

Provision for payment of salary arrears not allowable if same hadn't crystallised during the year: ITAT

Summary – The Delhi ITAT in a recent case of Housing & Urban Development Corporation Ltd., (the Assessee) held that where assessee made provision for payment of arrears of salary on basis of revised pay scales approved by GOI in Sixth Pay Commission, since liability on account of payment of revised enhanced salary had not accrued and crystallized during relevant assessment year, impugned provision made on account of revised enhanced salary could not be allowed

Rule 8D is prospective in nature and was not applicable before assessment year 2008-09

Where assessee was following mercantile system of accounting in respect of all its receipts, assessee was not justified in adopting cash system of accounting selectively for certain receipts such as application fees, front end fees, administration fees etc., even if accounting policy was changed in pursuance of observation of audit party of Comptroller & Auditor General, (CAG) as statutory provisions under Act would prevail over any observation/objection/remark of audit party of CAG

Facts

- The assessee-company was a Public Sector Undertaking under Government of India. The assessee had claimed deduction on account of *ad hoc* provision of salary. This deduction was claimed by the assessee on account of provision for revision of pay in the books of account. This claim for deduction was made by the assessee in the light of Pay Revision Committee appointed by GOI the report of which was pending.
- The Assessing Officer disallowed this claim holding that the expenditure was purely a provision against unascertained liability and that this provision could not be claimed as expenditure. As per the recommendations of the central Sixth Pay Commission/Ministry of Finance etc it was decided that 60 per cent of arrears worked out on the implementation of Sixth Central Pay Commission was ordered by the Central Government to be paid in financial year 2008-09 relevant to assessment year 2009-10 and balance 40 per cent was ordered to be paid in financial year 2009-10 relevant to assessment year 2010-11.
- On appeal, the Commissioner (Appeals) also upheld the order of the Assessing Officers. observing that the liability on account of revision of pay in consequence of report of sixth central pay commission had not accrued and crystallized during relevant assessment year and, accordingly, the provision of such revision of pay was unascertained liability which was not eligible for deduction for the year under consideration.
- On second appeal:

Held

- In the instant case, the Pay Revision Committee had not completed its deliberations before end of financial year 2006-07 and was yet to submit its report at time when the financial year 2006-07

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came to an end. The question to be decided is whether any present liability has accrued against the assessee during the relevant financial year, *i.e.*, in 2006-07.

- In the facts of the case it has already noticed that the Pay Revision Committee had not completed its deliberations before the end of the financial year 2006-07 and was yet to submit its report at the time when the financial year 2006-07 came to an end; and furthermore, pay revision was finally implemented in pursuance of aforesaid Office Memorandum dated 26-11-2008 of Ministry of Heavy Industries & Public Enterprises. Under these facts and circumstances, liability for which deduction was claimed by the assessee on account of *ad hoc* provision for pay revision, had not accrued during the relevant financial year *i.e.* 2006-07 (Assessment year 2007-08). Merely because Pay Revision Committee was constituted during the year, it cannot be said that liability towards pay revision had accrued during the year, when one consider the facts that the Pay Revision Committee had not completed its deliberations before the end of the financial year 2006-07 and was yet to submit its report at the time when the financial year 2006-07 came to an end; and furthermore, the pay revision was finally implemented in pursuance of aforesaid Office Memorandum dated 26-11-2008 of Ministry of Heavy Industries & Public Enterprises. During financial year 2006-07 (Assessment year 2007-08), there was neither any statutory liability nor any legally enforceable liability against the assessee in respect of the assessee's claim for deduction for which was claimed by the assessee on account of *ad hoc* provision for pay revision. In fact, there was no such liability at all. Even if there was a liability, it was purely a contingent liability which is not deductible for income tax purposes.
- One has given anxious consideration to the submission made by the assessee that if this claim is not allowed in this year, it will cause hardship to the assessee because the aforesaid claim towards *ad hoc* provision on account of pay revision has not been claimed by the assessee in the subsequent years. Each previous year is a distinct unit of time for the purposes of assessment. The profits made; and the liabilities or losses made before or after the relevant previous year are immaterial in assessing income of a particular year; unless in accordance with proviso to section 4(1), there is statutory provision to contrary. The contention of the assessee that if this claim is not allowed in this year, it will cause hardship to the assessee because the aforesaid claim towards *ad hoc* provision on account of pay revision has not been claimed by the assessee in the subsequent years; does not merit any favourable consideration. A claim wrongly made by an assessee in an earlier year cannot be allowed in that year, merely because the assessee did not make the claim correctly in a subsequent year. During the pendency of a dispute as to the year in which a claim of the assessee is to be allowed; a prudent assessee can make the claim in other year(s), on protective basis, subject to final out come of such a dispute, by explaining such a protective claim in other year(s). The assessee, having failed to make protective claim in subsequent year(s) in which it was lawfully allowable, cannot force the claim in an earlier year in which it was not lawfully allowable. As the present appeal pertains to the assessment year 2007-08; by way of abundant caution, it is clarified, however, that presently decline to give any directions to revenue for any subsequent year; and that all questions of law, fact, and mixed questions are left open in case the assessee exercises.

- Therefore, in the facts and circumstances of this case, the impugned order of the Commissioner (Appeals) on this issue is confirmed sustaining the disallowance on account of *ad hoc* provision for pay revision.