

आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE

**BEFORE SHRI S.S.GODARA, JM
AND SHRI DR. DIPAK P. RIPOTE, AM**

आयकर अपील सं. / ITA No.493/PUN/2020
निर्धारण वर्ष / Assessment Year : 2017-18

Kopergaon Peoples Co-Op Bank Ltd.,
NA NA Bank Road,
Kopergaon,
Ahmednagar -423 601

PAN : AAAAK2255J

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, circle, Ahmednagar

.....प्रत्यर्थी / Respondent

Assessee by : Shri C.H. Naniwadekar &
Shri Kiren Sanmane
Revenue by : Shri Arvind Desai

सुनवाई की तारीख / Date of Hearing : 22.06.2022
घोषणा की तारीख / Date of Pronouncement : 29.08.2022

आदेश / ORDER

PER S. S. GODARA, JM :

1. This assessee's appeal for A.Y. 2017-18 arises against the CIT(A)-2, Pune's order dated 24/03/2020 passed in case No. PN/CIT(A)-2/DCIT CIR/AN/1484/2019-20 involving proceeding u/s. 143(3) of the Income Tax Act, 1961; in short "the Act".

Heard both the parties. Case file perused.

2. The assessee's sole substantive grievance raised in the instant appeal challenges correctness of both the lower authorities action disallowing its prior period expenditure claim of Rs.29,07,938/- on the ground that it has been followed mercantile system of accounting and therefore, no relief could be granted as the corresponding expenditure pertains to assessment year 2015-16. The CIT(A)'s detailed discussion to this effect reads as under

"5.3 I have perused the assessment order and the submission of the appellant as above carefully. I find the submission and contention of the appellant are devoid of merit. The facts that the account of the appellant were audited and audit report had been filed and in the said audited accounts and profit and loss accounts the appellant had claimed the expenditure as "Prior period expenses" is an established fact and there is no dispute in the same. Therefore, the said expenses pertained to FY 2015-16 relevant to AY 2016-17 when established and such expenses had been attributed to 01/07/2015 to 31/03/2016 and also 01/04/2016 to 30/09/2016 pertaining to two different financial years admittedly, the amount of expenses related to the FY 2015-16 relevant to AY 2016-17 should have been quantified bifurcated by the appellant and his auditor and the expenses related to such staff increment pertaining to FY 2015-16 relevant to AY 2016-17 should have been shown in the accounts as provision made for the said year, when the payments had not been made. It is a settled law that every year is a separate assessment year and any income and expenditure pertaining to the said year should be shown by the assessee in the said relevant assessment year. Income of one year and so also expenditure of one year cannot be claimed by an assessee in a different assessment year. It is also a settled law that if any expenditure had accrued but not paid and the assessee had maintained the Mercantile System of accounting, the amount of expenditure which had to be incurred but not paid should have

been shown in the accounts as provision made. The appellant, in its case could not follow the said settled principle. The appellant referring to the section 37 of the Act contended that the expenses though were prior period expenses were not capital in nature or personal in nature and the same were incurred during the course of running the business and or the business and in furtherance of business and therefore the same was allowable being in the nature of salaries to be paid on contractual and unforeseen liability. I do not agree with the contention of the appellant. The liability of payment of salaries though is a contractual liability, the same could not be defined as "unforeseen liability" as has been allegedly claimed by the appellant. Section 37 of the Act states about the expenditure incurred wholly and exclusively for the business in the year of expenditure when the same is to be considered. The said section nowhere states that any expenditure pertaining to any other year(s) for which no provision had been made by the appellant should also be allowed as business expenditure in the year of appellant's claim, despite the fact that the said expenditure did not pertain to the year of claim. Secondly, the appellant has also furnished the chronology of events contending that the same were relevant and on the basis of which such expenses were incurred and should be allowed. I find such Chronology is immaterial as far as allowability of any prior period expenses in this year for which no provision had been created in the year in which the said expenses were related to. Thirdly, the contention of the appellant that the provision of these expenses could not be made as on 31/03/2016 as the accounts for FY 16 were finalised and also the Audit was completed and NP was disclosed and approved by the AGM of members and accordingly ITR for AY 17 was filed before 30/09/2016 and agreement was signed on 17/10/2016, again contradicts the contention of the appellant that the payments of salaries was a contractual liability. If there was a contract with the employees of the appellant, there

was no reason to quantify the amount by 31/03/2016 and further before the accounts were audited and the return of income had been filed. The very facts that there was a contractual payment to be made to the employees on account of salaries in the FY 2015-16 very well indicates that the quantified amount was payable and therefore the same could not be construed as “unforeseen liability”. Fourthly, the appellant had referred to the accounting Standard 5, contending that prior period items are income of 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. The accounting Standard 5 is not denied. It is, however, is to be examined as to whether such claim of prior period expenses in this relevant assessment year for not making any provision in the said prior period could be allowed in this year under the Income Tax Act or not, The AO had rightly pointed out that the same was not allowable under the Income Tax Act. Fifthly, the appellant had cited the decision of the Hon’ble Gujarat High Court in the case of Pr. CIT Vs. Dishman Pharmaceuticals & Chemicals Ltd. 417 ITR 0373 (Guj) wherein the Hon’ble Gujarat High Court had referred to its earlier decision in the cases of Pr. CIT Vs. Adani Gas Ltd. in ITA No. 900 of 2016 dated 11/01/2017 and Pr. CIT Vs. Adani Enterprises on ITA Nos. 566 of 2016 dated 20/07/2016 inter-alia stating that in the said case it was held that even the revenue did not dispute that the company would be taxed at the same rate in the present assessment year of earlier year and it is also not disputed that prior period income as declared by the assessee during the current year which was accepted by the revenue and hence no question of law had arisen. I find the said decision is not at all applicable as in the case of the appellant no prior period income had been declared as income. On the other hand the prior period expenses had been claimed as expenditure u/s. 37 in the submission without making any provisions in the year when such expenditure was accrued or attributable to.

Therefore, the decision cited of the Gujarat High Court is of no use to the appellant. The appellant further had cited the decision in the case of CIT Vs. Excel Industries [2013] 358 ITR 295 (Dishman Pharma) of the Hon'ble Supreme Court, which for the identical reason as in the above case is found to be not applicable in the case of the appellant. In view of above, I hold that the AO was justified in disallowing the prior period expenses in this year.

*5.3.1 Having said so, it is clearly submitted by the appellant that such expenses pertained to two FYs i.e. (i) for the period from 01/07/2015 to 31/03/2016 relevant to FY 2015-16 and (ii) the other for the period from 01/04/2016 to 30/09/2016 relevant to FY 2016-17. The AO had not considered this aspect, though the appellant had brought this fact before the AO in its written submission as quoted above and duly quoted by the AO in para 5.3 of the assessment order. Therefore, the expenditure pertaining to 01/04/2016 to 30/06/2016 relevant to this assessment year could not be disallowed by the AO being the expenditure incurred for the business purpose of the appellant wholly and exclusively in this relevant year under consideration, which is required to be allowed u/s. 37 of the Act. The AO is therefore directed to quantify the amount pertained to this relevant assessment year and allow the same. The amount pertained to prior period expenses for FY 2015-16 relevant to AY 2016-17 is therefore **confirmed**. Ground No. 1 raised by the appellant is accordingly **partly allowed**.”*

3. Both the learned representative reiterated their representative stands against and in support of impugned disallowance. The Revenue more particularly argued that both the learned authorities have rightly disallowed the assessee's impugned claim once it follows mercantile system of accounting. We find no merit in the Revenue's arguments as it has come on

record that the assessee and its employees union had finalised the corresponding incremental benefits in nature of overtime bonus etc. only on 17.10.16 with retrospective effect. That being the case, we hold that the assessee has rightly claimed the impugned expenditure as crystallised in the relevant previous year only. This is indeed coupled with the fact that such a disallowance could hardly be made once an assessee is assessed at a uniform rate all along. We therefore delete the impugned prior period expenditure disallowance in light of assessee's overwhelming supportive evidence. Ordered accordingly.

4. This assessee's appeal is allowed in above terms.

Order pronounced in the Open Court on this 29th day of August, 2022.

Sd/-

(DR.DIPAK P.RIPOTE)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 29th August, 2022.

Sd/-

(S.S. GODARA)

न्यायिक सदस्य/ **JUDICIAL MEMBER**

Ashwini

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Pune.
4. The Pr.CIT-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File. आदेशानुसार / BY ORDER,
// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

S.No.	Details	Date	Initials
1	Draft dictated on	22.06.2022	
2	Draft placed before author	16.08.2022	
3	Draft proposed & placed before the Second Member		
4	Draft discussed/approved by Second Member		
5	Approved Draft comes to the Sr. PS/PS		
6	Kept for pronouncement on		
7	Date of uploading of Order		
8	File sent to Bench Clerk		
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R.		
11	Date of Dispatch of order		