

## **No accrual of income if its payment was deferred prior to closing of previous year**

**Summary – The High Court of Calcutta in a recent case of Nicco Corporation Ltd., (the Assessee) held that where trade mark and marketing assistance fee payable by a company to assessee was deferred by assessee prior to closing of accounting year, fee did not accrue in relevant year**

### **Facts**

- The assessee, a company, followed the mercantile system of accounting. Trade mark and marketing assistance fee was paid by Telelink Nicco to the assessee.
- The Assessing Officer found that the assessee did not credit the fee. As fee was receivable from Telelink Nicco, the Assessing Officer treated the income as accrued and added it to the income of the assessee.
- Appeal was preferred before the Commissioner (Appeals). The assessee succeeded.
- The revenue preferred appeal before the Tribunal. The Tribunal found that the assessee, a co-promoter of Telelink Nicco and Nicco Orissa had guaranteed loan from financial institutions apart from investing money by way of share capital and loan. On being approached for reschedulement of loan and interest, necessary conditions were imposed by the financial institutions for deferment of fee payable to the assessee. The Tribunal found that as the assessee had agreed to deferment of fee, the original agreement got modified which were ratified by a resolution of the Board. Since modification of the agreement rendered the amount as not due and as the genuineness of the modifications were not in doubt and was not an afterthought, the Tribunal held that for the relevant year nothing had accrued to the assessee for the purpose of taxation.
- On appeal:

### **Held**

- The principle of law which emerges is if it is found that the assessee had given up the amount even before the accounts were made up, the mere fact that the accounts of the assessee are maintained on mercantile basis cannot lead to a conclusion that the amount had accrued in the relevant assessment year. Hence, the actual or real accrual of income is the point in issue.
- In the case in hand, it appears from records that in its best interest the assessee had agreed for deferment of fees. Accordingly the original agreement was modified which was supported by a resolution of the Board. The genuineness of such modification is not in question as the Financial institution was a party to such modification. Therefore, as the accrual of income was deferred prior to the closing of the accounting year, which as evident from facts was for business expediency, and as the right to receive the fee was suspended, the Tribunal was justified in deleting the addition.