

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “ए”, चण्डीगढ़

**IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH ‘A’, CHANDIGARH**

**BEFORE SMT.DIVA SINGH, JUDICIAL MEMBER
AND SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

ITA No. 1023/Chd/2019

(Assessment Year: 2010-11)

M/s. Kamla Retail Ltd. Now known as Ethos Limited, SCO-88-89, Sector 8-C, Chandigarh.	बनाम	Additional CIT, Range-1, Chandigarh.
स्थायी लेखा सं./PAN NO: AADCK2345N		

निर्धारिती की ओर से/Assessee by: Shri Parikshit Aggarwal, CA.

राजस्व की ओर से/ Revenue by : Smt.Priyanka Dhar, Sr.DR

सुनवाई की तारीख/Date of Hearing: 20.12.2021

उद्घोषणा की तारीख/Date of Pronouncement: 20.01.2022

(Hearing through Webex)

आदेश/ORDER

Per Vikram Singh Yadav, Accountant Member:

This is an appeal filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals)-1, Chandigarh [in short the ‘Ld. CIT(A)’] passed u/s 250(6) of the Income Tax Act, 1961 (in short ‘the Act’) dated 12.04.2019 relating to assessment year 2010-11, wherein the assessee has taken the following grounds of appeal:

- “1. That the facts, circumstances and legal position of the case, the Worthy CIT in its order dated 12.04.2019 has erred in passing that order in contravention of the provisions of Section 250(6) of the Income Tax Act, 1961.
2. That on law, facts and circumstances of the case, the Worthy CIT(A) has erred in confirming the action of Ld. AO in making disallowance of Rs. 30,45,000/- as prior period expenses without considering the fact the expense was paid at a later date due to pending negotiation with the landlord.
3. That on law, facts and circumstances of the case, the Worthy CIT(A) has erred in confirming the action of Ld. AO in making disallowance of Rs. 6,86,317/- u/s 40(a)(ia) of the Income Tax Act on account of non deduction of TDS out of which the amount of Rs.2,73,503/- pertain to the purchase of material and not services as such these are not liable to TDS and the amount of Rs. 4,12,814 pertains to payments made through credit card for online advertisement which was in the nature of business profit on which no TDS was deductible and more-so when Income could not even be deemed to accrue or arise in India.
4. That on law, facts and circumstances of the case, the Worthy CIT(A) has erred in confirming the action of Ld. AO in making disallowance of Rs. 2,82,317/- out of general charges on account of prior period expenses without considering the fact that the expense was incurred wholly and exclusively for the purposes of business of the company and the same is allowable u/s 30 and 37 of the Income tax Act, 1961.”

2. Ground of appeal No.1 is general and does not require any specific adjudication.

3. In Ground of appeal No.2, the assessee has challenged the sustenance of disallowance of Rs.30,45,000/- as prior period expenses. In this regard, briefly, the facts of the case

are that the AO observed that the assessee has debited a sum of Rs.30,45,000/- under the head “prior period expenses” and the assessee was asked to show cause as to why this expense should not be disallowed being related to prior period. In its response, the assessee submitted that this expense pertains to rent payment for the stores at JW Marriot Hotel, Mumbai and pending negotiation with the landlord and the brand owners for a possible remission in rent due to poor performance of the store, the lease rent was not paid earlier and the final settlement was reached in August, 2009 and lease rent was thereafter paid as per the modified terms. The submissions so filed were considered but not found acceptable to the AO and the amount of Rs.30,45,000/- was held not allowable and disallowed and added to the income in the hands of the assessee.

4. Being aggrieved, the assessee carried the matter in appeal before the Ld.CIT(A) and the submissions made before the AO were reiterated and it was also submitted that though the rent pertains to earlier year, the settlement was made during the financial year relevant to the impugned assessment year and, therefore, the liability has crystallized during the year and, therefore, the same should be allowed in the hands of the assessee. In support, copies of the communications with the landlord with regard to the remission of rent were

submitted during the course of appellate proceedings which were sent to the AO and Remand Report was called for. In his rejoinder, the assessee submitted that the AO in his Remand Report has acknowledged that as per letter dated 17.8.2009 issued by the landlord, there is a reduction of licence fee from Rs.7 lacs to Rs.3 lacs which indicates that there were negotiations going on for settlement of rent. Had the assessee paid the rent earlier, there would not have been any settlement. It was submitted that this process of settlement was going on from prior period and when the final settlement was done in August, 2009, the amount was paid and the expenses were booked. It was further submitted that the AO has not questioned the commercial expediency and the nature of the business expenditure and the issue is tax neutral as the expenses have to be allowed in the earlier year or in the current year. Further reliance was placed on the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Modipon Limited Ltd 334 ITR 102. The submissions of the assessee as well the Remand Report of the AO were considered by the Ld.CIT(A). The Ld.CIT(A) thereafter returned a finding that the appellant has filed certain letters exchanged with JW Marriot and the appellant deferred the payment of rent on its own sweet will in financial year 2008-09. It was further held by the Ld.CIT(A) that since the assessee is following mercantile

system of accounting, it shall not be allowed any expense which pertain to any previous year other than the concerned previous year except those expenses which are specifically allowed under the Act. Further reliance was placed on the decision of ITAT Chandigarh Benches in the case of M/s Haryana State Electronics Development Corporation Ltd. Vs. DCIT, 78 Taxmann.com 268 and addition made by the AO was confirmed.

5. Against the said findings, the assessee has come up in appeal before us. During the course of hearing, the Ld. AR reiterated the submissions made before the lower authorities and took us through various letters and communications exchanged with the landlord M/s Juhu Beach Resorts Limited, in particular, our reference was drawn to letter dated 12.8.2009 and 17.08.2009 wherein the particulars of the revised licence fee have been mutually agreed upon and countersigned by both the parties. Further our reference was drawn to the revised rent agreement signed with Juhu Beach Resorts Limited dated 13.8.2009. It was accordingly submitted that the liability towards the rent has crystallized during financial year relevant of the impugned assessment year and even though the assessee is following mercantile system of accounting, the assessee shall be eligible for claim of expenses which has crystallized during the year. It was

accordingly submitted that the addition so made by the AO and confirmed by the Ld.CIT(A) be deleted.

6. Per contra, the Ld. DR relied upon the findings of the lower authorities.

7. We have heard the rival contentions and perused the material available on record. It is no doubt true that it is incumbent upon the assessee to account for the expenses in respective financial year in which they are incurred or the liability towards such expenses has accrued which is in line with the mercantile system of accounting as well as concept of matching accounting principle where the revenues and corresponding expenses are accounted for in the respective years. At the same time, there are business exigencies where at times, the parties either disputes either the supply of goods or availment/rendering of services or the quantification and or remission of amount payable and the same are settled in subsequent financial year(s). To take care of such exigencies, what is relevant to determine is the crystallization of liability or in other words, when the amount has actually become due and payable. The principle of crystallization of liability is inherent in the mercantile system of accounting and has been well accepted by the Courts while allowing the claim towards the expenses and has been understood to mean where the

liability has become due and payable. In other words, where the other person can make a lawful claim against the assessee and in the event of default, the matter may be agitated before the appropriate legal forum. Secondly, from the Revenue's perspective, what is equally relevant is that there are no changes in the maximum marginal rates of taxation and there is no loss of revenue where the expenses are booked in subsequent financial year. In the instant case, we find that the assessee right from the initial show-cause during the assessment proceedings and thereafter, during the appellate proceedings has submitted that this expense pertains to rent payment for the stores at JW Marriot Hotel, Mumbai and pending negotiation with the landlord and the brand owners for a possible remission in rent due to poor performance of the store, the lease rent was not paid earlier and the final settlement was reached in August, 2009 and lease rent was thereafter paid as per the modified terms. The AO has not returned any specific finding as to why the submissions so filed by the assessee were not found acceptable besides merely reiterating that these are prior period expenses. No doubt the assessee didn't corroborate its submissions before the AO during the assessment proceedings, however, during the appellate proceedings, the relevant documentation in form of communications exchanged with M/s Juhu Beach Resorts as

well as revised rent agreement were submitted and the AO had an occasion to examine the same. As submitted by the Id AR, the AO in his remand report has acknowledged the fact that as per letter dated 17.8.2009 issued by M/s Juhu Beach Resorts, there is a reduction of licence fee from Rs.7 lacs to Rs.3 lacs which indicates that there were negotiations going on for settlement of rent. Further, during the course of hearing, our reference was drawn to letter dated 12.8.2009 and 17.08.2009 wherein the particulars of the revised licence fee have been mutually agreed upon and countersigned by both the parties which again demonstrate that the action was not unilateral. Further our reference was drawn to the revised rent agreement signed with Juhu Beach Resorts Limited dated 13.8.2009. Therefore, the factum of negotiation between the assessee and the landlord and an agreement towards the revised licence fee as happened in the month of Aug 2009 is clearly borne out of records and the liability towards the rent/licence fee though pertaining to the earlier period has crystallized during the year and is allowable in the hands of the assessee. We therefore find that these expenses are duly allowable in the hands of the assessee as settled during the year and in any case, there are no changes in the tax rates and thus, no prejudice is caused to the Revenue and as held by the Courts, such an exercise of disallowing

otherwise allowable expenses treating as mere prior period expenses will only result in an academic discussion without any tangible results.

8. Further, the Revenue has not disputed the fact that the expenses have been incurred for the purposes of assessee's business and the only question which has been raised is the year of allowability which leads us to another facet of the matter which is that the aforesaid expenses in nature of rental payments are subject to TDS u/s 194I and the provisions of section 40(a)(ia) are equally attracted which provides for the allowability of expenses in the year in which the TDS has been deducted and paid. In the instant case, it is a matter of record that the assessee has paid and accounted for these expenses in the books of accounts in the financial year relevant to the impugned assessment year and has deducted and deposited TDS in the financial year relevant to the impugned assessment year and not in the earlier assessment year. Therefore, even from the perspective of harmonious construction of all relevant provisions, the assessee deserves an allowance towards these expenses in the year under consideration.

9. In light of aforesaid discussion and in the entirety of facts and circumstances of the case, the disallowance of

Rs. 30,45,000/- is hereby directed to be deleted and ground no. 2 of assessee's appeal is allowed.

10. In ground of appeal No.3, the assessee has challenged the action of the Ld.CIT(A) in confirming the disallowance of Rs.6,86,317/- u/s 40(a)(ia) of the Act. In this regard, briefly, the facts of the case are that during the course of assessment proceedings, the AO observed that the assessee has not deducted TDS under the head "Advertisement and publicity" on certain transactions as required u/s 194C of the Act. The assessee was issued a show cause notice and after considering the submissions so filed by the assessee and not finding the same acceptable, the AO made a disallowance of Rs.8,90,551/- as no TDS has been deducted on such expenses u/s 40(a)(ia) of the Act r.w.s. 194C of the Act.

11. Being aggrieved, the assessee carried the matter in appeal before the Ld.CIT(A). The submissions so filed by the assessee were considered and the Remand Report called for from the AO. Thereafter the Ld.CIT(A) has returned a finding that the AO in Remand Report has accepted the assessee's explanation for the payments of Rs.72,210/-, Rs.27,156/- and Rs.79,868/- as TDS is not deductible on these payments. Further, the assessee has deducted TDS on Rs.25,000/-, hence, no addition is required to be made on these amounts.

However, in respect of balance additions made by the AO, the same were confirmed for the reason that the assessee has not filed any evidence and failed to rebut the findings of the AO during assessment proceedings.

12. Against the additions so confirmed by the Ld.CIT(A), the assessee is in appeal before us. During the course of hearing, the Ld. AR took us through the order of the Ld.CIT(A) and our reference was drawn to para 10.1 wherein it was submitted that in respect of payments totalling Rs.2,73,503/-, no TDS was deductible at source as the payment was made towards purchase of material and not towards availing any service and in support, relevant supporting invoices were also submitted. It was submitted that the Ld.CIT(A) has failed to consider the same. It was further submitted that in respect of credit card payment to Facebook amounting to Rs.4,12,814/-, the same was paid to Facebook for online advertisement which was in the nature of business profit, on which no TDS was deductible and more-so, when the income could not even be deemed to accrue or arise in India and it was submitted that a copy of the sample invoice was also submitted during the course of appellate proceedings, which the Ld.CIT(A) failed to consider. It was accordingly, submitted that the findings of the Ld.CIT(A) that the assessee has not filed any evidence in support of his contention that the said payment does not

require any TDS, is not borne out from the record. It was further submitted that since the assessee has duly demonstrated that the payments are towards purchase of material and not services and secondly, the payments have been made to Facebook, which does not accrue or arise in India, there is no basis for sustaining the disallowance so made and confirmed by the Ld.CIT(A).

13. Per contra, the Ld. DR relied upon the orders of the lower authorities.

14. We have heard the rival contentions and perused the material available on record. We agree with the contention advanced by the ld AR that the assessee has filed relevant invoices/documentation in support of its contentions before the ld CIT(A) and therefore, the ld CIT(A) findings that the assessee has not filed any evidence in support of his contention that the said payment does not require any TDS, is not borne out from the records. Given that the material available on record has not been examined and no findings on merits of the additions have been recorded by the ld CIT(A), we deem it appropriate that the matter be set-aside to the file of the ld CIT(A) to examine the same on merits after providing reasonable opportunity to the assessee. The contentions advanced on the merits have been left open and the assessee

is free to advance the same before the Id CIT(A) as so advised.
In the result, the ground no. 3 is allowed for statistical purposes.

15. In ground of appeal No.4, the assessee has challenged sustenance of disallowance of Rs.2,82,317/-. In this regard, briefly, the facts of the case are that during the course of assessment proceedings, the AO observed that the following expenses which have been debited under the head “general charges”, do not belong to the period under consideration and, therefore, he disallowed the same and added to the income in the hands of the assessee:

Date	Description	Amount	Narration of the Assessee
30.06.2009	Entertainment S & M) expenses etc.	17500/-	Being impressed bill received from Victor for period mobile expenses for the month of February 09. Mobile expenses for the March 09, consignment clearing charges - 01.02.2009 to 31.03.2009.
31.03.2010	General Charges Expenses	28,125/-	Being assets write off as assets not in use. Ref. JV-0809-1398 dated 31.03.2009.
31.03.2010	General Charges Expenses	200000/-	Being provision for expenses for financial year 2008-09.
31.03.2010	General Charges Expenses- service tax recoverable	36,692/-	Being old balance now being written off.
Total		2,82,317/-	

16. Being aggrieved, the assessee carried the matter in appeal before the Ld.CIT(A). The Ld.CIT(A) has returned a finding that these expenses have been rightly found by the AO as not pertaining to the year under consideration. It was further held that where the assessee was following mercantile system of accounting, it shall not be allowed any expenses which pertain to any previous year other than the concerned previous year except those expenses which are specifically allowed under the Act. In support, reliance was placed at ITAT Chandigarh Bench decision in the case of M/s Haryana State Electronics Development Corporation Ltd. Vs. DCIT (supra).

17. Against the said findings, the assessee has come up in appeal before us. During the course of hearing, it was submitted that these expenditure have been incurred wholly and exclusively for the purpose of business of the assessee company and the same are duly allowable u/s 30 to 37 of the Act. In support, reliance was placed on the decision of the Hon'ble Delhi High Court decision in the case of CIT Vs. Modipon Limited Ltd.(supra).

18. Per contra, the Ld. DR has relied upon the findings of the lower authorities.

19. We have heard the rival contentions and purused the material available on record. Going by the nature of expenses

such as assets written off, provisions for expenses and old balances written off, it is prima facie not very clear whether these expenses can be claimed as revenues expenses and allowable under section 30 to 37 of the Act. Since these contentions have been raised for the first time and in absence of any findings of the lower authorities, we deem it appropriate to set-aside the same to the file of the ld CIT(A) who shall examine the aforesaid contentions so raised besides examining the matter from the perspective of allowability of prior period expenses taking into consideration our discussions on allowability of prior period expenses supra while disposing off ground no. 3 supra. In the result, the ground no. 4 is allowed for statistical purposes.

20. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on 20.01.2022.

Sd/-
(DIVA SINGH)
न्यायिक सदस्य/Judicial Member

Sd/-
(VIKRAM SINGH YADAV)
लेखा सदस्य/Accountant Member

Dated: 20.01.2022

रती

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT

4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar

Draft dictated	17/18.01.2022	Sr.PS
Draft placed before author	.01.2022	Sr.PS
Approved Draft comes to the Sr.PS/PS		Sr.PS
Order signed and pronounced on		
File sent to the Bench Clerk		Sr.PS
Date on which file goes to the AR		
Date on which file goes to the Head Clerk.		
Date of dispatch of Order.		