



आयकर अपीलिय अधिकरण "ए" न्यायपीठ मुंबई में।

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

श्री अमित शुक्ला, न्यायिक सदस्य एवं

श्री राजेश कुमार, लेखा सदस्य के समक्ष ।

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No. 2192/Mum/2013**

(Assessment year 2009-10)

आर्या ऑफशोर सर्विसेस प्राइवेट लिमिटेड Arya Offshore Services Private Limited, Godrej Coliseum, Office No.801, C-Wing , Behind Everard Nagar, Near Priyadarshini, Sion (East), Mumbai -400 022 PAN: <b>AAACA 1034 D</b>	<b>Vs</b>	The Jt. CIT (OSD) –Central Circle- 39, Room No.32, Aayakar Bhavan, Maharshi Karve Road, Mumbai
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	श्री हर्ष शाह Shri Harsh Shah
Respondent by	:	श्री डार्सी सुमन रत्नम Shri Darsi Suman Ratnam

सुनवाईकीतारीख /Date of Hearing : 25-02-2016

घोषणाकीतारीख /Date of Pronouncement : 31-05-2016

आदेश  
**ORDER**

श्री अमित शुक्ला, न्या.स :-

**PER AMIT SHUKLA, J. M.:**

The aforesaid appeal has filed by the assessee against impugned order dated 29.01.2013 passed by CIT(A) -41, Mumbai for the quantum of assessment passed under section 143(3) for the assessment year 2009-10, vide which following grounds have been raised: -

- "1. *The learned Commissioner of Income-tax (Appeals) erred in upholding the action of the learned Assessing Officer in disallowing out of gift expenses to the extent of a sum of Rs.4,00,000/- without any basis on the on ground that these expenses are not wholly and exclusively for the business purposes.*

2. *The learned Commissioner of Income-tax (Appeals) erred in upholding the action of the learned Assessing Officer in disallowing an amount of Rs.42,73,977/- on the ground that such expenses will be allowed as a deduction in the year in which such expenses accrued/ascertained/crystallized. The appellant admits that the learned Commissioner of Income-tax (Appeals) failed to appreciate that the said amount represented volume discount to a party resulting in reduction of the income booked and not a prior period expenditure and ought to have been allowed.*
3. *The appellant submits that the Assessing Officer be directed:*
  - (i) *to delete the disallowance of a sum of Rs.4,00,000/- made out of gift expenses;*
  - (ii) *to delete the addition of a sum of Rs.42,73,977/- (representing volume discount) resulting into reduction in income booked; and to modify the assessment in accordance with the provisions of the Act”.*

2. Brief facts *qua* the first issue is that assessee is engaged in the business of rendering comprehensive services to organization connected with offshore activities. The AO noted that assessee has debited a sum of Rs.36,59,899/- as “gift” expenses which was claimed as business expenditure. The assessee’s case before the AO was that ‘gifts’ were distributed to the customers and associates on occasions “Diwali” and were incurred out of commercial expediency. The AO held that, similar submissions were made in the earlier year also and part of the disallowance was made in those years on the ground that assessee has not brought complete verifiable documents on the record. Following the earlier year precedence, he disallowed a sum of Rs.7,50,500/- out of gift expenses on estimate basis.

3. The Ld. CIT(A), following the Tribunal order for AY 2006-07, restricted the disallowance to Rs.4 lakhs after observing and holding as under:-

“3.2 I have considered the facts of the case and the submissions made by the assessee. I find that under similar circumstances and on similar facts, Hon’ble ITAT, in the order referred to above, has upheld disallowance out of the gift expenses to the extent of around 11% of the expenses claimed in the return filed for the assessment year 2006-07 since the assessee had claimed gift expenses of Rs.11,95,469/- and Hon’ble ITAT held that a disallowance of Rs.1,30,000/- would be reasonable. Respectfully, following the order of the Hon’ble ITAT in assessee’s own case on identical issue and facts, I uphold the disallowance on account of gift expenses claimed by the assessee to the extent of Rs.4,00,000/- representing close to 11% of the total expenses claimed. Consequently, the assessee will get a relief of Rs.3,50,000/-. This ground of appeal is treated as partly allowed”.

4. After hearing both the parties, we find on perusal of the impugned finding given in the impugned orders that this issue had come up for consideration before the Tribunal in the earlier year, that is in AY 2006-07 and Ld. CIT(A) has merely followed the precedence of Tribunal order on the basis of which he has scaled down the estimate. Since the CIT(A) has restricted the disallowance following the finding of the Tribunal in AY 2006-07, therefore, we do not find any reason to deviate from such reason without any basis or any rebuttal by the assessee with cogent reasons or material. Accordingly, disallowance of Rs.4 lakhs as sustained by the CIT(A) is confirmed.

5. The relevant facts with regard to second issue is that in the revised computation, the assessee has claimed deduction of Rs.43,26,035/- on account of ‘prior period expenses’. In response to the show cause notice by the AO, the assessee submitted that

during the financial year ending on 31<sup>st</sup> March, 2010 it had incurred an amount of Rs.43,26,035/- which included the volume of discount given to its Principal, M/s ENI India Ltd. Since the decision to give volume discount materialized only after filing of the return of income, therefore, the same was claimed by way of revised computation. It was contended that this was incurred in connection with the business of the company only. The relevant part of the assessee's submission before the AO is reproduced hereunder:-

*“During the financial year ending 31<sup>st</sup> March 2010, we have incurred an amount of Rs.43,26,035/- on account of various expenses pertaining to AY 2009-10. These expenses included volume discount given to our principal ENI Ltd. Such decision to give volume discount materialized only after the filing of return. We are enclosing herewith the details correspondence which will show that these expenses pertained to the current year and hence have been claimed in the revised returns filed by us for AY 2009-10. In this respect it is pertinent to note that volume discount has also been offered to our customers for AY 2008-09 to the tune of Rs.20,35,188/-, but has not been claimed by us. The above expenses have been fully incurred in connection with the business of the company and hence fully allowable”.*

6. However, the AO did not accept the assessee's contention and observed that credit note issued by the assessee to the Principal showed an aggregate liability of Rs.74,78,660/- which was shown payable by the assessee on account of volume discount for the period from December, 2007 to July 2009. The letter was issued only on 23.11.2010, which means that, liability under consideration had not crystallized during the financial year relevant to assessment year 2009-10. Accordingly, he disallowed said clam of Rs.46,29,035/-.

7. Before the Ld. CIT(A) besides reiterating the same submission, the assessee stated that as per the contractual commitment with M/s ENI India Ltd, the Principal was entitled to volume discount on the services offered by the assessee. Due to some misunderstanding with the Principal with regard to giving of volume discount in certain services, applicant raised invoices to M/s ENI India Ltd., without considering or offering the volume discount. Later on, when the matter was clarified, a credit note was issued by the assessee in respect of Volume discount. Due to this, the income offered did not give the correct picture of the income, therefore the assessee had to file a revised return and claimed an amount of Rs.43,26,035/- in this year. Merely because credit note was issued on 23.11.2010, it does not mean that it represented the expenditure for a later year. The Ld. CIT(A) asked for the remand report and the Ld. AO in his remand report stated that assessee was recognizing the revenue as and when the services were performed, therefore, assessee correctly recognized the revenue from the services when it was performed in the assessment year 2009-10 and no adjustment was required in this year. The liability only got crystallized on 23.11.2010 and it is only in the AY 2011-12, it can be claimed as prior period expenditure. The Statutory Auditor has also certified that, this volume discount of Rs.42,73,977/- has already been booked as prior period expenditure for year ending on 31<sup>st</sup> March, 2010, therefore, such a claim of the assessee and deducting of the amount from the receipt of the year ending from 31<sup>st</sup> March, 2009 is not correct. The Ld. CIT(A) too accepted the AO's contention and noted that assessee had not given any volume discount to M/s ENI India Ltd during the year under appeal. In the books also, no such expenditure can be said to have accrued during the year relevant to assessment year 2009-10, it was only when the issue was resolved in September, 2010 that the assessee reviewed its contract obligation and agreed that volume discount of Rs.42,73,977/- was required

to be given. No provision was also made with regard to volume discount in question in the Balance sheet therefore, such an expenditure had not accrued in the assessment year 2009-10 and even the assessee has also not recognized its liability in this year. Accordingly, he upheld the disallowance of Rs.42,73,977/-.

8. Before the Ld. Counsel after explaining the entire facts, submitted that in the remand report AO has accepted that this liability if at all pertain to assessment year 2011-12, which is evident from his observations made in page 3 of the remand report, (copy of this appearing from pages 63 to 66 of the paper book). Accordingly, he submitted if same is not allowed in this year then same should be allowed in AY 2011-12 as CIT(A) has not considered this matter and has not given any direction to the AO in this regard.

9. Ld. DR, accepted that direction can be given to the AO for allowing same in the AY 2011-12.

10. After considering the submissions made by the parties and the finding given in the impugned order as well as material placed on record, we find that it is an undisputed fact that assessee was contractually obliged to give volume discount to its Principal, M/s ENI India Ltd., for the services offered by the assessee. It is also not undisputed that assessee is recognizing the revenue from services rendered based on time of service rendered and the bill amount is raised to the Principal as per the terms of contract. Thus, the related revenue was recognized as and when the services were performed. As brought out on record by AO on the remand proceedings, the liability got crystallized only on 23.11.2010, when both the parties have settled this issue, that is, they have agreed for the volume discount and accordingly, credit note was issued by the assessee accepting / recognizing the volume discount. The Ld. AO in his remand report had given his comment before the CIT(A)

that same should be allowed in 2011-12, the relevant comment of the AO is reproduced hereunder:-

- “8. *It has been already pointed out by the Revenue that the amount of Rs.42,73,977/- is correctly allowable only in assessment year 2011-12. The representative of the assessee has also almost conceded the issue by stating that he has no objection, if the expenditure is allowed in AY 2011-12. Therefore it is respectfully submitted before the Ld. CIT(A) that the impugned appeal has become infructuous and hence the addition may be confirmed in AY 2009-10 with a direction to allow it in AY 2011-12.*
9. *During the course of the hearing the assessee has submitted a e-amil confirmation from M/s ENI India Ltd., a copy of which is enclosed herewith which clearly says the above income has been admitted by M/s ENI India Ltd. only in AY 2011-12 and hence it is allowable in the hands of the assessee only in AY 2011-12”.*

In view of the aforesaid facts, we direct the AO to allow the claim of the expenditure on account of volume discount for Rs.42,74,977/- in the assessment year 2011-12 and accordingly, the ground No.2as raised by the assessee is treated as partly allowed for statistical purposes.

11. As regards ground No.3, the issue raised in ground 1 & 2 has been reiterated, therefore, no separate adjudication is required. Accordingly, grounds raised in the assessee’s appeal is treated are partly allowed for statistical purposes.

12. In the result, appeal of the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 31st May, 2016

Sd/-

(राजेश कुमार)

लेखा सदस्य

**(RAJESH KUMAR)  
ACCOUNTANT MEMBER**

Sd/-

(अमित शुक्ला)

न्याईक सदस्य

**(AMIT SHUKLA)  
JUDICIAL MEMBER**

**Mumbai, Date: 31st May, 2016**

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
- 2) प्रत्यर्थी /The Respondent.
- 3) The CIT(A) -3, Mumbai.
- 4) The Commissioner of Income Tax-Central-III, Mumbai.
- 5) " प्रतिनिधि विभागीय", अधिकरण अपीलीय आयकर, मुंबई/  
The D.R. "A" Bench, Mumbai.
- 6) गार्डफाईल  
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आदेशानुसारBy Order

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सहायक पंजीकार  
मुंबई ,आयकरअपीलीयअधिकरण  
Asstt. Registrar  
I.T.A.T., Mumbai

\*Chavan, Sr.PS