

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER AND
SHRI MS KAVITHA RAJAGOPAL, HON'BLE JUDICIAL MEMBER**

ITA NO. 2112/MUM/2021 (A.Y. 2011-12)

Flo-Dyne Controls (India) Private Limited 2501, G Square Business Park Plot 25 and 26, Sector 30 Navi Mumbai - 400703 PAN: AABCF2339M	v.	Income Tax Officer – 15(1)(2) Room No. 15B, Ground Floor Aayakar Bhavan, M.K. Road Mumbai - 400020
(Appellant)		(Respondent)

Assessee Represented by	:	Khushiram Jadhvani
Department Represented by	:	Vranda U Matkari
Date of Hearing	:	08.08.2022
Date of Pronouncement	:	20.09.2022

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 23.09.2021 for the A.Y.2011-12.

2. Brief facts of the case are, assessee filed its return of income for the A.Y. 2011-12 electronically on 19.06.2011 declaring total income of ₹.NIL. The case was selected for scrutiny under CASS and notice u/s. 143(2) and 142(1) of Income-tax Act, 1961 (in short "Act") were issued and served on the assessee. After considering the detailed submissions by the assessee, the Assessing Officer completed the assessment u/s. 143(3) of the Act on 10.03.2019 and made the following additions: -

"1. Addition u/s. 41(1) of the act: The assessee shown as liability of Rs. 75,82,302/- payable to M/s. Camy Plant. However, the assessee could not prove the genuineness correctness of transactions made with M/s. Camy Plant. The A.O. had added to the total income of the assessee treating as cessation of liability u/s. 41(1) of the I.T. Act.

2. Expenses claimed towards misappropriation by the employee amounting to Rs. 1,00,640/

3. Disallowance of discount of Rs. 25,38,533/-. The assessee had claimed an amount of Rs. 25,38,533/- in P&L account towards discount. The assessee was asked to explain the claim of discount. During the assessment proceeding, the assessee had submitted in this regard that since the company was in the process of winding up the profit component was reversed & shown under the head Rebate, Discount & Round up charges. The contention of the assessee was not accepted by A.O. The A.O. held that the said income/profit is admittedly not accrued to assessee and there are no transactions with said party during the year. The A.O. also states that the profit element of the earlier years is by no stretch of imagination can partake a character of expenses even under winding up process of the company.

4. Disallowance u/s. 40(a)(ia) of Rs. 21,56,984/- for delay/non payment of TDS in respect of expenses and u/s. 43B of Rs.2,18,588/- for non payment TDS.

3. Aggrieved, with the above order, assessee preferred an appeal before Commissioner of Income Tax (Appeals). After considering the submissions of the assessee Commissioner of Income Tax (Appeals) sustained the additions made by the Assessing Officer relating to Section 41(1) of the Act, amount relating to misappropriation by the employee and amount claimed by the assessee as discount. CIT(A) gave relief to the assessee with regard to 40(a)(ia) of the Act and directed the Assessing Officer to verify the disallowance already made by the assessee on certain disallowance made by the Assessing Officer.

4. Aggrieved with the order of the CIT(A) assessee preferred appeal before ITAT and raised following grounds in its appeal: -

"1.1. The Id.CIT(A) has erred in law and on facts in upholding the addition of Rs. 75,82,302/ u/s. 41(1) of the Act although the same remained payable to M/s. Camy Plant in the appellant's books.

1.2. Because, the CIT(A) has erred in placing reliance upon a judicial authority which is completely distinct in facts.

2. Because, the Ld. CIT(A) has erred in law and on facts in upholding the disallowance of expenses of Rs. 1,00,640/- although complete explanation in that regard was placed on record.

3. Because, the Id. CIT(A) has erred in law and on facts in disallowing the expenses of Rs. 25,38,533/- allowed as discount to one of its debtors which was in the nature of write off of debt since debtor had gone into liquidation.

4. Because, the Id. CIT(A) has erred in law and on facts in granting only partial relief in respect of the addition of Rs.21,56,984/-

u/s. 40(a)(ia) of the Act by referring to AO for verification all though all relevant material was already on record."

5. After considering the submissions, the Coordinate Bench restored the issue to the file Assessing Officer on two grounds on the basis of additional evidences filed by the assessee i.e., disallowance of ₹.75,82,302/- u/s. 41(1) of the Act and disallowance of ₹.1,00,640/- on account of misappropriation and in respect of disallowance u/s. 40(a)(ia) of the Act.

6. Accordingly, on the direction of ITAT, Assessing Officer issued notice u/s. 142(1) asking the assessee to furnish the details relating to disallowance towards misappropriation by employee, claim of discount amount to ₹.25,38,533/- and details of expenditure and TDS deducted thereon. After considering the submissions of the assessee, Assessing Officer rejected the submissions made by the assessee and proceeded to make the additions sustained by the CIT(A) in the first round of appeal relating to disallowance u/s. 41(1) of the Act, on account of misappropriation by employee and disallowance u/s.40(a)(ia) of the Act. Aggrieved, assessee preferred appeal before Ld.CIT(A). Ld.CIT(A) after considering the submissions of the assessee and grounds of appeal raised by the assessee, he sustained the addition relating to claim of discount to

the extent of ₹.25,38,533/- and disallowance of ₹.3,14,000/- u/s. 40(a)(ia) of the Act.

7. Aggrieved assessee is in appeal before us raising following grounds in its appeal: -

"1. The Id. CIT(A) has erred in law and on facts in disallowing the expenses of INR 25,38,533/- allowed as discount to one of its debtors which was in the nature of write off of debt since the debtor had gone into liquidation.

2. On facts and in circumstances of the case and in law, National Faceless Appeal Centre New Delhi erred in confirming addition of INR 3,14,000/- on account of claim of expense invoking section 40(a) (ia).

3. On facts and in circumstances of the case and in law, Appellant is entitled to credit of disputed taxes paid to the tune of INR 15,42,247/- which is not granted by Ld. Income Tax Officer while issuing notice of demand dated: 30.12.2019."

8. At the time of hearing, Ld. AR of the assessee brought to our notice Page No. 3 of the Assessment Order and submitted that assessee has entered into transaction of sales amounting to ₹.1,26,83,600/- on 26.12.2009 with M/s. Flo-Dyne Ltd. (UK) during the F.Y. 2009-10. As on 31.03.2010, there was closing balance of ₹.86,97,549/- which was shown in outstanding sundry debtors. During the F.Y. 2010-11, there was no transaction with the above said party. Further, assessee submitted before the Assessing Officer that due to failure of payment from principle vendor

i.e., M/s. Flo Dyne Ltd.(UK) unable to pay to the assessee. In that circumstances, the assessee has given discount of 20% of the order amount, i.e. ₹.1,26,83,600/- and the balance amount shall be received in future. However, due to liquidation of M/s. Flo- Dyne Ltd. (UK) in August, 2013 and subsequent wind up, the Ld. AR submitted that the assessee could not recover any funds from them.

9. In this regard, he brought to our notice that assessee has declared the above outstanding from A.Y. 2010-11 to A.Y. 2014-15 as outstanding and in A.Y 2014-15 assessee has declared the above said amount as bad debts. Accordingly, he brought to our notice Page No. 104, 105 and 109 to show that assessee has continuously declared the same outstanding and recoverable. Due to liquidation it has claimed the above said amount as bad debts. Further, he brought to our notice Page No. 111 of the Paper Book which is the Assessment Order passed u/s. 143(3) of the Act for the A.Y. 2014-15 in which Assessing Officer has accepted the same. Ld. AR submitted that this is the factual matrix of the claim of the assessee and assessee is forced to offer the discount in order to recover the amount. Since the whole sales made to the above party has become bad and even otherwise assessee would have claimed whole amount as bad debts in

A.Y. 2014-15. Therefore, allowing the claim of the assessee as discount in the current assessment year has no impact to the revenue.

10. On the other hand, Ld.DR relied on the orders of the Authorities below.

11. Considered the rival submissions and material placed on record, we observe that assessee has exported certain goods on 26.12.2009 to its group concern M/s. Flo- Dyne Ltd. (UK) for the value of ₹.1,26,83,600/-. During the Financial Year 2009-10 assessee has received an amount of ₹.39,86,050/- as an advance from them. The net outstanding for F.Y.2009-10 was ₹.86,97,550/-. During the present assessment year i.e. A.Y. 2011-12 assessee has offered discount to the group concern to the extent of ₹.25,36,720/- by passing a general entry. However, we observed that while disclosing related party transactions, assessee conveniently failed to disclose the same in the notes to account the above discount. Further, it is brought to our notice the group concern M/s. Flo-Dyne Ltd. (UK) gone into liquidation in August, 2013. Therefore, assessee claims that the outstanding with them becomes irrecoverable. Therefore, assessee has declared the same as bad debts in A.Y. 2014-15. Since the amount is not recoverable from them, assessee made a plea before us

that this itself is a proper reason for assessee to claim and offer the discount to them, so that assessee could recover the balance outstanding. However, we are not convinced with the submissions of the assessee for the reason that M/s. Flo- Dyne Ltd. (UK) is a group concern and a related party, assessee cannot simply write off the outstanding amount and also offer the discount without there being any proper reasoning or any justification placed on record. It is the responsibility of the assessee to recover the amount exported outside India, this being one of the group concern assessee should recover the same from the holding company or from other sister concerns. The assessee cannot write off the above said transactions as bad debts. Therefore, the claim of the assessee, on discount is not proper and reasonably justified on record. Therefore, we are inclined to agree with the findings of the Assessing Officer and accordingly, ground raised by the assessee in this regard is dismissed.

12. With regard to Ground No. 2 the relevant facts are, during the assessment proceedings Assessing Officer observed that the assessee submitted before him that the disallowance of ₹.13,07,104/- is made on account of salary to staff and out of the above amount ₹.10,95,258/- already disallowed. It was further submitted before him that, the

provisions of section 40(a)(ia) of the Act does not apply to the salary expenses. The Assessing Officer observed that the contention of the assessee on this ground are acceptable to him and accordingly, he allowed the relief of ₹.16,31,138/-. Further, he observed that the TDS on amount of ₹.3,14,000/- is deducted but not paid before filing of the return of income i.e., 19.06.2011. Therefore, the expenses claimed of ₹.3,14,000/- is added to the total income of the assessee u/s. 40(a)(ia) of the Act.

13. Aggrieved, with the above order assessee preferred an appeal before the Ld.CIT(A). Before Ld.CIT(A) assessee submitted that assessee has deducted TDS and accepted that the same was deposited beyond the due date u/s. 220 of the Act but before filing return of income u/s. 139(1) of the Act. It has given details of remittance as under: -

Name	Nature of Exp.	TDS (in ₹)	Dt of TDS Paid
Vaibhav Jadhav	Professional Fees	50,000/-	12.07.2011
Asha Dhure	Rent	2,64,000	12.07.2011
Total		3,14,000/-	

14. After considering the submissions of the assessee, Ld.CIT(A) observed that Assessing Officer has initially made addition of ₹.21,56,984/- u/s. 40(a)(ia) in the original Assessment Order passed u/s.143(3) of the Act. However, while appeal giving effect to the order

passed u/s. 254 r.w.s. 143(3) of the Act, Assessing Officer has allowed deduction to the extent of ₹.16,31,138/- as per the break up given under:-

Nature of Expense	Total Amt in Rs. disallowed by AO u/s 143(3)	Suo motto Disallowed by assessee	Finally allowed by AO U/S 254 r.w.s 143(3)	Balance disallowed by AO u/s 254 r.w.s 143(3)
Salary to Surender Kr Bind	11,15,004	10,95,258	10,95,258	19,746
Salary to Vijay Mevada	1,92,100	0	0	1,92,100
Prof Fees : Manish Chandra	56,180	56,180	56,180	0
Prof Fees : Kishor Soali	4,39,500	4,39,500	4,39,500	0
Brokerage : New Millennium	40,200	40,200	40,200	0
Prof Fees : Vaibhav Jadav	50,000	0	0	50,000
Rent : Asha Dhure	2,64,000	0	0	2,64,000
Total Amount	21,56,984	16,31,138	16,31,138	5,25,846

15. Accordingly, he sustained the addition made by the Assessing Officer by agreeing with the reasons given by Assessing Officer. Aggrieved assessee is in appeal before us and at the time of hearing Ld.AR submitted that the assessee has remitted the TDS amount before filing the return of income and in this regard he relied on the decision of the Hon'ble Bombay High Court in the case of Pr.CIT v. Crescent Construction Co., in I.T. Appeal No. 667 of 2018 dated 29.07.2018.

16. On the other hand, Ld. DR relied on the orders of the Authorities below.

17. Considered the rival submissions and material placed on record, it is fact on record that assessee has remitted the TDS before filing of return of income and as held in the case of Pr.CIT v. Crescent Construction Co., (supra) the Hon'ble Bombay High Court held as under: -

"10. We observe that in the case at hand there are concurrent findings of fact of the CIT(A) and the Tribunal that the Subject TDS in the present case was deposited in the state exchequer before the due date of filing of return which is not disputed by the Revenue. Also no material or facts have been brought before us even to suggest that the deduction has been granted twice to the assessee. Therefore, there cannot be any disallowance on this count. The AO could not have made a disallowance of Rs. 5,30,91,745 under s. 40(a)(ia) of the Act in view of the retrospective nature of the proviso to the said section. We do not find any error apparent or perversity in the order of the Tribunal in confirming the order of the CIT(A) holding that no disallowance is called for under s. 40(a)(ia) of the Act."

18. Respectfully following the above said decision, the provisions of section 40(a)(ia) of the Act clearly indicates that the amendment is retrospective in nature and the assessee has deposited the TDS prior to filing of the return of income. Therefore, there cannot be any disallowance in this case. Accordingly, ground raised by the assessee is allowed.

19. With regard to Ground No. 3, at the time of hearing, Ld. AR brought to our notice that assessee is entitled to get tax credit which assessee has

paid to the tune of ₹.15,42,247/- which Assessing Officer failed to give credit in demand notice dated 13.12.2019. The assessee has filed the relevant information in Paper Book at Page No. 121 and he also brought to our notice Page No. 134 and 136 of the Paper Book. Since this issue needs to be verified, accordingly, we remit this issue to the file of the Assessing Officer with a direction to verify the same and if found correct the credit may be granted to the assessee after giving proper opportunity of being heard to the assessee. Accordingly, ground raised by the assessee is allowed for statistical purpose.

20. In the result, appeal filed by the assessee is partly allowed as per above directions.

Order pronounced in the open court on 20th September, 2022.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai / Dated 20.09.2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum