

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER
[Through Video Conferencing]**

ITA No. 3609/Del/2017
Assessment Year: 2011-12

ACIT, Circle-25(1), New Delhi	Vs.	M/s. Telecommunication Consultant India Pvt. Ltd., TCIL Bhawan, Greater Kailash- 1, New Delhi
		PAN :AAACT0061H
(Appellant)		(Respondent)

Appellant by	Sh. Prakash Dubey, Sr.DR
Respondent by	Sh. Suyash Sinha, Adv.

Date of hearing	05.07.2021
Date of pronouncement	16.07.2021

ORDER

PER O.P. KANT, AM:

This appeal by the Revenue is directed against order dated 28/02/2017 passed by the Learned Commissioner of Income Tax (Appeals)-15, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2011-12 raising following grounds:

1. *"The impugned order of the CIT(A) is bad in law as well as on facts of the case."*
2. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,96,72,870/-*

made u/s 14A of the Act ignoring the fact that there is direct and proximate nexus between the exempted income, which the investment shall generate and the expenditure directly or indirectly involved in earning the said income.”

3. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition of Rs. 8,17,696/- to 2,87,351/- resulting in deletion of Rs. 5,30,345/- made on account of prior period expenses ignoring the fact that the prior period expenses had not been debited to Profit & Loss Account in the year when those were incurred.”*
4. *“The Appellant craves, leave or reserving the right to amend, modify, alter, add or forego any of the Ground(s) of Appeal at any time before or during the hearing of this appeal.”*

2. Briefly stated facts of the case are that the assessee is a public sector undertaking of Government of India under the administrative control of Ministry of Information Technology. For the year under consideration, the assessee filed return of income on 29/09/2011, declaring total income of ₹ 1,45,96,030/- which was further revised to ₹ 8,16,09,300/- on 20/03/2013. The scrutiny assessment under section 143(3) of the Income-tax Act, 1961 (in short ‘the Act’) was completed on 29/03/2014 after making disallowance of Rs. 3,96,72,870/- under section 14A of the Act and disallowance of prior period expenses of Rs. 26,16,106/-. The Ld. CIT(A) deleted both these disallowances. Aggrieved, the Revenue is in appeal before the Tribunal, raising the grounds as reproduced above.

3. Before us, the parties appeared through Video Conferencing facility and filed documents electronically.

4. The ground No.1 of the appeal is general in nature and therefore, we are not required to adjudicate upon and the same is accordingly dismissed.

5. The ground No. 2 relates to disallowance of ₹ 3,96,72,870/- under section 14A of the Act. The Ld. CIT(A) deleted the disallowance observing as under:

"5. Ground No. 2: This ground relates to the disallowance of Rs.3,96,72,870/- made u/s 14A of the Act and the corresponding addition made to the book profits u/s 115JB. During the course of appellate proceedings, it is submitted by the AR of the appellant that the appellant company did not earn any exempt income during the year under reference. For making disallowance u/s 14A it is submitted by the appellant that there should be nexus between the exempt income and the expenditure incurred and there should be an income which does not form part of the total income. In the absence of any exempt income the provision of Section 14A cannot be invoked. The appellant placed reliance on the various judgments as mentioned in his submissions. It is submitted that entire investment were made from its own resources and not from the borrowed fund. It is further submitted that no interest bearing funds are utilized for making the investment in shares by the appellant company. The loans and overdrafts were taken by the appellant company for execution of various projects in India and abroad. My attention is also drawn to the fact that in A.Y. 2007-08 and 2008-09 the disallowance made u/s 14A of the Act were deleted by the CIT(A) vide order dated 27.11.2012 in Appeal No. 33/09-10 for A.Y. 2007-08 and order dated 03.04.2012 in Appeal No. 201/11-12 for A.Y. 2008-09 in appellant's own case. It is noted that during the year under reference the appellant has not received any dividend or exempt income. It has been held by the Hon'ble jurisdictional High Court in the case of Cheminvest Ltd. vs CIT-VI in ITA No.749/2014 vide their judgment dated 02.09.2015 that for disallowances u/s 14A there should be receipt of income which is not includible in the total income during the relevant previous year. Para 23 of the judgment is reproduced below:-

"23. In the context of the facts enumerated hereinbefore the Court answers the question framed by holding that the expression "does not form part of the total income" in Section 14A of the envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, Section 14A will not apply if no exempt income is received or receivable during the relevant previous year."

In the light of above stated facts and following the judgment of Jurisdictional High Court as given in the case of Cheminvest Ltd. (supra), and also the order of the CIT(A) in appellant's own case in

A.Y. 2007-08 and 2008-09 as mentioned above as facts are similar in this year as well, the disallowance made u/s 14A of the Act in this case is hereby deleted. “

5.1 Before us, the Learned DR relied on the order of the Assessing Officer, whereas Learned Counsel of the assessee relied on the order of the Learned CIT(A).

5.2 We have heard rival submission of the parties on the issue in dispute. We find that during the year, no exempted income was received by the assessee and therefore, following the finding of the Hon'ble Jurisdictional High Court in the case of Cheminvest Ltd (supra), the Ld. CIT(A) deleted the disallowance. In our opinion, there is no infirmity in the order of the Ld. CIT(A) on the issue in dispute and accordingly we uphold the same. The ground of the appeal of the Revenue is accordingly dismissed.

6. The ground No. 3 related to prior period expenses wherein the Ld. CIT(A) has reduced the disallowance of ₹ 8,17,696/- to Rs. 2,87,351/-. The Ld. CIT(A) has deleted the disallowance observing as under:]

“4. I have gone through the assessment order and also the submissions filed by the appellant during the course of appellate proceedings. The grounds raised in this appeal are adjudicated as follows:-

Ground No. 1 :- This ground relates to the addition of Rs.26,16,106/- made on account of prior period expenses. Vide order dated 16.06.2014 Act passed under Section 154 of the Act. AO has restricted the disallowance to Rs.8,17,696/- holding that as per the schedule the prior period expenses are of Rs.8,17,696/- only. During the course of appellate proceedings, the appellant has submitted details in respect of adjustments carried out in respect of prior period expenses/income. As per the details submitted by the appellant it is seen that the appellant has offered prior period income of Rs.34,33,802/- and has claimed expenses pertaining to prior period of Rs.8,17,696/-. In net result the appellant has offered income of Rs.26,16,106/- on account of prior period adjustment. During the course of appellate proceedings, the appellant was asked

to give the details of prior period expenses claimed during the year under reference. It is submitted by the appellant that a sum of Rs.3,74,490/- claimed by the appellant in fact relate to work contract tax which was charged @ 4% instead of 1% and pertain to the F.Y. 2009-10. When the matter was taken up with the commercial tax division it got finally resolved in the year under reference. Since the matter was resolved in A.Y. 2011-12 the differential was debited to the Profit and Loss Account in A.Y. 2011-12 and the corresponding payment was made to the sub contractor. With regard to expenditure claimed of Rs. 1,55,855/- in respect of stores and spares and loose tools consumed, it is submitted that the materials were supplied by the supplier for Rs.1,55,855/- who submitted their bills on 30.03.2010. The said bills were verified by the appellant's engineer and forwarded to the Accounts Department in April 2010 and therefore the expenditure was claimed in the year under reference. The appellant however could not furnish details in respect of other expenses of Rs.1,07,730/- and no details for the depreciation claimed in the year of. Rs.1,79,621/- were furnished. As the appellant has given due justification for the expenses debited in respect of stores and spares of Rs 1,55,855/- and expenses in respect of sub contract of Rs.3,74,490/-, I am of the considered view that the same needs to be allowed to the appellant. The addition to this extent is hereby deleted. As appellant has not been able to justify the other items of expenditure claimed, the addition of Rs.2,87,351/-(Rs.1,07,730/- + Rs.1,79,621/-) is therefore, confirmed.”

6.1 Before us the Learned DR relied on the order of the Assessing Officer and submitted that the assessee failed to demonstrate that liability crystallized in the year under consideration.

6.2 On the other hand, the learned Counsel of the assessee relied on the order of the Learned CIT(A) and submitted that identical issue has been decided in favour of the assessee by the Tribunal in ITA No. 4129/Del/2011 for assessment year 2005-06.

6.3 We have heard rival submission of the parties of the issue in dispute. The Ld. CIT(A) has allowed relief in respect of expenses of store and spares amounting to ₹ 1,55,855/- and expenses in respect of the contract of ₹ 3,74,490/- holding that same were

crystallised in the year under consideration. The assessee has demonstrated that liability has been crystallised in the year under consideration and therefore, the Learned CIT(A) is justified in deleting the disallowance. Further we find that identical issue of prior period Expenses on contract has been allowed in favour of the assessee by the Tribunal (supra) in assessment year 2005-06 observing as under:

“9. We have carefully considered rival contentions as well as the perused the orders of the lower authorities. The assessee is a government organization following the mercantile system of accounting where the expenses are recognized only when they are crystallized. It was further stated that these expenditure have been crystallized during the year and therefore there been accounted so. The assessee is also explained various reason why the expenditure have been crystallized during the year such as receipt of claim from subcontractors a later date when the work was duly carried out in completed in earlier years, acceptance of additional claims, receipt of invoices of materials and later date, measurement of work done by the client after the closing of the accounts, staff salary payments revision of pay structures etc with retrospective effect. The identical issue arose in the case of the assessee wherein for assessment year 2006 2007 the Ld. CIT appeal has allowed the claim of the assessee relying upon the decision of the Hon'ble Gujarat High Court in case of Saurashtra cement and chemicals industries Ltd versus CIT 213 1TR 523 The Ld. CIT appeal also relied upon his own order for earlier years wherein identical disallowances been deleted. Hon'ble Gujarat High Court in Saurashtra cement & chemical industries Ltd versus CIT 213 ITR 523 has held that:-

“9. Question No. 5 relates to the expenditure of Rs. 39,823 actually incurred during the previous year but was not allowed as deduction from the profit of the previous year on the ground that the liability in respect of various expenses included in the aforesaid sum had arisen in the earlier previous year and not in the relevant previous year and as the assessee maintained the accounts on mercantile system, the same was not allowable expenses of the previous year in question.

10. From the statement of the case and the order of the Tribunal it appears that the contention of the assessee was that the expenditures in dispute were incurred in the year under consideration because they were quantified in the

previous year concerned, and the Commissioner (Appeals) rest contended by saying that when the expenses related to the earlier accounting years, how each of these expenses could be quantified in the year of consideration. The Tribunal affirmed the disallowance by observing that there is no dispute that the assessee-company maintained its books of account on mercantile basis. It was observed that if that is so, there was no justification in claiming these expenses for the assessment year under appeal. Having considered the material on record, we do not find any justification for the disallowance of the claim of the assessee on such abstract proposition. Merely because an expense relates to a transaction of an earlier year it does not become a liability payable in the earlier year unless it can be said that the liability was determined and crystallized in the year in question on the basis of maintaining accounts on the mercantile basis, in each case where the accounts are maintained on mercantile basis it has to be found in respect of any claim, whether such liability was crystallized and quantified during the previous year so as required to be adjusted in the books of account of that previous year. If any liability, though relating to the earlier year, depends upon making a demand and its acceptance by the assessee and such liability has been actually claimed and paid in the later previous years, it cannot be disallowed as deduction merely on the basis that the accounts are maintained on mercantile basis and that it related to a transaction of the previous year. The true profits and gains of a previous year are required to be computed for the purpose of determining tax liability. The basis of taxing income is accrual of income as well as actual receipt. If for want of necessary material crystallising the expenditure is not in existence in respect of which such income or expenses relates, the mercantile system does not call for an adjustment in the books of account on estimate basis. It is actually known income or expenses, right to receive or liability to pay which has come to be crystallised, is to be taken into account under mercantile system of maintaining books of account. An estimated income or liability, which is yet to be crystallised, can only be adjusted as contingency item but not as an accrued income or liability of that year. To illustrate, we find from the details of the expenses that certain expenses are related to the fees paid to the experts, out of pocket expenses incurred by the consultation firm and discharge of liability on account of demurrages claimed by the port authorities. Such items without investigation into the fact about the crystallization of such dues cannot be disallowed merely on the ground that they relate to the transactions pertaining to earlier accounting year. In this connection it is useful to refer to a decision of the

Gauhati High Court in the case of CIT v. Nathmal Tolaram f 19731 88 1TR 234 which was a case arising under the Indian Income-tax Act, 1922, as to the interpretation of section 10(2) (xv) which is corresponding to section 37(1) of the 1961 Act. The question related to the claim of deduction on account of the sales tax liability paid during the year 1957-58, whereas the liability related to the accounting year 1949-50. The Division Bench in that case observed as under:

". . . Under section 4 of the Income-tax Act, the income that accrues or arises during any previous year alone is to be taken note of. There is, therefore, a bar to include any income that accrues or arises outside the previous year subject to the deeming provisions in the Act. There is, however, no express bar in law,, nor one by necessary implication, restricting the power of the Income-tax Officer to exclude the expenditure laid out or expended under section 10(2) (xv) of the 1922 Act. We are, therefore, unable to accede to the submission of the learned counsel for the department.

Section 10(2) (xv) , shorn of other details for our purpose, provides for making allowances of any expenditure 'laid out' or 'expended'. The words 'laid out' are with reference to the mercantile system while the word 'expended' is with regard to the cash system. Once there was the sales tax demand in this case, which was an enforceable liability and as such a real expenditure, for which the assessee laid out the amount by debiting his account in the accounting year which was also the year of demand of the department, deduction can be legitimately claimed under section 10(2) (xv) . Here is a case, where there is no doubt about the genuineness of the expenditure. There is also the compulsiveness in the sales tax demand which can be ignored only at peril of the assessee. This expenditure had never been taken note of in the earlier years for one reason or the other. In the absence of any legal bar in the way of the assessee claiming this expenditure in the year of demand for which provision has already been made in his accounting year, deduction under section 10(2) (xv) is permissible in law and has been rightly allowed by the Tribunal. " (p.238)

We are in respectful agreement with the said view expressed by the Gauhati High Court. We, therefore, answer question No. 5 in the negative, i. e. , in favour of the assessee and against the revenue."

The Ld. departmental representative could not controvert the findings of the Ld. CIT appeal as well as could not place before us

any reason that the expenditure has not been crystallized during the year. In view of this ground No. 2 of the appeal of the revenue is dismissed.”

6.4 In view of the facts and circumstances, we uphold the finding of the Learned CIT(A) on the issue in dispute. The grounds of the appeal of the Revenue are dismissed.

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

Order pronounced in the open court on 16th July, 2021.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER**

Dated: 16th July, 2021.

RK/-^(DTDC)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi