

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

**BEFORE SHRI N.K. CHOUDHRY, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 1025/Del/2019
Assessment Year: 2015-16**

DCIT, Circle 1(1)(Exemption) New Delhi	Versus	India Trade Promotion Organization, PragatiBhawan, PragatiMaidan, New Delhi
(Appellant)		PAN: AAATI2955C (Respondent)

Assessee by : Sh. Kamal Bansal, Ld. CA
Revenue by : Sh. Ravi Kant Choudhary, Ld. Sr. DR

Date of hearing : 01.09.2022
Date of order : 01.09.2022

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the Revenue Department against the order dated 22.11.2018, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-40, Delhi (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2015-16.

2. Brief facts, relevant for adjudication of the instant appeal, are that the Assessee vide certificate No. F. No. DGIT(E)/10(23C)(iv)/2008/143 dated 01.05.2008 claimed to be registered u/s. 10(23C)(iv)/11 and 12 read with section 2(15) of the Act, and by filing its return of income on dated 31.03.2017 declared its income as 'Nil' and claimed the exemption u/s. 11 & 12 of the Act.

2.1 The Assessee further stated in the computation of income that alternatively, it reserves its right to claim the exemption u/s. 10(23C)(iv) of the Act as and when the same is restored. The Assessing Officer by considering the emerging position allowed the alternative claim of exemption u/s. 10(23C)(iv) to the Assessee, however, while perusing the audit report filed by the Assessee in Form 3CD along with accounting policy given in the notes to accounts (Note No. 19) observed that the Assessee has not accounted an amount of Rs.2,40,79,000/- as the rental income which is under dispute.

2.2. The Assessing Officer found the said treatment given by the Assessee as not acceptable on the reason that the income as per the mercantile method of accounting has to be offered for tax on accrual basis and such income which has accrued, but not received, is to be shown as receivable or under the head sundry debtor, as the case may be, in the balance sheet. It is entitled to claim it as bad and write off subsequently when it actually becomes bad as per the provisions of the Act but cannot resort to such accounting as has been done by it.

2.3 The Assessing Officer, ultimately added the amount of Rs.2,40,79,000/- in the income of the Assessee.

3. The Assessee being aggrieved, preferred first appeal before the Id. Commissioner, who vide impugned order deleted the addition of Rs. 2,40,79,000/- on account of disputed "space rental income". The Revenue Department, being aggrieved against the impugned order, preferred the instant appeal.

4. Learned DR supported the assessment order passed by the Assessing Officer and submitted that the order under challenge not only suffers from perversity, but also suffers from impropriety and / or illegality, hence, the same is liable to be set aside. On the contrary, the Id. AR supported the impugned order by submitting that the impugned order is based on the previous orders passed in the Assessee's own cases for previous assessment years. Therefore, no interference is warranted.

5. Heard the parties and perused the material available on record. In this case, though the Assessing Officer allowed the alternative claim of exemption u/s. 10(23C)(iv) of the Act to the Assessee, however, made the addition of Rs.2,40,79,000/- on account of disputed "space rental income" by rejecting the non-accounting treatment given by the Assessee and on the reason that such income has accrued.

5.1 The Id. Commissioner on appeal deleted the said addition, while relying on the orders passed by herself in Assessee's own cases for A.Y. 2013-14 and 2014-15 and by its Id. Predecessor [CIT(A)] in the cases of earlier assessment years. For brevity and ready reference, we are reproducing the conclusion drawn by the Id. Commissioner for deletion of the addition under challenge:

4. *Determination*

4.1 *Ground of appeal no. 1 challenges the addition on account of disputed "space rental income" amounting to Rs. 2,40,79,000/-*

4.2.1 *I have considered the assessment order and also submissions made by the appellant. Similar issues existed for assessment years 2009-10 (Appeal No. 341/2014-15), 2010-11 (Appeal No. 177/2013-14), 2011-12 (Appeal No. 07/2014-15), 2012-13 (Appeal No.143/2015- 16), 2013-14 (Appeal No.*

369/2016-17) and 2014-15 (Appeal No. Delhi-40/10190/2017-18). In all these years, on similar facts, the appeal had been allowed by my Id. predecessor and by me also by following the orders of my Id. predecessors. While deciding the appeal for assessment year 2011-12 in appeal no. 7/2014, my Id. predecessor had held as under:

"I have gone through the submissions, case laws and documents of the case regarding the disputes with the two government departments, who are in possession of the space in PragatiMaidan, involved in the case for recovery of the space rent. The Assessee is engaged in long correspondence with the departments and pursuing the matter for recovery of the space rent even at the highest levels in the administrative ministries of the Government of India involved.

One of the organisation viz. National Science Centre (NSC) had paid space rent to the Assessee company @ Rs. 200/- per sq. mtr. p.a. in an earlier year. Subsequently, the rate of space rent was enhanced by the Assessee company on year to year basis which was contested by the NSC. Accordingly, the Assessee company has accounted for income @ Rs. 200/- per sq. mtr. per year in the Income & Expenditure Account as NSC had paid @ Rs 200/- per sq. mtr. p.a. but contested the increase in rates. The element of enhanced space rent over Rs.200/- per sq. mtr. p.a. (disputed amount) was kept out of books as "Contested dues not accounted for" and disclosed in the Notes to the Accounts. The Assessee is essentially relying on the Accounting Standard 9 issued by the Institute of Chartered Accountants of India relating to Recognition of Income in accordance with para 10 which states that if at the time of raising any claim, it is unreasonable to expect ultimate collection, revenue recognition should be postponed.

As regards the other department viz. Crafts Museum, they have not paid any space rent to the Assessee company and are maintaining that they were in possession of the space even prior to the formation of the Assessee company. On the same analogy of NSC and following AS 9, the Assessee company has not raised any invoice for the space rent on Craft Museum and disclosed the disputed amount

of space rent relating to the Assessment Year under reference, in the Notes to Accounts.

The disputes have not been resolved even till date. The case laws relied up on by the Assessee and the Accounting Standard 9 being followed by the Assessee tilt the arguments in the favour of the Assessee.

Decision: The ground allowed in favour of the Assessee and addition of Rs. 1,83,00,000/- made by the Assessing Officer in this connection is deleted."

4.2.2 Since the facts of the case are same as that for earlier assessment years, respectfully following the decision of my Id. predecessors and my own order for assessment years 2013- 14 and 2014-15, addition of Rs.2,40,79,000/- made by the Assessing Officer is deleted. Ground of appeal no. 1 is allowed."

5.2 We have given thoughtful consideration to the conclusion drawn on the issue in hand, by the Id. Commissioner in the impugned order, as well as order dated 13.09.2019 passed by the Hon'ble coordinate Bench of the Tribunal in the Assessee's own cases i.e. ITA No. 1919, 3359, 2508 and 3135/Del/2016 for the assessment years 2009-10, 2010-11, 2011-12 and the order dated 22.01.2021 in ITA No. 2110/Del/2017 by the Tribunal, wherein the Hon'ble coordinate Bench, affirmed the deletion of the similar addition by the Id. Commissioner.

For ready reference, the conclusion drawn by the Hon'ble coordinate Bench vide order dated 13.09.2019 (supra) is reproduced herein below:

"12. AO made addition of Rs. 1,68,73,663, Rs.2,01,86,003 & Rs.1,83,00,000 in AYs 2009-10, 2010-11 & 2011-12 respectively on a/c of space rent income on the basis of disclosure in Notes to Accounts of the Assessee. However, Id. CIT(A) deleted the addition on the ground that since space rent account is disputed by two Government Departments viz. National Science Centre and Crafts Museum by contesting the ownership of land attracting

rent by the Assessee and claimed that they are in possession of the land and as such it is uncertain, no addition can be made.

13. Ld. CIT(A) has thrashed the facts in detail and by applying the decision rendered by various Hon'ble High Courts and Hon'ble Supreme Court, decided the issue in favour of the Assessee on the ground that since the dispute has not been resolved till date, the addition is not sustainable.

14. Assessee has brought on record documents and letter of discussion to resolve the disputes between National Science Centre & Crafts Museum and India Trade Promotion Organisation (ITPO) for non-payment of rent, available at pages 93 to 130 of the paper book, which have been duly examined by the ld. CIT(A). We are of the considered view that when income on account of space rent has not been accrued, as in the instant case due to dispute, there cannot be any rent even though entry in the books of account have been made on account of notional income. So, when the income would be received its taxability can be examined by the Revenue. Ld. DR for the Revenue has not brought on record any document if the dispute between the parties qua the space rent has been resolved. So, in these circumstances, we are of the considered view that there is no illegality or perversity in the findings returned by the ld. CIT (A), consequently ground no.3 in AYs 2009-10, 2010-11 & 2011-12 is determined against the Revenue.”

5.3 Nothing contrary was brought before us to controvert the findings of the Id. Commissioner as well as of the Hon'ble coordinate Benches on the issue in hand. Even otherwise, we do not find any reason/material to controvert the findings referred above. Hence, respectfully following the decisions of the Hon'ble Coordinate Benches, we are inclined to dismiss the appeal of the Revenue Department.

6. In the result, the appeal filed by the Revenue Department stands dismissed.

Order pronounced in the open court on 01/09/2022.

Sd/-

(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER

*aks/-