

आयकर अपीलिय अधिकरण  
मुंबई पीठ " डी ", मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH " D ", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आअसं. 3383/मुं/2019 (नि. व. 2014-15)  
ITA NO.3383/MUM/2019(A.Y.2014-15)

Maharashtra State Electricity Distribution Co. Ltd.,  
'Prakashgad' 2<sup>nd</sup> Floor,  
Anant Kanekar Marg,  
Bandra(East), Mumbai 400 051

PAN: AAECM-2933-K

..... अपीलार्थी/ Appellant

बनाम Vs.

Dy. Commissioner of Income-tax-14(2)(1),  
Room NO.432, 4<sup>th</sup> Floor,  
Aaykar Bhavan, M.K.Road,  
Mumbai – 400 020

..... प्रतिवादी/ Respondent

आअसं. 2635/मुं/2019 (नि. व. 2014-15)  
ITA NO.2635/MUM/2019(A.Y.2014-15)

Dy. Commissioner of Income-tax-14(2)(1),  
Room NO.432, 4<sup>th</sup> Floor,  
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..... अपीलार्थी/ Appellant

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Bandra(East), Mumbai 400 051

PAN: AAECM-2933-K

..... प्रतिवादी/ Respondent

Assessee by : Shri J.D.Mistry, Sr.Advocate with  
Shri Niraj Sheth

Revenue by : Smt.Sanyogita Nagpal, CIT-DR

सुनवाई की तिथि/ Date of hearing : 30/11/2023  
घोषणा की तिथि/ Date of pronouncement : 07/02/2024

आदेश / ORDER

**PER VIKAS AWASTHY, JM:**

These cross appeals by the assessee and Revenue are directed against the order of Commissioner of Income Tax(Appeals)-22, Mumbai [in short 'the CIT(A)'] dated 31/01/2019, for the Assessment Year 2014-15.

**ITA NO.3383/MUM/2019 -2014-15-ASSESSEE'S APPEAL:**

2. The assessee in appeal has assailed the order of CIT(A) on two counts:
  - (i) Disallowance of prior period expenditure; and
  - (ii) Addition based on selective comments made by the Comptroller and Auditor General (CAG) on accounts of assessee /appellant.
  
3. Shri J.D.Mistry appearing on behalf of the assessee submitted that the assessee is engaged in the business of distribution of electricity in the State of Maharashtra. During the relevant Financial Year, the assessee debited an amount of Rs.1044,65,06,000/- to the Profit and Loss Account under the head 'Prior Period Expenses'. The assessee made a detailed submission before the Assessing Officer explaining the nature of Prior Period expenditure and different components of said expenditure debited in the P&L Account. The assessee has been consistently following the same method of accounting to record such transactions. The assessee has also credited prior period income of Rs.18,04,30,700/- in P&L Account. The Assessing Officer accepted the prior period income in the impugned assessment year but denied assessee's claim of prior period expenditure. He pointed that substantial part of the Prior Period Expenditure is 'Interest and other charges' amounting to Rs.310,20,63,000/-. The said interest charges are not strictly prior period

expenditure. The other substantial component of expenditure is 'Adjustment to past billing' Rs.572,66,65,736/-. The said adjustment is on account of discrepancy arising on account of wrong reading, wrong selection of category for billing (viz. residential, commercial, industrial, etc.), wrong tariff application, cases of theft, average billing due to non-availability of meter reading, etc. After making debit/credit adjustments as the case may be accounting entries are taken in the books of the appellant. The revenue previously booked is subsequently, rectified. He further pointed that the expenditure classified as prior period expenditure is incurred by various site offices of the appellant/assessee located at remote locations in the State of Maharashtra. The expenditure incurred by offices at remote locations are transmitted to the head office only after the said expenses are consolidated at the head office level. Therefore, the expenditure in fact does not fall in the category of prior period expenditure. The Id. Counsel for the assessee submits that the manner of recording expenditure is not in particular related to Assessment Year under appeal, but this manner of recording expenditure is consistently followed by the assessee since inception. The expenditure even though technically treated as Prior Period Expenditure, relate to a continuous flow of expenditure and hence, disallowance on this account is not warranted.

3.1 The Id.Counsel for the assessee furnished a chart indicating components of prior period expenditure in Assessment Year 2012-13 and Assessment Year 2014-15. He pointed that the components of expenditure in Assessment Year 2012-13 are identical to the components of prior period expenditure in the impugned assessment year. He submitted that in Assessment Year 2012-13 the assessee carried the issue in appeal before the Tribunal assailing

disallowance of expenditure in ITA No.4630/ Mum/2017. The Co-ordinate Bench vide order dated 10/10/2023 placing reliance on order of Tribunal in assessee's own case in ITA NO.3813/Mum/2009 decided on 17/02/2021 for Assessment Year 2001-02 deleted the addition. To emphasize that the facts in Assessment Year 2012-13 and Assessment Year 2014-15 are identical, the Id. Counsel for the assessee pointed that a perusal of para 5.3 of the assessment order would show that Assessing Officer has made addition on account of prior period expenses to maintain consistency, as similar additions were made in earlier years. The CIT(A) also confirmed the addition following the order of his predecessor in Assessment Year 2012-13. The Id.Counsel for the assessee placed reliance on the decision in the case of CIT vs. Mahanagar Gas Ltd., 42 taxmann.com 40 (Bom ) to emphasize that prior period expenditure which are crystallized during the relevant Assessment Year on receipt of bills even though the assessee was following mercantile system of accounting can be allowed since the assessee is following consistent method of accounting in recording of such transactions.

4. In respect of ground No.2, the Id.Counsel for the assessee submits that the accounts of the assessee are audited by CAG. During the course of said audit, the Office of CAG makes certain comments /objections. The assessee gave a detailed reply to the objections. The audit committee out of four objections accepted assessee's reply on issue No.2 and 3 but made negative comments on issue No.1 and 4 . The Assessing Officer ignored the comments given by CAG on issue No.2 and 3 and cherry picked the issue on which there were negative comments by the CAG against the assessee. The Id.Counsel for the assessee submits that the grievance of the assessee is that Assessing Officer should have taken into consideration all the four issues on which CAG

has given comments. The Assessing Officer erred in selectively accepting the comments of CAG.

5. Per contra, Smt. Sanyogita Nagpal representing the Department vehemently defended the assessment order and the order of CIT(A) , wherein the additions have been confirmed. The Ld. Departmental Representative submits that the CIT(A) has upheld the addition as the assessee has failed to furnish relevant documents to show date of crystallization of expenditure.

6. We have heard the submissions made by rival sides and have examined the orders of authorities below. The first issue in appeal by the assessee is with regard to disallowance of Prior Period Expenditure. The assessee has been consistently following the same method of accounting in respect of prior period expenditure. In the impugned assessment year the assessee had debited Rs.104465.06 lacs under the head Prior Period Expenditure comprises of following components:

Particulars	Amount (in Rs.) (00,000)
Short Provision for power purchase	(3,856.50)
Operating expenses	7,211.09
Employee Cost	1,424.05
Depreciation under provided	7,974.66
Interest and other charges	31,020.63
Administration expenses	626.63
Material related expenses	2,797.84
Adjustment to past billing	57,266.66
<b>Prior Period Expenditure</b>	<b>1,04,465.06</b>

We find that in Assessment Year 2012-13 the assessee had claimed prior period expenditure on identical set of components. The CIT(A) in the impugned order while confirming the addition placed reliance on the decision of his predecessor for Assessment Year 2012-13. The assessee carried

the issue in appeal before the Tribunal in ITA No.4630/Mum/2017 (supra). The Co-ordinate Bench in turn following the order of Tribunal in assessee's own case in ITA No.3813/Mum/2009 decided on 17/12/2021 for Assessment Year 2001-02 titled DCIT vs. Maharashtra State Electricity Board decided the issue in favour of assessee deleting the addition. The Tribunal further observed that in the preceding Assessment Years the method of accounting has been accepted and the expenditure rendered in earlier years was allowed when the same was crystallized on receipt of bills in the current Assessment Year. Thus, the assessee has been consistently following the method accounting of debiting the expenditure as and when the same is crystallized. We find that the assessee is not only claiming the expenditure in this manner but is also offering prior period income by adopting the same approach. There cannot be two different scales in accepting prior period income but not allowing prior period expenditure. The issue is perennial. The Tribunal in the past while adjudicating this issue has placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of Mahanagar Gas Ltd.(supra). We see no reason to take a different view in the impugned assessment year. The Assessing Officer is directed to delete the addition of Rs.10465.06 lacs on account of prior period expenditure. Hence, the assessee succeeds on ground No.1 of appeal.

7. The second issue in appeal by the assessee is addition arising from comments made by CAG on accounts of the assessee. The accounts of the assessee are subject to statutory audit by the CAG. The CAG made certain comments on the accounts of assessee for the year ending 31/03/2014. The comments of CAG and the reply of the assessee thereon are at page 02 and 03 of the paper book. There were adverse comments by the CAG on two issues

and on the other two issues there were positive comments. The Assessing Officer took cognizance of only adverse comments and made addition of Rs.787,99,095/- (Rs.1,25,00,000/- + Rs.6,62,99,095/-). The short prayer of the assessee is that if, Assessing Officer has considered negative comments to make addition, the Assessing Officer should have considered positive comments of the CAG to grant relief. We find merit in the submissions of the assessee. Cherry picking of items from CAG report to make addition is unjustified and arbitrary. We deem it appropriate to restore this issue back to the file of Assessing Officer for denovo examination. The Assessing Officer shall consider the comments of the CAG in whole and thereafter decide the issue by passing a speaking order. The Assessing Officer shall also grant reasonable opportunity of making submissions to the assessee before deciding the issue, in accordance with law. The ground No.2 of appeal is thus, allowed for statistical purpose.

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

**ITA NO.2635/MUM/2019-A.Y.2014-15-REVENUE'S APPEAL:**

9. The Revenue in appeal has assailed the order of CIT(A) primarily on the following ground:

*"2. "Whether on the facts and in the circumstances of the case and in law, the Learned CIT(A) has erred in directing the AO to allow the assessee's claim and, subject to verification, effectively deleting the additions made on account of overstatement of loss totaling to Rs.7,87,99,095/- (comprising Rs. 1,25,00,000/- in respect of Open Access Charges and Rs.6,62,99,095/- in respect of interest accrued but not due) without considering the fact that it is well settled law that income should be taxed in the year in which it has arisen or accrued on the basis of matching principle of accounting and the methodology adopted by the assessee amounts to deferment of taxes which is adverse to the interests of the Revenue ?"*

10. We find that ground No.2 of Department's appeal emanates from the comments of CAG. While deciding ground No.2 of assessee's appeal, we have

restored the issue back to the file of Assessing Officer. The CIT(A) has restored the issue to Assessing Officer for verification of records. We find no infirmity in the order of CIT(A), hence, ground No.2 of Department's appeal is dismissed being devoid of any merit.

11. In the result, appeal of Revenue is dismissed.

12. **To sum up, appeal of the assessee is partly allowed and appeal of the Revenue is dismissed.**

Order pronounced in the open court on Wednesday the 07<sup>th</sup> day of February, 2024.

Sd/-

(AMARJIT SINGH )

लेखाकार सदस्य / ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/ Dated 07/02/2024

Vm, Sr. PS(O/S)

**प्रतिलिपि अग्रेषित Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि. , मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/ Guard file.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

BY ORDER,

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(Dy./Asstt. Registrar) ITAT, Mumbai