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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INCOME TAX APPEAL NO. 620 OF 2015
WITH
INCOME TAX APPEAL NO. 622 OF 2015
WITH
INCOME TAX APPEAL NO. 711 OF 2015**

The Pr. Commissioner of Income Tax – 15 ... Appellant
Versus
M/s. C.U. Inspections India Pvt. Ltd. ... Respondent

Mr. Suresh Kumar, for the Appellant.
Dr. K. Shivram, Senior Counsel with Mr. Rahul Hakani, for the Respondent.

**CORAM: M.S.SANKLECHA &
RIYAZ I. CHAGLA, JJ.**
DATED: 22ND JANUARY 2018

PC:-

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 12th November 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 16th March 2007 is in respect of Assessment Year 2004-05, 2006-07, 2008-09 & 2009-10. These three Appeals are in respect of Assessment Years 2004-05, 2006-07 and 2008-09.

2. The Revenue urges the following question of law for our consideration:

(1) *“Whether, on the facts and in circumstances of the case, the Tribunal was right in holding that license*

fees although billed in the previous years relevant to the subject Assessment Year yet income has partly accrued to the assessee in the previous year relevant to the next Assessment Year, inspite of the Assessee following a mercantile system of accounting”?

3. The Respondent Assessee is engaged in the business of quality control / inspection / survey relating to agricultural products. The Respondent had income on account of license fees. This license fees were billed in January, for the calender year i.e. 1st January to 31st December. However as the Respondent is maintaining its books of accounts on financial year basis 1st April to 31st March, it accounted for the license fee attributable to the period 1st January to 31st March in the previous year relevant to the subject Assessment Year to determine its taxable income and balance attributable to the balance period of the calender month i.e. April to December in the next previous year relevant to the next Assessment Year. In the previous year relevant to the subject Assessment Year the aforesaid balance amounts (which was to be accounted in the next Assessment Year) was shown under the head current liabilities (income billed but not due).

4. The Assessing Officer was of the view that as the Respondent was following the mercantile system of accounting it ought to have accounted the entire income billed in January of the previous year relevant to the subject Assessment Year, although billing was for the entire calendar month. Thus bringing the entire license fees to tax as income for the previous years relevant to the Assessment Year ending on 31st March when the license fee was billed. Thus for each of the Assessment Year, the Assessing Officer brought to tax the entire income as billed in January in the previous year related / relevant to the subject Assessment Year.

5. Being aggrieved the Respondent carried the issue in Appeal to the Commissioner of Income Tax (Appeal) (CIT (A) for each of the three Assessment Years. By independent orders the CIT (A) held that as the Respondents are following the mercantile system of accounting and license fees billed have been regularly accounted as income to the extent it is attributable for the period January to March in the year in which the amounts were received as license fee, while for the balance of the period of the calendar year was brought to tax in the subsequent Assessment Year. This method of accounting is being followed by the Respondent assessee consistently and also accepted by the Revenue.

Accordingly, the Appeals of the Respondent for the three Assessment Years were allowed.

6. Being aggrieved, the Revenue carried the issue in further Appeals to the Tribunal. By the common impugned order, the Tribunal upheld the view of the CIT(Appeals). The impugned order further records that while the amounts of license fees are billed in January by the Respondent, yet it recognises the amounts billed attributable for only three months period i.e. January to March of the previous year related to the subject Assessment Year and the balance in the next year. This method has been consistently accepted by the Revenue and nothing has been shown to warrant a change in the subject Assessment Years. Therefore dismissed the Revenue's Appeal.

7. The grievance of the Revenue before us is that as the Respondent is following mercantile system of accounting, the entire license fees billed ought to have been taxed in the previous year ending 31st March of the relevant subject Assessment Year in which the license fees were billed in January, for the entire calender year. In support of this, reliance has been placed upon Section 145 (1) and (3) of the Act.

8. It is an undisputed position between the parties before us that the method of accounting followed by the Respondent has been consistently accepted by the Revenue. Further it is not disputed that the amounts attributable to the period post 31st March of the previous year relevant to the subject Assessment Year in which the license fee was billed has been subjected to tax in the subsequent Assessment Year. There is no difference in the rate of tax in the Assessment Year under consideration as well as in the subsequent Assessment Year. It is also admitted position that the tax which is sought to be collected for the subject Assessment Year have been already been paid and collected in the next year. In the above view the following observations of this Court in **CIT Vs. Nagri Mills Co. Ltd.**¹ are pertinent :-

We have often wondered why the Income-tax authorities, in a matter such as this where the deduction is obviously a permissible deduction under the Income-tax Act, raise disputes as to the year in which the deduction should be allowed. The question as to the year in which a deduction is allowable may be material when the rate of tax chargeable on the assessee in two different years is different; but in the case of income of a company, tax is attracted at a uniform rate, and whether the deduction in respect of bonus was granted in the assessment year 1952-53 or in the assessment year corresponding to the accounting year 1952, that is in the assessment year 1953-54, should be a matter of no consequence to the Department; and one should have thought that the Department would not fritter away its energies in fighting matters of this kind. But, obviously,

1 Vol. XXXIII ITR 681.

judging from the references that come up to us every now and then, the Department appears to delight in raising points of this character which do not affect the taxability of the assessee or the tax that the Department is likely to collect from him whether in one year or the other.

9. The observations of this Court in this case stands true even today. Similarly, the Apex Court in **CIT Vs. Excel Industries Ltd.**² had made the following observations which are reproduced as under:-

Thirdly, the real question concerning us is the year in which the assessee is required to pay tax. There is no dispute that in the subsequent accounting year, the assessee did make imports and did derive benefits under the advance licence and the duty entitlement pass book and paid tax thereon. Therefore, it is not as if the Revenue has been deprived of any tax. We are told that the rate of tax remained the same in the present assessment year as well as in the subsequent assessment year. Therefore, the dispute raised by the Revenue is entirely academic or at best may have a minor tax-effect. There was, therefore, no need for the Revenue to continue with this litigation when it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers.

10. Further the manner in which the Respondent – Assessee has reflected his income by following mercantile system of accounting cannot be found fault with as the amounts attributable to the period post 31st March is income which has not accrued during the previous year relevant the subject Assessment Year.

² (2013) 358 ITR 295 (SC).

This is so as it is not due during the period for which the Revenue seeks to bring it to tax. The Appellant has not been able to show that the method followed by the Respondent does not correctly bring out the income chargeable to the tax. The obligation in respect of the license fees billed for the entire calender year is yet to be discharged at the end of the previous year related to the subject Assessment Year and would be due only in the next previous year related to the next Assessment Year.

11. In the above view, the question as proposed does not give rise to any substantial question of law. Thus not entertained.

12. Accordingly, **Appeal dismissed.** No order as to costs.

(RIYAZ I. CHAGLA J.)

(M.S.SANKLECHA, J.)