

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI B R BASKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM

ITA No. 4630/Mum/2017
(Assessment Year: 2012-13)

Maharashtra State Electricity Distribution Company Ltd. 1 st Floor, Prakashgad, Anant Kanekar Marg, Station Road, Bandra (E), Mumbai-400 051	Vs.	Asst. CIT (HQ)(Judl to CIT-14) Mumbai
PAN/GIR No. AAECM 2933 K		
(Appellant)	:	(Respondent)
Assessee by	:	Shri J. D. Mistry & Niraj Sheth
Revenue by	:	Shri Manoj Kumar Sinha
Date of Hearing	:	14.07.2023
Date of Pronouncement	:	10.10.2023

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals)-22, Mumbai ('Id.CIT(A) for short) passed u/s. 250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2012-13.

2. The solitary ground of appeal raised by the assessee in this is challenging the disallowance of net prior period expenses made by the Assessing Officer ('A.O.' for short) and confirmed by the Id. CIT(A) on the ground that the assessee has not proved that the same was crystallized during the year under consideration.

3. The brief facts are that the assessee company was engaged in the business of distribution of electricity in the State of Maharashtra. The assessee had filed its return of income dated 28.09.2012, declaring loss of Rs.1179,96,17,308/- and had filed a revised return of income dated 01.11.2013 declaring total loss of Rs.2909,14,51,735/-. The assessee's case was selected for scrutiny and notice u/s. 143(2) and 142(1) of the Act were issued and served upon the assessee. The Id. A.O. then passed the assessment order dated 29.03.2015 determining the total income at Rs.323,64,17,918/- by making various additions/disallowances.

4. Aggrieved, the assessee was in appeal before the Id. CIT(A) who had partly allowed the appeal filed by the assessee.

5. The assessee is in appeal before us challenging the order of the Id. CIT(A) in upholding the disallowance of net prior period expenditure debited under the head 'prior period expenses' made by the Id. A.O. on the ground that the assessee has failed to furnish the evidences to substantiate that the prior period expenses claimed by the assessee has crystallized during the impugned year.

6. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that the issue of prior period expenses has been allowed in assessee's case by the co-ordinate bench in A.Ys. 2001-02 to 2006-07 and 2010-11. The Id. AR relied on the order of the Tribunal in earlier years.

7. The learned Departmental Representative ('Id.DR' for short), on the other hand, controverted the said facts and stated that the assessee has failed to furnish any

documentary evidences to substantiate the fact that the prior period expenses claimed by the assessee has crystallized during the year under consideration. The Id. DR further stated that the assessee has failed to show how the earlier year's expenditure was quantified in this year. The Id. DR relied on the order of the lower authorities.

8. We have heard the rival submissions and perused the materials available on record. It is observed that the issue of allowability of prior period expenses is recurring in nature in assessee's case where the said expenditure has been allowed in assessee's case for earlier years by the co-ordinate bench. It is observed that the assessee has debited prior period expenses to the profit and loss account as per the tax audit report and the Id. A.O. has disallowed the net amount of Rs.100,67,84,653/- being the difference of Rs.384,61,56,577/- - Rs.283,93,71,924/-, i.e., the total expenditure and income for the reason that the assessee has failed to furnish the details as to how the said liability had been crystallized during the year under consideration. The Id. CIT(A) in his finding has stated that the assessee has debited a sum of Rs.7268.61 lacs to the profit and loss account and the breakup of which is tabulated hereunder:

<i>Particulars</i>	<i>Amount in Lakhs</i>
<i>Prior period income (A)</i>	<i>Rs.31,192.95</i>
<i>Prior period expenses (B)</i>	<i>Rs.38,461.57</i>
<i>Net prior period expenditure (A-B)</i>	<i>Rs.7,268.61</i>

9. The Id. CIT(A) upheld the disallowance made by the Id. A.O. for the reason that the assessee has not furnished any documentary evidence neither before the Id. A.O. nor before the first appellate authority to substantiate that the said expenditure had crystallized during the impugned year. The Id. CIT(A) further held that as the assessee has been following mercantile method of accounting, for which the expenses of earlier

years has to be allowed only in the year in which the liability has crystallized. The ld. CIT(A) rejected the claim of the assessee for the reason that no evidence was produced by the assessee to substantiate the crystallization of the said amount during the year under consideration.

10. The ld. AR for the assessee has relied on the decision of the Tribunal in earlier years where the said claim of the assessee has been allowed on identical facts. The relevant extract of the said finding in *DCIT vs. Maharashtra State Electricity Board* (in ITA No. 3813/Mum/2009 vide order dated 17.02.2021 for A.Ys. 2001-02 to 2003-04) has been extracted hereunder for ease of reference:

4. *We have heard rival submissions and perused the materials available on record. We find that assessee is a State Government undertaking engaged in generation and distribution of electricity. We find that the ld. AO by placing reliance on the figures mentioned in the tax audit report submitted by the assessee under the head 'prior period expenses' / 'prior period income', sought details of the same during the course of assessment proceedings. The assessee furnished the details of prior period income and prior period expenses which are duly tabulated by the ld. AO in page 5 of his order. The assessee earned prior period income of Rs.84,48,47,317/- and prior period expenditure of Rs.944,00,69,767/-. The net prior period expenses amounting to Rs.859,52,22,450/-. The ld. AO brought to tax the amount already offered by the assessee in the return in respect of prior period income and disallowed entire prior period expenditure (gross) while completing the assessment by holding that these expenses did not crystallise during the year under consideration. It is pertinent to note that out of total details of prior period expenses submitted by the assessee in a tabular form, the assessee had voluntarily made disallowance in the return of income towards depreciation amounting to Rs.31,02,01,481/- and income tax provision of Rs.156,66,42,865/- which was again disallowed by the ld. AO while framing the assessment, thereby leading to double addition. This mistake of double addition was duly rectified by the ld. CIT(A) in his order. The ld. CIT(A) deleted the remaining amount of disallowance made by the ld. AO by holding in detail as under:-*

"8.1 Facts briefly, are that the appellant had credited its Revenue Account for the year by an amount of Rs.84,48,47,317/- as prior period income. Similarly a sum of Rs.9,44,00,69,767/- was debited as prior period expenses. Detailed break-up of the amounts included in the aforesaid sum of Rs. 944 crores has been given in the Assessment Order. The AO disallowed the expenditure of Rs.9,44,00,69,767 on the ground that such expenditure cannot be allowed unless it has crystallized during the year.

8.2 Before me the Ld.AR of the appellant submitted that the expenses have crystallized during the year under consideration. Further, it was also stated that the same is in accordance with the method of accounting regularly followed by the Appellant in the earlier years.

8.3. The Ld.AR of the appellant submitted that that MSEB is a statewide organisation having big net work of number of offices for power Stations Constructions. 400KV/Trans. Lines Constructions. Sub-station Constructions, Power Station, Major Stores and for each of these activities like construction, Generation, transmission, distribution and maintenance, etc. MSEB has got a number of zonal offices, section offices, etc. spread throughout the Maharashtra State. This being so, there is always a communication gap and some of the payments / income due or accrued, of the year may not be accounted for during the year. This is inspite of the fact that MSEB has got a system of proper Internal, Control and pre-audit. Further, it has got separate department headed by Director of Internal Audit for regular Internal Audit and Inspection under the D.O.I.A. for Inspection work and there are number of Inspection teams attached to circle offices for carrying out regular Inspection work. Ld.AR of the appellant mentioned that appellant's audit is conducted by CAG. In spite of above at the instant of the Government Audit, certain items of expenses and Income pertaining to earlier period are required to be accounted for. These items are nothing but spill over of the earlier period and which were not considered while submitting returns for the earlier period. MSEB Accounts thus prepared in keeping with the rules of Electricity (Supply) (Annual Accounts) Rules 1985 prescribed under section 69 of the Electricity Supply Act, 1948 and C.A.G. also accepts this accounting system.

8.4 The appellant further submitted that the total income of the appellant required to be computed was in accordance with the method of accounting regularly followed by it as laid down by the provisions of sec. 145 of the Income-tax Act, 1961. In this connection attention was drawn to the accounting standard No. II issued by the CBDT notified vide notification no. SO69(E) dtd. January 25,1996 in terms of which it has been stated in Para 7 that :-

'Prior period items shall be separately disclosed in P&L account in the previous year together with their nature and amount in a manner so that their impact on profit and loss in the previous year can be perceived'.

8.5 Hence it was submitted that the objective of the above mentioned Accounting Standard is that every assessee is required to disclose the prior period item separately. Had it been laid down that prior period expenditure is not allowable as per the LT.Act,1961, as alleged by the Assessing Officer there was no requirement for CBDT to issue an Accounting Standard in respect thereof.

8.6 Ld.AR further submitted that the quantum of prior period expenses is very negligible in comparison to the total expenses claimed. Reference was made to the following judicial pronouncements wherein it has been held that in the case, the prior period expenses are a meager percentage of the turnover, then the prior-period expenses should be allowed:

Escorts Ltd. v/s. IAC reported in (2004) 89 TTJ 221 (Del) Unreported decisions of the Mumbai Bench of the Income Tax Appellate in the case of Rashtriya Chemicals & Fertilizers Ltd. v/s. JCIT ITA Nos. 1013/Mum/2001 and 3863/Mum/2006

8.7. Further reliance was placed on the decision of the Delhi High Court in the case of CIT vs. Vishnu Industrial Gases P. Ltd. in ITR No.229/1988 wherein the High Court, while dealing with a case where the department had not disputed that the expenditure was deductible in principle but was only disputing the year in which the deduction could

be allowed, held, that as the tax rates were the same in both years, the department should not fritter away its energies in raising questions as to the year of deducibility/taxability.

8.8. Without prejudice to the foregoing, the Ld.AR submitted that the following amounts (out of the prior-period expenses) have been suo-moto ITA No.3813/Mum/2009 and other appeals Maharashtra State Electricity Board 6 disallowed by the Appellant and hence disallowing the same once again would tantamount to double deduction:

1. Depreciation under provided - Rs. 31,02,01,481 /- 2. Excess provision of income-tax / short provision - Rs. 156,66,42,865/-

Documents were filed evidencing the fact that the aforesaid items have been suo-moto disallowed.

8.9. I have carefully considered the submissions of the Ld.AR and gone through the material brought before me. First of all, if the appellant has worked out the loss computed as per return of income after disallowing and adding back short provisions for income tax amounting to Rs.156,66,42,865/- and short provision of depreciation amounting to Rs.31,02,01,481/-, the same two items cannot be added back again to the returned loss which has been adopted by the AO. The AO is directed to verify and make necessary corrections in this regard.

8.10 So far as the other items are concerned, the treatment given to them is according to the guidelines framed for preparing the accounts of the electricity companies. The facts showing the entirety of the appellant's operations and its huge net work explains the time taken to account for various expenses. The accounts of the appellant are audited by internal auditors and statutory auditors under the Companies Act and the Income tax-Act. Further the reference to the Board's Circular is also in favour of the appellant. The AO has not come out with any finding that any of these expenses are not allowable as deduction. Since the expenses are otherwise allowable, the appellant cannot denied the deduction which has been claimed following proper accounting standards. Further, the AO has included the prior period revenue in the appellant's income. So there is no logic to disallow the prior period expenses. In view of this the AO is directed to allow the prior period expenses as claimed."

4.1. It is not in dispute that the accounts of the assessee have been prepared in accordance with the mandate provided under the Electricity Act. We also find that the ld. AR drew our attention to the page 254 of the paper book containing the statutory mandate in the form of Commercial Accounting System for State Electricity Boards together with the Electricity (Supply) Annual Accounts Rules 1985 issued by the Government of India, Ministry of Energy, Department of Power, wherein it has been categorically stated that the prior period expenses or prior period revenues are to be shown separately which arise on account of difference between an accounting estimate made for accrual and actual values involved or on account of any other reason. The State accounting mandate statutorily stated that the same shall be accounted only prospectively and no retrospective re-stating of past years figures was permitted in the accounts. This clear statutory mandate issued by the Government with regard to maintenance of accounts enabled the assessee company, being a Public Sector Undertaking (PSU), to disclose the prior period expenses and prior period income separately in its accounts. Moreover, we find that the ld. CIT(A) had duly recognised the method of accounting regularly followed by the assessee in the instant case. We find that the ld. CIT(A) had taken due cognizance of each and every item pertaining to prior period expenses and had understood the modus operandi thereon and duly appreciated the fact of assessee company conducting its operations with huge net work which eventually explains the time taken for accounting of various expenses contributing to the delay

and slippage of an annual accounting year. The ld. CIT(A) also took note of the accounts of the assessee company getting scrutinized by Statutory Auditors, Internal Auditors and also by the Controller of Auditor General of India. It is pertinent to note that none of them had given any adverse remarks about the aspect of prior period expenditure. We find that the ld. CIT(A) had categorically given a finding that all the expenses reflected in the prior period expenses except the one which were voluntarily disallowed by the assessee in the return of income, though debited to prior period expenditure during the year, got crystallised during the year under consideration and hence, becomes allowable expenditure. None of these findings given by the ld. CIT(A) were rebutted by the Revenue before us. We also find that the Hon'ble Jurisdictional High Court in the case of yet another Public Sector Undertaking in CIT vs. Mahanagar Gas Ltd., reported in 42 Taxmann.com 40 had an occasion to go through the same issue. The question raised before the Hon'ble Jurisdictional High Court was as under:-

“B. Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in confirming the order of CIT(A) in deleting the disallowance of Rs.92,91,343/- made by the Assessing Officer on account of prior period expenses?”

4.2. The Hon'ble Jurisdictional High Court disposed off the aforesaid question by holding as under:-

“4) Regarding Question B :

(a) In its return of income for assessment year 2004-05 while declaring total income of Rs.100.76 crores the Respondent-assessee claimed an expenditure of Rs.92.81 lacs as prior period expenses. The Assessing Officer disallowed the expenditure relating to prior period on the ground that as the respondent followed mercantile system of accounting expenditure relatable to an earlier year cannot be allowed as deduction in the assessment year under consideration. Thus an amount of Rs.92.81 lacs was added to the income of the Respondent assessee.

b) In appeal, the CIT(A) held that the method of accounting consistently followed since many years by the respondent was that expenses were claimed as a liability as and when the bills were received even though the work was done in earlier year and not in the assessment year under consideration. The liability to make payment for work and services received in an earlier year was crystallized only in current assessment year when the bills were received by the respondent assesses from the person who did the work and/or rendered services. The CIT(A) also noted that the Assessing Officer had taxed income attributable to work rendered in the earlier years in the year under consideration depending upon the time when the amounts were crystallized. On the same principle, the expenses attributable to earlier years but crystallized in the year under consideration ought to be allowed. In view of the above, the CIT(Appeals) held that in view of the consistent practice followed by the Respondent-assessee and accepted by the Revenue the prior period expenses which were crystallized during the assessment year under consideration, on receipt of the bills are to be allowed as an expenditure.

(c) On further appeal by the revenue the Tribunal upheld the finding of fact arrived at by the CIT(Appeals) and held that prior period expenditure was claimed in respect of the bills received during the assessment year 2004-05, even though the work/services was received in an earlier year. This has been consistent practice followed by the respondent-assesses according to which the liability is to be accounted when the bills are received and the payments made in the subsequent year. Thus the appeal of the Respondent-assessee was allowed.

(d) The Revenue's grievance is that in mercantile system of accounting the respondent assessee has to account for the expenditure in the year in which the work/service was received by them and not when the bills were received by the respondent assesses.

(e) We find that the liability in respect of work/services rendered in earlier year was crystallized only on receipt of the bill in the current assessment year. Moreover, the method adopted by the respondent assesses has been accepted by the revenue for the earlier assessment year and also while accounting for the income earned in respect of the work done in earlier years. In the circumstances, the Revenue is required to adopt consistent approach and allow the expenditure which was crystallized during the assessment year under consideration as done in the earlier years. This finding of fact has not been shown to be perverse.

In view of the above we see no reason to entertain question B as the same does not raise any substantial question of law as it is essentially a finding of fact arrived at by two authorities concurrently."

4.3. In view of the aforesaid observations and respectfully following the decision of the Hon'ble Jurisdictional High Court referred to supra, we find no infirmity in the order of the Id. CIT(A) granting relief to the assessee in respect of prior period expenditure. Accordingly, the grounds raised by the revenue in this regard are dismissed.

11. It is also observed that the Tribunal in ITA No. 1649/Mum/2010 for A.Ys. 2004-05 and 2005-06 vide order dated 21.04.2021, ITA No. 1650/Mum/2010 for A.Y. 2006-07 vide order dated 20.05.2021 and ITA No. 2782/Mum/2015 for A.Y. 2010-11 has consistently followed the above said decision. The tribunal in earlier years has accepted the method adopted by the assessee where the liability of the work/services rendered in earlier year was allowed when the same was crystallized on receipt of the bill in the current assessment year. The Tribunal has also held that the Revenue has to adopt consistent approach and allow the expenditure which was crystallized during the year under consideration.

12. By respectfully following the above said decision, we direct the Id. A.O. to allow the claim of the assessee as per the findings of the Tribunal mentioned hereinabove in ITA No. 3813/Mum/2009. The ground no. 1 raised by the assessee is allowed. Ground no. 2 being general ground requires no adjudication.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 10.10.2023.

Sd/-

(B R Baskaran)
Accountant Member

Mumbai; Dated : 10.10.2023
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai