

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 4608/DEL/2014 [A.Y. 1996-1997]

ITA No. 4609/DEL/2014 [A.Y. 1999-2000]

The A.C.I.T
Circle - 5(1)
New Delhi

Vs. M/s Kuber Mutual Benefits Ltd
Official Liquidator Shri O.P. Sharma
9th Floor, Sangam Place Civil Line
Allahabad, U.P.

PAN - AAACK 4639 E

(Applicant)

(Respondent)

Assessee By : Shri Saumy Agarwal, Adv

Department By : Shri Gaysuddin Ansari, CIT- DR

Date of Hearing : 27.03.2023

Date of Pronouncement : 27.03.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above two separate appeals by the Revenue are preferred against the common order of the Id. CIT(A) - 8, New Delhi dated 31.12.2010 pertaining to Assessment Years 1996-97 and 1999-2000.

2. Since common grievance is involved in both the appeals and since the Id. CIT(A) has decided the appeals by a common order, both the appeals are decided by us by this common order for the sake of convenience and brevity.

3. The common grievance in both the appeals relates to the deletion of addition on account of unexplained increase in the amount in provision for interest, though the quantum may differ.

4. The captioned appeals appear to have been filed after the expiry of period of limitation, but when we read Form No. 36 with the order of this Tribunal in ITA Nos. 1110 & 1111/DEL/2011 for the impugned A.Ys., we find that earlier, both the appeals were filed on time, but the Tribunal dismissed the appeals as the same should have been filed in the name of the Official Liquidator.

5. However, this Tribunal gave liberty to the Revenue to file fresh appeal by bringing on record the Official Liquidator. Now since both the appeals have been filed in the name of the Official Liquidator, in light of the order of this Tribunal [supra], the appeals are admitted.

6. Briefly stated, the facts of the case are that during the course of scrutiny assessment proceedings, the Assessing Officer noticed that there is an increase in provision for interest on deposits. The Assessing Officer was of the opinion that the increase in provision of interest is neither relatable to the interest income shown by the assessee on its deposits nor the same relates to the expenditure on account of interest.

7. Thus, according to the Assessing Officer, provision of Rs. 19,40,53,621/- created during the year under consideration was distinct and separate from the interest shown as per Schedule 9, and interest and financial expenses claimed as per Schedule 13 to the profit and loss account.

8. On such presumption, the Assessing Officer took a view that the only possibility was that the assessee has calculated interest income on its loans given to the members but not taken as income, but has simply shown as credited under the head "Provisions" and accordingly, made addition of Rs. 19,40,53,621/- in A.Y 1996-97 and Rs. 7,51,62,626/- in A.Y 1999-2000.

9. The ld. DR heavily relied upon the findings of the Assessing Officer and the ld. counsel for the assessee reiterated what has been stated before the lower authorities.

10. We have given thoughtful consideration to the orders of the authorities below. The findings of the ld. CIT(A) has to be understood in its true perspective. While deciding the quarrel for A.Y 1996-97, the ld. CIT(A) held as under:

“i...in order to decide the issue raised by the appellant company, I have made an attempt to ascertain the real character of the provision created by the appellant company. On a perusal of the balance sheet for the A Y under consideration, I find that the issue in question has its origin in the various schedules to the balance sheet. As per schedules 1 to 4 of the balance sheet, the appellant company had share capital, surplus and loan funds of Rs 1476334234 as on 31-3-96 as against Rs 757904663 as on 31-3-95. It is seen that the aforesaid funds were invested by the appellant company in fixed assets of Rs 113583389 and current assets of Rs 1619032742 as per schedule 5 & 6 of the balance sheet. In order to arrive at the net value of current assets, out of current assets loans and advances of Rs 1619032742, provisions on account of (a) current liabilities-Rs 10021551 and (b) provisions- Rs 246560326 have been deducted and thereafter, the net current assets have been stated at Rs 1362450865 as on 31-3-96. On a further perusal of schedule 8 to the balance sheet, it is seen that out of aggregate provision of Rs 246560326, provisions of Rs 243060326 was towards

interest on deposits as against provision of Rs 4,90,06,705/- made in the immediately preceding FY. The balance of Rs 35 lacs was provision for interest tax. Thus, it may be seen that the provision of Rs 19,40,53,621/- which is subject matter of decision was, in fact, a liability which was shown as provision, probably, because either the same had not crystallized/accrued or the same was not accurately quantifiable. However, in both the situations, the liability would not have formed part of taxable income in the hands of the appellant company.

Therefore, in view of the aforesaid fact situation, I am of the view that the Id.AO was clearly in error in treating a liability representing estimated/anticipated payment of interest as income for the A Y under consideration. Accordingly, following the order of the Id.CIT(A)-II, Delhi and considering the aforesaid factual matrix of the case, I delete the addition made by the Id.AO in ; the original assessment order and repeated by the present incumbent AO in the impugned assessment.”

11. From the above, it is crystal clear that the provision, which is subject matter of the quarrel, is in fact, a liability, as the same has not been crystallized or accrued during the year under consideration. In either case, it has not been claimed as expenditure. Therefore, the same cannot be added back as income of the assessee.

12. Similar findings are given in A.Y 1999-2000.

13. Considering the facts of the case in totality, we do not find any error or infirmity in the findings of the ld. CIT(A).

14. In the result, both the appeals of the Revenue in ITA Nos. 4608 and 4609/DEL/2014 are dismissed.

The order is pronounced in the open court on 27.03.2023.

Sd/-

Sd/-

**[ANUBHAV SHARMA]
JUDICIAL MEMBER**

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 27th March, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
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Date on which the approved draft comes to the Sr.PS/PS	
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