

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above two captioned cross appeals by the assessee and the Revenue are preferred against the order of the ld. CIT(A) - 35, New Delhi dated 04.07.2018 pertaining to Assessment Year 2014-15. Both these appeals were heard together and are disposed of by this common order for the sake of convenience and brevity.

2. We will first address to the appeal of the assessee in ITA No. 6561/DEL/2018. The grievances of the assessee read as under:

"1. That on facts and in law in the Commissioner of Income Tax (Appeals) (Ld. CIT(A)) erred in upholding the disallowance of Rs 3,97,28,446 on account of payment of octroi expenses.

2. That on facts and in law the Ld. CIT(A) erred in not following the principle laid down by jurisdictional High Court in case of CIT v. Vishnu Industrial Gases Pvt Ltd (ITR No. 229/1998) (2008) that the year of deductibility is not a relevant factor when the rate of tax is identical in both the years.

3. Without prejudice to ground no 1 and 2 above, the Ld. CIT(A), even after accepting the alternate plea of the appellant to allow the payment in AY 2015-16, has erred in not giving clear direction to the assessing officer to allow the said expense in AY 2015-16.

4. That on facts and in law the Ld. CIT(A) erred in not upholding lease incentive amounting to Rs 6.60,79,574 being recognised over the lease period.

5. Without prejudice to ground no 4, the Ld. CIT(A) erred by not giving clear direction to the assessing officer to give effect of the alternate plea of the Appellant in all the years having impact on the income by reducing the lease incentive from the block of assets as per explanation 10 to section 43(1) of the Act.

All of the above grounds of appeal are without prejudice and notwithstanding each other.

The appellant craves leave to add, alter, omit or substitute any or all of the above grounds of appeal, at any time before or at the time of appeal, to enable the Hon'ble Income Tax Appellate Tribunal to decide the appeal according to the facts and law."

3. Briefly stated, the facts of the case are that the assessee company is a joint venture of Inditex group and TATA group and is engaged in retail trading through Zara stores across the country.

4. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has claimed deduction of Rs. 5,49,29,271/- as 'exceptional item'. The Assessing Officer found that this deduction was towards local state taxes for the Assessment Year 2014-15 as well as for earlier Assessment Years. The assessee was asked to give complete details of expenses with year-wise break-up alongwith supporting documents.

5. The assessee furnished complete break-up. From a perusal of the break-up, the Assessing Officer found that Rs. 3,97,28,446/- pertained to octroi expenses for Assessment Years 2012-13 and 2013-14. The Assessing Officer was of the firm belief that this amount cannot be allowed as deduction because liability to pay this octroi expenses was incurred during F.Ys 2011-12 and 2012-13 and since the liability was not paid before the due date of filing return of income for the respective F.Ys, the Assessing Officer disallowed Rs. 3,97,28,446/-.

6. The assessee agitated the matter before the ld. CIT(A) but without any success.

7. Before us, the ld. counsel for the assessee vehemently stated that though the liability pertains to F.Ys 2011-12 and 2012-13, but the same has been crystallized during the year under consideration and has been paid before filing the return of income. The ld. counsel for the assessee drew our attention to the relevant documentary evidences brought on record pointing out to the letters of Brihan Mumbai Mahanagar Palika by which demand crystallized during the year under consideration.

8. The ld. DR strongly supported the findings of the Assessing Officer.

9. We have given thoughtful consideration to the orders of the authorities below. There is no dispute that the impugned liability pertains to F.Ys. 2011-12 and 2012-13. A perusal of the documents shows that though the assessee made several attempts of paying the same, but the Brihan Mumbai Mahanagar Palika returned the demand draft, as further investigation was going on in respect of the liability.

10. Finally, liability was settled and the assessee made a payment. There is no dispute that the entire liability was discharged before filing return of income for the year under consideration. On perusal of the facts, we are of the considered opinion that since the liability of F.Ys. 2011-12 and 2012-13 crystallized during the Assessment Year under consideration, the same has to be allowed. We, accordingly, direct the Assessing Officer to allow the claim of Rs. 3,79,28,446/-. Addition is, accordingly, deleted. Ground Nos. 1, 2 and 3 are allowed.

11. Facts relating to Ground Nos. 4 and 5 show that during the year under consideration, the assessee received incentives/benefits amounting to Rs. 6,94,85,100/- from lessors. The assessee had taken these premises on lease to run Zara Stores in Surat, Jaipur and Chennai and entered into an agreement with the lessors alongwith other covenants. The lessors have agreed to pay/compensate the fit out cost to the lessee [assessee] as per the terms and conditions set forth in the agreement as a part of lease incentive to the assessee.

12. The assessee booked the said amount as lease incentive in the books of account and amortized in the profit and loss over the lease

period following the Accounting Standards prescribed by the ICAI as mandated by Section 211 of the Companies Act, 1956.

13. This action of the assessee did not find any favour with the Assessing Officer who was of the opinion that lease incentives received by the assessee are not on capital account. The Assessing Officer observed that these lease incentives have been recognized as revenue receipts by the assessee itself and the assessee has amortized these incentives over the period of lease and only proportionate amount has been recognized as revenue receipts during the year which has been reduced from lease rentals.

14. After referring to various judicial decisions, the Assessing Officer came to the conclusion that the assessee should have recognized the whole of the incentives amounting to Rs. 6,94,85,100/- and after reducing the part which has been accounted for by the assessee, the Assessing Officer made an addition of Rs. 6,60,79,574/-.

15. The matter was agitated before the Id. CIT(A) but without any success.

16. Before us, the ld. counsel for the assessee reiterated what has been stated before the Assessing Officer.

17. Per contra, the ld. DR strongly supported the findings of the Assessing Officer/ld. CIT(A).

18. We have carefully considered the orders of the authorities below. There is no dispute that the assessee has received incentives from the lessors amounting to Rs. 6,94,85,100/-. It is also not in dispute that the assessee has amortized in the profit and loss account only Rs. 34,05,526/- and balance has been spread over the entire lease period.

19. It is also not in dispute that the assessee is following the mercantile system of accounting and, therefore, was required to recognize all revenue receipts as income in the year of accrual. Lease agreement clearly indicates that the assessee is entitled to receive lease incentives at the time of the delivery of space/opening of stores which means that the right to receive the lease incentives accrued to the assessee at the beginning of the lease.

20. Even in the lease agreement, there is nothing to show that the incentives accrued yearly. In fact, the assessee is not under any obligation to refund any part of the incentive to the lessor in case the lease is terminated before the completion of lease period. This also shows that the amount of incentive does not accrue yearly during the lease period.

21. Considering the facts in totality, the findings of the Assessing Officer/Ld. CIT(A) cannot be faulted with. Therefore, no interference is called for. Ground Nos. 4 and 5 are, accordingly, dismissed.

22. In the result, the appeal of the assessee is partly allowed.

ITA No. 6233/DEL/2018 [Revenue's Appeal]

23. The grievances of the Revenue read as under:

"1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law deleting the addition of Rs. 6,60,79,574/- made by the Assessing officer on account of Lease Incentive not offered to tax, which is revenue receipts and liable to be taxed as business income earned u/s 28(i)/28(iv) of the Income tax Act. Ld. CIT(A) has erred in treating the

Lease Incentives as capital receipts and directing AO to reduce the same from block of assets in accordance with the explanation 10 to section 43(1) of the Act and the provisions of Accounting Standards. The Ld. CIT(A) has not dealt at all the inconsistencies in creation of provision from year to year pointed out in detail in the assessment order in para 10 of the order.

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.1,16,76,820/- made by the Assessing officer on account of provisions for Sales Returns made by the assessee in the profit and loss account, which is not proved to be computed on any scientific basis on past records. The Ld. CIT(A) has not dealt at all the inconsistencies in creation of provision from year to year pointed out in detail in the Assessment order in para 14 of the order.

24. The underlying facts relating to Ground No. 1 are identical to the facts considered by us in assessee's appeal vide Ground Nos. 4 and 5. For our detailed reasoning given therein, Ground No. 1 is allowed.

25. Ground No. 2 relates to the deletion of addition of Rs. 1,16,76,820/- to its profit and loss account towards provision for sales returns against sales effected during the month of March 2014.

26. The assessee was asked to justify the claim.

27. In its reply, the assessee stated that the said provision is governed by Accounting Standard 29 issued by ICAI which requires recognition of provision for liability where there exists an obligation resulting from past event and there is a probability of out flow of resources required to settle the obligation and a reliable estimate of the amount required to settle the obligation can be made.

28. The creation of such provision did not find any favour with the Assessing Officer. The Assessing Officer was of the opinion that the provisions of section 145A of the Act nowhere provides for claiming a deduction for provision of sales returns. The Assessing Officer further found that in Assessment Year 2013-14, the assessee did not create any provision for sales return and was of the opinion that there is a change in accounting policy which has resulted in double deduction during the current Assessment Year i.e. reduction of sales return in the month of April 2013 corresponding to sales made in the month of March 2013 on actual basis and provisions for sales return corresponding to sales made in the month of March 2014 on provisional basis. The Assessing Officer accordingly, made an addition of Rs. 1,16,76,820/-

29. The assessee carried the matter before the Id. CIT(A) and reiterated its claim.

30. After considering the facts and submissions, the Id. CIT(A) found that on the 1st day of the next year, the provision that is debited to the profit and loss account of that year and the actual sales return is booked during the year and, therefore, the effect of excess or short provisioning gets absorbed in the profit and loss account. Being convinced with the accounting method, the Id. CIT(A) deleted the addition.

31. Before us, the Id. DR strongly supported the findings of the Assessing Officer and the Id. counsel for the assessee reiterated what has been stated before the lower authorities.

32. We have carefully considered the orders of the authorities below. We find that the sales return policy of the company is in-built into the agreement or agreed by the assessee at the time of sales, which means that the obligation to accept sales returns arises on the date of sale. The assessee's sales return policy is mentioned in all its invoices which

clearly states that exchange/refunds shall be accepted within one month from the purchase date.

33. Thus, at the year end, i.e., in the month of March, the assessee is required to debit an amount towards provision for sales return to its profit and loss account against sales debited during the month of March for which the assessee takes actual sales from 1st April to 24th April which is after the balance sheet date but before the finalization of books of account and sales return for remaining 6 days is estimated on scientific/past experience basis.

34. Following this practice of the 1st day of next year provision, i.e. debit to profit and loss account is reversed back to the profit and loss account of that year and actual sales return is booked during the year.

35. We are of the considered opinion that the sales return policy, as accounted for by the assessee, is based on sound accounting principles and therefore, we do not find any reason to interfere with the findings of the ld. CIT(A). This ground is, accordingly, dismissed.

36. In the result the appeal of the Revenue is partly allowed.

37. In the result, the appeal of the assessee in ITA No. 6561/DEL/2014 and that of the Revenue in ITA No. 6233/DEL/2018 are partly allowed.

The order is pronounced in the open court on 09.03.2022.

Sd/-

**[YOGESH KUMAR U.S]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 09th March, 2022.

VL/

Copy forwarded to:

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

Asst. 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	