

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 6948/Del/2017
(Assessment Year: 2014-15)

Hari Machines Ltd, 4, Scindia House, Connaught Place, New Delhi PAN: AAACH0868C	Vs.	DCIT, Circle-11(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	None
Revenue by:	Ms. Anima, Sr. DR
Date of Hearing	14/07/2021
Date of pronouncement	14/07/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the Assessee against the order of the Id CIT(A)-35, New Delhi dated 10.08.2017 for the Assessment Year 2014-15.
2. The assessee has raised the following grounds of appeal:-
 - “1. That the order of the learned Commissioner of Income Tax (Appeals) is bad in law and is against the facts and circumstances of the case.
 2. That the learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance of interest payment of Rs. 1,06,660/-.
 3. That the learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance of Rs.45,42,000/-.
 4. That the learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance of claim of the appellant for Rs.15 lakhs.
 5. That the last date for filing of appeal being a holiday, the appeal filed is within limitation.”
3. Brief facts of the case shows that the Assessee is a company engaged in the business of manufacturing and sale of machines, erection and commission of effluent treatment plant. It filed its return of income on 29.09.2014 declaring loss of Rs. 18,80,93,277/- which was assessed u/s 143(3) of the Act at a total loss of Rs. 18,34,44,617/- wherein, the Id AO made an disallowance of Rs. 1,06,660/- being interest on delayed payment of TDS as

well as disallowance of particular period expenditure of Rs. 45,42,000/-. On appeal before the Id CIT(A), both the disallowance were confirmed and therefore, the Assessee is in appeal before us.

4. Despite notice none appeared on behalf of the Assessee. On earlier occasion on 30.12.2020 none appeared so the notice was sent by RPAD for next date of hearing on 09.03.2021. On that date none appeared on behalf of the Assessee. On this date also none appeared on behalf of the Assessee therefore, the issue is decided on the merits of the case.
5. The Id DR supported the orders of the lower authorities.
6. The second ground of appeal is with respect to confirmation of disallowances of the interest of late deposit of tax deducted at source of Rs. 1,06,660/-. The facts show that the Assessee has incurred the interest of Rs. 1,06,660/- for late deposit of TDS which claimed as deductible expenditure stating that it was paid on behalf of the deductees therefore, it is not an liability of the Assessee hence, it is not a tax liability and only compensatory in nature. The Id AO relied upon the decision of the Hon'ble Madras High Court 239 ITR 435 as well as decision of the Hon'ble Supreme Court in 230 ITR 733 and the decision of the Id CIT(A) in Assessee's own case for Assessment Year 2012-13 confirmed disallowances of the above payment. The Id CIT(A) also confirmed the above disallowances.
7. On careful consideration of the issue we find that the Assessee has deposited the tax deducted at source from various payees but has not deposited the same in time provided by the law. As it is deposited late the Assessee was liable to pay interest thereon. Firstly, the payment of the interest cannot be said to be an expenditure wholly and exclusively incurred for the purpose of the business. It is expenditure on which tax is deductible might be an expenditure incurred for the purpose of the business. But the interest on late deposit of tax deducted at source cannot be said to be an expenditure incurred wholly and exclusively for the purpose of the business. Therefore, such deduction cannot be allowed u/s 37(1) of the Act. Even otherwise late payment of TDS is infraction of law and therefore, any payment made for infraction of law cannot be considered as expenditure incurred by the Assessee wholly and exclusively for the purpose of the business. Here in this case the Assessee has been saddled with the

statutory liability to deduct tax at source and deposit to the credit of the Govt of India in time. The Assessee has failed to pay his statutory dues in time and therefore, there is an interest liability. Therefore, such expenditure is not at all allowable to the Assessee as deduction u/s 37(1) of the Act. Even otherwise this deduction is not allowable in any of the section u/s 30 to 36 of the Act. The Id AO has correctly applied decision of the Hon'ble Madras High Court in CIT Vs. Chennai Properties in making the disallowance. The Id CIT(A) also correctly confirmed the same. Accordingly, ground No. 2 of the appeal is dismissed.

8. Ground No. 3 and 4 are with respect to the confirmation of disallowance of Rs. 45,42,000/-.
9. The brief facts of the case are mentioned in para NO. 6 to 11 of the order as Id CIT(A) as under:-

“4.3. Ground nos. 3 & 4 : Ground 3 is with respect to disallowance of consultancy charges of Rs.45,42,000/- and Ground 4 is with respect to rejection of the claim of the appellant for Rs. 15 lakhs already disallowed by the assessing officer in A.Y. 2012-13 in respect of the consultancy charges, now claimed to be allowable during assessment year 2014-15.

4.3.1. The appellant has submitted that:

4.2 It its computation of income for assessment year 2014-15 appellant claimed Rs.45,42,000/- as deduction towards the marketing consultancy charges paid to M/s Predominant Engineers & Contractors Pvt. Ltd. in terms of consultancy agreement dated 28th June, 2010 (Paper Book pages 32-33), wherein they were appointed as marketing consultant for supply of sponge iron plant equipment. The remuneration payable to them was 3% of ex-works value of orders procured through them and was payable on receipt of the payment of the ordered equipment from the prospective customers. 4.3 Pursuant to this agreement appellant received orders in respect of two nos. of 350 TPD sponge iron kiln on 21.8.2010 and 25.11.2010 from Usha Martin Ltd, Jamshedpur.

4.4 Supply in respect of these orders was made between 30th November, 2010 to 29th September, 2012. Payments in respect thereof were received between 19th October, 2010 till 20th August, 2014. Copies of agreement with M/s Predominant Engineers & Contractors Pvt.Ltd, details of dispatch and payments received and the invoice raised by the consultants on 31st March, 2014 for commission amount of Rs.60,42,000/- (Paper Book page 34) was submitted to Assessing Officer in the course of the assessment proceedings.

4.5 Out of the amount of Rs.60,42,000/-, Rs.15 lakhs was paid to the consultant in assessment year 2012-13 and was claimed as deduction for that assessment year. However, since no TDS was deducted from that payment of Rs.15 lakhs in Out year, it was disallowed by the Assessing Officer in that year (Paper Book pages 5 to 10). Appellant filed appeal against said disallowance, but did not press the same in the course of the hearing. Amount of Rs. 15 lakhs having already been disallowed during assessment year 2012-13 in the course of the assessment proceedings for assessment year 2014-15 appellant requested the Assessing Officer to allow Rs.60,42,000/- instead of Rs.45,42,000/-, since the TVS on the entire amount of Rs.60,42,000/- was deducted and deposited in the assessment year 2014-15. In the course of the assessment proceedings, while making this claim appellant submitted:-

"In continuation to hearing in the above matter, from the computation of income for assessment year 2014-15 it will kindly be seen that a deduction of Rs. 45,42,000/- has been claimed as commission crystallized during the year included in prior period expenses in an amount of Rs. 45,42,000/-. In this connection, it is submitted that the total payment of commission was Rs. 60,42,000/- in addition to the charge of service tax thereon. This Rs. 60,42,000/- included Rs. 15 lakhs paid on account in assessment year 2012-13 and claimed as deduction in that year. Since die tax at soiree on die said amount was not deducted in that year, tire amount of Rs. 15 lakhs was not allowed. Bill for the entire amount of commission pursuant to agreement dated 28th June, 2010 has been raised by Predominant Engineers and Contractors Pvt. Ltd. on 31st March, 2014, copy of which is enclosed for your ready reference. In view of this, liability crystallized during the year under consideration and is allowable as deduction during this year.

Since Rs. 15 lakhs was not allowed in assessment year 2012-13 on which IDS has also been deducted and paid during the year under consideration entire amount of Rs. 60,42,000/- plus service tax thereon aggregating to Rs. 67,88,791/- is allowable as deduction during the year under consideration.

Copy of order placed on Predominant Engineers and Contractors Pvt. Ltd. dated 28th June, 2010, details of date wise supplies made by the assessee and date wise payments received against the same are enclosed for your ready reference. It is, therefore, submitted that instead of Rs. 45,42,000/- claimed in the computation of income Rs. 60,42,000/- may please be allowed as deduction during the year.

4.6 Assessing Officer, however, disallowed the expenditure of Rs.45,42,000/- as originally claimed in the return of income and Rs. 15 lakhs claimed during the course of assessment proceedings with the following observations:-

"4 Disallowance of Prior Period Expenses

During the year under consideration, the assessee has claimed the expenses of Rs.45,42,000/- in Profit and Loss A/c and in computation of income incurred during the year, as the same pertains to AY 2012-13. However, the prior period expenses are not allowable, the assessee vide order sheet entry dated 10.11.2016 was required to show cause as to why the prior period expenses be not disallowed. In response, the assessee vide its letter dated 02.12.2016 submitted as under;

The total payment of commission was Rs.60,42,000/- in addition to the charge of service tax thereon. This Rs.60,42,000/- included Rs. 15 lakhs paid on account in assessment year 2012-13 and claimed as deduction in that year. Since the tax at source on the said amount was not deducted in that year, the amount of Rs. 15 lakhs was not allowed. Bill for the entire amount of commission pursuant to agreement dated 28.06.2010 has been raised by Predominant Engineers and Contractors Pvt Ltd on 31.03.2014. In view of this, liability crystallized during the year under consideration and is allowable as deduction during this year. Since Rs.15 lakhs was not allowed in assessment year 2012-13 on which TDS has also been-deducted and paid during the year under consideration entire amount of Rs.60,42,000/- plus service tax thereon aggregating to Rs.67,88,791/- is allowable as deduction during the year under consideration.

I have considered the submission of the assessee and facts of the case. The facts of the relied upon case laws are different from the facts of this case. The assessee is maintaining mercantile system of accounting, the prior period expenses are not allowable. In case of any uncertain liability, the assessee is allowed to create provision for the same in its books of accounts and if the same has not been incurred, the same is disallowed while computing the tax. The expenses of Rs.45,42,000/- claimed in the computation of income pertains to AY 2012-13. Thus the above expenses being the prior period expenses are not allowable as per I. T, Ad, 1961. Accordingly the expenses of Rs.45,42,000/- is hereby disallowed.

The assessee in its submission during assessment proceedings the expenditure of Rs.15,00,000/- which pertains to AY 2012-13, however the same has not been claimed either in the Income Tax Return or in the computation of income."

4.7 However, the Assessing Officer rejected the additional claim of Rs.15 lakhs disallowed in assessment year 2012-13 and also the claim for Rs.45,42,000/- summarily with the observations that the assessee is following mercantile system of accounting, prior period expenses are not allowable. In case of any ascertained liability assessee is allowed to make provision for the same in its Books of Accounts and if the same has not been incurred, the same is disallowed while computing the tax.

The expenses claimed in the computation of income pertain to assessment year 2012-13 and therefore, they are not allowable during the assessment year under consideration.

4.8 Appellant beg to submit that as per consultancy agreement, consultancy charges are payable on receipt of the payment against the supplies of equipments from the prospective customers. Details of the material supplied and the payment details clearly show that the supplies has been continued till September, 2012, whereas payments have been mostly received till June, 2013. Invoice for consultancy charges has been raised by the consultant on 31st March, 2014. Thus, the liability crystallized during the assessment year under consideration and has been accounted for in the Books of the Company during assessment year 2014-15 in an amount of Rs.45,42,000/- and Rs.15 lakhs in assessment year 2012-13 which, however, was not allowed as an expenditure in that year for non-deduction of TDS in that year for non-deduction of TDS in that year.

4.9 The entire amount of Rs.60,42,000/- deserves to be allowed during the year under consideration, since the liability is crystallized during the year under consideration. The Assessing Officer was, therefore, not justified in disallowing the same. He may kindly be directed to allow the same."

4.3.2. In the assessment order, the submission of the Appellant and facts of the case. The AO has observed as below: '

"The facts of the relied upon case laws are different from the facts of this case. The assessee is maintaining mercantile system of accounting, the prior period expenses are not allowable. In case of any uncertain liability, the assessee is allowed to create provision for the same in its books of account and if the same has not been incurred, the same is disallowed while computing the tax The expenses of Rs.45,42,000/- claimed in the computation of income pertains to A.. Y 2012-13. Thus the above expenses Ming the prior period expenses are not allowable as per I. T. Act, 1961. Accordingly, the expenses of Rs.45,42,000/- is hereby disallowed.

The assessee in its submission during assessment proceedings the expenditure of Rs.15,00,000/- which pertains to A.Y. 2012-12, however the same has not been claimed either in the Income Tax Return or in the computation of income."

4.3.3. In the present case, the AO has rightfully disallowed Rs.45,42,000/- claimed in the computation of income as the same pertains to A.Y. 2012-13. Thus the above expenses being the prior period expenses are not allowable as per I.T. Act, 1961. In case of any uncertain liability, the Appellant is allowed to create provision for the same in its books of account which has not been done by the Appellant. I observe that the AO has correctly disallowed the amount of Rs

45,42,000/- and I find no valid reason to interfere with the AO's order on this issue.

As regards the expenditure of Rs.15,00,000/- which the Appellant submitted during assessment proceedings before the AO. It is seen that the said deduction was claimed in AY 2012-13 and it pertains to A.Y. 2012-12 and the same was disallowed in AY 2012-13 as no TDS was deducted on the same. In AY 2014-15, the same has not been claimed either in the Income Tax Return or in the computation of income. During assessment proceedings, this claim was made. The Appellant has claimed the same expenses of Rs 15,00,000/- in AY 2012-13 and has again claimed the same Rs 15,00,000/- in AY 2014-15. I observe that the AO has correctly not entertained the amount of Rs 15,00,000/- and I find no valid reason to interfere with the same. Hence Ground nos. 3 & 4 are dismissed.

4.4. Ground nos. 5 & 6 ; are consequential, hence do not require separate adjudication.

10. We have carefully considered contention is of the learned departmental representative and also perused the orders of the lower authorities. The fact clearly shows that there was an agreement dated 28th of June 2010 for payment of marketing consultancy charges to Messer's predominant engineers and contractors private limited. It was appointed as marketing consultant for supply of sponge iron plant equipment. The remuneration was payable to them at the rate of 3% of experts value of the orders procured through them and was payable on receipt of the payment of the ordered equipment from the prospective customers. Therefore the liability to pay commission to this party arises on account of the assessee only at the time of receipt of the payment for equipment from the customers. Assessee received orders from Usha Martin Ltd for supply of the goods in the month of August and November 2010. Supplies were made from month of November 2010 to September 2012. Payments were received from 19 October 2010 till 20th of August 2014. Thus payments were also last received on 20 August 2014. Therefore on the date of the payment received by the assessee the liability to pay consultancy charges arises. In the present case the invoices were raised by the consultant on 31st of March 2014 for commission of ₹ 6,042,000. However as claimed by the assessed the liability to pay consultancy charges arises on receipt of the payment by the assessee which has happened from 19 October 2010 till 20th of August 2014. The assessee has claimed the complete amount of

commission/consultancy charges of Rs. 6,042,000 during the year despite receipt of payment from the customers till 20th of August 2014. In the above circumstances the assessee is entitled to deduction of all the payments received till 31st of March 2014 from the customers and commission thereon is allowable to the assessee in assessment year 2014-15. Thus we find that out of the total commission of Rs. 6,042,000 claimed by the assessee during the year only the commission which relates to the payment received by the assessee from its customers till 31st of March 2014 assessee is entitled for deduction of commission/consultancy charges to that extent only. In view of this we set-aside the whole issue back to the file of the learned assessing officer with a direction to the assessee to submit the details of payment received till 31st of March 2014 and due commission thereon. The learned assessing officer may examine the same and granted deduction of consultancy charges to that extent. In the result ground number 3-4 are allowed with above directions.

11. In the result appeal filed by the assessee is partly allowed.

Order pronounced in the open court on conclusion of hearing on 14/07/2021.

-Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 14/07/2021
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating member	
Date on which the typed draft is placed before the other member	
Date on which the approved draft comes to the Sr. PS/ PS	
Date on which the fair order is placed before the dictating member for pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	