

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD
BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No.343/Ahd/2019
Assessment Year : 2015-16

ACIT, Cir.3(2) Ahmedabad.	Vs.	The Green Environment Services Co-op Society Ltd. CETP Plot No.244-51, Phase-11 GIDC Estate, Vatva Ahmedabad. PAN : AAAAT 1191 N
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(Applicant)		(Responent)
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Assessee by :	Shri S.N. Soparkar, Sr.Advocate
Revenue by :	Shri A.P. Singh, CIT

सुनवाई की तारीख/Date of Hearing : 14/12/2022
घोषणा की तारीख /Date of Pronouncement: 06/03/2023

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the Revenue against order passed by the Commissioner of Income Tax (Appeals)-3, Ahmedabad [hereinafter referred to as "the Id.CIT(A)"] dated 28.12.2018 passed under section 250(6) of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short] for the Asst. Year 2015-16.

2. Sole ground raised by the Revenue reads as under:

"1. The Id.CIT(A) has erred in law and on facts in deleting the addition of R.7,73,73,600/- made by the AO on account of provision for Solid Waste Dispsal Expenses."

3. Facts relating to the case are that during assessment proceedings the AO noted that the assessee had claimed an amount of Rs.7,77,73,600/- as provision for expenses of solid waste disposal. The said amount comprised of provision for such expenses as under:

- Rs.3,53,51,500/- being transportation charges payable for transporting for interim SW site Vatva to proposed solid waste site at Semalia Bayad and ,
- Rs.4,24,22,100/- being provision made for solid waste (sludge) to be dumped in site from solid waste interim site to new solid waste site.

Since, as per the AO, the assessee did not submit any documentary evidence clarifying whether the amount for which provision was made was based on actual incurrence of expenses and inquiry revealed that expenses actually incurred in subsequent years i.e. financial years 2015-16, 2016-17 & 2017-18 fell short of the amount provided for, the AO held that the provision related only to a contingent liability and disallowed the same. He held that only actual liability could be allowed to be considered as expenditure. The relevant findings of the AO reproduced at para 4 of the Ld.CIT(A)'s order is as under:

"4. In view of the above discussion facts, it is clear that the assessee is not eligible for claiming expenses on provision basis under head of Solid Waste Disposal Charges. A liability which is dependent on fulfillment of a condition which may result in deduction or in an extinction of the liability is a contingent liability. It is only the actual liability which is existing in the relevant assessment year which is allowed to be considered as expenditure. If the liability is contingent, then it would amount to allowing the apprehended losses in future from the profits which is not acceptable on any principle of law or accountancy. The question of estimation in a contingent liability does not arise in order to allow the deduction under section 37. Accordingly, the amount claimed of Rs.7,77,73,600/- (Rs.3,53,51,500 + Rs.4,24,22,100/-), under the head of 'Solid Waste Disposal Charges' on provision basis is considered as contingent liability

which is not allowable and added back to the total income of the assessee for the year under consideration.”

4. Before the ld.CIT(A) the assessee contended that it was engaged in disposing solid waste generated by its member units in the GDIC Industrial Estate, Vatva, where 540 member units were located. It was pointed out that the procedure for dumping and disposal of solid waste was also explained to the AO, and it was pointed out that the assessee had collected solid waste of 70,703.500 MTs during the year under consideration and charged Rs.8,81,50,182/- on account of the same. He pointed out that this fact of income shown, on account of solid waste collected by the assessee during the year for disposal, was not disputed by the AO; but, it was pointed out to the ld.CIT(A), that since existing site of the assessee for disposal of waste at Vinzol was filled, the assessee was looking for a new site which also could not be opened at the end of the impugned year, and therefore, solid waste was collected and stored at a temporary site for making safe disposal in the future. That since the assessee had booked income on account of disposal of waste, the liability for incurring the expenses for the disposal of waste had also accrued, which the assessee had to provide for in its accounts and accordingly provision for this expenditure had been made as per the mercantile system of accounting adopted by the assessee. He further pointed out that the provision was based on actual estimates and the same is evident from the fact that in the subsequent years, the assessee had actually incurred these expenses. It was also pointed out that the provision has been done on the basis of section 145 of the Act as per the prescribed accounting policy and Accounting Standards. Further, several case laws in support were referred to. Pleadings of the assessee before the ld.CIT(A) are reproduced at para 2.2 of the order as under:

2.2. *The appellant's submission before the CIT(A) is as under:*

1. *At the outset, your appellant draws your kind attention to the reply dated 26.12.2017 reproduced by AO at Para 4 of the assessment order. It is undisputed fact that the appellant society is engaged in disposing the solid waste generated by its members in the GIDC Industrial Estate Vatva. Nearly 540 members units located in GIDC, Vatva are the beneficiary of Common Effluent Treatment Plant who booked their quantity of such waste based on their production planning. The procedure of the treatment and disposal (dumping) of the waste is explained in the said reply. The Income of the appellant comprises of the charges levied on the members units based on the quantity of solid waste generated by them which then is required to be disposed off by the appellant in accordance with the norms and guidelines of Gujarat Pollution Control Board (GPCB).*

2. *The appellant has collected Solid Waste of 70,703.500 MT for the year under consideration. The appellant charged Rs. 8,81,50,1827- on the member units based on their respective quantity of waste which was collected by it such waste as stated above and which in turn was required to be filled up at the sites of the appellant. The factum of quantity of solid waste collected and revenue charged for the said quantity as above is not disputed by the Id AO. However, as explained in the said reply, since the Vinzol Site of the appellant was filled up fully, the appellant had to look for new site at Modasa which also could not be opened by the end of 31 March 2015 and hence the Solid Waste collected was stored at Interim (Temporary) storage site at Vatva, GIDC for making safe disposal in the future (which in fact is so disposed in later years). It is thus abundantly clear that the appellant after having collected the solid waste and charged the member units on such solid waste which is income credited in the Profit & loss account, the liability for incurring expenses against such income in terms of the contractual obligation immediately accrued and had to be provided for in the accounts. The appellant has therefore made provision of such expenses of the accrued liability in accordance with the mercantile method of accounting (noted at the body of assessment order col.7). The expenses to be incurred being accrued liability is provided at conservative rate of Rs. 500 per MT towards transportation expenses and Rs. 600 per MT for other expenses based on past experience and prevalent rates.*

3. *The appellant draws your kind attention to the Provision for Expenses ledger accounts for the year ended on 31.03.2015, 31.03.2016, 31.03.2017 and for period up to 30.11.2017 vide EXHIBIT-E page No: 15 to 23. It is clear that the appellant had incurred expenses on disposal of such solid waste which it collected during the FY 2014-15 and hence the said provision for expenses account shows debit to the provision account as per various expenses incurred towards disposal of solid waste. A summarized statement of solid waste income and expenses for AY 2015-16 to 2018-19 (Up to 31.12.2017) is attached EXHIBIT- F page No: 24.*

4. *The Id AO patently erred in observing that out of expenses provided of Rs. 777.74 lakhs , Rs. 232.87 lacs was still outstanding as on 30.11.2017. The AO failed to appreciate that solid waste collected during the previous year relevant to assessment year under consideration was completely disposed off and it was the provision for later years which continued in the said account. The Id AO for the reasons best known to him did not raise any*

query regarding documentary evidence of expenditure so incurred in later years after appellant submitted the ledger accounts. The books of account of appellant are duly c-cited and all the expenses (as in the past and current year) are fully supported by relevant vouchers.

5. Surprisingly, the Id AO at Para 4 (iii) has made observations that it is not binding to the assessee that sludge is compulsorily dumber at another new site. This is quite contrary to the objects under which the appellant is established me also the norms and guidelines as per which the appellant has undertaken the liability for disposal of solid waste. In fact under the authorization of the GPCB and with the intention of upliftment of the public health only, the appellant society is formed for carrying on activity of Pollution Control and it is always me obligation to fill such solid waste at approved site.

6. The Id AO therefore completely failed to appreciate the factual position and the submission of appellant while observing that expenses provided in the accounts was a contingent liability and not ascertained liability. The provision being made based on the provisions of section 145 and the accounting policy and accounting standards, the Id AO ought to have accepted the same, (when huge income against the activity of the appellant was also credited in the Profit he loss account) . Accounting Standards notified by the Act (vide Note No: 9949 dated 25.01.1996 u/s 145 of IT Act) also state that:

Prudence.-Provisions should be made for all known liabilities and losses even though the amount cannot be determined with certainty and represents only a best estimate in the light of available information ;

7. The said Standard further also state that:

"Accrual" refers to the assumption that revenues and costs are accrued, that is, recognized as they are earned or incurred (and not as money is received or paid) and recorded in the financial statements of the periods to which they relate.

8. The Id AO also failed to consider the legal position emanating from the decided case laws cited before him and went wrong in relying on the decision not relevant to the facts of the appellant's case.

9. Case Laws:

i) *Bharat Earth Movers vs. CIT 245 ITR 428 (SC): Held:*

"The law is settled: if a business liability has definitely arisen in the accounting ear 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 :c De discharged is not certain."

ii) *Calcutta Co Ltd vs. CIT 37 ITR 1 (SC) Held:*

"Apart, however, from the question whether section 10(2)(xv) of the Income-tax Act would apply to the facts of the present case, the case is, in our opinion, well within the purview of section 10(1) of the Income-tax Act. The appellant here is being assessed in respect of the profits and gains of its business and the profits and gains of the business cannot be determined unless and until the expenses or the obligations which have been incurred are set off against the receipts. The expression "profits and gains" has to be understood in its commercial sense and there can be no computation of such profits and gains until the expenditure which is necessary for the purpose of earning the receipts is deducted there from— whether the expenditure is actually incurred or the liability in respect thereof has accrued even though it may have to be discharged at some future date."

iii) *DCIT vs. Enviro Technology Ltd ITA No: 2836/Ahd/2010 [Copy attached EXHIBIT-G Page No: 25 to 37] Held: Following earlier orders that:*

"We find that the Sludge is generated in the .lent treatment, which has to be disposed off as per the rules and regulation of GPCB, and the liability of sludge disposal charges accrues the moment sludge sets generated. The Company is following mercantile system of accounting and accordingly provided for the sludge disposal charges to be incurred on the sludge generated up to 31.March of the relevant year but could not be disposed off as on that date. The Average rate of sludge disposal works out to Rs.430/- per MT, to be on the conservative side the provision for disposal charges have been made at the rate of Rs.330.72 per MT on 5371.820 MT of sledge that could not be removed as on 31 .03.2001. We find that this issue is covered by the decision of the Rajasthan High Court in the case of Udaipur Mineral Development Syndicate Pvt. Ltd. vs. DCIT (261 ITR 706 (Raj)), wherein it is stated that the assessee company was engaged in open cast mining of soap stone ceude. A least exploration of mines was granted to it by the State Government of Rajasthan. There was an agreement between the assessee and the State that as faras possible a lease shall restore the surface land so used to its original condition. The estimated cost of refilling the pit was coming to Rs. 1,51,360/- arid the provision for the same was made as per the clause 2 of part V of the lease agreement. The assessee-company claimed that the liability to refill pits accrued as soon as the pits were dug. The AO denied the claim on the ground that the liability stipulated in the lease agreement to restore the land has not accrued in the assessment year in hand and it does arise when the assessee has filled the pits. The Commissioner of Income-tax (Appeals) has allowed the claim. In appeal before the Tribunal, the tribunal restored the view taken by the Assessing officer. On the further Appeal to High Court at page 708 of 261 ITR, it was held that we agree with the view taken by the Commissioner of income- tax (Appeals) that the assessee digs the pits, the liability does ariseand it is entitled for deduction of the expenses which it is supposed to incur for filling those pits, as the assessee is following the mercantile system of accounting. It can claim the expenses incur as soon as it digs the pits. In view of the aforesaid facts and circumstances and relying upon the aforesaid decision of Rajasthan High Court, we allow the liability of sludge disposal charges accrues the moment the sludge is generated and accordingly the provision for sludge disposal charges ought to be allowed as

deduction under section 37 of the Act as the same is provided following the mercantile system of accounting. In the result, the issue is decided in favor of the assessee..." [It is submitted that issue in the instant case is thus squarely covered by the above decision of the Ahmedabad ITAT]

iv) Rotork Controls India (P) Ltd vs. CIT 314 ITR 62 (SC) holding that

"A provision is a liability which can be measured only by using a substantial degree of estimation. A provision is recognized when: (a) an enterprise has a present obligation as a result of a past event; (b) it is probable that an outflow of resources will be required to settle the obligation; and (c) a reliable estimate can be made of the amount of the obligation. If these conditions are not met, no provision can be recognized. Liability is defined as a present obligation arising from past events, the settlement of which is expected to result in an outflow of resources from the enterprise embodying economic benefits.

v) CIT vs. Om Metals & Minerals (P) Ltd 373 ITR 406 (Rajasthan) [copy attached EXHIBIT-H page No: 38 to 42 Following Bharat Earth Movers & Rotork Control & Calcutta Co Ltd judgments]

vi) Shree Drain Auto Transport Corporation vs. ACIT 148 TTJ 41 Ahmedabad) [Copy attached EXHIBIT-! Page No: 43 to 47 following Bharat earth Movers, Metal Box India and Rotork Control judgments]

10. Hon'ble ITAT has considered the decision of Rajasthan High Court in Rajasthan State Mines & Minerals Ltd (relied on by the Id AO in the instant case of appellant) which is on different facts. As regards the decision in Rajasthan State Mines & Minerals 74 Taxman 171 (Raj) relied on by AO, as already stated the same is distinguishable as done in above decision by Ahmedabad ITAT since in the case before Rajasthan High Court the quantity of overburden to be removed was completely uncertain which depended on a number of facts.

11. As regards judgment of Sajjan Mills, the same is considered and distinguished by Apex Court in the case of Rotork Controls 314 ITR 62 it being relating to gratuity for which section 40A (7) had overriding effect. The said judgment of Sajjan Mills is also considered by Rajasthan High Court in said case of Om Metals and followed Supreme court judgments in Bharat earth Movers & rotor Controls.) In view of above factual and legal position, the Id AO erred in placing reliance on the said judgments which are distinguishable and considering binding judgments of Apex Court as well as identical facts in the case of Ahmedabad ITAT in Environ technology EX-G above, the disallowance of provision of Rs.7,77,73,600/- is not justified. It be so held now and disallowance be deleted."

5. The Ld.CIT(A) was convinced with the contentions of the assessee and accordingly deleted the disallowance made holding at para 2.6-2.7 of its order as under:

“2.6. On careful consideration of entire facts, it is observed that AO has not disputed the business activity carried out by Appellant nor disputed the quantum of income shown by Appellant. In the year under consideration, Appellant has offered income of Rs. 8,81, 50, 182/- being solid waste income generated during the course of its business of disposing of solid waste as described in reply filed before AO. The Appellant has claimed before AO that it was disposing of such waste at Vinzol Site till current year but, as above site was filled up and new site being Modasa was not opened up, Appellant has stored such solid waste at interim site at Vatva GIDC for making its safe disposal in the future. As solid waste to be disposed of in future period require transportation charges and other charges, Appellant has made provision of Rs.7, 77,73, 600/- in Books of Account against above income earned by

2.6.7. The AO has not disputed the fact that Appellant is disposing of such solid waste, income has been earned in such process or there is no availability of site as per approval given by Gujarat Pollution Control Board hence it was required to store solid waste material collected from GIDC, Vatva, at temporary site. The only dispute of the AO is regarding contingency of such expenditure. It is settled legal law that Assessee is eligible for claiming expenditure incurred or to be incurred against income offered to tax in current year. The Appellant is not following cash system of accounting but has been consistently following mercantile system of accounting and as per accepted accounting standards issued by ICAI, all the accrued expenditure are required to be booked as expenditure and as per principle of prudence, provision should be made for all known liabilities and losses even though amount cannot be determined with certainty and represent only best estimate in the light of available information. The Appellant has provided for such expenditure at Rs.1,100 per MT which comprises of Rs.500 per MT towards transportation expenses and Rs.600 per MT for other expenses. The Appellant has also submitted ledger account of provision for expenses for current year as well as in subsequent year vide letter dated 12th December, 2017 and on 26.12.2017 from such details it is found that Appellant has paid Rs.600 being dumping charges to Saurashtra Enviro Projects Pvt. Limited on 5th December, 2015 and in subsequent years, the appellant has paid an average of Rs. 1200 per MT dumping charges to Elitcore Infrastructure Pvt. Ltd. and Saurashtra Enviro Projects Pvt. Limited and approximately Rs.475 per MT to Roadways for transportation of solid waste which clearly justify the rate of provision made in Books of Account. During the course of Appellate Proceedings, Appellant has also submitted ledger account of solid waste disposal charges of AY 2014-15 along with bills wherein also Appellant has paid Rs.1,100 per MT towards disposal of solid waste to Naroda Enviro Projects Limited.

2.6.2. These details clearly support the contention of Appellant that it is required to incur expenses on solid waste disposal, provision made in the Books of Account is against income recognized in profit & loss account and rate of provision is as per actual expenditure incurred in the past and future for same activity as against the receipt of income there is corresponding obligation and liability. By adopting the method of accounting as suggested by AO, it

would lead to anomaly meaning thereby income is recognized on collection of waste whereas expenditure is recognized on disposal of waste and which will entirely disturb the profit & loss account. In one year there would be huge income without any corresponding expenditure and in subsequent year there would be losses higher than income. The AO has claimed that entire provision made in year under consideration is not actually expended in subsequent year, it is observed that from the details submitted by Appellant vide letter dated 12th December, 2017 and 26.12.2017, it is found that Appellant has made provision of solid waste for year under consideration at 70703.52 MT against which disposal of 22648.27 MT is made in AY 2016-17, 1775 MT in AY 2017-18 and up to 30th November, 2017, 29809.58 MT waste was disposed of. Even balance quantity of 16471 MT solid waste collected which was not disposed of till 26.12.2017. These facts clearly suggest that Appellant has recognized expenditure to be incurred at future date against income offered to tax by adopting the principle of prudence and accrual under mercantile system of accounting and even is incurring those expenditure in subsequent years.”

The Ld.DR relied on the order of the AO while the ld.counsel for the assessee relied on the order of the ld.CIT(A).

6. We have heard both the parties and have gone through the orders of the authorities below. We find that the ld.CIT(A) has held the provision created by the assessee to be allowable as an accrued liability taking note of the fact that income in relation to the solid waste disposal under taken by the assessee was already accounted for in the impugned year, and since the assessee could not carry out the disposal of solid waste on account of non-availability of proper site and had kept the waste at temporary site, it had booked the expenses for the disposal of the waste at the permanent site ,commensurate to income accounted for by it ,on the basis of the actual estimation of expenditure which were required to be incurred. The ld.DR was unable to controvert these factual findings of the ld.CIT(A). The Ld.CIT(A) has further noted that this accounting method followed by the assessee was in consonance with the prescribed Accounting Standard and policy in accordance with the Prudence norms. That it complied accordingly with section 145 of the Act requiring income to be computed in accordance with

notified accounting standards. The Ld.DR was unable to controvert the same.

In view of the above, we find no infirmity in the findings of the Ld.CIT(A) that the provision made by the assessee was not a contingent liability but an accrued liability, and therefore was allowable claim of the assessee. The order of the ld.CIT(A) is accordingly upheld, and the appeal of the Revenue is dismissed.

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

Order pronounced in the Court on 6th March, 2023 at Ahmedabad.

**Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad, dated 6/03/2023