IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI

BEFORE SHRIS.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR KUMAR, JUDICIAL MEMBER

ITA No.2585/DEL/2022
(Assessment Year: 2017-18)

Prasandi Infotech Park P. Ltd., Plot No.21, Knowledge Park, Greater Noida, Gautam Budh Nagar – 201 308 (U.P.).	vs.	ACIT, Central Circle 1, New Delhi.

(PAN : AACCP7989E)

(APPELLANT) (RESPONDENT)

ASSESSEE BY : Dr. Rakesh Gupta, Advocate
Shri Deepesh Garg, Advocate
REVENUE BY : Shri Sumer Singh Meena, CIT DR

Date of Hearing : 13.11.2024
Date of Order : 07.02.2025

O R D E R

PER S.RIFAUR RAHMAN,AM:

1. This appeal has been filed by the assessee against the order of ld. Commissioner of Income-tax (Appeals)-23, New Delhi (hereinafter referred to as 'ld. CIT (A)') dated 31.08.2022 for the Assessment Year 2017-18.

2. Brief facts of the case are, assessee field its return of income on 31.10.2017 declaring loss of Rs.57,13,75,718/-. The case was selected for scrutiny. Accordingly, notices under section 143(2) and 142(1) of the Income-tax Act, 1961 (for short 'the Act') were issued and served on the assessee through

ITBA Portal along with questionnaire. In response, ld. AR of the assessee submitted the relevant information through ITBA Portal. After considering the submissions of the assessee, a show-cause notice dated 27.11.2019 was issued to explain why the disallowance of prior period expenses to the tune of Rs.33,65,13,449/- should not be made. In response, assessee submitted as under :-

> *"The Amount of Rs.336513449 shown as exceptional item in the Profit and loss accounts is interest payable by the assessee on the loan taken from SERI Infrastructure Finance Limited in earlier Years. Assessee company acquired ERA Infrastructure Pvt Ltd during the year 2014. The interest pertaining to FY 2014-15 and 2015-16 was not provided as the assessee was under negotiation to seek waiver of interest payable, which did not materialise. During the financial year under assessment the assessee claim the entire interest as an exceptional item due to failure of negotiation. In case your good self is not inclined to subscribe to the above views, the assessee. It is settled position that the expenditure is allowable in the year in which the liability to pay such an expenditure has crystallized. The assessee request you to kindly allow the expenditure in the AY 2017-18 as expenditure crystallised in this year. If your good self do not subscribe to this view, alternatively the assessee request your good self to allow such expenditure in the relevant assessment year to which it pertains i.e. AY 2015-16 and 2016-17."*

3. After considering the submissions, the Assessing Officer rejected the same and observed that Profit & Loss account in which assessee has claimed the abovesaid interest as an exceptional item. He observed that assessee has claimed the interest expenditure pertained to AYs 2015-16 & 2016-17 in the present assessment year and made a submission that the relevant interest was

crystallized only this year. However, to substantiate his claim, the assessee has not furnished any evidence on the basis of which it can be proved that the liability as regards to such interest expenses is being crystallized in the concerned assessment year. Even the assessee itself is in a dilemma of facts which can easily be deducted from its admission wherein it was stated that if the expenses would not be allowed in the concerned assessment year then it was requested to provide the relief of such expenses in the relevant assessment years i.e. 2015-16 & 2016-17. From the above facts, the allowability of the expenditure is restricted to the assessment year for which the Assessing Officer has the jurisdiction and he rejected the submissions of the assessee that negotiated interest was only crystallized during the year and since the assessee is following the mercantile system, assessee should have claimed the relevant expenditure in the relevant assessment year. With the above observation, the claim of the extra-ordinary expenditure is disallowed and accordingly the loss declared by the assessee was reduced and assessed the same at Rs.23,48,62,269/-.

4. Aggrieved assessee preferred an appeal before the ld. CIT (A). Assessee has filed detailed submissions and the relevant notes to accounts and relevant auditor statements were submitted before him to justify the claim of the assessee. After considering the same, ld. CIT (A) dismissed the appeal filed by the assessee with the following observations :-

"20. It is case wherein the liability was determined but the amount of reduction/remission that may have happened consequent to the request of the appellant would have taken the character of income. The correct accounting method for such case will be that expenses be booked in the year of accrual of liability and the reduction in liability be treated as income in the year of remission. The rate of interest on the loan was 12% and the appellant wanted a waiver of 4%. The amount of interest equal to 12% of the loan amount takes the character of accrued expense and the amount of interest equal to 4% takes the character of income (which cannot be recognized because it did not happen during the year).

21. At no point of time the lenders gave any indication to the appellant that there liability will be reduced in any manner. It was the appellant only who made a request to reduce the interest. Therefore, the outcome was pre determined. The lenders refused to reduce the liability of the appellant in any manner whatsoever. Further, the lenders have already accounted for as income the amount of interest due from the appellant. In this regard, the appellant has furnished a certificate from the lender that the receipts due from the appellant have been treated as income by the lenders in their return of income. Therefore, there was no way that the lenders could have reduced the amount of interest due from the appellant.

22. The nature of interest expense amounting to Rs.336513449/- remained as prior period expenditure in the accounts for the F.Y 2016-17. As per the provisions of Income-tax Act prior period expenditure are not allowable as deduction as it is not expenditure for the year under consideration.

23. Under the provisions of Income-tax Act, it is only the income for the previous year under consideration is taxable. In computing the income of the year, the receipts and payments on accrual basis as to be taken into account. If the expenditure do not pertain to the year under consideration, in that case, it is treated as prior period expenditure and not allowable as deduction for the impugned year.

24. The appellant has regularly followed mercantile system of accounting and has offered income on due basis and has also claimed expenses on due basis. The claim of prior period expense has distorted the accounts of the year under consideration because the liability of the past years has been claimed as deduction in the current year.

25. Section 3 of the Act defines the previous years and the charging section 4 charges income-tax in respect of the total income of the previous year. Under section 4 of the Income-tax Act, the income that accrues or arises during the previous year alone is to be taken note of. There is therefore, a bar to include any income or expenditure that accrues or arises outside the previous year subject to the deeming provisions in the Act.

26. In the instant case of the appellant, the impugned liability of interest had accrued and crystallised during the F.Y 2014-15 & 2015-16 itself. Therefore, the same cannot be claimed as deduction for the previous year 2016-17 relevant to the A.Y 2017-18."

5. Aggrieved assessee is in appeal before us raising following grounds of appeal:-

"A. General Grounds of Appeal

1. That the Assessment Order ["AO Order"] passed by the Assessing Officer [lithe AO"]/ Appellate Order Passed by the learned Commissioner Appeal- 23 New Delhi [the CIT(A)-23"], to the extent prejudicial to the interest of the appellant, are bad in law and deserve to be quashed to that extent.

2. That the grounds of appeal hereto are without prejudice to each other.

3. That the CIT(A)-23 erred in fact and in law in sustaining the order of the AO assessing the loss @ Rs. -23,48,62,269 against the returned loss of Rs.57,13,75,718 thus making a disallowance of Rs. 33,65,13,449.

B- Main Grounds of Appeal

1.1. The CIT (A)-23 erred on fact and in law in upholding the disallowance of a sum of Rs. 33,65,13,449 made by the Assessing Officer in his assessment order u/s 143(3) towards interest payable u/s. 36(1)(iv) of the Act treating the same as expenditure pertaining to preceding financial years / prior period expenses.

1.2. The CIT (A)-23 erred on fact and in law in holding that the expenditure of Rs 33,65,13,449, crystalized during the F.Y. 2014-15 and F.Y. 2015-16 completely ignoring the discloser made by the appellant in its annual accounts for F.Y. 2014-15 and F.Y. 2015-16

1.3. The CIT (A)-23 erred on fact and in law in holding that the negotiation for wavier of interest with the lender does not give rise to an event on which the payment of interest is contingent.

l.4. The CIT (A)-23 erred on fact and in law in holding that the nature of an expenditure Rs 33,65,13,449 remained prior period expenditure despite the correspondence between the appellant and the lender for wavier of interest.

1.5. The CIT (A)-23 erred on fact and in law in observing that the correspondence between the appellant and the lender was for reduction of interest.

1.6. The CIT (A)-23 erred on fact and in law in sustaining the disallowance made by the assessing officer despite the fact that the lender had already considered the income in their return of income and paid the taxes due on it, thus there was no injury was caused to the revenue.

1.7. The CIT (A)-23 erred on fact and in law in not accepting the alternative plea of the appellant that if the appellant's contention is not accepted, the expenditure be allowed in the A.Y. 2015-16 and A.Y. 2016-17.

6. At the time of hearing, ld. AR of the assessee submitted as under :-

"5. Ground No. 1.1 is that the Ld. CIT(A) erred on facts and in law in upholding the disallowance of a sum of Rs.33,65,13,449/- made by the Ld. AO in assessment order u/s 143(3) towards interest payable, treating the same as expenditure pertaining to preceding financial years/prior period expenses.

5.1. The facts of the case have already been submitted in earlier paragraphs. Briefly, the facts of the case are that the appellant had taken loan from two parties in earlier years. Due to precarious financial condition, the appellant entered into negotiation with the lender about scaling down/waiving the interest. The details of correspondence between the appellant and the lender is summarised below:

(i) The appellant wrote a letter dated 30.03.2015 to SREI (PB 2). It was inter-alia pointed out that the new management has taken over the appellant company from 01.01.2015 from ERA management who defaulted the loan payment. The new management is yet to formulate the market plan and resolve old issues. There is no revenue generation for payment of interest of previous loan availed by the old management. Therefore, the lender was requested to waive off interest on previous loans and all payment made today should be adjusted in principal amount.

(ii) The appellant again wrote a letter dated 21.09.2015 (PB 1) to the SREI, it was stated that in-spite of lapse of 6 months, the situation at the ground level has not improved because there are so many customer issues including payment or assured return to them. The appellant is trying to resolve these issues through dialogue. The work of development at site is also to be carried out, which is in a poor state. Therefore, no retail customer wants to open office at the site. In this worse situation, it is requested again to waive the interest availed by the previous management and reduce the rate of interest from 12% to 8% on current loan availed on 30.03.2015.

(iii) The SREI responded by letter dated 15.10.2015 (PB 90). It was informed that the request of the appellant is not acceptable as the SREI is facing losses in this loan account. It was suggested that the appellant may contact Shrishti, a group

company, which may help the appellant to market the units in NCR.

(iv) The appellant wrote one more letter dated 25.03.2016 (PB 91). In this letter, a reference was made to Shrishti which was expected to help the appellant to market its units. It was pointed out that after lapse of about 6 months, they have also failed to generate revenue from the market. The appellant was struggling to manage day to day activity at site due to fund crunch. In this worse situation, it was again requested that the interest on the old loan may be waived and interest on the current loan may be reduced from 12% to 8% per annum. A moratorium of 2 years for payment of interest was also sought.

(v) The SREI responded by letter dated 13.06.2016. It was informed that the management of SREI has not accepted the request and asked the appellant to start paying interest in time so as to save this account from becoming non-performing asset. The appellant was also informed that interest pertaining to FY 2014-15 has been adjusted in the books and accordingly, the appellant was asked to pay the balance interest amount.

It will thus be seen that the request of the appellant for reduction/waiver of interest was finally refused on l3 .06.20 16, a date which falls in the previous year relevant to assessment year 2017-18. Therefore, it is contended that the liability crystalized in this year and accordingly, it was deductible as expenditure of this year.

6. Ground No. 1.3 is that the Ld. CIT(A) erred in holding that the negotiation for waiver of interest with the lender does not give rise to an event on which payment of interest is contingent.

6.1. It is submitted that the financial position of the appellant was precarious. Therefore, it entered into negotiation with the lender for waiver of interest on old loan and to reduce the interest from 12% to 8% on the new loan. The appellant also asked for moratorium on payment for a period of two years. The negotiation started on 30.03.2015 and ended on 25.03.2016. In this period, the appellant company was quite hopeful that some relief will become available as even for the

lender, it would have been difficult to recover any money from the appellant. Therefore, the process of negotiation was a significant event having impact on the interest liability of the appellant. Thus, it is argued that the Ld. CIT(A) erred in holding that the negotiations did not have any impact on accrual / computation of interest liability. Therefore, it is requested that Ground No. 1.3 may be allowed.

7. Ground No. 1.5 is that the Ld. C1T(A) erred in observing that the correspondence between the appellant company and the lender was for reduction of interest.

7.1. We have already stated the gist of correspondence between the appellant and the lender. The negotiations were on three counts- (i) Waiver of interest on old loan; (ii) Reduction of interest from 12% to 8% in respect of new loan; and (iii) moratorium on payment for two years. The outcome of negotiation would have significant impact on computation and date of payment of interest liability. Therefore, in the intervening period, this liability could not be ascertained with any degree of certainty. The amount became certain on rejection of the request of the appellant by the SREI on 13.06.2016. That is why the whole of the liability was provided in the books in this financial year. This is in conformity with the note of the auditor. Thus, it is argued that the Ld. CIT(A) erred in observing that while the liability had accrued in the respective years, any remission from such liability would have become income in the year of remission. The point is that in view of negotiations, the quantification on the basis of agreed rate had become a theoretical exercise and to that extent the liability could not have been computed on exact basis for the respective years. Thus, it is prayed that Ground No. 1.5 may be allowed.

8. Ground No. 1.2 is that the Ld. CIT(A) erred that expenditure of Rs.33,65,13,4491- crystallised during the financial years 2014-t5 and 2015-16 completely ignoring the disclosure made by the appellant in its accounts for those years.

8.1. We have already reproduced the disclosure made in the accounts of financial years 2014-15, 2015-16 and 2016-17. The reasons for not providing for the liability were mentioned in

these notes which are to the effect that due to financial constraint, the appellant company entered into negotiation with the lender for waiver and reduction of interest and therefore the liability cannot be determined till finalisation of the negotiations. It was also mentioned by the auditor that the same shall be adjusted as and when final settlement will be made. In consonance with these notes, the appellant did not provide for interest liability till the negotiations came to an end. In these circumstances, it is argued that the liability was crystallised in the current F'Y when the negotiations came to an end. Therefore, the amount of Rs.33,65,13,4491- was deductible in computing the income of the appellant for this year.

9. Crystallization of expenditure in the current year

The appellant relies on the following cases in this regard:

(i) DCIT v. Enercon India Ltd. (2016) TaxPub (DT) 2867;
(ii) DCM Limited v. DCIT 2015 TaxPub (DT) 4649;
(iii) State Bank of Bikaner Jaipur v. ACIT 2014 TaxPub (DT) 4331 : 166 TTJ 244;
(iv) DCIT v. Khurana Engineering Ltd. ITA No.571 (Ahd) of 2010;
(v) DCIT (OSD), Circle 8, Ahmedabad vs. Zydus Welless Ltd. (2016) 76 taxmann.com 328;
(vi) Union Bank of India vs. ACIT (2011) 16 taxmann.com 304 (Mumbai);
(vii) Toyo Engg. India Ltd. vs. JCTI 110 (2005) 5 SOT 616 (Mum.);
(viii) T and T Motors Ltd. v. Additional CIT (2015) 58 taxmann.com 295;
(ix) Saurashtra Cement and Chemical Industries Ltd. vs. CIT 213 ITR 523;
(x) Sutna Stone and Lime Co. Ltd. vs. CIT;
(xi) Tata Communications Ltd. v. JCIT (2015) 58 taxmann.com 295;
(xii) CIT, Delhi vs. Nav Sansar Agro Prodcuts (2017) 88 taxmann.com 480 (Delhi);
(xiii) Pr. CIT vs. Escorts Ltd. (2018) 98 taxmann.com 291 (Delhi);

The Mercantile system of accounting.

10. The Assessing Officer in his order dated 12/12/2019 contended that the appellant is following the mercantile system of accounting; hence the appellant should have made the provision interest expenditure in the books in the relevant years. In this regard it is submitted that though the appellant had followed the mercantile system of accounting, the provisions in the books could not be made as the appellant was locked in negotiation for waiver 1 reduction of interest with the lender company and the liability to pay the interest amount was not crystalized. Once the liability was crystalized during the FY 2016-] 7, the assessee has accounted for the interest liability in for of an unexceptional amount. In this connection, the appellant relies on the following cases:

(i) Commissioner of Income-tax- 10 v. Mahanagar Gas Ltd (2014) 42 taxmann.com 40 (Bombay);
(ii) Commissioner of Income-tax-I v. Indian Petrochemicals Corporation Ltd, (2016) 74 taxmann.com163 (Gujarat);

11. Ground No. 1.4 is that the Ld. CIT(A) erred in holding that the expenditure of Rs.33,65,13,449/- remain prior period expenditure despite correspondence between the appellant and the lender for waiver of interest.

11.1. In discussing Ground No. 1.2, it has been pointed out that due to negotiations between the appellant and the lender, the liability for interest remained inchoate and it crystallized on 13.06.2016. Therefore, it is argued that the expenditure is not prior period expenditure but a liability accrued in this year. Therefore, it is requested that it may be held that the liability pertains to this year and this is not a prior period expenditure. Thus, Ground No. 1.4 may be allowed.

12. Ground No. 1.6 is that the Ld. CIT(A) erred in sustaining the disallowance despite the fact that lender had already considered the income in their returns and paid taxes and thus there was no injury caused to the revenue.

12.1. The undisputed facts are that the lenders had accounted for interest on accrual basis as seen from paragraph no. 21 of the order of the Ld. CIT(A). It is inter-alia mentioned that the lenders have already accounted for as income the amount of interest due from the appellant in the respective years. In this regard, the appellant has furnished a certificate from the lender that the receipts due from the appellant have been treated as income by the lenders in their return of income. Therefore, there was no way that the lenders could have reduced the amount of interest due from the appellant. Thus, the lenders have paid tax on the impugned amount of Rs.33 ,65,13,449/-. On the other hand, the income of the appellant has been computed at a loss even after disallowance of the aforesaid amount. If this amount had been claimed in the respective years, the same would have been carried forward as loss. Therefore, there is no prejudice or injury caused to the revenue by claiming this amount in AY 2017-18. There is no implication of interest either. In such circumstances, the Ld. AO / Ld. CITCA) ought to have allowed the interest.

12.2. Reliance is placed on the decision of Delhi High Court in the case or CIT vs. Dinesh Kumar Goel, [2011] 331 ITR 10 (Delhi), in which it has been held that if there is no loss to the revenue, the department should not make much outcry for nothing. He further relied on the following decisions :-

- *(i) CIT vs. Nagri Mills Co. Ltd. (1958) 33 ITR 681;*
- *(ii) CIT vs. Vishnu Industrial Gases (P.) Ltd. in ITR No.229 of 1988 dated 6.5.2008;*
- *(iii) CIT vs. Vishnu Industrial Gases P. Ltd. in ITR No.229/1988 dated 06.05.2008; and*
- *(iv) CIT vs. Vee Gee Industrial Enterprises in ITA No.187 of 2014 dated 28.07.2015.*

12.5. Thus, it is argued that since there is no loss to the revenue in allowing this expenditure, the Ld. CIT(A) ought to have allowed the appeal of the appellant. Thus, it is requested that Ground No. 1.6 may be allowed.

13. Ground No. 1.7 is that the Ld. CIT(A) erred in not accepting the alternative plea that if the appeal of the appellant is not accepted, the expenditure may be allowed in A Ys 2015-

16 and AY 2016-17. In this connection, it is submitted that on the accounts of these years, clear notes were appended by the auditor about the quantum of interest and that it would be claimed in the year when negotiations come to an end. In such circumstances, the Ld. CIT(A) ought to have issued the direction after dismissing the appeal of the appellant that the amounts may be allowed in the respective years. There is no dispute about the admissibility of the expenditure and therefore, it is requested that in case the appeal is not allowed, a direction may be issued that the respective amounts may be allowed in the assessment of A Y s 2015-16 and 2016-17.

14. Thus, in result, it is requested that the appeal may be allowed."

7. On the other hand, ld. DR of the Revenue objected to the submissions of the ld. AR of the assessee and submitted that the loan was taken in the Financial Year 2010 and assessee was negotiating with the SREI Infrastructure Finance Ltd. (in short SREI) for reduction of interest and not complete waiver. From the record, it is clear that the interest rate was not reduced but assessee has not claimed any interest in the relevant assessment year. Therefore, he relied on the findings of the lower authorities.

8. Considered the rival submissions and material placed on record. We observed that assessee has taken loan from two parties and due to financial difficulties, it entered into negotiations with the SREI to scale down/waiver the interest. The ld. AR has brought to our notice various correspondence with the lender dated 30.03.2015 & 21.09.2015 and relevant response by the lender were placed on record. From the facts brought on record, we observe that assessee has sought reduction in interest from 12% to 8% along with

moratorium of two years. However, the lender has rejected the same and assessee has to book the relevant interest as per the liabilities. It is a fact on record that assessee must have booked the relevant interest in AYs 2015-16 & 2016-17. However, assessee has deferred the recording of expenses in those assessment years and recorded the total interest expenditure during the current assessment year and declared the interest expenditure relevant for AYs 2014-15 and 2015-16 as extra ordinary expenditure. The Assessing Officer and ld. CIT (A) disallowed the same by observing that the relevant expenditure claimed by the assessee is not relevant for the current assessment year and it can claim only in those relevant assessment years. After considering the factual matrix on record, we observed that assessee has declared loss of Rs.27.82 crores in AY 2015-16, loss of Rs.61.18 crores in AY 2016-17 and in current assessment year, before considering the exceptional item of interest claimed by the assessee, the loss declared was Rs.23.49 crores. From the above, it is clear that even the assessee may have claimed the above interest loss would have been increased and assessee would have carried forward the loss. From the financial positions and profitability declared in the financial statement, it shows that it has no tax effect. The lower authorities argued that assessee has followed the mercantile system and assessee should have booked the relevant information in the relevant financial year, however there would not be any tax impact

even assessee could have claimed the relevant expenditure in the relevant assessment year. In this regard, we rely on the decision of Hon'ble Delhi High Court in the case of CIT vs. Dinesh Kumar Goel (2011) 331 ITR 10 (Delhi) wherein it was held that if there is no loss to the Revenue, it cannot make much outcry for nothing. In this case, the above finding applies considering the factual matrix discussed above. Therefore, we are inclined to allow the claim of the assessee even though the assessee has sought for full waiver of interest even though it is not possible. However, the relevant liability was communicated to the assessee by the lender rejecting the proposals mooted by the assessee. Considering the peculiar facts in this case, we are inclined to allow the grounds raised by the assessee considering the fact that there is no loss to the Revenue. Accordingly, the appeal filed by the assessee is allowed.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 7TH day of February, 2025.

Sd/-	**sd/-**
(SUDHIR KUMAR)	**(S.RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 07.02.2025
TS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-23, New Delhi.
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI