by the more substantive and meritorious reasoning adduced by the AR on the issue at hand.

6. From the assessment order is clear that the main reason why the AO has disallowed the aforesaid provision for wage arrears, is that according to him, it was a contingent liability and also that it lacked reasonable certainty and possible quantification. To buttress the above proposition the AID has relied on the cases of

- (i) Shree Sajjan Mills Ltd. V CIT 156 ITR 585*
- (ii) Indian Molassess Co. (P) Ltd. v CIT 37 ITR 66*
- (iii) Alembic Chemical Works v DCIT 120041 266 ITR 47*
- (iv) Seshasayee Industries (2000)424 ITR 691*
- (v) Indian Overseas Bank ITA No1690 & 1866/Mds/2006*

wherein it has been stated respectively, inter aim that contingent liabilities do not constitute expenditure and cannot be the subject matter of deduction even under the mercantile system of accounting and further pending adjudication by way of appeal the liability would be contingent in nature and the liability to pay such compensation did not arise on event anticipated by the assessee.

6.1 The contentions of the AC appears to be misplaced both on the facts and circumstances of the case and in law insofar as on both issues relating to the contingent nature of the expenses as well as its certainty as the AC terms it there cannot be two Opinions that the business liability by way of wage arrears in the instant case being a real one had definitely arisen within the impugned accounting years and it was not contingent on any event / process happening in the future and therefore the incurring of the liability was clearly certain since the services rendered for which the wages had to be paid had already occurred and therefore there was nothing contingent about it to arise, and as held by Hon'ble Supreme Court in the case of Bharat Earth Movers vs CIT 245 ITR 428 wherein it has been considerably ruled that "that if a business liability has definitely arisen in the accounting year the deduction should be allowed although the liability may have to be quantified and discharged at a future date and what should be certain is the incurring of the liability and it should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible and if these requirements were satisfied, the liability could not be a contingent one which is in present though to be discharged at a future date and it does not make any difference if the future date on which the liability shall have to be discharged is not certain. Therefore applying the above ratio or the aforesaid Supreme Court judgement since the business liability in the form of wage / salary arrears had arisen for the impugned years for works / services rendered by the employees during the said years and would therefore be allowable even if the

negotiations with the State Govt. / Registrar of Cooperative Societies for revising the pay scale of the employees had not been finalized / qualified fully.

6.2 Further ITAT Kolkata in the case of Allahabad Bank vs ACIT 2175/Kol/2009 vide order dated 16.03.2016 has held that according to AS 29 issued by the ICAI provision is a liability which can be measured only by using a substantial degree of estimation and a liability is a present obligation of the enterprise arising from past events the settlement of Which a expected to result in an outflow from the enterprise of resource embodying economic benefits and according to para 14 of AS 29 provision should be recognized when

- (a) an enterprise has a present obligation as a result of past events.*
- b) it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation and*
- c) a reliable estimate can be made or the obligation*

7. It is not the case of the AO here, that the liability of wage arrears is not a real one for services which has already been rendered and therefore definitely was in the nature of arrears for such unpaid salary and had definitely arisen and therefore in fact it had a present obligation as a result of the past events of the works / services already carried out by the employees entailing an outflow of resources to settle such obligation as per the contractual agreement between the employees and the management.

7.1 Neither it is the case of the AO that the said provision had not actually not been disbursed in the subsequent year or that an exorbitant estimate had been made of the obligation in order to create a loss or reduce the incidence of taxation for the impugned years and it is an accepted principle that salary and wages generally accrued daily, weekly and monthly as per the contract of appointment and the liability of the Sank to pay salary / wages at the revised rates commencing from the date of the expiry of the existing agreement and the liability to compensate the employees for the services already rendered is very much an existing liability for the Bank for which there were every possibility of outflow and considering the fact that an amount of Rs. 11.65 crores was disbursed to the employees in the immediately following FY 2010-11 the provision made indisputably of Rs.5 crores and 5.57 crores for FY 2008-09 and FY 2009-10 could certainly be called an almost accurate and most reliable estimate to begin with.

7.2 The Assessing Officer's reliance on the case laws mentioned in the assessment order is distinguishable from the facts of the instant case since in the cases referred to by the AG, the liability of payment of compensation had not clearly and entirely arisen and an event was

anticipated by the assessee for the incurring of such expenditure whereas in the case of the instant assessee it has not even been disputed by the AO that the liability for wages had accrued on the date of the balance sheet for services already rendered as per the terms of contract of appointment / employment and therefore the liability to compensate the employees for the services already rendered by way of outflow of resources was very much an existing Liability and was not contingent on the happening of any future event or agreement but on the result of past events / work / services already rendered, as stated earlier and the negotiations / agreement with the State Govt./ Registrar of Cooperative Societies and the Labour Unions was only for the Increase of payment of such salary / wages in keeping with the Pay Commission recommendations and its implementation to the State Govt. employees also and not on the basic fact of the arisen present liability and not contingent on the finalization on the said agreement as erroneously held by the AO.

8. Now, it has been held in the case of Haryana Agro Industries Corporation Limited (2017) 82 taxmann.com 220 that since the assessee following the mercantile system of accounting and the provision on account of arrears for salary payment was made in the accounts on the accrual basis, the disallowance made by the Assessing Officer was not justified”

9. Further prudence is one of the basic assumptions on which accounts are maintained. The term prudence is defined as:

“A concept of care and caution used in accounting according to which (in view of uncertainty attached to future events) profits are not anticipated, but recognized only when realized, though not necessarily in cash. Under this concept, provision is made for all known liabilities and losses even though the amount cannot be determined with certainty and represents only a best estimate in the light of available information.”

Again, the Apex Court in the case of Metal Box Company of India Ltd. vs. Their Workmen 73 ITR 33 (1969) has held that if reasonable estimates can be made of the liability, then it will be allowed in the year of the provision.”

In CIT vs Kerala State Financial Enterprises 219 CTR 147 wherein it has been held that what is to be considered is whether the liability is attributable to the previous year or not and it is immaterial if the actual liability was ascertained and settled only in the next year. By the time the accounts were finalized and returns were filed the assessee had ascertained the actual liability attributable to the previous year and therefore the actual amount payable only was

claimed based on mercantile system of accounting followed by the assessee.

Further in CIT vs Bharat Heavy Electricals Ltd 352 ITR 88 (Delhi) it has been held that if a business liability has definitely arisen within the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date.

10. Therefore when viewed in the totality of facts and circumstances obtaining in the case and also in the light of the ratio of judgements including that of the Hon'ble SC) quoted supra the addition made by the AO on account of disallowance of provision for wage arrears for both the AYs being legally untenable, is directed to be deleted. This ground is therefore allowed."

7. The learned DR submitted that the learned CIT(A) has erred in directing the Assessing Officer to delete the disallowance of wage arrears made u/s.40(a)(ia) of the Act for the assessment year 2010-11 without appreciating the fact that the assessee created ad-hoc provision for wage arrears for the impugned assessment years, even though the said liability has been discharged in subsequent financial years. The DR further submitted that the learned CIT(A) ought to have considered the Board instructions No.17/2008, where it was clearly specified deductibility of expenses including provision for expenses u/s.37 of the Act, as per which the amount debited in the profit and loss account in respect of accrued or ascertained liability is only admissible for deduction while any provision in respect of any unascertained liability or liability which was not accrued do not qualify for deduction. In this case, there is no liability

accrued for the impugned assessment years because negotiations between the assessee bank and employees unions were not finalized and consequently, it cannot be said that liability accrued for wage arrears for the impugned assessment years.

8. The learned AR for the assessee, on the other hand, strongly supporting the order of the learned CIT(A) submitted that the case is squarely covered in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of Bharat Earth Movers Ltd. Vs.CIT (supra), where it was held that if a business liability has definitely arisen in the accounting year, the deduction should be allowed although liability may have to be quantified and discharged at future date. In this case, liability has certainly arisen for the impugned assessment years because wage arrears has to be paid for the services rendered by the employees, as per terms of appointment/ employment and therefore, liability to compensate the services already rendered by way of resource was very much existing liability and was not a contingent, even though the same was not finalized during the relevant assessment years.

9. We have heard both the parties, perused the material available on record and gone through the orders of authorities below along

with case laws cited by both parties. There is no dispute with regard to the fact that there was negotiations between the assessee bank and employees unions for wage revision on the basis of recommendation of 6th Pay Commission of State Government w.e.f. 01.01.2006. It is also not in dispute that the State Government has constituted a committee to examine the demands of employees union and accordingly, a committee has been constituted under the leadership of Registrar of Co-operative Societies, Government of Tamil Nadu. Further, after negotiations and deliberations with employees union, a settlement had been reached, as per which the assessee bank and employees unions have agreed to revise the wages w.e.f 01.01.2006, but monetary benefit arising out of revision shall be w.e.f 01.01.2007. Based on the above inputs, the assessee has anticipated liability in respect of wage arrears to its employees for the impugned assessment years and accordingly on the basis of certain degree of estimation provision was made for wage arrears in the books of account, although the said liability has been finally quantified and paid in subsequent financial years. In the light of the above factual background and on examining the contention of the Assessing Officer that the said liability is contingent liability, we find that the findings of the Assessing Officer appears to

be misplaced both facts and in law because liability of wage arrears is a real one for the services which have already been rendered and therefore, was definitely in the nature of arrears for such unpaid salary and had definitely arisen and therefore, in fact, it had a present obligation as a result of past events of the works or services already carried out by the employees entailing an outflow of resources to settle such obligation as per contractual agreement between employees and management. No doubt, the liability may not have been quantified and paid in the impugned assessment years, but certainly liability has been estimated on reasonable degree of estimation based on past events and hence, the same cannot be considered as unascertained liability. Further, liability for wages had accrued on the date of balance sheet for services already rendered has to be paid as per terms of appointment/employment and therefore, liability to compensate the employees for the services already rendered was very much existing liability and was not contingent on the happening of any future event or agreement, but on the result of past events/works already rendered. This view is supported by the decision of the Hon'ble Supreme Court in the case of Bharat Earth Movers Ltd. Vs.CIT (supra), where the Hon'ble Court held that if a business

liability has definitely arisen in the accounting year, the deduction should be allowed, although the liability may have to be quantified and discharged at a future date and what should be certain is incurring of liability and it should also be capable of being estimated with reasonable certainty, though the actual quantification may not be possible. If these requirements are satisfied, the liability could not be contingent one which is present though to be discharged at future date and it does not make any difference in future date on which liability shall have to be discharged .

10. In this case, on perusal of facts, we find that there is no dispute with regard to the fact that wage arrears needs to be paid to the employees for the services already rendered for the impugned assessment years. It is also not in dispute that negotiations between the assessee bank and employees union were going on at the time of making provision for liability on the basis of recommendation of 6th Pay Commission of State Government. The assessee bank had also made provision with certain degree of estimation, although the same is not quantified with accuracy. Therefore, we are of the considered view that liability has been provided in books of accounts when it was accrued for the impugned assessment years

for the services rendered and hence the same cannot be considered as contingent in nature or unascertained liability, merely for the reason that the said liability was quantified and paid in subsequent financial years. The learned CIT(A) after considering the relevant facts has rightly deleted the addition made by the Assessing Officer towards disallowance of provision for wage arrears. We do not find any error or infirmity in the order of the learned CIT(A) and hence, we incline to uphold the order of the learned CIT(A) and dismiss the appeal filed by the Revenue for both the assessment years.

11. In the result, appeal filed by the Revenue for both the assessment years are dismissed.

Order pronounced in the open court on 9th December, 2020

Sd/-
(वी. दुर्गा राव)
 (V.Durga Rao)
 न्यायिक सदस्य /Judicial Member

Sd/-
(जी. मंजुनाथ)
 (G.Manjunatha)
 लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
 दिनांक/Dated 9th December, 2020
 DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.