



S-10 & 11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ITA Nos. 293/2013 & 295/2013**

COMMISSIONER OF INCOME TAX: DELHI-V..... Appellant
Through Mr. Balbir Singh, Sr. Standing
Counsel.

versus

BITES LTD. Respondent
Through Mr. Manoj Kumar and Mr. J.C.
Seth, Advocates

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER% **06.12.2013**

These two appeals filed by the Revenue under Section 260A of the Income Tax Act, 1961, pertain to assessment years 2006-07 and 2007-08.

2. The issue raised pertains to expenses, which were shown under the head 'prior period expenses' in the papers/statement of accounts filed before the Assessing Officer. In the assessment year 2006-07, the amount involved is Rs.1,37,20,650/- and in the assessment year 2007-08, the amount involved is Rs.40,83,640/-. The tribunal in the impugned order has followed their own order dated 20th March, 2008 for the



assessment year 2002-03. This order of the tribunal was made in the subject matter of challenge in ITR 72/2009, but the ~~appeal~~ ^{reference} was disposed of on 4th May, 2009 recording that approval from Committee on Disputes had not been taken and hence the High Court declined to entertain the reference. The appellant has not pointed out whether the Committee on Disputes was in fact approached and whether they had approved or rejected the request. It is, however, accepted that no application for revival of ITR 72/2009 was filed. It is also pointed out that similar issues had arisen in the assessment years 2003-04 and 2004-05, but the Revenue did not file any appeal before the ITAT questioning the findings recorded by Commissioner (Appeals) in favour of the respondent-assessee. It is stated that this was for want of approval from the Committee on Disputes.

3. In the two assessment years, the assessee had filed reply which has been reproduced in the assessment orders. In the reply it was mentioned that the respondent-assessee was a Government of India undertaking and they had well recognised rules or procedures for providing income or liability after requisite approval was obtained from the designated authority. This practise had been followed uniformly in the past and only after the invoices were examined and found to be correct or in




order by the designated authority, they were treated crystallized. The same principle was adopted in respect of expenses and income. After reproducing the reply, the Assessing Officer has not mentioned or dealt with the factual matrix in detail specifically dealing with each individual expense as claimed. He did not specifically examine and go into details of each expenses; when invoices were raised, when approval was granted and so on and so forth.

4. Commissioner (Appeals) in the appellate order relating to assessment year 2006-07 has recorded the following findings:-

“I have gone through the assessment order and submission of the appellant. During the course of hearing of appeal, appellant placed on record a detailed chart in respect of past history of the case, where the issue of prior period expenses was involved.

DETAILS OF PRIOR PERIOD EXPENSES ALLOWED IN DIFFERENT YEARS		
A.Y.	FORUM IN WHICH ALLOWED	ORDER No.
2000-01	CIT (APPEALS)	Order No.73/05-06 dated 30.3.2007
2001-02	CIT (APPEALS)	Order No.72/05-06 dated 30.3.2007
2002-03	HON'BLE ITAT	Order No.3074/del/2006 dated 30.3.2008 Bench-C
2003-04	CIT (APPEALS)	Order No.107/05-06 dated 30.3.2007
2004-05	CIT (APPEALS)	Order No.106/05-06 dated 14.8.2007
2005-06	CIT (APPEALS)	Order No.21/08-09 dated 15.6.2010



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As per the above said chart, it is noticed that the claim of "prior period expenses" have always been accepted either by the CIT (A) or ITAT and in fact COD approval was also not granted to pursue the appeal against order of the CIT (A) on the above said issue before ITAT. The Assessing Officer himself has accepted the above said position in the assessment order. It is further noticed that the claim of prior period is a regular feature in case of the appellant company and even other Public Sector Companies as these entities are bound by procedures and rule of governance. As per the office management system, adjustment in respect of income or expenses are booked only when approval or the requisite authorities is obtained. It is in this context that the issue or prior period income or expenses is relevant in all the years in case of appellant company. Further, under the mercantile system also, the liability is required to be allowed as and when crystallised and issue of period is of no relevance or consequence. The legal position to this effect is well supported from various case laws referred to in the written submission as extracted above. It is further noticed that Assessing Officer has not disputed the genuineness of the claim or admissibility of the same under the law. Further, accounts of the appellant company are audited by the statutory auditor appointed by the CAG and such audited accounts are also approved by office of CAG. It is not the case of the Assessing Officer that these statutory authorities have made any adverse comment in respect of genuineness of the claim or procedure followed by the appellant company.

In the light of above discussion and past history of the case, I am inclined to accept the claim of the appellant as per the rule of consistency and by following orders of CIT (A) and ITAT in the preceding years.

In the result, this ground of appellant is allowed and disallowance of Rs.1,91,33,000/- is deleted."

5. The findings recorded in the earlier years were followed by CIT

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(Appeals) in the assessment year 2007-08. The aforesaid view has been affirmed by the tribunal.

6. Keeping in view the aforesaid factual matrix as there is hardly any elucidation and the order passed by the Assessing Officer is cryptic, we are not inclined to interfere with the findings recorded by the tribunal.

The appeals are dismissed.

Dasti.


SANJIV KHANNA, J.


RAJIV SAHAI ENDLAW, J.

DECEMBER 06, 2013
NA