

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
Ms. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.1047/DEL/2016
[Assessment Year: 2011-12]**

Dy. Commissioner of Income Tax, CC-25, Room No.322, E-2, ARA Centre, Jhandewalan Extn. New Delhi	Vs	M/s Shilpi Cabletronics Ltd. A-19/B-1 Extension, Mohan Co- operative Industrial Estate, Badarpur, Mathura Road, New Delhi
		PAN-AALCS3249R
Revenue		Assessee

Revenue by	Shri Sanjay Gupta, CIT-DR
Assessee by	None

Date of Hearing	23.05.2022
Date of Pronouncement	01.06.2022

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the Revenue against the order of the Ld. CIT(A)-I, New Delhi, dated 25.01.2016 pertaining to Assessment Year 2011-12.

2. Grounds of appeal reads as under:-

1. *That on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 3,07,60,733/- claimed on account of LC Discounting Charges in the Revised Return filed for the AY 2011-12 without discussing the complete submission made by the AO in the Remand Report dt. 08.01.2016.*

2. *That on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in ignoring the findings of the inquiries conducted by the AO during the remand proceedings as in the Remand Report dt. 08.01.2016 the AO had submitted that notices u/s 133(6) were issued to all 10 parties to whom the assessee has claimed to pay LC*

discounting charges and out of that 5 notices came back unserved but he had received replies through post from two companies- M/s Micro Electronics and Spares and M/s KJRS Trading Pvt. Ltd. to whom notices u/s 133(6) were not served. Thus, it is evident that the replies supposed to be furnished by above two parties were not genuine and have been filed by the assessee itself but the Ld. CIT(A) completely ignored this vital information.

3. That the Ld. CIT(A) erred in law and facts in holding that identity and creditworthiness of five creditors to whom notices were not served had been established.

4. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on the facts in deleting the disallowance of Rs. 3,07,60,733/- claimed on account of LC Discounting Charges in the Revised Return filed for the AY 2011-12 without examining the genuineness of expenses and without examining whether the ten parties(suppliers) has claimed the above expenses in their returns of income or not.

5. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 3,07,60,733/- without appreciating the fact that as per AS-5 the term 'prior period items' refers only to income and expenses which arise in the current period as a result of errors or omissions in the preparation of the financial statements of one or more prior periods and prior period items but does not include other adjustments necessitated by circumstances, which though related to prior periods, are determined in the current period.

6. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 3,07,60,733/- without appreciating that the above expenditure was crystallized in the FY 2011-12 (AY 2012-13) and thus, as per AS-5, the assessee can claim expenses in the AY 2012-13 and not in the AY 2011-12.

7. That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.

8. That the grounds of appeal are without prejudice to each other.

3. Brief facts of the case are that the assessee company is engaged in the business of trading of aluminium and copper wire etc. It

has filed its return of income on 30.09.2011 declaring total income at Rs.2,87,94,135/-. The appellant further filed revised return of income on 24.03.2012 declaring a net loss of Rs.21,40,272/-. In the assessment order, the Assessing Officer observed that the assessee has claimed Rs.3,09,34,407/- LC charges neither provided nor claimed in the original return. Assessee's explanation that the liability crystallized in the impugned assessment year was also rejected by the Assessing Officer. The Assessing Officer also took adverse inference for non-furnishing of the details by the assessee. The order of the Assessing Officer in this regard may be gainfully referred as under:-

“On being asked about the reasons for filing revised return of income which resulted in reducing its taxable income, the assessee vide its letter dated 18.03.2011 submitted its reply, which is summerised hereunder :-

“The assessee company filed its original return of income for the assessment year 2011-12 at an income of Rs. 2,87,94,135/- on 30.09.2011. While filing the original return of income, the assessee had inadvertently debited the party accounts for the LC discount, charges instead of claiming it as expenses. Subsequently the assessee company has filed a revised return of income for the assessment year 2011-12 at a loss of Rs. 21,40,272/- on 24.03.2012. The revision was on account of claim of LC charges of Rs. 3,09,34,407/- which had not been claimed in the original return.

Your honour is requested to refer to the judgment of Apex Court in the case of M/s Kedar Nath Jute Mills Ltd. 82 ITR 363 (SC) wherein the Apex Court laid down that any liability relating to the earlier year demanded in the current year is an allowable expense (copy enclosed). The assessee obtained an opinion in writing on the issue from Mr. Devrajan, Ex. Chairman of the Board of the Institute of Chartered Accountants of India before revising the return (Copy enclosed).

Further your honour is requested to refer Accounting Standard-5, which says prior period items are income or expenses which arise in the current period as a result of errors or omissions in the preparation of financial statements of one or more prior periods. Prior period items are normally included in the determination of net profit or loss for the current period. An alternative approach is to show such items in the statement of profit and loss after determination of current net profit or loss. In either case the objective is to indicate the effect of such items on the current profit or loss.

The LC charges which crystallized in February 2012 constitute prior period items. As per AS-5, the impact of the same is to be shown in the current year either as part of the profit and loss account or separately as an item below the line in the profit and loss account of the previous year.

In view of the above, your honour is requested to assess the income as per the revised return. ”

7. The reply of the assessee has been considered and found to be unacceptable. In its reply, the assessee has not substantiated how an amount of Rs. 3,09,34,407/- has been quantified under the head LC Charges. From the perusal of previous year's and current year's balance sheet, 3CD report and notes on accounts, there is no such liability shown under the head LC Charges which has been claimed during the year under considerations as prior period expenses. The para 15 of schedule 15 on significant accounting policies and notes on accounts forming part of the balance sheet as at 31 Mar 2012 states that provisions involving substantial degree of estimation in measurement are recognized where there is a present obligation as a result of past events and it is probable that there will be an outflow of resources. Contingent liabilities are not recognized but are disclosed in the notes, but the same has not been complied with in claiming prior period LC Charges in this year.

8. In the original return, the assessee has shown book profit of Rs. 2,95,84,454/- which is changed to (-) Rs. 13,49,952/- in the revised return filed by the assessee. In support of the change of book profit, the assessee has

submitted neither audited balance sheet and profit and loss account nor 3CD report. Further, the assessee has also not submitted any such ledger account claiming such expenditure. Furthermore, the assessee failed to produce the terms and agreements made with the suppliers and banks to ascertain who will bear the LC charges and what will be the accounting treatment in the case of the assessee.

9. In view of the above, it cannot be merely termed as error or omission; rather, it is a change of accounting policy to claim previous year's expenditure in current year against the matching principle of accounting. Hence, the claim of the assessee made in the revised return of income is not tenable and rejected. The assessee relied upon the judgment of M/s Kedar Nath Jute Mills Ltd. 82 ITR 363 (SC) which is having quite distinguishable facts with respect to matter under consideration.

4. Against the order, assessee appealed before the ld. CIT(A) .
5. The Ld. CIT(A) in great detail referred to additional evidences submitted by assessee, the remand report of the Assessing Officer and rejoinder by the assessee. While making the decision, the ld. CIT(A) observed as under:-

“It is seen that appellant has claimed LC discounting charges amounting to Rs,3,09,34,407/- by filing revised return of income on 24.03.2012. These discounting charges were pertaining to the ten parties who had supplied goods to the appellant on the condition of upfront payment or in advance. The suppliers had discounted the LC from their bank and credited the account of the appellant by the net amount received after deduction of discounting charges. On the other hand, the appellant had debited the account of ten parties with the LC amount with the presumption that the cost of discounting charges of LC would be borne by the suppliers. In view of the above, none of the parties had claimed the LC discounting charges in their books of accounts. There had been an ongoing dialogue with the supplier on the issue but the supplier did not agree to shoulder the responsibility of LC charges due to their nominal margin on sale

of goods to the appellant. The appellant finally agreed with the supplier on 21st February, 2012 to bear the discounting charges of LC and signed a Memorandum of Understanding with the ten suppliers. Copy of the MOU is enclosed at page 14-33 of the paper book filed by the appellant vide paper book dated 01.09.2015. The appellant company accordingly revised its return of income for A.Y. 2011-12 and claimed LC discounting charges of Rs.3,09,34,407/- as the same were crystallized in February 2012 after an MOU was signed with the suppliers. The appellant had also filed an opinion of Shri Devrajan, Ex-Chairman of Board of Studies of the Institute of Chartered Accountants who has opined in the case of appellant company's sister concern M/s Shilpi Cable Technologies Pvt. Ltd. for A.Y.2011 -12 that it can claim LC discounting charges by filing a revised return u/s 139(5) as the liability of LC discounting charges has occurred only in February 2012. The appellant has also mentioned the reason and clarifications for revising the return and claiming LC discounting charges. The appellant claims that these LC discounting charges were crystallized after signing of balance sheet, therefore, the same has been claimed in the assessment year 2011-12. The appellant filed an application under Rule 46A vide his letter dated 01.09.2015 along with a copy of Memorandum of Understanding entered into with ten suppliers, copy of the credit note issued to the ten suppliers, copy of the audit report issued u/s 115JB by the statutory auditor on 28.09.2011 and 28.03.2012 and party-wise and year-wise break up of LC discount charges.”

6. Thereafter Ld. CIT(A) observed that additional evidences were remanded to the Assessing Officer. The Assessing Officer objected to the admission thereof. That Assessing Officer commented that the discounting charges do not pertain to year under appeal. The Ld. CIT(A) further noted that assessee's observation that all the parties have not responded to notices. Ld. CIT(A) preferred to accept assessee's rejoinder that the suppliers directly communicated to the Assessing Officer by speedpost. Referring to the reply filed by nine suppliers before the Assessing Officer, Ld. CIT(A) held that the same established that the

assessee has paid discounting charges for making delayed payment the suppliers. Ld. CIT(A) also noted that assessee has filed copies of return of income filed by the suppliers. Ld. CIT(A) noted that transaction with these parties have been effected through the banking channels. Purchases made from these parties have been accepted by the Assessing Officer in the assessment order passed under section 143(3) itself. The Ld. CIT(A) noted that Assessing Officer has mentioned that replies have been received in the case of five parties directly and in the remaining five parties through Ld. AR of the assessee. Ld. CIT(A) accepted the assessee's explanation and he found it very intriguing that replies of five parties did not reach the Assessing Officer. He noted that assessee has not been able to furnish any response from one supplier and that in view of which the identity of the same has not been established. The Ld. CIT(A) accepted the assessee's plea that liability has crystallized and the same is liable to be accounted for the assessment year itself. In this regard, Ld. CIT(A) referred to assessee's reliance upon Hon'ble Supreme Court decision as under:-

“In support of its contention, the appellant has relied upon the judgment of Hon'ble Supreme Court in the case of Nonsuch Tea Estate Ltd. Vs. CIT 98 ITR 159 (SC). In this case, the question arose regarding the point of time of accrual of remuneration payable to managing agents. The appointment of managing agent was governed by provisions of Section 326 of the Companies Act and prior approval of the Central Government was required. In this case the Central Government conveyed its approval vide letter dated 2nd September, 1957. The Supreme Court held that the liability to pay remuneration to the managing agents arose only when

the Government conveyed its approval vide letter dated 2nd September, 1957 and not prior to that date.”

7. Ld. CIT(A) found the ratio of the above decision squarely applicable that the assessee's liability arose only on entering into memorandum of understanding with the 10 suppliers and not earlier. Ld. CIT(A) rejected as Assessing Officer's plea the liability not arising by reference to the memorandum of understanding. Some relevant observation of Ld. CIT(A) in this regard are as under:-

“By filing these evidences during the course of remand proceedings, the appellant has established that liability of the discounting charges has been crystallized subsequent to the signing of the balance sheet of A.Y. 2011-12. Since, the dispute was resolved after the finalization of the accounts, the appellant entered into the agreement with the suppliers and on the basis of the MOU it has claimed the discounting charges by filing revised return of income. The Assessing Officer has opposed admission of additional evidence and rejection of the LC discounting charges, however, it is seen from the report of the Assessing Officer that he was not able to bring any adverse material on record which could establish that these expenses were not genuine. The appellant has given the name of the parties and has filed copies of the MOUs which contain the address, details of the transactions and name of the bank where these LC discounting charges were debited. Therefore, genuineness of these expenses is established.

In view of the above, the expenditure of LC discounting charges claimed by the appellant is an allowable expenditure as the expenditure was crystallized on entering into the Memorandum of Understanding with the ten suppliers on 21.02.2012. The disallowance of LC Discount charges paid to M/s, Asia Telecom Ltd of Rs.1,73,674/- is confirmed as appellant has not been able to establish its identity. However, the disallowance of LC discount charges paid to 9 suppliers of Rs.3,07,60,733/- is deleted.

8. Ld. CIT(A) also referred to the decision of the Hon'ble Delhi High Court as under:-

(a) CIT Vs. Exxon Mobil Lubricants Pvt. Ltd. 328 ITR 17 (Del)

"Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Year in which deductible - Assessment year 2003-04 - In course of its assessment, Assessing Officer found that, although assessee had entered into an agreement in August, 2002 with 'E' Ltd. with retrospective effect, i.e., from 1-1-2002, yet it had incurred expenses during period January to March, 2002 and, thus, liability thereunder had crystallized during earlier previous year - Accordingly, Assessing Officer disallowed assessee's claim in respect of said expenses - Tribunal, however, allowed assessee's claim - On revenue's appeal, it was noticed that liability of assessee under agreement had accrued in August, 2002, when agreement was executed and, therefore, its liability to pay for period January, 2002 to March, 2002 arose and crystallized in August, 2002 - Whether, on facts, assessee could have claimed expenditure in question only in assessment year in question - Held, yes - Whether, therefore, Tribunal was justified in allowing assessee's claim - Held, yes

FACTS

The assessee filed a return declaring a loss of Rs. 3.81 crores. The case was selected for scrutiny wherein the Assessing Officer recorded a finding that the assessee had entered into an agreement in August, 2002 with E' Ltd. with retrospective effect, i.e., from 1-1- 2002 and the expenses had been incurred during the period January to March, 2002, thus, the liability thereunder had crystallized during the earlier previous year. On appeal, the Commissioner (Appeals) set aside the assessment order. On the revenue's appeal, the Tribunal found that the liability of the assessee under the agreement had arisen and accrued in August, 2002, when the agreement was executed. It was under the said agreement that the liability to pay for the period January, 2002 to March, 2002 arose. Thus, the assessee could have claimed the said liability as expenditure in the assessment year 2003-04.

Accordingly, the Tribunal upheld the order of the Commissioner (Appeals).

On revenue's appeal:

HELD

The assessee's liability under the agreement had arisen and accrued in August, 2002, when the agreement was executed and, therefore, its liability to pay for period January, 2002 to March, 2002 arose and crystallized in August, 2002. It is pertinent to mention that the Commissioner (Appeals) had observed that the assessee had shown prior period expense of Rs. 1.34 crores against which the prior period income was shown as Rs. 83.21 lakhs and the net amount of Rs. 51.13 lakhs had been shown as expenditure in the account. The Commissioner (Appeals) held that if the assessee had shown prior period income and the Assessing Officer had not excluded it while working out the relevant current year's taxable income then there was no reason on the part of the Assessing Officer to disallow only one part of the prior period adjustments, i.e., the prior period expenditure. [Para 14]

Consequently, the addition made by the Assessing Officer could not be sustained. Hence, the instant appeal, being bereft of merit, was to be dismissed. [Para 15]"

The facts of the above cited judicial pronouncements are identical to the facts of the appellant's case, therefore, the ratio of the said judgment is squarely applicable in the case of appellant's case. Hence, the discounting charges for F.Y. 2009-10 and 2010-11 liability for which arose on 21.02.2012 has to be allowed on the basis of crystallization of liability which appellant has claimed by filing revised return of income and by producing necessary evidences before AO as well as appellate authorities. Hence, the claim of the LC discounting charges pertaining to nine parties is fully allowable."

9. Thereafter Id. CIT(A) referred to certain other case laws and concluded as under:-

"The facts of the above cited judicial pronouncements are identical to the facts of the appellant's case, therefore, the

ratio of the said judgments is squarely applicable in the case of appellant's case and looking to the facts of these judicial pronouncements the claim of the appellant of LC discounting charges in respect of nine parties is fully justified and same is allowed. In the result, this ground of the appellant is partly allowed."

10. Against the above order of the Ld. CIT(A), Revenue is in appeal before us.

11. We have heard ld. DR. None is appearing on behalf of the assessee for considerable time. Hence, we proceed to adjudicate the issue by hearing the Ld. Departmental Representative and pursuing the records.

12. First of all, we note that the issue is when the liability arose. The assessee has not provided the L.C. discounting charges in the books of accounts or in the final accounts. It has also not claimed the same in the original return. In the revised return the same claim was made. The reason for the same has been duly accepted by the Ld. CIT(A) that the liability crystallised in February 2012 after an MOU was signed with the suppliers. From this, it is abundantly clear that till the signing of memorandum of understanding the CIT(A) accepted that the liability did not crystallise. When the liability crystallised in February 2012, the same is to be assessed for AY 2012-13. Hence, Ld. CIT(A) has contradicted himself when he says that the liability arose after there was a memorandum of understanding on 21.02.2012 still the same has to be allowed in AY 2011-12 i.e. in the year earlier than the date of MOU. The decision referred by the Ld. CIT(A) from Hon'ble Supreme Court in the case of Nonsuch Tea State Ltd. vs CIT 98 ITR 159(SC) also supports the

proposition that the liability arose only when the MOU was signed. In that case, Hon'ble Supreme Court has held that the liability to pay remuneration arose only when government conveyed its approval and not prior to that date. Same proposition is emanating from the decision of Hon'ble jurisdictional High Court in the case of CIT vs Exxon Mobil Supra which Ld. CIT(A) has himself referred. In this view of the matter when Ld. CIT(A) is himself accepting and giving case laws for the proposition that the liability arose only when the MOU was signed, there is no justification for the same to be accounted for in the current assessment year. The mere submission that there was the opinion from a C.A. for this claim has no legal sustainability dehors any cogent reasoning. Once it is clear that the expenditure was not to be accounted for this year, the order of the Ld. CIT(A) is not at all sustainable.

13. As regards other aspects wherein Ld. CIT(A) is accepting the assessee's submission that five of the parties have replied directly to the Assessing Officer, which the Assessing Officer has not so acknowledged. We find that nothing stopped the Ld. CIT(A) from examining the assessment records as to whether the Assessing Officer's claim that there was no response from these parties is correct or not. In this view of the matter, we do not approve the Ld. CIT(A) doubting the claim of the Assessing Officer that some of these parties did not reply. Be as it may the adjudication of the claim on merit is only of academic interest, as we have already held that the amount was not liable to be accounted for in the present assessment year.

14. In the background of aforesaid discussion and precedent, we set-aside the order of the Ld. CIT(A) on the reasoning that Ld. CIT(A) has erred in holding that the L.C. discounting charges were to be allowed in the present assessment year.

15. In the result, the appeal of the Revenue is allowed for statistical purpose.

Order pronounced in the open court on 01.06.2022.

Sd/-
[ASTHA CHANDRA]
JUDICIAL MEMBER

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Delhi; Dated: 01.06.2022.

Shekhar,

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi