Aricent Technologies Holdings Ltd ITA No. 5708/Del/2019

Issues discussed and addressed:

Issue No 1 Section 37 ESOP Expense

Issue No 2 Right to Claim Credit of TDS

Facts of the case with respect to issue No 1:

The assessee had claimed sum of Rs. 6.58 crores as deduction on account of reimbursement of ESOP expenses to the parent company. The assessee claimed the said amount ass deductible u/s 37

The assessing officer on the other hand did not allow the claim of the assessee alleging as under:-

(a) "Employees compensation expense claimed by the appellant was not allowable under section 37 of the Act since the same was not incurred wholly and exclusively for the purpose of the business of the appellant company.

(b) Expenditure claimed did not represent a crystallized liability and being without any objective evidence for justification, the same was not allowable as deduction.

(c) ESOP is a part of salary and since the appellant did not deduct any tax at source on payment to the group company, the amount claimed was disallowable under section 40(a) of the Act."

Held by Authority with respect to issue No 1:

The difference between the fair market value of the shares and the amount paid by the employee on actual exercise of option represented employee compensation expenses. Since the option was granted to the employees during the relevant assessment year and assessee reimbursed the said amount to the group company, as the liability had accrued/crystallized and the same was recognized in the year itself as the assessee was following mercantile system of accounting. The aforesaid expense was claimed as deduction under section 37(1) of the Act. It may be pointed out herein itself that the aforesaid payment to the Aricent Cayman has been accepted by the TPO to be at arms length. Hence this being incurred was wholly and exclusively for the purposes of business is a deductible expenditure.

The requirement to deduct tax would arise when the employee exercises the option granted under ESOP and it would be treated as perquisite in the hands of the employee on actual allocation/transfer of such shares, which is provided under section 17(2)(vi) of the Act. Further, even the provision of section 192 of the Act mandate the deduction of tax at source on actual payment which is allotment of shares in the case of

ESOP and not prior to that. Hence, there was no requirement to deduct tax at source by the assessee while reimbursing the amount to its AE during the year under consideration.

Judgments Relied by the Authorities :

1. CIT v. M/s PVP Ventures Ltd. (2014) 211 Taxman 554 (Mad)
2. CIT v. Lemon Tree Hotels Ltd. (2019) 104 taxmann.com 26 (Del)
3. Biocon Ltd. v. DCIT (2013) 155 TTJ 649 (Bang) (SB)

Facts of the case with respect to issue No 2:

The assessee in its return of income had claimed the credit to the extent of Rs. 18,79,68,945 and the assessing officer had allowed the credit of TDS of Rs. 16,57,18,029. Hence, short TDS credit amounting to Rs. 2,22,50,916 was allowed to the assessee. The case of the assessee is that complete details including name of the parties, amount paid by the parties and tax deducted at source and TDS claimed of Rs. 18.79 crores were furnished alongwith the return of income.

Held by Authority with respect to issue No 2:

The details of tax deducted at source totals to Rs. 18.79 crores, which was claimed by the assessee as part of taxes paid for the year under consideration. The assessing officer as against the claim of Rs. 18.79 crores has allowed credit for 16.57 crores. The grievance of the assessee is two fold before us. First of all, it points out that in case subsequent to the processing of the assessment order, if changes are made in the Form No.26AS by the parties, who had deducted tax at source, out of the payment made to the assessee, then the credit of the same should be allowed to the assessee.

The department does not contend that the petitioner did not suffer deduction of tax at source at the hands of payer, but contends that the same has not been deposited with the Government revenue. As provided under section 205 of the Act and as elaborated by this Court in case of Yashpal Sahni (supra) under such circumstances the petitioner cannot be asked to pay the same again. It is always open for the department and infact the Act contains sufficient provisions, to make coercive recovery of such unpaid tax from the payer whose primary responsibility is to deposit the same with the Government revenue scrupulously and promptly. If the payer after deducting the tax fails to deposit it in the Government revenue, measures can always be initiated against such payers..

Judgments Relied Upon by the Authorities:

1) Yashpal Sahani (2007) 165 taxman 144 (Bom.), 2) Sumit Devendra Rajani (2014) 49 taxmann.com 31 (Guj)

Numaligarh Refinery Ltd ITA Nos. 5 to 8/Gau/2014

Issues Addressed and Discussed:

Claim of Prior Period Expense

Claim of Retirement Benefit Expense

Claim of CSR Expense

Facts of the case with respect to Issue No 1:

The learned assessing officer observed that the Tax Auditor had certified that an amount of Rs. 77,14,27,745 had been debited in the Profit and loss account under the head 'Prior Period Expenses'. The learned assessing officer observed that the assessee credited Rs. 8,37,58,169 on account of purchase for resale and other operating and administrative expenses and debited Rs. 85,51,85,914 on account of sale of products, raw material consumed and depreciation, effecting net debit to the profit and loss at Rs. 77,14,27,745. The learned assessing officer further observed that Sale of Product of Rs. 8,81,913, Raw Materials Consumed worth Rs. 2,28,13,514 and depreciation amounting to Rs. 83,14,90,487 relates to earlier years, but debited in the accounts during the assessment year 2007-08.hence the same was disallowed.

Held by Authority with respect to issue No 1:

In mercantile system of accounting, an assessee had not earlier debited his account with the expenditure which accrued in law in an earlier year, would not, in the absence of a barring provisions under the law, disentitle to debit his account later when an enforceable demand is made by the appropriate authority. There is no express bar in law which disallows expenditure relating to a period other than the 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, 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. In view of the same claim of the assessee was allowed.

Judgments Relied Upon by the Authorities:

Nathmal Tolaram (1973) 88 ITR 234 (Gau)

Saurashtra Cement & Chemical Industries Ltd. (1995) 213 ITR 523 (Guj)

Jatia Manufacturing Investment Co. (P) Ltd. (1983) 142 ITR 536 (Cal)

Khaitan Chemicals & Fertilizers Limited (2008) 307 ITR 150 (Del)

Facts of the case with respect to Issue No 2:

The assessee claimed deduction of Rs. 1,00,22,722 being provisions for retiring benefits of employees, in computation of income under the general provisions of the Act as well as in determining income under section 115JB of the Act, which was arrived at based on actuarial valuation. The learned assessing officer added the amounts both in computation of income under general provisions of the Act as well as in determining of income under section 115JB of the Act holding that the amounts are not ascertained liabilities.

Held by Authority with respect to issue No 2:

Provisions of post retirement benefits based on actuarial valuation is an allowable expenses under section 37(1) of the Act.

Judgments Relied Upon by the Authorities:

Hindustan Petroleum Corporation Ltd. in ITA No. 1294/Mum/2001

Facts of the case with respect to Issue No 3:

During the appellate proceedings before the learned Commissioner (Appeals), the assessee company raised additional grounds claiming deduction of expenses incurred by it on corporate social responsibility. It was submitted by the assessee company that the expenditures under the Corporate Social Responsibility Scheme were debited in the profit and loss account. However, while making computation of income, the same were added back under erroneous impression of the Act and wrong understanding of the provisions of law, that the same were not allowable expenditures. The matter was not raised before the learned assessing officer and realising the mistake, the issue was raised for the first time before learned Commissioner (Appeals). The submission was not considered by CIT(A) relying on Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC).

Held by Authority with respect to issue No 3:

It is well settled that the learned Commissioner (Appeals) has ample power to consider an issue though not raised before the learned assessing officer during assessment proceedings. It is a settled law that an appeal being a continuation of assessment proceedings, it would be permissible for an assessee to agitate its grievances before the first assessee authority.

Assessee incurred these expenses by following specific guidelines on Corporate Social Responsibility (CSR) for public sector enterprises. The learned Commissioner (Appeals) is not justified in bringing a new issue of application of income for CSR expenditure in terms of Circular No. 1/2015, dated 21-1-2015 which has been issued in relation to Explanation 2 to section 37(1) of the Act which is prospective and applicable from assessment year 2015-16 relating to expenses incurred with reference to S. 135 of the Companies Act, 2013.

The CSR expenses are mandated to all profit making Central Public Sector enterprise. Hence, Gross Receipt or Turnover of an enterprise is not considered to determine the quantum of CSR expenses. Thus, simply because Net Profit is taken as base for determining the budget of CSR expenses, it need not lead to the conclusion that the expenses are application of funds and not allowable expenses. In accounting treatment of CSR expenditure, these are revenue in nature and the same should be charged as expenses to the Statement of Profit and Loss Account. However, when an 'asset' is created from such expenditure, the definition of the word 'asset' as per 'Framework for Preparation and Presentation of Final Statement' issued by the Institute of Chartered Accountants (ICAI) should be followed and when the control of the asset is transferred to others, the same should be charged to Profit and Loss Account.

Explanation 2 to section 37(1) inserted with effect from 1-4-2015 is not retrospective. It applies only to Corporate Social Responsibility expenditure referred to in section 135 of the Companies Act, 2013 and not to voluntary Corporate Social Responsibility expenditure. The Tribunal has observed that the amendment in the scheme of section 37(1) which has been introduced with effect from 1-4-2015 cannot be construed as to disadvantage to the assessee in the period prior to the amendment

Judgments Relied Upon by the Authorities:

Judgments with respect to entitlement of Assesee for making fresh claim before CIT Appeals

1. CWT v. Smt. Vimlaben Vadilal Mehta (1984) 145 ITR 11 (SC)
2. CIT v. Kanpur Coal Syndicate (1964) 53 ITR 225(SC)
3. Jute Corporation of India Ltd. v. CIT (1991) 187 ITR 688 (SC)
4. Kanpur Coal Syndicate Supreme Court
5. CIT v. Nirbheram Daluram (1997) 224 ITR 610 (SC)
6. Ranicherra Tea Co Ltd. (1994) 207 ITR 979 (Cal)
7. Hukumchand Mills Ltd. v. CIT (1967) 63 ITR 232 (SC)
8. Cellulose Products India Ltd. (1985) 151 ITR 499 (Guj)
9. CIT v. Ahmedabad Crucible Company (1994) 206 ITR 574 (Guj)
10. Smt. Prabhavati S Shah v. CIT (1998) 231 ITR 1 (Bom)

Judgments with respect to Claim of CSR Expense

1. ACIT v. Jindal Power Limited in [ITA No. 99/BLPR/2012]

Kind Attention :

The Judgment is not applicable with respect to CSR Expenditure incurred as per S. 135 of Companies Act 2013 post 01-04-2015. But relying upon this judgment additional ground can be taken for prior years.