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

BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM

आयकर अपील सं/ I.T.A. No.6386/Mum/2017
(**निर्धारण वर्ष** / Assessment Year: 2012-13)

ACIT-3(1)(1) Room No. 607, 6th Floor, Aayakar Bhavan, Mumbai-400020.	**बनाम** / Vs.	M/s. ALD Automotive Pvt. Ltd. 13, Floor, Maker Chamber-IV, Nariman Point, Mumbai-400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFCA0924K		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Shri Rajesh Agrawal
Revenue by:	Ms. N. V. Nadkarni (DR)

सुनवाई की तारीख / Date of Hearing: 01/08/2023
घोषणा की तारीख /Date of Pronouncement: 21/08/2023

आदेश / O R D E R

PER ABY T. VARKEY, JM:

This is an appeal preferred by the revenue against the order of the Ld. CIT(A)-8, Mumbai dated 25.07.2017 for the AY 2012-13.

2. At the outset, it is noted that this is a second round before this Tribunal. In the first round, the Tribunal has passed order (ITA. No.6386/Mum/2017) by order dated 10.04.2019 wherein the Tribunal had adjudicated ground no. 1 preferred by the revenue. But did not adjudicate ground no. 2 preferred by revenue. Therefore, the revenue preferred Miscellaneous Application (MA) NO. 573/Mum/2019 which was decided on 02.06.2021, wherein Tribunal was pleased to recall the order passed in the first round dated 10.04.2019 for the limited purpose of adjudicating ground no. 2. Thus, this appeal has come up for hearing for the limited purpose of adjudicating ground no. 2 which reads as under: -

> "2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs.74,14,49,570/- being Deferred Maintenance Charges without appreciating the fact that providing for future expenses which escalate with time is nothing but provision for unascertained liabilities which is not allowable as per the Income Tax Act, 1961."

3. At the outset, the Ld. AR pointed out that there is mistake in the sum of disallowance shown in ground no. 2 (supra). According to the Ld. AR, the Deferred Maintenance Charges disallowed by the AO was only to the tune of **Rs.1,14,48,078/-** in place of Rs.74,14,49,570/- as shown in revenue's ground no. 2. And in order to support this claim drew our attention to page no. 2 to 6 of the assessment order dated 26.03.2016 passed by the AO u/s 143(3) of the Income Tax Act, 1961 (hereinafter "the Act') wherein we note that the AO had disallowed Deferred Maintenance Charges to the tune of Rs.1,14,48,078/-. In the light of the aforesaid fact, the mistake in the ground no. 2 could not be controverted by the Ld. DR. Therefore, we take judicial notice of this mistake and note that AO had disallowed *Deferred Maintenance Charges to the tune of Rs.1,14,48,078/-* in place of Rs.74,14,49,570/-. So the ground no. 2 of revenue is against the action of Ld. CIT(A) deleting Rs.1,14,48,078/- being deferred maintenance charges.

4. Brief facts of the case are that the AO has disallowed Deferred Maintenance Charges of Rs.1,14,48,078/- by passing the assessment order as under: -

> "6.1 During the year under consideration, the assessee has offered the fleet management income after reducing the maintenance reserve. The assessee has created the deferred maintenance reserve of Rs.7,26,83,897/- during the year. The assessee has utilized the deferred maintenance reserve of Rs. 6,12,35,819/- opening balance in deferred maintenance reserve is Rs.3,55,08,903/- which stands at Rs.4,69,56,981/- as on 31.03.2012. The assessee was asked to explain the nature & purpose of such maintenance reserve. The assessee was also asked to show cause as to why the maintenance reserve created during the year should not be brought to tax. In response to the same, vide its letter dated 14.03.2016 has made its submissions, the relevant part of which is reproduced herein under: -
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> > "……Maintenance charge (which includes also the profit margin on maintenance costs) is recognized in line with the normal maintenance cost incurred over the tenure of the contract a suitable basis as per AS9.
> >
> > it is notable that maintenance cost are lower in the initial period of the contract as the cars leased out are brand new and the cost incurred is high in the later part of the contract due to the usage/normal wear and tear of the car.
> >
> > To achieve the matching of cost and revenue a percentile completion / Statistical formula is used to determine the proportionate revenue to be recognized in a financial period and then a difference of this with revenue actually billed in the year is calculated. Difference amount represents the maintenance income and or differ maintenance reserve against which costs

will be incurred, hence the amount is not considered as income for the year/period. It is in accordance with AS-9 issued by The Institute of Chartered Accountants of India……"

6.2 The contention of the assessee has been carefully perused. It is noted that the income from fleet management services is offered less to the extent of deferred maintenance reserve created during the year. As admitted by the assessee itself, the maintenance service charges are received from customers towards driver services, door-to-door services, emergency assistance services, repair & maintenance services, and it is recovered from the customer in equal installments. Thus, it is found that fleet management services income does not include income only from maintenance the vehicles. It includes the charges received on account of providing driver Services door-to-door services, etc., and such charges are not affected by the age of the vehicles. It is only the maintenance cost, which can said to be increasing with the age of the vehicle. Further, the offering of an income under a particular head in a particular should depend upon accrual of such income in that year and not upon the increase in expenses in future. It is usual that a new vehicle is expected to earn higher income in comparison to an older one. It is also important to note that assessee has in fact received the amount which it is not offering for tax on the pretext of increase in maintenance cost in future. The assessee is basically trying to keep the income artificially low on the ground of rise in maintenance cost in future, an event which need not necessarily occur. Assessee cannot explain as to why it is not charging its customer for maintenance services less in initial years and higher in subsequent years, if it is so concerned with the concept of matching the cost with income. Assessee is

getting the full charges for each year and at the same time not offering the same to tax to that extent. The contention of the assessee regarding applicability of AS-9 does not have much force as it does not support the case of assessee. The assessee has in fact taken the help of 'Reversal Rule of 78' which is said to be as per the industry practice to calculate deferment of the revenue. But, such industry practice cannot override the provisions of the Income Tax Act, as per which the assessee is required to offer the income on the basis of accrual. The same issue was involved in earlier years also and an addition was made in the assessment order u/s.143(3) for that years after detailed discussion.

6.3 In view of the same, the contention of the assessee is rejected and deferred maintenance charges of Rs.1,14,48,078/- (Provision made during the year of Rs.7,26,83,897/- utilized during the year of Rs.6,12,35,819) are brought to tax as income for the year under consideration. The penalty proceedings u/s.271(1)(c) r.w. Explanation-1 are initiated separately for furnishing inaccurate particulars of income leading to concealment of income chargeable to tax."

5. Aggrieved by the aforesaid action of the AO, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the same by following his predecessor's order dated 28.10.2016 for previous assessment year i.e. AY. 2011-12 wherein the Ld. CIT(A) has allowed the ground of appeal of the assessee by taking note that Tribunal order in assessee's own case (on this issue) for earlier assessment years, Tribunal directed the AO to allow the claim of the

assessee after due verification. Aggrieved by the aforesaid action of the Ld. CIT(A), the revenue is before us.

6. We have heard both the parties and perused the records. At the outset, the Ld. AR brought to our notice that the issue i.e. ground no. 2 (supra) is covered in favour of the assessee from AY. 2007-08 onwards and drew our attention to this Tribunal order in ITA. No.907 & 109/Mum/2013 as well as ITA. No.2179 & 601/Mum/2013 for AY. 2008-09 & AY. 2007-08 (cross appeals order dated 25.07.2016) wherein similar disallowance was made by the AO. And the Tribunal held on this issue as under: -

> "5. We, next, take up the assessee's appeal. The assessee's claim is that the repair and maintenance costs are not period costs, but rise gradually with time, while the recovery thereof (which is along with a margin thereon) is made at a uniform rate, i.e., equally over the term of the lease. The higher (than proportionate) amount received in the initial years of the contract is to be regarded as an advance, which is appropriated to a reserve account. Recognizing revenue thus, is considered by the assessee as in agreement with AS-9 (issued by ICAI). The Revenue considers it as not proper in-asmuch as what is received does not carry any concomitant obligation. If the costs incurred, or liable to be incurred, in future, stand to increase, so be it, and which would only imply that the assessee would stand to earn a lower profit (on that account) for that year/s; each year being an independent unit of assessment.
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> During hearing, the ld. AR was queried by the Bench that in that case an appropriation would be equally justified in respect of lease rentals, also charged uniformly, while the capital charge (for depreciation), being on WDV basis, is higher for the initial years. He conceded, would though submit that depreciation is a charge/allowance at the rates provided under the Act, so that the same, irrespective of the assessee's method of accounting in respect thereof, is to be claimed at the statutory prescribed rates. We agree. Further, the assessee's claim is, in our view, unexceptional. If the expenditure (on repairs) is the basis for the charge raised in its respect, as it indeed is,

calibrating the receipt (by passing adjustment entries in the accounts) to synchronize with the costs likely to be incurred over the contract period, cannot be faulted. We make a statement in definite terms as, if the rendering of the relevant services, incurring the concomitant costs, is not the basis of the charge, what is? It is not the character of the receipt as revenue that is in dispute, but the extent to which it, in the facts and circumstances of the case, can in law be considered as allocable to/arising for a particular year, i.e., considering the year-wise profile of such expenditure, and given that incurring of the cost is itself the basis of the charge. The amount credited to the reserve account has to be reversed (for each vehicle) over the term of the contract. The credit to the reserve is stated to be by following the reverse rule of 78, an industry norm. These aspects, however, would require verification. We may restate the issue by way of an example for the sake of better communication thereof. A sum of Rs.1,00,000/- is regarded as liable to be incurred on repairs over the lease term of (say) five years. Adding 20% thereof (Rs.20,000) as margin, a charge of Rs.1.20 lacs is made by the assessee-lessor, working to an annual charge of Rs.24,000 (i.e., EMI of Rs.2000). The assessee's empirical data suggests that only Rs.8000 (say) is liable to be incurred in the first year, which would carry a concomitant charge of Rs.9,600/-. The excess Rs.14,400/- (Rs.24,000 – Rs.9,600) is transferred to the reserve account. In the latter years, where the normative cost is higher than the average, at Rs.30,000 (say), the shortfall in the proportionate revenue for that year (Rs.36,000), is accounted by write back from the reserve account to that extent (Rs.12,000/-, or Rs.36,000 - Rs.24,000). The entire reserve created in the initial years would thus stand to be reversed in time. Further, the same would therefore stand to be provided and, thus, verified, with reference to each individual contract, i.e., qua each vehicle. We further suppose that the costs are also logged vehicle-wise, enabling verification of such 'provision', as well as it's reversal, and that the figure of Rs.1 lac and Rs.1.20 lacs (going by our example), being the aggregate cost and the corresponding charge respectively, are based on or approximate the amounts actually obtaining, and is demonstrable. We, accordingly, approve the accounting treatment - which forms the basis for returning income qua the said service, in principle. True, the 'excess' amount received in the initial years cannot be called or said to be an advance proper - which could only be so in terms of the contract, and neither the amount appropriated (to the

reserve a/c) a 'provision'. Yet, the amount so appropriated can be said as not liable to be recognized as revenue for the year of receipt, considering that the corresponding costs, which form the basis of the charge, is yet to be incurred (to that extent). In-as-much as uneven repairs and, therefore, corresponding services, are liable to be rendered over the lease term – as indicated by the corresponding expenditure, the accounting treatment is in consonance with AS-9. The assessee's reliance on the decisions in Calcutta Co. Ltd. vs. CIT [1959] 37 ITR 1 (SC) and Madras Industrial Investment Corporation Ltd. vs. CIT [1997] 225 ITR 802 (SC), both advocating the matching principle, is apposite. The AO shall cause necessary verification as indicated above, subject to whose findings of fact we allow the assessee's claim. We may further add that the assessee's plea is acceptable only qua such expenditure which is subject to, in the normal course of events, an increase with time, i.e., is age (of the vehicle) related. We say so as we observe several expenses forming part of the fleet management services, viz. providing relief vehicles, drivers, emergency breakdown services, door to door services, etc., and which are essentially period costs, so that all such costs which do not exhibit a pronounced increase with time, i.e., in relation to the age of the corresponding vehicle, would not be subject to such appropriation. The AO's finding shall further include that in respect of reversal of the credit (on the basis of the rule being purportedly followed) as well. Reference to the said rule, we may add, is only toward the assessee following a scientific basis in allocating the revenue over the term of the lease and, accordingly would stand to be examined by the A.O., and the allowance of the assessee's claim by us is subject to his returning positive findings. We decide accordingly."

7. Since the revenue could not point out any change in facts or law vis-à-vis the issue for AY 2007-08 & AY 2008-09, which has been decided as supra and since the same is no longer res-integra as noted (supra), respectfully following the Tribunal order in assessee's own case for AY. 2007-08 and AY. 2008-09, we direct the AO to make necessary verification as indicated above in the Tribunal order and allow the assessee's claim after verification in accordance to law.

8. In the result, the appeal of the revenue is allowed for statistical purposes on the afore-said terms of earlier year.

Order pronounced in the open court on this 21/08/2023.

Sd/-	Sd/-
(AMARJIT SINGH)	**(ABY T. VARKEY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 21/08/2023.
Vijay Pal Singh, (Sr. PS)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
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