

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B+SMC": NEW DELHI

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 5571 /Del/2019  
(Assessment Year: 2013-14)

Fiserv India Private Limited, Regus Elegance, Level-2, Jasola District Centre, Old Mathura Road, Delhi PAN: AACCR0787L (Appellant)	Vs.	ACIT, Circle-9(1), New Delhi (Respondent)
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Assessee by :	Srhi Sachit Jolly, Adv Shri Vasudevan, Adv
Revenue by:	Ms. Ashima Neb, Sr. DR
Date of Hearing	16/03/2020
Date of pronouncement	03/ 07/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. Assessee filed ITA number 5571/Del/2019 against the order of the learned Commissioner Of Income Tax Appeals – 34, New Delhi [ The Id CIT (A) ] dated 22/04/ 2019 passed by him in appeal filed by the assessee before him against the order passed u/s 143 (3) of The Income Tax Act[ The Act] by the Asst Commissioner Of Income Tax, Circle – 9 (1) , New Delhi [ The Id AO ] for AY 2013-14. following grounds of appeal have been raised:-
  - “1. *That the Commissioner of Income tax (Appeals) [“CIT(Appeals)”] erred on the facts and in law in upholding the action of the Assessing Officer (“AO”) in making a disallowance of provision for the following expenses on the ground that the same are in the nature of unascertained/contingent liability:*
    - (a) *Professional expenses to the extent of Rs. 17,21,805/-.*
    - (b) *Miscellaneous expenses to the extent of Rs.77,87,018/-.*
    - (c) *Travel expenses to the extent of Rs.4,87,24,855/-.*
  - 1.1 *That the CIT(Appeals) erred in holding that since the above provision of expenses are reversed in subsequent year and actual invoice amount is*

*booked, the provision is to be treated as contingent/unascertained liability for the year under consideration.*

- 1.2 *Without prejudice, the CIT(A) erred in upholding the disallowance without appreciating that claim for above expenses is 'revenue neutral' since per-se allowability of the above expenditure as 'business expenditure' under Section 37(1) of the Income Tax Act, 1961 (the "Act") is not doubted, albeit only the year of allowability is questionable.*
  2. *That the CIT (Appeals) erred on facts and in law in confirming the disallowance of Rs.68,00,000/- made by the AO on account of stamp duty paid in relation to leased business premises holding the same to be in the nature of capital expenditure merely on the ground that lease is for a period of 10 years.*
    - 2.1 *That the CIT(Appeals) failed to appreciate that incurrance of the above stamp duty neither created any new asset in the capital field nor conferred any enduring benefit to the Appellant, so as to treat such stamp duty as capital expenditure.*
  3. *That the CIT(A) erred on facts and in law in confirming the action of the AO in charging interest under section 234B of the Act."*
2. The brief facts of the case shows that assessee is a company engaged in the business of providing software development and maintenance services to Fiserv Global Services Inc USA. Assessee filed its return of income on 29/11/2013 declaring total income of Rs 52,65,19,530/-. This return was revised on 20/11/2014 where the income of the assessee remains unchanged. In the scrutiny assessment, the learned AO passed an order u/s 143 (3) of The Act on 29/12/2016 at Rs 59,90,57,890.
  3. The AO disallowed
    - a. Provisions made by the assessee of ₹ 24,26,485/- towards legal and professional expenses
    - b. Disallowed stamp duty of ₹ 68 lakhs, on account of stamp duty paid by the assessee on the leased property holding that it is for the long-term and having any enduring benefit to the appellant therefore it is a capital expenditure
    - c. Disallowed accrued miscellaneous expenditure of Rs. 1, 45,87,018
    - d. Disallowed accrued travel expenditure of Rs 4,87,24,855.
  4. The assessee preferred an appeal before the learned CIT (A). He confirmed the disallowance of ₹ 1,721,805/- out of the total disallowances of ₹ 2,426,485 out of legal and professional expenses. He also confirmed the addition of ₹ 68 lakhs on account of stamp duty paid by the assessee on the leased property holding that it is for the long-term and having any enduring

benefit to the appellant therefore, it is a capital expenditure. With respect to the disallowance of accrued miscellaneous expenditure of Rs 1,45,87,018/- he confirmed the disallowance of ₹ 7,787,018/-. With respect to the disallowance of accrued Travelling expenditure of Rs. 4,87,24,855/- holding that these expenses debited are contingent in nature and not allowable as per the provisions of section 37 (1) of the act. Thus, assessee aggrieved with the order of the learned CIT – A is in appeal before us.

5. As per the first ground of appeal, assessee challenges the disallowance of following expenditure
  - a. professional expenses to the extent of ₹ 1,721,805/-,
  - b. Miscellaneous expenses to the extent of Rs 7,787,018/-
  - c. Travelling expenses to the extent of Rs 4, 87,24,855/-.
6. The brief facts with respect to the disallowance of the provisions made on account of legal and professional charges shows that the learned assessing officer asked assessee to furnish the complete details and breakup of the legal and professional expenses. The assessee vide letter dated 27/12/2016 furnished the details. On perusal of the above details, the learned AO noted that assessee has made a provision of ₹ 519,586/- and ₹ 1,906,899 under the head legal and professional expenses. The AO held that the provisions are allocated towards probable, but not certain expenses, He held that it is just like a future obligations/expenses and any provision of expenses are treated as unascertained liability and the same cannot be allowed to be debited to the profit and loss account. Further, he held that, if the assessee has made any provisions during the year, then at first, it should have offered the above provision for taxation and therefore it could have claimed the same as per the actual expenses. According to him, assessee has also not deducted tax at source on the aforesaid payment. He therefore held that any provisions of expenses are treated as an unascertained liability and the same cannot be allowed to be debited to the profit and loss account. Since the assessee according to him has failed to justify the above provision expenses, it is to be disallowed. Such a liability to be incurred at a future date is a contingent liability, which could not be allowed u/s 37 (1) of the Act. Therefore, he disallowed the same u/s 37(1) of the act.

7. On appeal before the learned CIT – A, appellant submitted that it has furnished the breakup of legal and professional expenses along with the copy of invoices to substantiate claim of the expenditure. Assessee also submitted that it has duly complied with the withholding tax obligation on the said expenses. These provisions were created for expenses that had accrued during the year. Such provisioning was in line with the mercantile system of accounting, which is followed regularly by the appellant. Assessee submitted that the said expenditure was towards a liability that has crystallized during the year and not towards any unascertained liability. Assessee submitted copies of the corresponding invoices and tax deduction at source certificate in form number 16 A. Assessee further demonstrated that provision for legal and professional charges debited to profit and loss account for the month of March 2013, for which the bills are not received are subsequently reversed in the month of April 2013 by crediting it to profit and loss account. Further on the receipt of invoices, actual amount of expenditure as per invoice is debited to profit and loss account for the financial year 2013 – 14. It was further stated that appellant, out of the provision of professional expenses of ₹ 1,906,829/–, it has already disallowed the expenses to the tune of ₹ 704,680 u/s 40 (a) (ia) of the act for non-deduction of tax at source. Assessee further submitted that disallowance by the AO has resulted into the double disallowance to the extent of the sum of ₹ 704,680. Assessee further claimed that the liability is estimated by the assessee on the scientific basis during the year, which is accrued, and pertain to financial year 2012 – 13 and was an ascertained liability and therefore it should be allowed. As the assessee furnished an additional evidences before the learned CIT – A, ld CIT (A) asked for the remand report of the assessing officer. In the remand report the AO submitted that no evidences been given by the assessee about when the provisions were created and subsequently offered for taxation. No evidences was also filed before the learned CIT (A) as to when this provisions were created and the detailed calculation of how the expenditure has been accrued and taken as an expenditure under the head legal and professional expenditure for the year under consideration. The ld AO further submitted that invoices under the tax deduction at source certificate

submitted by the appellant were checked on simple basis and are found to be related to the expenditure claimed by the appellant. Based on this, the learned CIT – A held that the contention of the assessee is not accepted as assessee admitted that the provision for legal and professional expenses are charged to the profit and loss account for the month of March 2013 subsequently reversed in the month of April 2013 by crediting to the profit and loss account. On receipt of the invoices, actual amount of expenditure is debited to the profit and loss account for financial year 2013 – 14, i.e. subsequent year to the assessment Year. He also perused the details of the expenses filed by the assessee about the accrual for legal and professional expenses and observed that the posting date of booking of expenditure is the next financial year 2013 – 14. He therefore held that the appellant has debited provisions in the profit and loss account and did not offer the same for income during the year. Thus according to him, assessee reduced the income/profit during the year under consideration. As assessee has reversed the provision in the next financial year, it shows that the expenses are in the nature of unascertained liability and contingent which are not allowable as per the provisions of section 37 (1) of the act. However he held that as assessee has added back sum of ₹ 704,680/- u/s 40(a) (ia) of the act for non-deduction of tax at source out of ₹ 1,906,829/- , he deleted the above disallowance as it amounts to double addition. Therefore, he restricted the disallowance to ₹ 1,721,805.

8. The facts relating to the disallowance of ₹ 1,45,87,018/- shows that assessee has debited Rs. 2,83,10,188/- on account of the accrued miscellaneous expenses in the profit and loss account. Assessee itself disallowed the sum of Rs 1,37,23,170/- out of the total expenditure and therefore the AO asked assessee to furnish invoices of the balance amount of Rs. 1,45,87,018/- . On 30 December 2016, assessee only furnished breakup of the same and did not furnish the invoices, therefore the learned AO disallowed the above sum. On appeal before the learned CIT – A, appellant submitted that it furnished details of the tax deduction at source on the accrued expenses recorded under the sundry creditors as on 31<sup>st</sup> of March 2013, where the assessee has deducted tax at source on the above sum. Appellant also submitted that it could not submit further details due

to paucity of time provided by the learned assessing officer. Claim of the appellant was that it has recorded the liability for accrued expenses such as staff welfare, printing and stationery, employee training, repairs and Maintenance; employee relocation expenses etc. on a reasonable basis and in support of its contention appellant enclosed the copies of the supporting invoices and breakup of accrued miscellaneous expenditure. The appellant stated that invoices pertain to the services availed or expenses incurred by the appellant during the financial year 2012 – 13 relevant to assessment year 2013 – 14. Therefore, above liability was an ascertained liability. Appellant also submitted that the accrued miscellaneous expenditure is charged to the profit and loss account for the month of March 2013 and if invoices are not received, it is subsequently reversed in the month of April 2013 by crediting the profit and loss account. On receipt of invoices, actual amount of expenditure was debited to the profit and loss account for financial year 2013 – 14. The assessee further submitted that sum of ₹ 68 lakhs was disallowed by the learned assessing officer on account of stamp duty charges are also included in the above sum of accrued miscellaneous expenditure of Rs. 1,45,87,018/- and therefore there is a double disallowance. The learned and CIT – A obtained the remand report of the assessing officer who checked the evidence submitted by the assessee in the form of invoices and Ledger account on sample basis and found to be related expenditure claimed by the assessee. However, The learned CIT – A did not accept the explanation of the assessee that the invoices pertain to the services availed/expenses incurred by the appellant during financial year 2012 – 13 relevant to the assessment year 2013 – 14 and liability related to the accrued miscellaneous expenses pertain to financial year 2012 – 13 was an ascertained liability, as appellant itself has admitted that it has debited the expenses in the profit and loss account during the year under consideration and subsequently reversed in the month of April 2013 by crediting to profit and loss account. He held that it shows that the expenses debited in the profit and loss account are merely provisions and appellant has not reversed the expenses during the financial year itself and not offered the same as income. He further stated that the assessee has furnished the details of accrued miscellaneous expenditure and he observed

that posting date for booking of the expenditure is the next financial year i.e. 2013 – 14 and assessment year 2014 – 15. Thus according to him the assessee has reduced the profit by booking the expenses on the provision during the year under consideration being contingent in nature. He therefore held that expenses are not allowable according to the provisions of section 37(1) of The Income Tax Act. He further held that if the expenses are pertaining to the year under consideration the appellant is not required to reverse the same in the next financial year. He held that it shows that the appellant has debited the provisional expenses, therefore all the expenses debited under the head accrued miscellaneous expenditure posted in the next financial year on actual invoice basis. Therefore, he confirmed the disallowance of ₹ 7,787,018/-.

9. The facts with respect to the disallowance of the accrued travel expenditure of Rs. 4, 87, 97,755/- where the assessee has only furnished the breakup of the expenditure along with the note on the above expenditure. However, it did not furnish the invoices of the above expenses in its support and therefore the learned AO disallowed it. Assessee challenged the same before the learned CIT – A. The learned CIT – A, held that appellant has debited the accrued travelling expenditure of Rs. 4 87, 24,855/- in the profit and loss account for the month of March 2013. This was subsequently reversed in the month of April 2013 by crediting into the profit and loss account. On receipt of invoices, actual amount of expenditure debited to the profit and loss account for financial year 2013 – 14. According to him, as the appellant has not reversed the provisions during the close of the year and book the actual expenses in the next financial year, assessee has reduced the profit/income during the year by debiting the accrued travel expenses in the profit and loss account. He further held that assessee has not given any justification for reversing the expenses in the next financial year on the plea that revenue should not dispute the deductibility in one year or the other if the deduction is per se allowable. He rejected this contention of the appellant as the expenses to be debited in the year for which they pertained so that the correct income could be determined. He further noted that expenses debited on account of accrued travel expenses are contingent in nature as expenses to the extent of Rs 36,073,963/- was reversed by the

appellant in the next financial year. Therefore he held that the above expenditure are contingent in nature and not allowable as per the provisions of section 37 (1) of the act.

10. The learned authorised representative submitted that these are the expenses, which have been disallowed by the lower authorities for the only reason that the provisions are made in the year on the basis of the estimated liability accrued during the year for which the bills have not been received. Such liability is debited to the profit and loss account as expenditure and credited as expenses payable at the end of the year. At the beginning of the year the above amount of provision is reversed by crediting it to the profit and loss account and as an when the bills are received the expenses are debited to the profit and loss account. Therefore, he submitted that this is an acceptable method of maintaining its books of accounts on accrual basis of accounting. He submitted that assessee being a company is required to maintain its books of accounts on accrual basis therefore at the end of the year even if the bills are not received but the provision is required to be made on the basis of the mandate/agreed to terms with the suppliers/service providers. He submitted that these expenditure are incurred by the assessee only and exclusively for the purposes of the business of the assessee and are pertaining to the year for which the provision is made and therefore are allowable u/s 37 (1) of the act. The learned authorised representative further relied upon the decision of the coordinate bench in ITA number 2538/del/2014 for assessment year 2009 – 10 in case of AT&T Global Network Services (India) Private Limited Versus The Deputy Commissioner Of Income Tax Circle – 2 (1) wherein in para number 30 the coordinate bench has considered the accrual of circuit charges on identical facts and circumstances and allowed the claim. He further referred to para number 34 – 35 the order of coordinate bench held that no disallowance can be made when the provisions are made on scientific basis and in the next year on the first day, same are reversed, no disallowances called for.
11. The learned departmental representative vehemently supported the order of the learned CIT – A and relied on page number [8] of the order wherein in para number 3.10 the submission of the assessee was considered. He

submitted that there is no establishment of the fact that the liabilities are estimated on a scientific basis during the year and had accrued in financial year 2012 – 13. He further submitted when the provision was reversed during the next year it shows that it was not an ascertained liability. Therefore, he submitted that there is no infirmity in the order of the lower authorities in disallowing the above expenditure.

12. We have carefully considered the rival contentions and perused the orders of the lower authorities. Looking to the facts of the case, the assessee, at the close of the year i.e. on 31 st March makes provision of various expenses. It may happen that the invoices of the parties at that time while finalizing the accounts of the assessee are not received. In such cases, assessee makes estimated provisions of the expenses based on mandate/ agreement etc. Such provision is made by debiting the relevant expense account and crediting the expenses payable account. The relevant expenses account naturally is debited in the profit and loss account of that particular year. The provision of expenses payable account is naturally shown under the head sundry creditors/ expenses payable/ liabilities etc in the balance sheet at the close of the year. On the first day of next year, this account of Expenses payable is credited to the respective Expenses account of the next year. As and when those bills are received for, which provision was made in the last year, for which provision of Expenses payable reversed by crediting expenses account of next year, assessee debits the amount of invoices to that respective expenditure account. Thus, there is no impact on the profit and loss account of the next year. Reversal of the provision is merely a control account. Assessee also deducts tax at sources at the close of the year on such provisions, If it is not deducted same is disallowed u/s 40 (a) (ia) of the act. Assessee is a company and therefore it has to mandatorily maintain its books of accounts of Accrual basis of accounting. Accrual means 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. The lower authorities have failed to understand the concept of accounting on accrual basis and practice followed by the assessee. Thus, the provision made by the assessee on accrual basis was on basis of reasonable estimates. It

cannot be an unascertained and contingent liability. Similar is the fact of disallowance of legal and professional expense, miscellaneous expense and travelling expenses. In view of this, the disallowance confirmed by the Id CIT (A) deserves to be deleted. Accordingly, we reverse the orders of the lower authorities and direct the Id AO to delete the disallowance of Rs 1721805/- out of professional and legal expense, Rs. 7787018/- out of miscellaneous expenditure and Rs 48724855/- out of travelling expenses. Accordingly ground no [1] of the appeal is allowed.

13. Ground number two of the appeal is related to the disallowance confirmed by the lower authorities of ₹ 68 lakhs on account of stamp duty paid in relation to the leased business premises holding that same are capital in nature only because of the reason that lease was for a period of 10 years. The brief facts of the case show that assessee has debited the above sum in the legal professional expenses because of stamp duty paid on lease premises. The learned assessing officer noted that stamp duty is paid only once to acquire the lease for a specific period like three years, five years, 10 years or more so the benefits arising from executing lease deed lasts for more than one year or for the period mentioned in the lease deed. Therefore, the stamp duty paid on it cannot be treated as a revenue expenses as its benefits are not confined to the current previous year. Therefore, stamp duty is treated as capital expenditure.
14. On appeal before the learned CIT – A he held that the appellant has taken premises on lease from 1 April 2013 to 31<sup>st</sup> of March 2023 for which it has paid stamp duty charges of ₹ 68 lakhs. The lease is for the long period and is of enduring benefit to the appellant hence the learned assessing officer has correctly treated the expenses incurred on stamp duty as capital in nature. Thus, he confirmed the disallowance.
15. The learned authorised representative submitted that this issue is now covered by the decision of the honourable Bombay High Court in case of Commissioner Of Income Tax – III Versus Reliance Industrial Infrastructure Ltd in 61 taxmann.com 407-[234 taxman 256] wherein the assessee had taken a land of lease for a period of 30 years and stamp duty was paid in respect of the deed of lease executed by the assessee with the lessor. The assessee treated it as revenue expenditure as the expenditure was incurred

for carrying on the business. The AO on the identical facts held it to be deferred revenue expenditure. The honourable High Court held that it is revenue expenditure. He therefore submitted that issue is squarely covered in favour of the assessee.

16. The learned departmental representative supported the orders of the lower authorities and submitted that the assessee has obtained a benefit of enduring nature and therefore the stamp duty paid on lease, which is for 10 years is a capital expenditure.
17. We have carefully considered the rival contentions and perused the orders of the lower authorities. In the present case the facts says that stamp duty was payable for the lease of a business premises at sector 62, Noida which were taken on lease from Galaxy Mercantile Ltd. The stamp duty was paid in accordance with The Stamp Duty Act 1899, being a statutory levy for registering of the lease deed. The issue is whether the stamp duty paid by the assessee for registering the lease deed, though for 10 years, is revenue expenditure or not. The issue is squarely covered in favour of the assessee by the decision of the Honourable Bombay High Court in CIT versus Reliance Industrial Infrastructure Ltd (supra) wherein the assessee in that case took a land on lease for a period of 30 years and ₹ 23.31 lakhs were paid as a stamp duty in respect of deed of lease. The honourable High Court following the decision of CIT versus Cinceita private limited 137 ITR 652/10 Taxman 82 (BOM) held that the period of lease for which the property has been taken cannot be regarded as a decisive test to determine the nature of the expenditure. The honourable High Court further held that it is not disputed that the stamp duty amount has been paid on lease deed for the carrying on of the business of the assessee and therefore the amount of stamp duty paid for has to be allowed as revenue expenditure. Further, the honourable High Court relying on the decision of the honourable Supreme Court in case of Taparia Tools Ltd versus The Joint Commissioner Of Income Tax 372 ITR 605 [231 taxman 5] also held that same is also not a deferred revenue expenditure. In view of this, we direct the lower authorities reversing the decision to allow the stamp duty charges of ₹ 68 lakhs paid by the assessee as an expenditure for the current year holding it

to be revenue expenditure in nature allowable u/s 37 (1) of the act. Accordingly, ground number [2] of the appeal of the assessee is allowed.

18. In the result, the appeal of the assessee is allowed.
19. On the issue of time limit for pronouncement of order as per ITAT Rules 1963, this order is pronounced beyond 90 days from the date of hearing due to COVID 19 and consequent lockdown and restricted operations. Therefore relying up on the decision of the coordinate bench in [2020] 116 taxmann.com 860 (Mumbai - Trib.) we exclude the period during which lockout was in force is to excluded for the purpose of time limits set out in rule 34(5) of the Appellate Tribunal Rules, 1963

Order pronounced in the open court on 03.07.2020.

Sd/-  
(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER

Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 03.07.2020.  
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	03.07.2020
Date on which the typed draft is placed before the dictating member	03.07.2020
Date on which the typed draft is placed before the other member	03.07.2020
Date on which the approved draft comes to the Sr. PS/ PS	03.07.2020
Date on which the fair order is placed before the dictating member for pronouncement	03.07.2020
Date on which the fair order comes back to the Sr. PS/ PS	03.07.2020
Date on which the final order is uploaded on the website of ITAT	03.07.2020
date on which the file goes to the Bench Clerk	03.07.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	