

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER  
AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
[Through Video Conferencing]**

ITA No.398/Del./2018  
Assessment Year: 2009-10

Addl. CIT, Special Range-3, New Delhi	<b>Vs.</b>	M/s. Escorts Ltd., 11, Scindina House, Connaught Place, New Delhi
<b>PAN :AAACE0074B</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

**And**

ITA No.7623/Del./2017  
Assessment Year: 2009-10

M/s. Escorts Ltd., Corporate Taxation, 15/5, Mathura Road, Faridabad	<b>Vs.</b>	DCIT, Circle-11(1), New Delhi
<b>PAN :AAACE0074B</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by	Ms. Nidhi Srivastava, CIT(DR) Sh. Rajesh Kumar, Sr.DR
Assessee by	Shri R.M. Mehta, CA

Date of hearing	15.03.2021
Date of pronouncement	19.03.2021

**ORDER**

**PER O.P. KANT, AM:**

Above Cross Appeals by the Revenue and the assessee are directed against order dated 31/10/2017 passed by the learned

Commissioner of Income-tax (Appeals)-44, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2009-10. The grounds raised by the Revenue and the assessee in their respective appeals are reproduced as under:

**(i) Grounds of appeal of the revenue:**

1. *The Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs.1,39,00,000/- made by the AO on account of disallowance of Royalty Expenditure."*
2. *The appellant craves leave to modify, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.*

**(ii) Grounds of appeal of the assessee:**

1. *The learned CIT(A) has erred in law and facts by upholding the action of AO/TPO in rejecting a comparable considered by the appellant in the comparability analysis.*
2. *The learned CIT(A) erred by not accepting the appellant's plea that a comparable (i.e. a company whose financial statements were for a period of nine months) should not be rejected particularly when it met the criteria for selection as comparable.*
3. *The learned CIT(A) has erred in law and facts by upholding the disallowance of Rs.1,58,512/- on account of prior period expenses ignoring the plea of appellant that the expenses accrued during the relevant assessment year even though pertaining to the previous accounting period.*
4. *That the appellant reserves to itself, the right to add, alter, amend, substitute and/or withdraw any ground(s) of Appeal on or before the date of hearing.*

**2.** The briefly stated facts of the case are that the assessee company is engaged in the business of manufacturing and sale of tractors, shockers, railway equipment etc. and other trading activities. For the year under consideration, the assessee filed return of income on 30/09/2009, declaring nil income under regular provisions of the Income-tax Act, 1961 (in short 'the Act') and book profit of ₹ 27,77,81,818/- in terms of section 115JB of the Act. The return of income filed by the assessee was selected

for scrutiny assessment. The Assessing Officer noticed international transactions entered into by the assessee with Associated Enterprises (AEs), and accordingly he referred the matter of determination of the arm's-length price of those international transactions to the learned Transfer Pricing Officer (TPO). The learned TPO proposed an addition of ₹ 1,55,00,000/- to the value of the international transaction reported by the assessee. The Assessing Officer passed a draft assessment order on 28/02/2013, wherein he proposed transfer pricing addition of ₹ 1,55,00,000/-, addition on account of disallowance of royalty expenses of ₹ 1,39,00,000/- and other additions . As the assessee did not file objection before the Learned Dispute Resolution Panel (DRP), within the stipulated period of 30 days, the Assessing Officer passed the assessment order on 29/04/2013 determining total income at ₹ 3,01,58,760/- under normal provisions of the Act. Aggrieved, the assessee filed appeal before the Learned CIT(A), who partly allowed the appeal. Aggrieved, both the assessee and Revenue are before us by way of raising the respective grounds in their appeals.

**3.** Before us, both the parties appeared through Video Conferencing facility. The assessee filed a paper-book electronically as well as physically.

**4.** At the outset, the Learned DR submitted that tax effect involved in the appeal of the Revenue is less than the tax effect prescribed for filing appeal before the Income Tax Appellate Tribunal ( in short 'the Tribunal'), and therefore the appeal filed the Revenue be treated as withdrawn in terms of the CBDT Circular No. 17/2019 dated 08<sup>th</sup> August, 2019.

**5.** The learned Counsel of the assessee, on the other hand, submitted that the issue in dispute is covered in favour of the assessee by decision of the Tribunal in earlier years and the Learned CIT(A) has also allowed the issue in dispute in favour of the assessee following the decision of the Tribunal in assessment year 2004-05.

**6.** We have heard rival submission of the parties. In view of the submission of the Learned DR, the appeal of the Revenue is dismissed as withdrawn, with the liberty to file application for recalling the appeal, in case the tax effect is found to be more than the prescribed tax effect in the relevant CBDT circular or the case is covered in any of the exceptions in said circular. Accordingly, the appeal of the Revenue is dismissed.

**7.** As far as appeal of the assessee is concerned, the learned Counsel of the assessee before us submitted that Ground No. 1 & 2 of the appeal were not pressed by the assessee and accordingly both these grounds are dismissed as infructuous.

**8.** As far as ground No. 3 of the appeal is concerned, the learned Counsel of the assessee reiterated the submissions made before the learned CIT(A) and referred to various pages of the paper-book . He also relied on the decision of the Tribunal in ITA No. 4235/Del./2014, dated 09/03/2018 for assessment year 2005-06.

**8.1** The Learned DR, on the other hand, relied on the order of the lower authorities.

**8.2** We have heard rival submission of the parties on the issue dispute and perused the relevant material on record. We find that the Assessing Officer has disallowed prior period expenses of ₹

1,58,512/- on the ground that same pertain to earlier years. Out of the prior period expenses disallowed, the expenses of ₹ 1,35,491/- pertain to RED division and ₹ 23,021/- pertain to ASP Division. Before the Ld. CIT(A), the assessee made detailed submission with breakup of the expenses and justifying as how the expenses crystallized in the year under consideration. The Ld. CIT(A) following the order of the his predecessor and sustained the disallowance. The relevant finding of the Ld. CIT(A) is reproduced as under:

*“8.1 The appellant made the following submissions during the course of appellate proceedings:-*

*“The statutory auditors in their Tax Audit Report mentioned prior period expenditure of Rs.1,58,512/- pertaining to the following divisions of the company –*

- i) RED - Rs.1,35,491/-*
- ii) ASP - Rs. 23,021/-*

*The division-wise details of such expenses were filed along with photocopies of relevant bills. Detailed explanation was given to the Assessing Officer with evidences. The item-wise explanation given to the Assessing Officer is reproduced below:-*

*“Engineering Division (RED)*

*a) The expenditure of Rs.42,000/- on account of professional charges pertains to Bill No.BCL/C.R/Escorts/06-12/2007-08 dated 30.04.2008 of Brahma Dutta Chambers of Law for professional charges for the month of September 2007 to March, 2008. The liability to pay this expenditure arose in the assessment year 2009-10 on account of the bill having been issued by the party during the assessment year 2009-10. Accordingly, there is no case for any disallowance of this expenditure as a prior period expenditure.*

*b) The expenditure of Rs.43,491/- pertains to packing, freight and forwarding charges as per bills of M/s AKG Packers (Pvt.) Ltd. These bills were raised by the party in November, 2007 but were received late in the stores department. Such bills are always*

subject to verification at various levels and ultimately forwarded to the accounts department of the company for processing and payment. After complete verification by various functionaries, the bills were received in the finance department in October, 2008 and were accordingly processed and vouched on 11.12.2008. It will not be out of place to mention that in a company of this size with vast magnitude of transactions, it is not possible to account for small value transactions at the close of the year without proper processing and verification at various stages. The accounting is done only after final approvals are received for payment of the bills.

c) The expenditure of Rs. 50,000/- pertains to professional charges bill of Mr.A.S. Chandhiok. The Bill dated 05.01.2008 of the party was received by the legal department of the company and was subject to verification. The legal department did not verify and approved the bill for payment till the finalization of account for the year ended 31.03.2008. The bill was finally passed and approved for payment by the legal department in November, 2008 and accordingly vouched in the books of account on 29.11.2008. The liability to pay this expenditure arose during the assessment year 2009-10 and accordingly the same has been rightly booked. There is no case for any disallowance of this expenditure as a prior period expense.

Engineering Division (ASP)

The expenditure of Rs.23,021/- pertains to various small value purchases made at the ASP division of the company towards the end of the accounting year 2007-08. As per procedure, such bills are verified, processed and then approved for payment. The approval for these expenses was received by the finance department during the assessment year 2009-10 and accordingly booked in the accounts during the assessment year 2009-10. As already explained above, there is vast magnitude of small value transactions and it is always not possible to create liability for such expenditure at the close of the financial year due to non-receipt of approved bills in the finance department. There is no case for any disallowance of this amount. ”

8.2 I have perused the order of the Assessing Officer who has observed as follows:-

“From the tax audit report it is observed that the assessee has debited a sum of Rs. 1,58,512 being prior period expenses in the P and L account where as the assessee has been following the mercantile system of accounting. Therefore, the assessee was asked to file the details of prior period expenses. In response to

*which the assessee has filed its reply dated 27/02/2013. From the details filed it is notice that an amount of Rs. 1, 35, 491 pertains to RED division and rupees 23,021 to ASP division and then sphere raised in regard to consultancy charges, service charges etc. In view of the above, it is clear that the assessee has debited an amount of Rs. 1,58,512 being prior period expenses which is included under the head consultancy charges, service charges etc. Therefore, same is being disallowed and added back to the total income of the assessee. ”*

8.3 *I have also perused the order of the CIT(A) for AY 2007 - 08 where it has been observed as follows at para 4.3: -*

*“I have considered the assessment order, written submission and oral arguments of the In the paper book, learned AR has filed copy of the audit report evidencing that previous year expenditure are under the head sales and administrative expenses. No breakup of the sales and administrative expenses being prior period expenses has been filed before the assessing officer or even before the appellate proceedings.*

*The explanation of the Ld. AR that for a business of large volume, it is not possible to drill minor expenses at the time of closing of accounts and make provision thereof for which there are various reasons such as late receipt of bills, delay in processing of bills in various departments etc. in most cases, the liability to pay such expenditure has crystallize and subsequent period due to negotiation, disputes etc.*

*I have considered the arguments. The arguments are general in nature and not specific to Ld. AR. any particular items of expenses disallowed as prior period expenses. Once Auditor has certified that these expenses are prior period expenses then such expenditure cannot be allowed unless proved otherwise, as books of accounts of a company are admittedly prepared on accrual basis.*

*Ld. AR’s argument that such type of expenses be allowed by CIT(A) in earlier AYs cannot help the appellant as such assessment year is separately assessment unit and facts are different.*

*Considering entire’s stances of the case, I hereby confirm the addition made by the assessing officer. The ground of appeal is dismissed.”*

8.4 *I have considered the facts and the circumstances of the case and perused the order of the assessing officer as well as the submissions of the appellant. The material facts of the case are*

*the same in the instant year also. In accordance with the principle of consistency and respectfully following the order of the CIT(A) in AY 2011-12, the addition made by the AO is confirmed . The ground of appeal is dismissed.”*

**8.3** The assessee is following Mercantile system of accounting. Prior period expense are generally those expenses which are relating to the current year in the sense they are crystallized during the year, though relating to activities of an earlier year. For accounting purposes these are generally known as prior period items and required to be shown separately. Normally, where mercantile system of accounting is followed, expenses relating to relevant year are accounted for in that year. However, prior period expenses had to be allowed in subsequent years if those expenses are crystallized in that year.

**8.4** In the submission before the Learned CIT(A), which have been reiterated before us, the assessee has contended that bill in respect of professional charges of ₹ 42,000/-was received on 30/04/2008 . The Learned Counsel before us referred to page No. 7 of the paper-book, which is a copy of the said Bill and submitted that bill was processed finally on 19/01/2009 by the finance division, before travelling through various Department of the assessee company. Regarding other bills of ₹ 43,491/-; ₹ 50,000; and ₹ 23,021 also similar submissions have been made by the learned Counsel of the assessee.

**8.5** We find that Tribunal Jaipur bench in the case of State Bank of Bikaner and Jaipur Vs ACIT 2014, reported in 166 TTJ 244 held that expenses of the previous year are allowable in the respective year to which they pertained but information as regard

to such expenses with evidence was received by the assessee from the various branches after closing of books of accounts, and hence same are allowable during the year under consideration. Before us also, the genuineness of the expenses has not been doubted by the lower authorities. Since in the instant case the bills for expenses under consideration have been processed by various divisions of the assessee and finally approved in the year under consideration, and thus, respectfully following the decision of the Tribunal in the case of State Bank of Bikaner and Jaipur (supra), the liability for the expenses was finally settled and crystallised in the year under consideration. Accordingly, we set aside the finding of the Ld. CIT(A) on the issue in dispute and delete the addition made by the Assessing Officer for prior period expenses of ₹ 1,58,512/-. The ground of the appeal of the assessee is accordingly allowed.

**9.** In the result, the appeal of the Revenue is dismissed whereas the appeal of the assessee is allowed partly.

***Order pronounced in the open court on 19<sup>th</sup> March, 2021***

***Sd/-***  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

***Sd/-***  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Dated: 19<sup>th</sup> March, 2021.

RK/-(DTS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi