

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.No.302/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2013-14)

The Assistant Commissioner of Income Tax, Corporate Circle-6(2) Chennai-34.	Vs	M/s. Soundarya Decorators Pvt.Ltd. 26, Survey No.2 & 3, Porur Village, Kolathur, Keezhkottiyur, Chennai-600 127.
		PAN: AAFCS 8646C
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&

आयकर अपीलसं./I.T.A.Nos.334 & 335/Chny/2019

(निर्धारणवर्ष / Assessment Years: 2012-13 & 2013-14)

M/s. Soundarya Decorators Pvt. Ltd. 26, Survey No.2 & 3, Porur Village, Kolathur, Keezhkottiyur, Chennai-600 127.	Vs	The Deputy Commissioner of Income Tax, Corporate Circle-6(2) Chennai-34.
PAN: AAFCS 8646C		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Department by	:	Mr. Abani Kanta Nayak, CIT
Assessee by	:	Mr. V.S.Jayakumar, Adv

सुनवाईकीतारीख/Date of hearing	:	02.12.2021
घोषणाकीतारीख /Date of Pronouncement	:	22.12.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

These two appeals filed by the assessee for assessment years 2012-13 & 2013-14 and one appeal filed by the Revenue for assessment year 2013-14 are directed against separate, but identical orders of the learned Commissioner of Income Tax (Appeals)-16, Chennai, both dated 12.11.2018 and pertain to

assessment years 2012-13 & 2013-14. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

2. We find that appeal filed by assessee in ITA No.335/Chny/2019 is barred by limitation of two days, for which necessary petition for condonation of delay along with affidavit explaining the reasons for the delay has been filed. The learned counsel submitted that assessee could not file appeal within the time allowed under the Act, therefore delay may be condoned. Having heard both sides and considered the petition filed by the assessee for condonation of delay, we are of the considered view that reasons given by assessee for not filing the appeal within the time allowed under the Act comes under reasonable cause as provided under the Act for condonation of delay and hence, delay in filing of above appeal is condoned and appeal filed by the assessee is admitted for adjudication.

ITA No. 334/Chny/2019 (A.Y.2012-13) :

3. The assessee has raised following grounds of appeal:-

"1) The order of the CIT(A) is contrary to the law, facts and circumstances of the case.

2) The CIT(A) erred in dismissing the appeal and confirming the order of the Assessing officer for disallowing the prior period expenses of Rs. 13,43,73,568/-

3) The CTT(A) should have appreciated that the income proceedings are mere adjustment of tax liability that can be fastened on the assessee and so if a claim is properly allowable, the technicality should not stand in the way.

4) The CIT(A) erred in holding that the claim of prior years expenses cannot be allowed since the AO has accepted the income admitted by the appellant and in the absence of any addition or disallowance the relief cannot be granted to the assessee.

5) The CIT(A) erred in his observation that the Appellant did not bring any material on record to establish that the prior period expenses relate to AY. 12-13 and to establish the genuineness of expenses.

6) The CIT(A) failed to note that the decisions of the Supreme Court governs the case on hand which states that the relief can be granted to the assessee if all the details are on record even though the assessee had not made any specific claim for the same per Jute Corporation 187 ITR 688 (SC) and Taparia Tools Ltd 372 ITR 605 (SC)."

4. Brief facts of the case are that the assessee company is carrying on business of manufacturer of modular furniture and interior decoration filed its return of income for assessment year 20012-13 on 29.09.2012 declaring Nil total income. The case was taken up for scrutiny and during the course of assessment

proceedings, the assessee has made a fresh claim by way of a letter requesting the Assessing Officer to consider prior period expenses incurred for assessment year 2012-13, but were known and accounted in assessment year 2013-14 amounting to Rs.13,43,73,568/-. The Assessing Officer did not accept fresh claim made by the assessee and has completed assessment by accepting returned income. The assessee carried matter in appeal before the learned CIT(A). Before the learned CIT(A), the assessee submitted that in a similar situation, the ITAT in ITA No.539/Chny/2016 for assessment year 2011-12 has admitted fresh claim made by the assessee for deduction of prior period expenses and hence, similar direction may be given to the Assessing Officer to examine claim of the assessee. The learned CIT(A) did not accept arguments of the assessee and according to him, when the Assessing Officer has not made any additions to returned income, question of adjudicating grounds raised by the assessee on issue of deductibility of prior period expenses cannot arise. The learned CIT(A) further noted that moreover, the assessee did not bring any material on record to establish that prior period expenses related to assessment year 2012-13

and further failed to establish genuineness of expenses. Aggrieved by the order passed by learned CIT(A), the assessee is in appeal before us.

5. The learned A.R for the assessee submitted that the issue is covered in favour of the assessee by decision of the ITAT in assessee's own case for assessment year 2011-12, where under identical circumstances, the Tribunal has admitted fresh claim made by the assessee for deductibility of prior period expenses and has remitted matter back to file of the Assessing Officer for fresh consideration. Therefore, facts being *pari-materia*, for the year under consideration, similar direction may be given to the Assessing Officer to examine claim of the assessee.

6. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that first of all, the assessee has failed to make out a case for admissibility of fresh claim by filing a letter and also not furnished necessary evidences to prove that prior period expenses claim pertains to relevant assessment year and also has been incurred for the purpose of

business of the assessee. Therefore, there is no reason to admit fresh claim made by the assessee seeking deductibility of prior period expenses .

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that the Tribunal in assessee's own case for assessment year 2011-12 in ITA No.513/Chny/2016 has considered an identical issue and by following decision of the Hon'ble Supreme Court in the case of Goetz India Ltd. Vs. CIT (284 ITR 323) held that restrictions on powers to consider a new claim made by the assessee was only on the Assessing Officer and not on the appellate authorities, hence, appellate authorities are empowered to consider fresh claim made by the assessee at any stage of proceedings, even if such claim was not made before the Assessing Officer. However, facts with regard to said claim should be on record at the time of assessment proceedings . In the present case, question before us was whether the Assessing Officer was right in not considering fresh claim made by the assessee by filing a letter at the time of original proceedings seeking deductibility of prior

period expenses. The Assessing Officer has rejected said claim by holding that unless new claim is made by filing revised return, same cannot be admitted by the Assessing Officer. As we have already stated in earlier paragraph regarding power of appellate authorities that although the Assessing Officer is not empowered to admit fresh claim in absence of revised return, but the appellate authorities at the time of hearing appeal can admit fresh claim made by the assessee and deal with the issue in accordance with law. Therefore, considering facts and circumstances of the case and by following decision of the Tribunal in assessee's own case for assessment year 2011-12, we are of the considered view that fresh claim made by the assessee for claiming deductibility of prior period expenses needs to be admitted. Hence, we admit fresh claim made by the assessee and remit the issue back to file of the Assessing Officer and direct him to reconsider the issue afresh in accordance with law.

8. In the result, appeal filed by assessee is treated as allowed for statistical purposes.

ITA Nos.302 & 335/Chny/2019:

9. The solitary issue that came up for consideration from these cross appeals filed by the assessee as well as Revenue is with regard to admission of fresh claim made by the assessee seeking deductibility of prior period expenses before the learned CIT(A). The assessee has made a fresh claim before the Assessing Officer by filing a letter seeking deduction for prior period expenses. The Assessing Officer has rejected fresh claim made by the assessee on the ground in absence of revised return, no fresh claim can be entertained by the Assessing Officer. The learned CIT(A) has admitted fresh claim made by the assessee and has remitted matter to the Assessing Officer by following decision of the Tribunal in assessee's own case for assessment year 2011-12, where the Tribunal has admitted fresh claim of the assessee and has remitted the issue to file of the Assessing Officer for further verification. The assessee as well as the Revenue has filed appeal against CIT(A) order. The assessee is aggrieved by the order of the learned CIT(A) insofar as final conclusion given by the learned CIT(A), whereas the Revenue is aggrieved by direction of the learned CIT(A) insofar as setting aside

appeal to the file of the Assessing Officer on the ground the learned CIT(A) does not have power to set aside appeal to the file of the Assessing Officer .

10. We have heard both the parties, perused necessary materials on record and we find that the learned CIT(A) has admitted additional claim made by the assessee on the issue of deductibility of prior period expenses by following direction of the Tribunal in assessee's own case for earlier year, where similar direction has been given to the Assessing Officer to examine claim of the assessee in accordance with law. Therefore, in our considered view, findings recorded by the learned CIT(A) in light of decision of the Tribunal in assessee's own case for earlier year is in accordance with law, which does not require any modification or alteration from our end. Since the issue is already set aside to the file of the Assessing Officer to reexamine claim of the assessee on eligibility of deduction towards prior period expenses, there is no grievance for both sides. Hence, we are of the considered view that there is no merit in appeal filed by the assessee as well as Revenue. Hence, both the appeals are dismissed.

11. In the result, appeal filed by the assessee for assessment year 2012-13 is allowed for statistical purposes and appeals filed by assessee and Revenue for assessment year 2013-14 are dismissed.

Order pronounced in the open court on 22nd December, 2021

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष/ Vice-President
चेन्नई/Chennai,

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

दिनांक/Dated 22nd December, 2021
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.