

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “H”: NEW DELHI**

**BEFORE
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 3521/Del/2019
Asstt. Year: 2015-16

Indian Synthetic Rubber Pvt. Ltd, 10 th Floor,Core-2 North Tower, Scope Minar, District Center Laxmi Nagar Delhi – 110 092 PAN AACCC13980J	Vs.	DCIT, Circle 12(1), New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri M.P. Rastogi, Advocate Ms. Priyanka Goel. CA
Department by :	Shri M. Baranwal, CIT(DR)
Date of Hearing	02.12.2022
Date of pronouncement	01.2023

ORDER

PER ASTHA CHANDRA, JM

1. The appeal by the assessee is directed against the order dated 31.01.2019 of the Ld. Commissioner of Income Tax Appeals-22, New Delhi (**“CIT(A)”**) pertaining to assessment year (**“AY”**) 2015-16.

2. The solitary ground taken by the assessee is as under:-

“1. The learned CIT (Appeals) has erred in confirming the disallowance of Rs. 34,76,581/- out of expenses provided towards freight, clearance charges & Demurrage etc. for bringing back export rejected goods to India in proportion to the number of days falling in two years – in disregard to the fact that freight etc. are related to weight and not on the basis of days.”

3. The assessee is a Joint Venture (JV) company co-owned by Indian Oil Corporation Ltd., Marubeni Corp. of Japan and Trimurti Holding Corporation of Taiwan. It filed its return for AY 2015-16 on 26.11.2015 declaring loss of Rs. 2,74,49,10,337/-. The case was selected for scrutiny under CASS. During the assessment proceedings, the Ld. Assessing Officer (“AO”) noticed that the assessee has debited an amount of Rs. 1,33,91,212/- in its P&L account being Detention/Demurrage charges. The Ld. AO required the assessee to furnish details. On perusal thereof, the Ld. AO found that the impugned expenditure was claimed in order to bring back the 336 MT material which was rejected by the customer due to quality issues. The assessee held the shipment at the Taiwan Port for 104 days to negotiate with the client or to find a way to avoid the loss by finding any other customer in Asia but the company did not get any success. Since out of 104 days, 77 days fell in the previous year relevant to AY under consideration and 27 days in the next year, the Ld. AO divided the impugned expenditure in the ratio of number of days. This resulted in disallowance of Rs. 34,76,581/- which he added to the income of the assessee in the assessment framed by him under section 143(3) of the Income Tax Act, 1961 **(the “Act”)** on 25.12.2017.

4. The assessee did not get any relief from the Ld. CIT(A) who confirmed the impugned disallowance holding that the expense pertaining to the year of account only can be allowed. Aggrieved the assessee is in appeal before the Tribunal.

5. The Ld. AR submitted that once the liability is ascertained, the provision based on estimate is an allowable deduction. In support, the Ld. AR relied on the decision of the Hon’ble Supreme Court in Calcutta Co. Ltd. vs. CIT, West Bengal (1959) 37 ITR 1 (SC) and yet another decision of the Hon’ble Supreme Court in Bharat Earth Movers vs. CIT (2000) 245 ITR 428 (SC). The Ld. AR also submitted that the tax rate being the same in the AY under consideration and the next year, division of the amount of allowable

deduction is of no consequence. According to him, the impugned disallowance is not warranted.

6. The Ld. DR, on the other hand supported the orders of the Revenue authorities. He refuted the submission of the Ld. AR by stating that it is not a case of ascertained liability. Moreover, the decisions relied upon by the Ld. AR are distinguishable on facts.

7. We have carefully considered the rival submissions of the parties and perused the material available in the records. It is observed that out of total debit of Rs. 1,33,91,212/- to the P&L account on account of Detention/Demurrage charges, an amount of Rs. 1,16,43,480/- pertained to such charges on exports return from Taiwan for which justification for their allowance was submitted by the assessee by way of Note 4 before the Ld. AO / CIT(A). It was stated that the company is engaged in manufacture of ESBR at its plant/factory at Panipat, Haryana. The company made export of 336 MT of ESBR for about 3.15 crores to Taiwan in October, 2014. However, the customer of Taiwan did not take delivery as the product was not of the same quality as they expected. The company did not succeed in getting an order from another foreign customer and had to bring back the goods to India. This process took about six months. Consequently the company had to bear clearing and handling charges at Taiwan (Rs. 18,24,480/-); Ocean freight from Taiwan back to India etc. (Rs. 81,90,000/-); and Haulage from sea port to ICD at Delhi and then to Panipat plus clearing and handling charges in India (Rs.16,29,000/-) aggregating in all to Rs. 1,16,43,480/-. It was contended before the Ld. AO/CIT(A) that the impugned amount claimed by the assessee was in the nature of ascertained liability which was allowable as business expenditure under section 28 and section 37 of the Act.

8. Copy of assessee's submission before the Ld. AO/CIT(A) appears at pages 90-95 of the Paper Book. At page 92 of the Paper Book in para 7 it is stated that since the Taiwan importer had rejected the goods before 31.03.2015 i.e. end of the previous year relevant to AY 2015-16, the assessee reversed the export sales and included the value of rejected goods

as its stock in hand as on 31.03.2015. It was further stated that the company had definite liability as on 31.03.2015 for the impugned expenses. Therefore, it provided for the said expenses in books on estimated basis and submitted before the Ld. AO the actual expenses of Rs. 92,15,918/- incurred after March, 2015 alongwith supporting vouchers as against the estimated liability of Rs. 1,16,43,480/-. Consequently, it would have reversed the excess provision of Rs. 24,27,562/- relevant to AY 2016-17 and got it tax in AY 2016-17 under section 41(1) of the Act. At page 923 of the Paper Book in para 10 it has been mentioned that the excess provision for liability made has been taxed in the next year under section 41(1) of the Act. All these facts are conspicuous by their absence in the order of the Ld. AO/CIT(A).

9. None-the-less the Ld. CIT(A) has recorded the finding that there is no dispute about the genuineness of the expenses. The solitary reason for impugned disallowance given is that part of the expenses claimed does not pertained to the year under consideration which is not legally tenable on the face of the facts and circumstance of the case of the assessee. It was the contention of the assessee is that the liability was definite and ascertained though not quantified and that the ocean freight and custom charges for bringing goods from Taiwan to India were related to weight and were not incurred on day to day basis. These contentions did not find favour with the Ld. CIT(A) for which no cogent reasons have been given.

10. The Hon'ble Supreme Court in their decisions in Calcutta Co. Ltd. (supra) and Bharat Earth Movers (supra) have laid down the principle of law which distinguish accrued liability and the liability which is contingent. At page 431 of the report in Bharat Earth Movers (supra) their Lordship observed as under:-

“The law is settled: if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain

is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied the liability is not a contingent one. The liability is in praesenti though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain.”

11. Though the decisions (supra) of the Hon’ble Supreme Court were rendered in the context of liability accruing on account of development of plot and liability on account of leave encashment of employees respectively, the principle of law enunciated therein applies squarely to the case under consideration.

12. For the reasons aforesaid, we hold that the impugned disallowance confirmed by the Ld. CIT(A) is not sustainable and is deleted.

13. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 11th January, 2023.

sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 11/01/2023

sd/-

(ASTHA CHANDRA)
JUDICIAL MEMBER

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

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