

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "B" KOLKATA**

Before **Shri Aby.T.Varkey, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.1124/Kol/2014 Assessment Year :2009-10

DCIT, Port Blair M.B. 210, Shadipur Port Blair, A & NI -744 106	V/s.	Andaman Nicobar Island Integrated Development Corporation Ltd., Vikas Bhawan, Port Blair, 143/1/1, Cotton Street, Kolkata-700 007 [PAN No.AACCA 4070 B]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	None
प्रत्यर्थी की ओर से/By Respondent	Shri D.S. Damle, FCA
सुनवाई की तारीख/Date of Hearing	30-01-2017
घोषणा की तारीख/Date of Pronouncement	08-02-2017

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-I, Kolkata dated 27.01.2014. Assessment was framed by ACIT, Andaman & Nicobar Islands, Port Blair u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 30.12.2011 for assessment year 2009-10.

2. At the outset it was noticed that the Revenue has neither appeared before us nor moved any adjournment petition. In such situation, we decided to proceed to adjudicate the matter after hearing Shri D.S. Damle, Ld. Authorized Representative appeared on behalf of assessee.

3. Facts in brief are that assessee in the present case is a Limited Company and engaged in business of procurement and distribution of iron & steel, milk, vegetables and promotion of tourism and catering. The assessee for the year under consideration has filed its revised returned electronically declaring total income of ₹10,20,25,351/-. Subsequently the return was selected for scrutiny through CASS module. Accordingly, notice u/s. 143(2)/142(1) of the Act were issued upon the assessee. The issue was framed u/s 143(3) of the Act at total income of ₹11,26,92,090/- after making certain addition / disallowances.

4. First issue raised by Revenue in this appeal is that Ld. CIT(A) in deleting the disallowance for ₹87,54,195/- on account of prior period expenses.

5. The assessee for the year under consideration has claimed prior period expenses for ₹87,54,195/-. On question by the AO about the allowability of prior period expenses, assessee failed to give any satisfactory reply to the AO. The assessee also failed to submit any documentary evidence justifying that the prior period expenses were crystallized during the year under consideration. The AO accordingly, disallowed prior period expenses as claimed by assessee and added to the total income of assessee.

6. Aggrieved, assessee preferred an appeal before Ld. CIT(A) whereas assessee submitted that prior period expenses represented the arrears of salary to the employees which was crystallized in the year under consideration by the Ministry of Finance, Govt. of India in its office memorandum published on 31.08.2008 for pay-scale revision with effect from 01.01.2006. The assessee further submitted that liability for the arrears of salary to the staff was crystallized in the year under consideration and therefore eligible for deduction u/s 37(1) of the Act. After considering the submissions of assessee Ld. CIT(A) deleted the addition made by AO observing as under:-

“3.2 The submissions of the Appellant have been considered and it is seen that the prior period related to payments of salary arrears consequent to the Office Memorandum of Ministry of Finance, Government of India published on 31.08.200. It is also seen that the AO

*has not disputed the fact that the liability had incurred and was aware the same related to the Sixth pay Commission Arrear. Therefore, his observation that the claim that these liability as crystallized cannot be considered as justified. Therefore, considering the above submission of the Appellant and the decision of ITAT, Delhi in Urban Improvement Co. Pvt. Ltd. Vs. ITO, Ward-18(2), New Delhi supra, it is held that the AO as not justified in disallowing the amount of Rs.87,44,195/- and the same is **deleted.**"*

Aggrieved by this, Revenue has come up in appeal before us on the following grounds:-

"1. That on the facts & circumstances, the case, the Ld. CIT(A) is not justified in deleting disallowances of Rs.87,44,195/- on prior period expenses without considering the fact that the assessee follows mercantile system of accounting and therefore, the said expenses are not allowable expenditure u/s 41 of the IT Act 1961. The Ld. CIT(A) did not also examine the fact that the prior period expenses were duly crystallized during the year."

7. Before us Ld. AR reiterated submission as made before Ld. CIT(A) and relied on the order of Ld. CIT(A).

8. We have heard Ld. AR and perused and carefully considered the materials available on record; including the judicial pronouncements cited and placed reliance upon. The facts of the case as borne out from the records are that assessee has claimed prior period expenses in the year under consideration. The assessee failed to furnish necessary details before AO at the time of assessment proceedings to justify that this expenses were crystallized in the year under consideration. Therefore, AO disallowed the same, however assessee before Ld. CIT(A) submitted the necessary details with evidence and demonstrated that these expenses were crystallized in the year under consideration. Accordingly, relief was granted by Ld. CIT(A) to assessee. Admittedly, the salary pertaining to earlier year was claimed by assessee in the year under consideration but it was crystallized in the current year. Prior period items are income or expenses which arose in the current period as a result of errors or omission in preparation of financial statement of one or more prior periods. On examination of order of Authorities Below, we

find that the Authorities Below has not disputed genuineness of such expenses. The expense was disallowed by AO as assessee failed to produce necessary documents to justify that these expenses were crystallized in the current year. However, we find that there was a revision in the pay scale was effected from 01.01.2006 and OM was published on 30.08.2008. In the aforesaid situation, the liability arose to assessee for payment of arrears salary. As Notification was issued on 30.08.2008 whereby the liability for the payment of arrears of salary was crystallized , therefore such liability is eligible for deduction under the IT Act. In holding so, we find support and guidance from the judgment of Hon'ble Punjab & Haryana High Court in the case of *Principal Commissioner of Income-tax v. Haryana Warehousing Corporation* (2017) 77 taxmann.com 43 (P&H) where it was held as under:-

"16. The concluding part of the Minutes adopted the letter dated 07.01.2009. The Minutes also referred to the arrears. As we mentioned earlier, the word "arrears", absent anything else, indicates that the liability had been incurred and had also been agreed to be discharged. The liability, thus, arose in praesenti and not in futuro. A part of the liability was to be discharged in future. The accrual of a liability and the time for the discharge thereof are different matters. In the mercantile system, the mere postponement of the date of payment of a liability already incurred, acknowledged and agreed to be met arises in the year it is stated to be so incurred and met.

*17. Mr. Garg, the learned senior counsel appearing on behalf of the assessee, relied upon the judgment of the Supreme Court in *Bharat Earth Movers v. CIT [2000] 245 ITR 428/112 Taxman 61*, which is also referred to by the Tribunal. The Supreme Court held:—*

"4. The law is settled: if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied the liability is not a contingent one. The liability is in praesenti though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain.

*5. In *Metal Box Co. of India Ltd. v. Workmen [(1969) 73 ITR 53 : AIR 1969 SC 612]* the appellant Company estimated its liability under two*

gratuity schemes framed by the Company and the amount of liability was deducted from the gross receipts in the P&L account. The Company had worked out on an actuarial valuation its estimated liability and made provision for such liability not all at once but spread over a number of years. The practice followed by the Company was that every year the Company worked out the additional liability incurred by it on the employees putting in every additional year of service. The gratuity was payable on the termination of an employee's service either due to retirement, death or termination of service — the exact time of occurrence of the latter two events being not determinable with exactitude beforehand. A few principles were laid down by this Court, the relevant of which for our purpose are extracted and reproduced as under:

- (i) for an assessee maintaining his accounts on mercantile system, a liability already accrued, though to be discharged at a future date, would be a proper deduction while working out the profits and gains of his business, regard being had to the accepted principles of commercial practice and accountancy. It is not as if such deduction is permissible only in case of amounts actually expended or paid;*
 - (ii) just as receipts, though not actual receipts but accrued due are brought in for income tax assessment, so also liabilities accrued due would be taken into account while working out the profits and gains of the business;*
 - (iii) a condition subsequent, the fulfillment of which may result in the reduction or even extinction of the liability, would not have the effect of converting that liability into a contingent liability; and*
 - (iv) a trader computing his taxable profits for a particular year may properly deduct not only the payments actually made to his employees but also the present value of any payments in respect of their services in that year to be made in a subsequent year if it can be satisfactorily estimated.*
6. *So is the view taken in Calcutta Co. Ltd. v. CIT [(1959) 37 ITR 1 : AIR 1959 SC 1165] wherein this Court has held that the liability on the assessee having been imported, the liability would be an accrued liability and would not convert into a conditional one merely because the liability was to be discharged at a future date. There may be some difficulty in the estimation thereof but that would not convert the accrued liability into a conditional one; it was always open to the tax authorities concerned to arrive at a proper estimate of the liability having regard to all the circumstances of the case."*

18. The liability, in the case before us, arose in the assessment year 2009-10. Sixty percent of it was liable to be discharged in the next assessment year. It is, undoubtedly, estimated with more than just reasonable certainty. The liability was, therefore, not a contingent one but one in praesenti. A part of it was to be discharged at a future date. The judgment supports the assessee's case."

From the above judgment, we find that the facts of the assessee are exactly identical to the facts of above case law, therefore, we find no reason to interfere with the findings arrived by the Ld. CIT(A). Under the circumstances, this issue of Revenue's appeal is dismissed.

9. Next issue raised by Revenue in this appeal is that Ld. CIT(A) erred in deleting the disallowance for ₹2,13,878/- on account of expenses incurred towards social service.

10. The assessee in the year under consideration has incurred expenses for social service and this expense was incurred for the supply of milk for SGFI Football tournament and football team and mementoes etc., the assessee failed to produce the necessary details in support of such expense incurred by assessee at the time of assessment proceedings. The AO also observed that this expense was not connected with the business of assessee. Accordingly, AO disallowed the expense to ₹ 2,13,878/- and added to the total income of assessee.

11. Aggrieved, assessee preferred an appeal before Ld. CIT(A) whereas assessee submitted that all the expenses were genuinely incurred and all the supporting evidences were duly made available at the time of assessment proceedings. The assessee further submitted that these expenses were incurred for the promotion of its business and therefore eligible for deduction under the IT Act. After considering the submissions of assessee Ld. CIT(A) deleted the addition made by AO by observing as under:-

"Therefore, considering the above and the fact that the expenses are duly vouched for, it is held that the same are allowable as relating to the business purposes Accordingly, the addition made by the AO is deleted."

Aggrieved by this, Revenue has come up in appeal before us on the following grounds:-

“2.That on the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in deleting the disallowances of Rs.2,13,878/- incurred towards social service, which were not related to the business activity of the assessee.”

12. Before us Ld. AR for the assessee reiterated same submission as made before Ld. CIT(A) and he relied on the order of Ld. CIT(A).

13. We have heard Ld. AR and perused the materials available on record. Issue in the instant case, relates to the disallowance of expense incurred by assessee on account of two reasons – firstly, necessary details were not submitted at the time of assessment proceedings and secondly the expense incurred by assessee were not connected with the business of assessee. However, Ld. CIT(A) observed that expense were incurred by assessee for the promotion of assessee’s business and accordingly Ld. CIT(A) granted relief to assessee. Admittedly, we find that assessee is 100% government owned company and engaged in procuring business of milk. The expense has been incurred by assessee under the head “milk”. Therefore, it can be established that the expense incurred by assessee were directly connected with the business of assessee. We also find that now-a-days it is very common for the corporate to sponsor sports activities for the purpose of advertisement of their products. Therefore, it cannot be concluded that expenses were not incurred in connection with business of assessee. We further also find genuineness of expense has not been doubted by AO. In similar facts and circumstances of the case, Hon'ble Delhi High Court in the case of *CIT vs. Delhi Cloth & General Mills Co.* reported in 240 ITR 9 (Del) has allowed the instant issue in favour of assessee. The relevant extract of the judgment is reproduced below:-

“Business expenditure—Allowability—Expenditure on organising a football tournament—Allowable as deduction.—Delhi Cloth & General Mills Co. Ltd. vs. CIT (1992) 198 ITR 500 (Del) : TC 17R.1113 followed

Expenditure incurred by assessee-company on organising a football tournament is allowable as deduction."

From the above, judgment, we find that the expense incurred on the sponsorship of sports event has been held as business expense. Respectfully following the same principle we find no infirmity in the order of Ld. CIT(A). Hence, this ground of Revenue is dismissed.

14. In the result, Revenue's appeal stands dismissed.

Order pronounced in the open court 08/02/2017

Sd/-
(न्यायिक सदस्य)
(Aby.T.Varkey)
(Judicial Member)
Kolkata,

Sd/-
(लेखा सदस्य)
(Waseem Ahmed)
(Accountant Member)

*Dkp, Sr.P.S

दिनांक:- 08/02/2017 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-DCIT, Port Blair, M.B. 210, Shadipur Port Blair, A& NI-744106
2. प्रत्यर्थी/Respondent-Andaman Nicobar Island Integrated Development Corporation Ltd.
143/1/1, Cotton Street, Kolkata-700 007
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,
/True Copy/

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।