

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

**ITA No.9377/Del./2019  
(ASSESSMENT YEAR : 2016-17)**

DCIT, Circle 25 (1), vs. The State Trading Corporation India Ltd.,  
New Delhi. Jawahar Vyapar Bhawan,  
Tolstoy Marg,  
New Delhi – 110 001.  
**(PAN : AA ACT0102F)**

**ITA No.8817/Del./2019  
(ASSESSMENT YEAR : 2016-17)**

The State Trading Corporation India Ltd., vs. DCIT, Circle 25 (1),  
Jawahar Vyapar Bhawan, New Delhi.  
Tolstoy Marg,  
New Delhi – 110 001.

**(PAN : AA ACT0102F)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Kamal K. Jaithley, Advocate,  
Shri Puneet Behki, Advocate  
REVENUE BY : Shri Amit Katoch, Senior DR

Date of Hearing : 16.08.2023  
Date of Order : 23.08.2023

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

These cross appeals filed by the Revenue and assessee are directed against the order of the Id. CIT (Appeals)-9, New Delhi dated 19.09.2019 pertaining to the assessment year 2016-17.

### **ASSESSEE'S APPEAL**

2. The grounds of appeal taken by the assessee read as under :-

“1. The order dated 19/09/2019 passed by the learned CIT (Appeals) is bad in law and wrong on facts and void ab initio.

2. That the learned CIT (Appeals) erred on facts and in law in confirming the disallowance of provision for leave salary made by the AO, even ignoring the order of Kolkata ITAT cited before him.

2.1 That the learned CIT (Appeals) erred in law in not giving a suitable direction to the AO follow the decision of the Apex Court in the case of Exide Industries Limited.

3. That the learned CIT (Appeals) erred on facts and in law in neither admitting nor deciding the admissibility of claim of the appellant in respect of deduction of Rs.130.95 crore, pursuant to the order of the Apex Court dated 06/12/2018, being excess interest income offered for tax in the return of income by the appellant ,vide letter dated 19/12/2018 filed before the AO, ignoring the plea that all the facts were on record.”

3. Ground No.2 has not been pressed by the assessee, hence the same is dismissed as not pressed.

4. Apropos Ground No.3 : On this issue, Id. Counsel of the assessee submitted that the issue is squarely covered by the decision of ITAT in assessee's own case in ITA No.7245/Del/2019 for AY 2015-16 vide order dated 11.04.2023.

7. Per contra, Id. DR for the Revenue did not dispute this proposition.

8. We have heard both the parties and perused the record. We note that in the aforesaid order on similar ground, ITAT in the aforesaid order has held as under :-

“9. The observation of the Ld.CIT(A) that the powers to entertain additional claim not made in the return of income is discretion of ITAT and not CIT(Appeals) is misplaced. In the additional ground assessee contended by the assessee that it is entitled for deduction of Rs.105.94 crores out of its business income on account of excess interest credited in the books of account and offered for tax is no now irrecoverable as per the judgment of the Hon'ble Supreme Court pertaining to Global Steel Holdings Pvt. Ltd. We are of the considered view that these contentions of the assessee have to be examined by the Assessing Officer as the said claim was not made before the Assessing Officer nor considered by the Ld. CIT(Appeals) which was raised before him as on additional ground of appeal. Thus, we restore this issue to the file of the Assessing Officer for denovo adjudication in accordance with law after providing adequate opportunity of being heard to the assessee. Grounds raised by the assessee are allowed for the statistical purpose.”

9. Since the facts are identical we restore this issue to the file of AO with similar directions as above.

### **REVENUE'S APPEAL**

10. Grounds of appeal taken by the Revenue read as under :-

“1. The impugned order of the CIT (A) is bad in law as well as on facts of the case.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made u/s 14A of Income Tax Act,1961. Therefore CIT(A) has erred on fact in not considering the CBDT Circular 5/2014 dated 11.02.2014. Although the above circular has been overruled by the judgement, but the judicial position is not yet settled.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) while giving relief to the assessee on disallowance of provision for Leave Salary, the CIT(A) has erred in not appreciating the fact that the assessee has claimed a provision of Rs.2,37,10,141/-

on account of post retirement medical benefits on the basis of actuarial valuation. The claim being merely a provision.”

11. Apropos Ground No.2 : AO has made disallowance of Rs.40,866/- under section 14A of the Income-tax Act, 1961 (for short 'the Act'). Upon assessee's appeal, on finding that no exempt income has been earned, ld. CIT (A) deleted the addition by referring to the decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs. CIT-VI 126 DTR 289 and CIT vs. Holcim India (P) Ltd. in ITA No.486/2014.

12. Against this order, Revenue is in appeal before us. We have heard both the parties and perused the records.

13. We find that the issue is squarely covered in favour of the assessee by the aforesaid decisions referred to by the ld. CIT (A). Hence, respectfully following the precedent of Hon'ble Delhi High Court, we affirm the order of ld. CIT (A) on this issue.

14. Apropos Ground No.3 : On this issue, AO has denied deduction for provision of post-retirement medical benefits amounting to Rs.2,37,10,141/- Upon assessee's appeal, considering the assessee's submissions, ld. CIT (A) held as under :-

“ It is gathered from the appellant's submissions reproduced herein above as well as from the arguments adduced by the AR of the appellant during the appeal hearing that-

- a) Provision for post-retirement medical benefits in books of accounts mandatory (AS15) to give a true and fair

view of the statement of affairs of the company. It has to maintain the accounts on accrual basis as well as to follow AS including AS15.

- b) Liability created based on certificate issued by the actuary, a specialized authority to evaluate such liabilities and accordingly determined with reasonable accuracy
- c) Provision created is in respect of employees who are either in service or have retired from the appellant's service. Since the service are rendered by the employees during the period of their active employment with the employer, the future cost, post retirement, is expected to be evenly charged on scientific method to the current period so that the profits are properly determined for taxation purposes. If not provided for, a future year would be saddled with expenditure in respect of the service of employees, which were rendered during active employment i.e. pre-retirement.

Further, during the hearing, the AR of the appellant relied on the decision of the apex court in Bharat Earth Movers vs.CIT [2000] 245 ITR 428 (SC), in this regard.

6.3 From the above, it is observed that the appellant's claim of deduction towards provision for post-retirement medical benefits in respect of its serving and retired employees is albeit a provision in its books of account and not incurred during the relevant PY, yet this provision is based upon the actuarial certificate as prescribed in the relevant Accounting Standard (AS 15) of ICAI, required to be followed mandatorily in accordance with the accrual system of accounting as prescribed by the Companies Act. Further, it was submitted by the AR of the appellant submitted that the decision of the first appellate authority in this regard for AY 2005-06 has been upheld by ITAT Delhi and filed the copy of the relevant order.

6.4 Accordingly, in view of the above as well as in due deference to the decision of the Hon'ble Supreme Court in Bharat Earth Moversvs.CIT(supra) the disallowance made on this issue in the impugned order(Rs.26,49,778,182/-) is deleted. The ground of appeal no. 4 is accordingly allowed.”

15. Against this order, Revenue is in appeal before us. We have heard both the parties and perused the records.

16. We find that the Id. CIT (A) has passed a well-reasoned order based on the Hon'ble Apex Court decision, hence we do not find any infirmity in the same. Therefore, the Revenue's appeal on this issue is dismissed.

17. In the result, the assessee's appeal is partly allowed for statistical purposes and the Revenue's appeal is dismissed.

**Order pronounced in the open court on this 23<sup>rd</sup> day of August, 2022.**

**Sd/-  
(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER**

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

**Dated the 23<sup>rd</sup> day of August, 2022  
TS**

Copy forwarded to:

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

**AR, ITAT  
NEW DELHI.**

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