

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.3698/Del/2017
Assessment Year: 2012-13

ITO, Ward-19(2), New Delhi	Vs.	M/s. Orient Craft Fashion Institute of Technology (P) Ltd., F-8, Okhla Industrial Area, Phase-I, New Delhi
PAN :AAACO9923H		
(Applicant)		(Respondent)

Applicant by	Ms. Rakhi Vimal, Sr.DR
Respondent by	Shri Salil Aggarwal, Adv. Shri Shailesh Gupta, Adv.

Date of hearing	09.01.2020
Date of pronouncement	31.01.2020

ORDER

PER O.P. KANT, AM:

This appeal by the Revenue is directed against the order dated 24th March, 2017 passed by the learned Commissioner of Income Tax (Appeals)-7, New Delhi [in short 'the CIT(A)'] for assessment year 2012-13, raising following grounds of appeal:

1. *"On the facts and under the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition made by the Assessing Officer amounting of Rs. 1,91,00,000/- made on account of deferred income by ignoring the fact that the grant is of revenue*

income and the entire income should be charged for tax for the year under consideration.”

2. *“On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition made by the Assessing Officer amounting to Rs. 42,04,450/- made on account of difference amount paid by NIRD as per 26AS and shown by the assessee by ignoring the facts that the assessee has taken complete TDS benefit during the year but difference of above income has not shown in the books of the assessee.”*
3. *The appellant craves to be allowed to add any fresh ground(s) of appeal and / or delete, amend any of the ground(s) of appeal.*

2. Briefly stated facts of the case are that the assessee filed return of income on 30.09.2012, declaring nil income. The case was selected for scrutiny assessment and statutory notice under Section 143(2) of the Income-tax Act, 1961 (in short ‘the Act’) was issued and complied with. In the assessment completed under Section 143(3) of the Act on 20th March, 2015 the Assessing Officer made certain additions/disallowances. The assessee filed appeal against the order of the Assessing Officer which was partly allowed by the learned CIT(A). Aggrieved with the relief allowed to the assessee, the Revenue is in appeal before the Tribunal raising the grounds as reproduced above.

3. In ground no. 1, the Revenue has challenged the deletion of addition made by the Assessing Officer, amounting to Rs.1,91,00,000/- on account of deferred income, out of the grant received by the assessee.

3.1 Facts qua the issue in dispute are that the assessee was engaged in the business of setting up, administering, maintaining and running of educational institutes and for that purpose it had entered into a Memorandum of Understanding (MoU) with the

National Institute of Rural Development (NIRD), Ministry of Rural Development, for training of 8000 rural BPL youth in apparel industry under special project, i.e., Swaranjayanti Gram Swarojgar Yojana (SGSY) by way of grant in aid from the Central Government. The total cost of the project was Rs.1491.28 lakhs out of which Rs.1118.46 lakhs were to be funded by the Central Government and the assessee's contribution of Rs.372.82 lakhs. The project was to be completed within two years i.e. from 17.05.2010 to 16.05.2012 from the date of realization of the first installment of the payment by the Central Government. The assessee was released a grant of Rs.2,75,42,077/- during the financial year 2010-11 and Rs.5,50,84,155/- during the financial year 2011-12 towards first and second installments of grant. According to the assessee, the grant was for specific project which was to be completed within two years. The assessee recognized the revenue from the grants in the profit and loss account, relying on AS 12 issued by the Institute of Chartered Accountants of India. The assessee realized the revenue from the grants in matching concept of income in ratio of expenditure incurred towards the project and deferred a portion of grant, i.e., Rs.1,91,00,000 to subsequent year. However, according to the Assessing Officer, the assessee was following mercantile system of accounting and, therefore, the entire grant being revenue in nature, the deferred portion of the grant is taxable in the hands of the assessee for the year under consideration. The learned CIT(A) after considering the facts of the case, assessment order and submissions of the assessee made before him, deleted the additions by observing that the income was offered by the

assessee consistently recognizing the expenditure incurred for the project against grant received during the year and offered the income following the matching principle of income. The relevant finding of the learned CIT(A) is reproduced as under:

“4.5. The appellant has been following this accounting method for the grant received from the Government. The unutilized grant at the end of the year is carried forward to the next year and only expenses relatable to the said grant is charged for the year and revenue to that extent is recognized for the year and the balance grant is transferred to the next year. The appellant had an opening balance of Rs.1.28 crores and received grant of Rs.5.89 crores during the year. It utilized grant of Rs.5.26 crores and carried forward the balance grant of Rs.1.91 crores to the next year. In terms of the MOU with the National Institute of Rural Development (NIRD), the project was to be completed within two years i.e. from 17.05.2010 to 16.05.2012 from the date of realization of the first installment of the payment of the Central Government. The appellant was released grant of Rs.2.75 crores during the F.Y. 2010-11 and Rs.5.50 crores during the year under consideration which was accounted for as per AS -12 as above. The AO however, was of the view that the deferred portion of the grant is also taxable during the year as the appellant is following mercantile system of accounting. The Ld. AR has contended that terms of the MOU with the Ministry of Rural Development puts an obligation on the appellant for accounting of the grant received as under:

"h. Maintain records in accordance with appropriate and accepted accounting practices reflecting its operation and utilization of grant.

i. Open and maintain a separate bank account of the project for implementing the Programme.

j. "OCFIT" will maintain separate books of accounts for this project for the purpose of auditing.

k. Get the expenditure with the appropriate and consistently applied auditing principles in India. Such Auditors will furnish to NIRD at the end of each financial year a certificate to the effect that the accounts have been audited and the grant has been spent on the objects for which it was meant, save as otherwise provided in this agreement. Any

unspent balance and accrued interest there from should be carried forward towards the next year's projected budget."

9. *On going through the above clauses, it is to be noted that there is an obligation on the assessee to maintain separate bank account. Further complete record financial year-wise is to be maintained and certified by the Auditors.*

10. *Clause (k) puts specific obligation on carrying forward the unspent balance with accrued interest to the next year projected budget.*

4.6. *The Ld. AR has also stated that this method of accounting has been accepted by the AO in the assessment for the A.Y. 2013-14. I have perused the accounting of Government grant by the appellant company, whereby it is consistently recognizing the expenditure incurred for the project against the grant received during the year and offering matching income. The unutilized grant is carried forward to the next year and is reported as deferred revenue grant in the Balance sheet. This accounting treatment is as per the MOU with the Government and also clause 15 of the Accounting Standard AS - 12 prescribed by the ICAI. The appellant is consistently following this accounting method. On the issue of consistency, the Hon'ble Supreme Court in the case of Radhasoami Satsang vs. CIT 1992 AIR 377 has ruled as under:*

*".....
We are aware of the fact that strictly speaking resjudi-cata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year....."*

4.7 *In view of the facts of the case and the submission of the Ld. AR and the principle of consistency laid down by the Apex Court, the AO's action in treating the deferred grant of Rs.1.91 crores as income of the appellant for the year is not sustainable and is directed to be deleted. This ground of appeal is ruled in favour of the appellant."*

3.2 We have heard the rival submissions of the parties on the issue-in-dispute. We find that the assessee has followed

percentile completion method of revenue recognition which is followed in the case of contract work on broad principle that income is accrued corresponding to the expenditure incurred towards execution of the contract project. Since income has been offered by the assessee as and when accrued to it, we do not find any error in the order of the learned CIT(A) on the issue in dispute. We also note that the assessee is consistently following this accounting method and thus, the learned CIT(A) has deleted the addition in view of the rule of consistency. In view of the facts and circumstances of the case above, we do not find any error in the order of the learned CIT(A) on the issue in dispute. Accordingly, we uphold the same. The ground no. 1 of the appeal of the Revenue is dismissed.

4. The ground no. 2 of the appeal relates to deletion of addition of Rs. 42,04,450/- made on account of difference amount paid by NIRD as 26AS.

4.1 The facts qua the issue in dispute is that National Institute of Rural Development (NIRD) deducted TDS of Rs.11,56,767/- on the entire grant of Rs.5.50 crores issued to the assessing during the year under consideration. However, the assessee offered income of Rs.5.08 crores during the year under consideration and claimed the entire credit of Rs.11.56 crores during the year. The Assessing Officer added in income of Rs.42,02,450/- corresponding the TDS claim of the assessee. The learned CIT(A) though deleted the addition of Rs.42,02,450/-, however, directed the Assessing Officer to restrict the credit of TDS corresponding to the income offered by the assessee. The relevant finding of the learned CIT(A) is reproduced as under:

“5.2. I have carefully considered the assessment order and written submission filed by the Ld. AR. The AO added Rs.42,04,450/- as the appellant had accounted for receipts of Rs.5.08 crores against Rs.5.50 crores as appearing in the 26AS statement and had also claimed credit of TDS of Rs.11.56 lacs on the receipts. In view of my decision regarding the method of accounting followed by the appellant consistently in para 4.6 of this order and since part of the grant received during the year on which TDS is claimed is deferred to the next year, claim of TDS on the entire grant received during the year is not admissible of the appellant. Section 199 of the Act read with Rule 37(BA)(3) of the I. T. Rules, 1962 clearly lays down the procedure for credit of tax deduction at source as under:

"37(BA)(3): (i) Credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable.

(ii) Where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax."

5.3. Since the appellant as per the method of accounting has not booked the entire revenue of Rs.5.50 crores on which TDS is claimed but has only offered receipts of Rs.5.08 crores during the year, the AO is directed to withdraw the TDS credit allowed to the appellant on the amount of Rs.42,04,450/-. Further, as the said amount is deferred to the next year as per the accounting method of Government grant, the addition of Rs.42,02,450/- shall also stand deleted. This ground of appeal is partly ruled in favour of the appellant."

4.2 We have heard the rival submissions of the parties on the issue in dispute. In our opinion, the learned CIT(A) has followed relevant provisions of Section 199 of the Act read with Rule 37(BA)(3) of the IT Rules, 1962 which specify that credit of the tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable. In view of the above, we do not find any error in the order of the learned CIT(A) on the issue in dispute and

accordingly, we uphold the same. The ground no. 2 of the appeal of the Revenue is dismissed.

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

Order is pronounced in the open court on 31st January, 2020.

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

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

Dated: 31st January, 2020.

RK/-(D.T.D.)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi