

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI S. RIFAUR RAHMAN, AM

आयकर अपील सं/ I.T.A. No.1633/Mum/2022

(निर्धारण वर्ष / Assessment Year: 2014-15)

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आयकर अपील सं/ I.T.A. No.1634/Mum/2022

(निर्धारण वर्ष / Assessment Year: 2015-16)

CU Inspections & Certifications India Pvt. Ltd. 2201, 2205, 2206, 22 nd Floor, 2301 to 2306 23 rd Floor, B Wing, Arihant Aura, Plot No. 13/1, TTC, Opp Turbhe Railway Station, Thane Belapur Road, MIDC side, Turbhe Navi Mumbai-400705.	बनाम/ Vs.	ACIT-15(1)(2) Room No. 483, Aayakar Bhavan, Maharshi Karve Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAEECC7885N		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri H. N. Motiwala	
Revenue by:	Shri Hiren Bhatt (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 31/10/2022

घोषणा की तारीख /Date of Pronouncement: 29/12/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/(NFAC), Delhi dated 18.05.2022 and for AY. 2014-15 respectively.

2. Both sides agree that the issue involved in the appeals are the same (except for the sum/figure). Therefore, the appeals of the assessee for AY 2014-15 is taken as the lead case and the decision of which will be followed for AY 2015-16.



3. The grounds of appeal of the assessee are as under: -

“1 On the facts and in the circumstances of the case, the learned Commissioner of income tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred in confirming the order of the Assessing Officer, Mumbai, in respect of addition of Rs 3,35,28,334/- for "License fees billed but not accrued during the year, without appreciating the fact that the appellant maintains its books of account on mercantile basis for the financial year. while service charges are accounted on the basis of financial year

2. On the facts and in the circumstances of the case the learned Commissioner of Income tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred in confirming the order of the of the Assessing Officer, Mumbai in respect of addition of Rs. 3,35,28,334/- for "License fees billed but not accrued", particularly when the appellant has accounted service charges for services on the basis of financial year and license fees in respect of successful completion of project by the client of appellant from the date of issue of certificate of license to end of financial year i.e. March 31, 2014, as the said certificate is valid for twelve months from the date of issue. Therefore, License fees which are not accrued is accounted as "License fees billed but not accrued on March 31, 2014 and shown under current liabilities. Which have been accounted as income in the assessment year 2015-16.”

4. Ground nos. 1 & 2 is regarding the action of the Ld. CIT(A) in confirming the addition of Rs.3,35,28,334/-.

5. Brief facts as noted by the Ld. CIT(A) is that the assessee company was incorporated on 09.04.2012 and that it follows



mercantile method of accounting. The main business of assessee is inspections, Certification, Sampling, Survey, Pre-shipment Inspection. During the financial year 2012-13, the assessee has stated to be not having any business activities. Therefore, this previous year relevant to the AY 2014-15 was its first year of business. During the year, as per mercantile method of accounting, the assessee has credited income for twelve months i.e. from 01.04.2013 to 31.03.2014 and income which is not due and accrued was carried forward in the next year under the head "*Income billed but not accrued*". On this basis, the assessee had credited the proportionate income declaring total income at Rs.2,93,89,060/- which return was subsequently revised twice. The final revised return was filed declaring total income of Rs.2,21,80,270/-. In the order u/s 143(3) of the Act, the AO disagreed with the assessee's method of accounting and added back the amount "*billed but not accrued*" of Rs.3,35,28,434/- and finalized the assessment on a total income of Rs.5,58,08,600/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to confirm the action of the AO by holding as under: -

“6.1. Since all the grounds 1,2& 3 are concerning the method of accounting followed and whether the AO was right in making the addition of Rs 3,35,28,334/- in respect of "Income billed but not accrued during the year, these are considered together and adjudicated as under:

6.2 It is well settled law that only Real income is taxable under the Income-tax Act. Way back in 1965 the Hon'ble Supreme Court observed in *Poona Electric Supply Co. Ltd. v. CIT* [57 ITR 521 (SC)] that-"Income-tax is a tax on the



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real income, i.e. the profits arrived at on commercial principles subject to the provisions of the Income. Tax Act. The concept of real income was further elaborated by the Hon'ble Supreme Court in its landmark judgment of State Bank of Travancore V. CIT [1986] 158 ITR 102 (SC), in which both questions, before the court were decided in favour of Revenue. The court inter alia observed -

8. The material provisions in regard to the computation of income of an assessee under the head 'Profits and gains of business or profession' are to be found in sections 28(i), 29 and 145(1) of the Act but these have to be read subject to section 5. Section 28(i) taxes the profits and gains of any business carried on by the assessee at any time during the previous year and such profits and gains are, under section 29, to be computed in accordance with the provisions contained in sections 30 to 43A of the Act that is to say after making allowances and deductions mentioned in those sections Section 145(1) provides that income chargeable under the head 'Profits and gains of business or profession' shall be computed in accordance with the method of accounting regularly employed by the assessee, provided that, in any case where the accounts are correct and complete to the satisfaction of the ITO but the method is such that, in his opinion, the income cannot be properly deduced there. From then the computation shall be made upon such basis and in such manner as the ITO may determine, but where he is not satisfied about the correctness or completeness of the accounts of the assessee, or where no method of accounting has been regularly employed by the assessee, he can proceed to make the



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assessment to the best of his judgment. It is well settled, as a result of the Privy Council decision in CIT v. Sarangpur Cotton Mfg Co. Ltd. [1938] 6 ITR 36 at p. 40 that the section clearly makes such regularly employed method of accounting compulsory basis of computation unless in the opinion of the ITO the income profits and gains cannot properly be deduced there from

9. Though these provisions provide for charging the income by way of profits and gains of business and prescribe the manner of computation the question as to at what point of time its chargeability arises is answered by section 5 which states that the total income of a resident assessee from whatever source derived becomes chargeable either when it is received by him or when it accrues or arises to him during the previous year. In other words taxability is attracted even when income has accrued and it is clear that the receipt of income is not the sole test of taxability under the Act but whether on receipt basis or accrual basis it is the real income and not any hypothetical income which may have theoretically accrued that is subjected to tax under the Act and this latter aspect arising under our Act is well settled by decisions of this Court and the High Courts to which I will presently refer

13. Turning to the first question it is true that under section 5 taxability is attracted not merely when income is actually received but also when it has 'accrued' and it is also true, as has been explained by this Court in KR M.T.T. Thiagaraja Chetty's case (supra) and Morvi Industries Ltd's case (supra) that income accrues when it 'falls due', that is to say when it becomes legally recoverable irrespective of whether



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it is actually received or not and 'accrued income is that income which 'the has a legal right to receive.....

[Emphasis provided]

6.3. Hon'ble apex court therefore, observed in unambiguous terms that taxability is attracted even when income has accrued and it is clear that the receipt of income is not the sole test of taxability under the Act Further that income accrues when it becomes legally recoverable irrespective of whether it is actually received or not and 'accrued income is that income which the assessee has a legal right to receive.

6.3.1. In the context of the present case the appellant had completed the work of certification, raised the invoices and even received the Licence Fees from the clients. However, it had decided to credit such income in the P&L Account on proportionate basis following its own methodology as stated in the submission and the balance amount was shown in the Balance sheet as Current Liabilities. The mandate of the Income-tax statute for a taxpayer is to report the correct income in the return filed which is computed in accordance with the provisions of the Act, which the appellant appears to have not adhered to in this case. In this context, the decisions in the case of the holding company viz. C.U. Inspections India Pvt Ltd rendered by the Hon'ble Mumbai ITAT and Bombay High Court and relied on by the appellant are also found to be are distinguishable on facts. To quote from para-3 of the order -

“The Respondent had income on account of license fees. This license fees were billed in January, for the calendar year Le 1st January to 31st December. However as the Respondent is maintaining its books of accounts on



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financial year basis 1st April to 31st March, it accounted for the license fee attributable to the period 1st January to 31st March in the previous year relevant to the subject Assessment Year to determine its taxable income and balance attributable to the balance period of the calendar month i.e. April to December in the next previous year relevant to the next Assessment Year. In the previous year relevant to the subject Assessment Year the aforesaid balance amounts (which was to be accounted in the next Assessment Year) was shown under the head current liabilities (income billed but not due)"

[Emphasis provided]

6.3.2 It is, thus quite evident that in the case of the appellant's holding company billing was done in January for the entire calendar year. This, however was different from what happened in the case of the appellant. Firstly, it was a new business which started its operation only from April, 2013. Secondly, as per appellant's own submission, after the successful completion of inspection they certify respective project and thereafter issue the certificate to the clients which has a validity of 12 months for these inspections they charge License fees (Annual Fees). This means the appellant raised the bills as and when the work was completed and not in January for the entire Calendar Year as in the case of its holding company. It was further submitted that for these inspections they charged License fees (Annual Fees) for next 12 months from inspection date. This income from Licence fees which was for the period of 12 months was divided into 12 months and license fees accrued up to 31st March was taken as Income accrued and



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the Balance was considered as income accrued but not due during the year which is shown as 'Income Accrued but not Due' in the Liability side of the Balance Sheet. The same amount has been shown in the subsequent year as Income

Let us take an example to understand this issue clearly:

Let us presume that the appellant had completed the Inspection of x in the month of July, 2013 and issued the certificate on the 15th of July. Since validity of certificate was for twelve months from the month of the issue of the certificate, this certificate would have remained valid for 12 months till 15th July, 2014. The appellant raised invoice on 'X' for the work done immediately and (say) charged Licence fees of Rs.12,000/ and also received the amount from 'X'. This amount was then equally divided by twelve (12). The resultant amount of Rs.1000/- was then first attributed to the 9 months of July 2013 to March 2014 for the F.Y.2013-14 i.e. Rs.9000/- was accounted for during the relevant previous year and the balance Rs.3000/- was shown in the liability side of the balance sheet as on 31.03.2014 as Current Liability under the head Income Accrued but not Due'. Subsequently, this Rs.3000/- was stated to be taken into account as income of the next previous year as Licence Fees for April, May & June, 2014.

This example would make it clear that the method of revenue recognition followed by the appellant was not exactly the same as its holding company.

1. The appellant has stated in the written submission that the company is following the Mercantile System of Accounting It was stated in the item no 2 of Note- 18 of



Financial Statement of the company for the relevant previous year under 'Significant Accounting Policies'-

(i).Basis of accounting and preparation of financial statements:

"The financial statements of the company have been prepared in accordance with the Generally Accepted Accounting Principles in India (Indian GAAP)to comply with the Accounting Standards notified under the Companies (Accounting Standards) Rules, 2006(as amended) and the relevant provisions of the Companies Act, 1956."

(iv) Revenue Recognition

1 Income with respect to Licence Fees-
Income is recognized on the basis of number of inspections carried out during accounting year or the period elapsed during the relevant accounting year at the rate and in the manner prescribed in the agreement with the licensees

However, nothing specific has been mentioned in the Financial Statement with regard to the prescribed Accounting Standard and whether the manner in which revenue was recognized for Licence Fees was in accordance with any Accounting Standard stipulated by the Accounting Standard Board of India, which is a professional and autonomous body managed by the Institute of Chartered Accountants of India, or following any Standard notified by CBDT in terms section 145(2) of the Act On the other hand there is no doubt that the method adopted by the appellant



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goes against the fundamental concept of Real Income as enunciated by the Hon'ble Supreme Court and quoted in para-62 above. If the appellant was following the Mercantile System of Accounting, it would have accounted for the income that accrued once the bill was raised for Licence Fees after the work of inspection and certification was complete. Such income was not in any way hypothetical but real income since it was receivable in terms of a contract with the client and recovery of the same was legally enforceable in case of any default. Under the circumstances, the arguments put forward by the appellant for deferring the recognition of income to the next year by creating a liability of Rs 3,35,28,334/- being License fees billed but not due as on 31/03/2014 are not found to be acceptable. In fact, this amount was accountable under Cash System as well since the appellant had already received it during the previous year and decided not to account for it as income but to show it as Current Liabilities in the Balance Sheet. Therefore, regardless of the method of accounting followed, the Licence Fees of Rs 3,35,28,334/- was liable to be treated as income of the appellant during the previous year relevant to AY 2014-15. The AO has the mandate under section 145(3) to disagree with the assessee, if he is not satisfied with the correctness and completeness of the accounts. Moreover, this being the first year of the appellant's business, the question whether the same accounting method was being followed consistently or not also does not arise in this case.

1 Another common issue that arises in similar cases of deferred revenue recognition is that- since the amount is accounted for and



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offered to tax in the subsequent year, the revenue does not stand to lose if the tax rates are the same for the current and the subsequent year. This view has sometimes found favour of the judicial authorities also. However, considering that every person having taxable income is required to furnish, as per the provisions of the Income-tax Act a return declaring therein a true and correct account of his income earned during the previous year, the question whether deferment of recognition of revenue and consequently under reporting of income in a particular previous year is causing any loss to revenue/Govt should not arise under ordinary circumstances. Unless mandated by any express statutory provision or any prescribed accounting standard, such arbitrary exercise of discretion goes against the fundamental principles of taxation of income. Even at the cost of repetition, once again a reference is drawn to the judgment in the case of State Bank of Travancore (supra) wherein it was observed by the Hon'ble SC.

"The material provisions in regard to the computation of income of an assessee under the head Profits and gains of business or profession are to be found in sections 28(i), 29 and 145(1) of the Act but these have to be read subject to section 5. Section 28(i) taxes the profits and gains of any business carried on by the assessee at any time during the



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previous year and such profits and gains are, under section 29, to be computed in accordance with the provisions contained in sections 30 to 43A of the Act that is to say after making allowances and deductions mentioned in those sections"

1. 1. Use of such arbitrary methods of accounting of income on the other hand, are likely to give rise to a complexity of different kind. When a part of the income accrued/received was not recognized as income earned during the previous year, what happens to the corresponding expenditure incurred with respect to earning of such income ? Were the expenses incurred for earning the license fees for 12 months also not charged to P&L account? Or only proportionate expenses were charged? If so which accounting standard was followed ? No clarity on these issues was provided by the appellant while commenting on the method of its revenue recognition as quoted above. As per appellant's own submission in para 5 proportionate income was credited to the P&L account. Evidently, to arrive at the correct profit, proportionate expenditure should have to be charged. However, no apparent mention of this aspect was found in the copy of accounts furnished, nor any such clarification was provided either during the assessment or the appellate proceedings.



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Therefore, the authenticity of the method of computation of the profits of business, which should be the net figure of all income earned minus all expenses incurred during the previous year, cannot be accepted. Consequently, it is concluded that the appellant has not furnished in the return a true and correct account of its income earned during the relevant previous year

2. In the light of the observations in the preceding paragraphs the addition of Rs. 3,35,28,334/- on account of Licence Fees is confirmed and Ground No.s 1,2 & 3 are dismissed.”

6. Aggrieved by the aforesaid action of the Ld. CIT(A), the assessee is before us.

7. We have heard both the parties and perused the records. At the outset, the Ld. AR of the assessee brought to our notice that the issue involved in this case is no longer res-integra. He brought to our notice that in the assessee's own holding company's case i.e M/s. CU Inspections & Certifications India Pvt. Ltd. also the AO did similar exercise and made addition which was reversed by the Ld. CIT(A), which action of the Ld. CIT(A) was upheld by Tribunal vide order dated 12.11.2014 (ITA. No.8043 & 346/Mum/2011 in the case of M/s. CU Inspections India Pvt. Ltd. Vs. ITO for AY. 2008-09 & 2009-10) wherein the grounds of appeal raised by the department was as under: -



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“Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the amount of Rs.82,60,380/- added as license fees/service charges which has accrued to the assessee, in spite of the clear finding by the assessing officer that the assessee was consistently following the mercantile system of accounting and that following this system income had accrued to the assessee.”

8. The facts of the case of the assessee’s holding company [i.e. M/s. CU Inspections India Pvt. Ltd. (supra)] was that it was also engaged in the business of quality control, inspection, technical testings, survey etc. all relating to agricultural products. The said company was having income from “service charges” and license fee. During the course of the original assessment proceedings, the AO noted that it had shown “under the head” ‘current liabilities’ an amount of Rs.82,60,380/- as *income billed but not due*. This was on account of license fee earned by that holding company (M/s. CU Inspections India Pvt. Ltd). So far as “service charges” are concerned, the same were accounted on the basis of completion of services and on financial year basis. As regards “license fees”, they were accounted on calendar year basis. Since the assessee’s holding company was maintaining its books of account on financial year basis, that is, from 1st April to 31st March, the assessee’s holding company had to make adjustment in respect of the license fees. Following this system, the assessee’s holding company had accounted license fees of Rs.1,62,49,075/- which were received and accrued during the year. However, an amount of Rs.82,60,380/- which was shown under the head current liabilities,



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it was shown as '*income billed but not due*'. But, the AO did not agree and held in that case of assessee's holding company that since it has been following mercantile system of accounting, and the sum of license fees had already accrued to it as income, therefore, there was no reason for not accounting for such income in this year. The assessee's holding company's contention before the AO was that, the license fees which was received from January to December for which the bill was raised in January and for the period, January to March whatever license fee is received or receivable, the same was accounted in the year under consideration, whereas, the remaining license fees for the balance nine months was carried forward to be accounted in the subsequent year; and it was brought to the notice of AO that this system of accounting had been followed regularly. However, the AO held that such method of accounting is not correct, as the Income Tax Act provides the period of 12 months, commencing from the first day of April every year which ends on 31st March of next year and according to him, the assessee's holding company should have offered all the accrued income for the period of 12 months relevant to the concerned assessment years. Accordingly, the AO in the case of assessee's holding company added the amount of Rs.82,60,380/-. On appeal by the assessee's holding company, the Ld. CIT(A) deleted the addition which was challenged by the Revenue before this Tribunal; and the Tribunal was pleased to confirm the action of the Ld. CIT(A) and dismissed the appeal of the revenue by holding as under: -

“6. After hearing both the parties and on perusal of the impugned order and material placed on record, we find that the license fee is received



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by the assessee in a separate division known as “M/s. Skul International India” from January to December that is, on calendar year basis, whereas the books of accounts were maintain on financial year basis, that is, first of April of every year to 31st March of the next year. The assessee used to raise the bills for the license fee in the month of January and the license fee received from January to March was accounted as income of the year and license fee from April to December was taken under the head ‘current liabilities’ that is, it does not recognizes the income of the year but as income of subsequent year. In other words, the license fee from the period April to December is not recognized as income, because bills are not raised and therefore income is not accrued to the assessee. When the bill are raised from the month of January, the assessee recognizes the income and accordingly account for in the books of accounts. In the given financial year, thus only 3 months income is accounted and for an balance nine months income is taken to next financial year. The accounting of the license fee in this year has been done in the following manner.

License fees received	1,73,79,256
Add: License fees bill but not due as on March 31, 2003	71,26,099
	2,45,05,355
Less: License fees billed but not due From	
April 01, 2004 to December 21, 2004	82,60,380
Credit in Profit & Loss Account	1,62,44,975

Since assessee is duly accounting the income in the aforesaid manner consistently in all the years and therefore, we do not find any reason to deviate from such system of accounting, for recognizing the income which has been followed regularly in all the years. Thus the finding and the conclusion given by the Ld. CIT(A) is upheld. Ground, as raised by the department is thus dismissed.”



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9. Thereafter, the revenue preferred an appeal before the Hon'ble High Court; and the Hon'ble High Court vide order dated 22.01.2018 in ITA. No. 620/622/711 of 2015 (PCIT Vs. M/s. CU Inspections India Pvt. Ltd.) was pleased to confirm the action of the Tribunal by holding as under: -

“2. The revenue urges the following question of law for our consideration:

(1) “Whether, on the facts and in circumstances of the case, the Tribunal was right in holding that license fees although billed in the previous years relevant to the subject Assessment Year yet income has partly accrued to the assessee in the previous year relevant to the next Assessment Year, inspite of the Assessee following a mercantile system of accounting”?

3. The Respondent Assessee is engaged in the business of quality control / inspection / survey relating to agricultural products. The Respondent had income on account of license fees. This license fees were billed in January, for the calender year ie. 1st January to 31st December. However as the Respondent is maintaining its books of accounts on financial year basis 1st April to 31st March, it accounted for the license fee attributable to the period 1st January to 31st March in the previous year relevant to the subject Assessment Year to determine its taxable income and balance attributable to the balance period of the calender month i.e. April to December in the next previous year relevant to the next Assessment Year. In the previous year relevant to the subject Assessment Year the aforesaid balance amounts (which was to be accounted in the next Assessment Year) was shown under the head current liabilities (income billed but not due).

4. The Assessing Officer was of the view that as the Respondent was following the mercantile system of accounting it ought to have



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accounted the entire income billed in January of the previous year relevant to the subject Assessment Year, although billing was for the entire calendar month. Thus bringing the entire license fees to tax as income for the previous years relevant to the Assessment Year ending on 31st March when the license fee was billed. Thus for each of the Assessment Year, the Assessing Officer brought to tax the entire income as billed in January in the previous year related / relevant to the subject Assessment Year.

5. Being aggrieved the Respondent carried the issue in Appeal to the Commissioner of Income Tax (Appeal) (CIT (A) for each of the three Assessment Years. By independent orders the CIT (A) held that as the Respondents are following the mercantile system of accounting and license fees billed have been regularly accounted as income to the extent it is attributable for the period January to March in the year. In which the amounts were received as license fee, while for the balance of the period of the calendar year was brought to tax in the subsequent Assessment Year. This method of accounting is being followed by the Respondent assessee consistently and also accepted by the Revenue. Accordingly, the appeals of the respondent for the three Assessment Year were allowed.

6. Being aggrieved, the Revenue carried the issue in further Appeals to the Tribunal. By the common impugned order, the Tribunal upheld the view of the CIT(Appeals). The impugned order further records that while the amounts of license fees are billed in January by the Respondent, yet it recognises the amounts billed attributable for only three months period i.e. January to March of the previous year related to the subject Assessment Year and the balance in the next year. This method has been consistently accepted by the Revenue and nothing has been shown to warrant a change in the subject Assessment Years. Therefore dismissed the Revenue's Appeal.



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7. The grievance of the Revenue before us is that as the Respondent is following mercantile system of accounting, the entire license fees billed ought to have been taxed in the previous year ending 31st March of the relevant subject Assessment Year in which the license fees were billed in January, for the entire calendar year. In support of this, reliance has been placed upon Section 145 (1) and (3) of the Act.

8. It is an undisputed position between the parties before us that the method of accounting followed by the Respondent has been consistently accepted by the Revenue. Further it is not disputed that the amounts attributable to the period post 31st March of the previous year relevant to the subject Assessment Year in which the license fee was billed has been subjected to tax in the subsequent Assessment Year. There is no difference in the rate of tax in the Assessment Year under consideration as well as in the subsequent Assessment Year. It is also admitted position that the tax which is sought to be collected for the subject Assessment Year have been already been paid and collected in the next year. In the above view the following observations of this Court in CIT Vs. Nagri Mills Co. Ltd. are pertinent:

3. We have often wondered why the Income-tax authorities, in a matter such as this where the deduction is obviously a permissible deduction under the [Income-tax Act](#), raise disputes as to the year in which the deduction should be allowed. The question as to the year in which a deduction is allowable may be material when the rate of tax chargeable on the assessee in two different years is different; but in the case of income of a company, tax is attracted at a uniform rate, and whether the deduction in respect of bonus was granted in the assessment year 1952-53 or in the assessment year corresponding to the accounting year 1952, that is in the assessment year 1953-54, should be a matter of no consequence to the Department; and one



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should have thought that the Department would not fritter away its energies in fighting matters of this kind. But, obviously, judging from the references that come up to us every now and then, the Department appears to delight in raising points of this character which do not affect the taxability of the assessee or the tax that the Department is likely to collect from him whether in one year or the other.

9. The observation of this court in this case stands true even today. Similarly, the Apex Court in CIT Vs. Excel Industries Ltd. had made the following observations which are reproduced as under: -

Thirdly, the real question concerning us is the year in which the assessee is required to pay tax. There is no dispute that in the subsequent accounting year, the assessee did make imports and did derive benefits under the advance licence and the duty entitlement pass book and paid tax thereon. Therefore, it is not as if the Revenue has been deprived of any tax. We are told that the rate of tax remained the same in the present assessment year as well as in the subsequent assessment year. Therefore, the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect. There was, therefore, no need for the Revenue to continue with this litigation when it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers.

This is so as it is not due during the period for which the Revenue seeks to bring it to tax. The Appellant has not been able to show that the method followed by the Respondent does not correctly bring out the income chargeable to the tax. The obligation in respect of the license fees billed for the entire calendar year is yet to be discharged at the end of the previous year related to the subject Assessment Year and



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would be due only in the next previous year related to the next Assessment Year.

11. In the above view, the question as proposed does not give rise to any substantial question of law. Thus not entertained.”

10. We find in this present case also the assessee was following the same method of accounting, wherein also the assessee had received License Fee [for conducting inspection of its clients project as per plan audit days and after inspection, the assessee certifies respective projects and issues certificate to clients which have a validity of twelve (12) months, which is valid for next twelve (12) months from inspection date]. So as per Note 18 of financial statement under significant accounting policies clause iv(1) & (2) which deals with the Revenue Recognition with respect to Licence Fees, the income/fees was recognized on the basis of number of inspections carried out during the relevant account year, at the rate and in the manner prescribed in the agreement with the license. And since the license fees/income which was for the period of twelve (12) months was therefore divided into twelve (12) months and the license fee accrued upto 31st March was recognized as income accrued & the balance was shown as “*Income accrued but not due*” in the liability side of the Balance-sheet; and the same has been shown as “*Income Accrual*” in the subsequent year as ‘income’ on which assessee offered it to tax. It is noted that during the year under considered even though the amount of Rs.3,35,28,334/- was shown as “*Income accrued but not due*” as per Revenue Recognition, the same is found to have been duly offered in the subsequent assessment year i.e. AY. 2015-16 and taxes has been



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paid on this amount. This practice/ same method of accounting, was followed by assessee's holding company M/s. C.U. Inspection India Pvt. Ltd. (supra) which similar practice was also disapproved by AO. But accepted by Ld. CIT(A), Tribunal & Hon'ble High Court as noted (supra). And therefore since there is no change in facts (except figure) or law, the ratio of the Hon'ble High Court in assessee's holding company would apply mutatis mutandis in the case of the assessee. And therefore, we are inclined to allow the appeal of the assessee. Therefore, grounds raised in both the appeals of the assessee i.e. for AY. 2014-15 and AY 2015-16 are allowed.

11. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open court on this 29/12/2022.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 29/12/2022.
Vijay Pal Singh, (Sr. PS)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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