

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.7779/Del./2018
(ASSESSMENT YEAR : 2012-13)**

Verint Systems (India) Pvt. Ltd.,
Building No.8, Tower A, 2nd Floor,
DLF Cyber City, Phase – II,
Gurgaon – 122 002 (Haryana).

vs. DCIT, Circle 26 (1),
New Delhi.

(PAN : AABCV9348Q)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri S.K. Aggarwal, CA
REVENUE BY : Ms. Indu Bala Saini, JCIT DR

Date of Hearing : 15.06.2023
Date of Order : 19.06.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal filed by the assessee is directed against the order of Id.

CIT (A)-9, New Delhi dated 04.09.2018 for the assessment year 2012-13.

2. The assessee has taken the following grounds of appeal :-

“1. That on the facts and circumstances of the case and, in law, the order passed by the Learned ('Id.')Commissioner of Income Tax Appeals ('CIT (A)') is erroneous and bad in law.

2. That the Id. CIT (A) erred in law and in facts in upholding the addition made by Id. Assessing Officer ('AO') in relation to accrued expenses amounting to INR 1,03,40,402 holding them to be unascertained in nature and not allowable under normal taxing provisions and provisions of section 115JB of the Income tax Act, 1961 ('the Act').

2.1. That Id. CIT (A) has erred in not appreciating that the accrued expenses have been accounted for on the basis of 'mercantile' system of accounting consistently followed by the Appellant over the years, and the same is duly supported not only by the provisions of the Income tax Act but also the accounting standards issued by the Institute of Chartered Accountants of India in this respect.

2.2. That while upholding the additions made by the Id. AO, the Id. CIT(A) has erred in not appreciating the fact that sufficient documentary evidence in support of accrued expenses were already filed by the Appellant during the course of assessment proceedings and were part of record to evidence the genuineness, incurrence and ascertainability of the above mentioned expense.

2.3. That the Id. CIT (A) has erred in holding that ability of the provisions being ascertained has not been rebutted by the Appellant. The Appellant had submitted all the factual details and made detailed submissions in respect of each expense head to establish that the same expense have been provided for on an ascertainable basis.

2.4. While upholding the disallowance, the Id. CIT (A) has erred in not appreciating the fact that the accrued expense have been accounted for on a 'reasonable basis'. Instead, the Id. CIT (A) has erred in placing heavy reliance on usage of a word 'rough' in one of the assessment submission

2.5 That the upholding the addition made by the Id. AO, the CIT(A) has erred in not appreciating the fact that in previous years as well as succeeding years, the Id. AO had accepted the accounting policy followed by the Appellant for making provisions year by year and nor made any disallowance in this respect.

2.6. That Id. CIT (A) failed to appreciate the fact that the Appellant is a cost plus entity and therefore its expenses are marked up and booked as revenue, therefore Appellant could not benefit by jacking up the expenses on the basis of uncertain liabilities.

3. Without prejudice to above, the Id. CIT (A) has erred in not reducing an amount of INR 13,41,245, (included in the amount of accrued expenses of INR 1,03,40,402) which was disallowed by the Appellant itself in its return of Income for AY 2012-13 due to non deduction of tax at source. Disallowance of INR 13,41,245 again as part of INR 1,03,40,402 resulted in double disallowance of the same amount which need to be deleted.

4. That the Id. CIT(A) erred in law and facts in upholding the disallowance of staff welfare expenses by the Id. AO amounting to INR 8,03,453 on grounds that these expenses were not supported by evidence and ignoring the fact that Appellant has submitted evidence for 80% of expenses.

4.1. While upholding the additions on account of staff welfare expenses, the Id. CIT (A) has erred in observing that no documents were submitted before him, without appreciating the fact that not only legal/factual submission were made by the Appellant before him, these were also filed by the Appellant during the course of assessment proceedings and had formed part of assessment records before him.

4.2. That Id. CIT (A) erred in ignoring the fact that Appellant is a cost plus concern and calculates its revenue by marking up its expenses and therefore Appellant would not benefit by booking any unnecessary expenses.

5. That the Id. CIT(A) erred in law and in fact in disallowing the part of miscellaneous expenses of INR 7,80,802 on grounds that these expenses were not supported by evidence.

5.1. While upholding the addition on account of miscellaneous expense, the Id. CIT (A) has erred in observing that no documents were submitted before him, without appreciating the fact that not only legal/factual submission were made by the Appellant before him, these were also filed by the Appellant during the course of assessment proceedings and had formed part of assessment records before him.

5.2. Without prejudice to above, Id. CIT(A) failed to realise that the Appellant had actually booked INR 11,55,548 as miscellaneous expenses for the relevant assessment year and not INR 13,90,277 as cited by the Id. AO (though in the order at para 4, first sentence, the Id. AO has correctly stated the amount of miscellaneous expenses booked by the Appellant).

5.3. Without Prejudice to above, that Id. CIT (A) also failed to realise that even out of INR 11,55,548, only INR 10,87,960 is on account of expenses above INR 20,000 from which bills and evidences of INR 5,88,086 have already been provided to the Id. AO. If at all a disallowance has to be made due to non production of evidence of expenses, it should be of lesser amount of INR 4,99,874 and not INR 7,80,802 as erroneously stated by the Id. AO in its order and upheld by the Id. CIT(A).

5.4. That Id. CIT (A) erred in ignoring the fact that Appellant is a cost plus concern and calculates its revenue by marking up its expenses therefore Appellant would not benefit by booking any unnecessary expenses.

6. Without prejudice to above, Id. CIT (A) erred in ignoring the fact that Appellant is a cost plus concern and all its expenses are marked up at 12.89% markup to book the revenue and even if above expenses are disallowed, the corresponding revenue should also be reduced.

6.1. That Id. CIT (A) erred in holding that marking up of expenses is an accounting concept and while disallowing expenses, it would not result in revenue reduction while determining the taxability of Appellant.

6.2. That Id. CIT (A) erred in ignoring the fact that as the revenue is directly linked with expenses and therefore disallowing expenses without reduction of revenue has created a situation of mismatch and double taxation of the revenue.

6.3. That Id. CIT (A) erred in not following the relevant judicial precedents involving the decision of Hon'ble Delhi Tribunal in case of Mercer Consulting India (P.) Ltd. v DCIT wherein it has held that in case expenses are reduced then corresponding marked up revenue would also be reduced and it would result in eroding the tax base of department rather than augmenting it.

6.4. That Id. CIT (A) erred in ignoring the fact that the case was also referred to the TPO and there were no adverse finding by the TPO in its order.”

3. Brief facts of the case are that the assessee, Verint Systems (India) Private Limited was incorporated on October 14, 2004 under the provisions of Companies Act, 1956. It is primarily engaged in providing pre sales and post- sales support services to its Associated Enterprises [viz. Verint US, Verint Systems Limited, Israel (Verint Israel)] and Verint Systems UK Limited ('Verint UK'). Assessee also rendered on-call support services to the customers of AEs. The assessee is a captive concern providing services to its AEs at cost plus method (cost plus markup @ 12.89%). All the expenses in the profit and loss account are marked up with an arm's length profit margin and recovered from the Appellant's overseas entities. In the year under consideration, the assessee has filed return of income on 29.11. 2012 declaring an income of Rs.3,26,24,640. The said return was picked for scrutiny and in the

assessment order passed under section 143(3) of the Income tax, Act 1961 ('the Act') dated 8th March 2016, the AO has made following disallowances :-

- (i) Disallowance on account of accrued expenses amounting to INR 1,03,40,402;
- (ii) Disallowance on account of staff welfare expenses amounting to INR 8,03,453; and
- (iii) Disallowance on account of miscellaneous expenses amounting to INR 7,80,802.

3.1 Aggrieved by the order of AO, assessee filed appeal before the Id. CIT (A) and the Id. CIT (A) vide order dated 04.09 2018 upheld the order of AO.

3.2 Further on filing the rectification application against the said assessment order, the rectification order was passed by AO u/s 154 r.w.s 143(3) of the Act wherein the disallowance on account of accrued expenses reduced by Rs.13,41.245 and miscellaneous expenses reduced by Rs.2,34.729. Accordingly, the revised disallowance made by the AO are as under :-

- (i) Disallowance on account of accrued expenses amounting to Rs.89,99,157;
- (ii) Disallowance on account of staff welfare expenses amounting to Rs.8,03,453; and
- (iii) Disallowance on account of miscellaneous expenses amounting to Rs.5,46,078

4. Against the order of Id. CIT (A), assessee is in appeal before us.

We have heard both the parties and perused the records.

5. Although assessee has raised various grounds the main ground pressed by the Id. Counsel for the assessee is the rejection of assessee's claim of provisions and expenses for lack of cogent evidence.

6. Ld. Counsel of the assessee referred to the voluminous paper book and submitted that assessee has all the necessary cogent evidences upon which these provisions are based upon. He submitted that authorities below have erred in brushing aside all the voluminous evidences.

7. In these circumstances, we are of the opinion that the matter needs to be referred to AO. AO shall go through the voluminous material being submitted by the assessee and examine the issue afresh as per law. Both the parties fairly agreed to this proposition. Needless to add, assessee should be provided an opportunity of being heard.

8. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on this 19th day of June, 2023.

**Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated the 19th day of June, 2023/TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-9, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**