

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “J”, MUMBAI**

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER)
AND
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)**

**I.T.A. No.2484/Mum/2022
(Assessment year 2018-19)**

Parle Biscuits Private Limited North level Crossing, Vile Parle (East), Mumbai-40 057 PAN :AAACP0485D	vs	Assessment Unit, Income Tax Department, National Faceless Assessment Centre, Ministry of Finance, Government of India Deputy Commissioner of Income- tax-2(3)(1), Mumbai Room NO.556, 5 th Floor, Aayakar Bhavan, Mumbai-400 020
APPELLANT		RESPONDENT

Assessee represented by	Shri Ketan Ved / Shri AK Jawadwala
Department represented by	Shri Samuel Pitta, Sr.AR

Date of hearing	21-06-2023
Date of pronouncement	30-06-2023

ORDER

PER : MS PADMAVATHY S. (AM)

This appeal is against the final order of assessment passed by the Assessment Unit, Income-tax Department dated 28/07/2022 for A.Y.2018-19 under section 143(3) read with section 143(3) read with section 144C(13) of the I.T. Act.

2. The assessee company was established in 1974 in Mumbai and is 100% subsidiary of Parle Products Pvt Ltd. The assessee manufactures wide range of biscuits,

confectionary, snacks and bakery products. During the year under consideration, the assessee has entered into various international transactions as listed below:-

Sr.No.	Type of Transactions	Name of the Associates Enterprises	Amount
1	Rendering of technical services	Antactic Biscuits Pvt Ltd	1,42,65,536/-
2	Interest on term loan	Antactic Biscuits Pvt Ltd	27,47,425/-
		Equator Foods Ghana Ltd	1,80,13,714/-
		Arctic Biscuits Pvt Ltd	3,47,50,000/-
3	Investment in equity shares	Oceanic Holdings Pte Ltd	11,74,99,550/-
4	Payment of share application money	Arctic Biscuits Pvt Ltd	2,58,02,787/-
5	Cost sharing	Oceanic Holdings Pte Ltd	11,72,06,400/-
		Arctic Biscuits Pvt Ltd	22,18,334/-
		Parlite Foods SARL	28,88,299/-
		Pardee Foods Nigeria Ltd	77,90,782/-
		Equator Foods Ghana Ltd	28,20,510/-
		Kilimanjaro Biscuits Ltd	14,42,253/-
		Esteem Foods Products LLC	19,36,881/-

The assessee filed the return of income for A.Y. 20/08/2019 on 29/03/2019, admitting an income of Rs.519,58,54,430/-. Since the assessee had international transaction as listed above, a reference was made to the TPO to compute the arm's length price in relation to the said international transaction. The TPO made the following adjustments:-

- | | |
|------------------------------------|-------------------|
| 1. Interest on accounts receivable | Rs. 5,32,605/- |
| 2. Interest on interest receivable | Rs. 1,79,28,615/- |

The Assessing Officer passed a draft assessment order incorporating the said TP adjustment. The Assessing Officer also made an addition of Rs.3,26,32,245/- being the amount which the assessee had declared as any other addition u/s.28 to 44DA in the tax audit report, failed to add the same in the income tax return filed. The Assessing Officer also made an addition of Rs.98,17,464/- under section 40(a)(ia).

Aggrieved, the assessee filed its objections before the DRP, who confirmed the TP addition and gave certain directions with regard to the other additions made by the Assessing Officer. The assessee is in appeal before the Tribunal against the final order of assessment passed by the Assessing Officer.

3. The assessee is contending the following issues through various grounds raised:-
- i. Charging of interest on accounts receivable and interest receivable from Associated Enterprises – Ground 1(1.1 to 1.4)
 - ii. Addition while computing total income under any other addition under sections 28 to 44 DA of the Act – Ground 2 (2.1 to 2.3)
 - iii. Additional claim of prior period expenses pertaining to A.Y. 2018-19 – Ground 3 (3.1 to 3.4)
 - iv. Penalty proceedings under section 270A of the Act – Ground 4 (4.1)

Ground no.1 (1.1. to 1.5)
Interest on receivable

4. The TPO noticed from records that the assessee has accounts receivable as on 31/03/2018 and required the assessee to furnish aging analysis of the receivables. The TPO on perusal of all the details furnished noticed that the assessee has not charged interest on the receivables though the same has been outstanding for more than 90 days. The TPO treated the receivable as a separate international transaction and stated that interest needs to be charged on the same. The TPO calculated the interest @5.5% based on the interest charged by the assessee on its AE on the loan transactions. Thus, the TPO made a TP adjustment of Rs.5,32,605/- as per below working:-

Description	Date of invoice	Currency	Amount receivable Outstanding as on 31/03.2018 (in Foreign Currency)	Amount receivables Outstanding as on 31.03.2018 (in INR)	No. of days outstanding for the FY 2017-18	Interest @5.5% (Amount in INR)
Technical Service Fees	30-12-2016	NPR	16,97,537	10,59,967	365	58290
Technical Service Fees	30-12-2016	NPR	15,69,643	9,80,108	365	53,900
Technical Service Fees	30-12-2016	NPR	9,94,819	6,21,179	265	34,165
Technical Service Fees	30-12-2016	NPR	14,51,382	9,06,264	365	49845
Technical Service Fees	31-03-2017	NPR	12,82,778	8,00,985	365	44054
Technical Service Fees	31-03-2017	NPR	13,59,512	8,48,899	365	46689
Technical Service Fees	31-03-2017	NPR	12,35,855	7,71,686	365	42443
Technical Service Fees	31-03-2017	NPR	10,54,579	6,58,495	365	36,217
Technical Service Fees	26-05-2017	NPR	6,52,500	4,07,430	309	18971
Technical Service Fees	26-0-2017	NPR	13,21,039	8,24,876	309	38408
Technical Service Fees	31-08-2017	NPR	17,23,859	10,76,403	212	34386
Technical Service Fees	31-08-2017	NPR	14,72,526	9,19,467	212	29373
					Total	5,32,605

5. The TPO while calculating interest excluded the receivables which were outstanding for a period less than 90 days. The assessee objected to the levy of interest before the DRP by stating that –

- (i) Benchmarking of outstanding receivable amounts to re-characterization of the same as a loan which is not correct
- (ii) Charging of notional interest on receivable is equal to hypothetical income and not real income.
- (iii) There are entity specific reason for delay in realization of account receivable.

Further, the assessee submitted a revised working before the DRP as given below wherein the assessee pleaded that the credit period of 90 days has not been considered by the TPO and the same should be applied for receivables outstanding for more than 90 days.

Date of invoice (A)	Due Date post credit period of 90 days (as provided by the Learned TPO)	Amount receivable Outstanding as on 31.03.2018 (in Foreign Currency)	Amount receivable Outstanding as on 31.03.2018 (in INR)	No. of days outstanding for FY 2017-18 considered by the Learned TPO [31 March 2018 -A]	No. of days outstanding for FY 2017-18 post considering 90 days credit period [31 March 2018 -B]	Actual interest @5.5% considering credit period of 90 days
31-03-2017	29-Jun-17	13,35,110	8,33,662	365	275	3,545
31-03-2017	29-Jun-17	12,82,778	8,00,985	365	275	33,191
31-03-2017	29-Jun-17	13,59,512	8,48,899	365	275	35,176
31-03-2017	29-Jun-17	12,35,512	7,71,686	365	275	31,977
31-03-2017	24-Aug-17	10,54,579	6,58,495	365	275	27,286
26-05-2017	24-Aug-17	6,52,500	4,07,430	309	219	13,445

26-05-2017	29-Nov-17	13,21,039	8,24,876	309	219	27,220
31-08-2017	29-Nov-17	17,23,859	10,76,403	212	122	19,788
31-08-2017	29-Aug-17	14,72,526	9,19,467	212	122	16,903
					Total	2,39,535

The DRP did not accept the submission of the assessee with regard to the accounts receivable being not an international transaction and that the interest being a hypothetical income. With regard to the entity specific submissions made by the assessee, the DRP held that –

“6.3.8 Further, the assessee has argued that most of the money receivables are from Nepal. That, Nepal has typical laws in this regard. That's why, the receivables are not being insisted upon. Even if that is so, no exception can be made for the assessee, as in that situation party-wise reasons can be made for the assessee, as in that situation, party-wise reasons can be forwarded in many cases. It shall be difficult to enter in to the business rationale of the transactions made and take separate decisions accordingly on a stand-alone basis. Lastly, the assessee has pleaded that the interest receivable can not be termed as an International transaction and therefore, no interest should be charged on the same. In fact, the contrary is true. There is no doubt that the assessee itself is charging interest on money advanced or money receivable. Interest is always charged with reference to a time period. So, logically speaking, if the interest is not being paid in time, further interest should be charged on the same In any case, the interest receivable also, finally speaking income receivable only and there is no particular reason why it should be differentiated from a trade receivable. The assessee has cited specific reasons party-wise for not receiving interest in time. The reasons given are general in nature and no cognizance can be taken of them at this level. The assessee could also have been wiser in pursuing its claims or informing the AEs about the TP normals and guinelines.”

6. The Ld.AR with regard to the interest charged on receivables reiterated the submissions made before the lower authorities. Without prejudice, the Ld.AR submitted that the TPO while arriving at the interest had not considered invoices

outstanding for less than 90 days which would mean that he has considered the credit period of 90 days. However, while calculating the interest on receivables outstanding for more than 90 days, the TPO did not consider the credit period of 90 days. It is, therefore, prayed by the Ld.AR that the credit period of 90 days should be allowed while computing the interest on receivables.

7. The Ld.DR submitted that the delay in receivables could mean that the AE is enjoying the liquidity benefits given by the assessee. The Ld.DR further submitted that the delay or the credit period is an important factor for price determination. The Ld DR also submitted that as per the agreement, the assessee has not given any credit period to the AE therefore the assessing is not entitled for any credit period. The Ld DR also pointed out that receivable out standing as of 31.03,2017, the TPO has considered only 365 days for calculating interest and therefore no further credit period should be allowed for these invoices.

8. We heard the parties and perused the material on record. It is a settled position now that interest on delayed receivables is a separate international transaction and has to be benchmarked accordingly. The Assessing Officer in the present case has applied a rate of 5.5% benchmarking the transaction against the rate at which the assessee is charging interest on the loan transactions with the AE. With regard to the submission of allowing credit period of 90 days, we notice that the TPO has excluded the receivables outstanding of a period of less than 90 days while arriving at the adjustment towards interest on delayed receivables which would mean that the TPO has allowed the credit period of 90 days. However while calculating the interest for receivable outstanding for more than 90 days, the TPO has taken the entire period of outstanding without allowing any credit period. We, therefore, see merit in the submission of the Ld.AR that there

should be uniformity in the stand taken by the TPO and accordingly credit period of 90 days should be applied while arriving at the interest on delayed receives on outstanding for more than 90 days. Accordingly, we direct the TPO / AO to revise the interest working after taking into consideration the credit period of 90 days as has been allowed in the case of invoices outstanding for less than 90 days. Needless to say that the assessee be given an opportunity of being heard. It is ordered accordingly.

Interest on interest outstanding/interest receivable

9. During the course of TP proceedings, the TPO noticed that the assessee has given loans to its AE and has been charging interest @5.5%. The TP further noticed that the outstanding interest receivables from AEs is as per details given below:-

AEs	Interest receivable - in INR
Arctic Biscuits	34,54,098
Parlite Foods	75,60,565
Equator Foods	18,82,50,255
Antarctic Biscuits	1,27,14,832

10. The Assessing Officer treated the interest receivable as a separate international transaction and accordingly charged interest as given below - The working of interest as has been done by the TPO extracted below:-

Arctic Biscuits Pvt. Ltd						
Description of transaction	Date of invoice	Currency	Net amount (In Foreign Currency)	Net amount (in INR)	No. of days outstanding for the FY 2017-18	Interest @5.5%
Loan interest	31-03-2004	USD	501	32,484	365	1787
Loan interest	31-03-2005	USD	5,553	3,60,049	365	19803
Loan	31-03-	USD	5902	3,82,677	365	21047

interest	2006					
Loan interest	31-03-2007	USD	5902	3,82,702	365	21049
Loan interest	31-03-2008	USD	5902	3,82,702	365	21049
Loan interest	31-03-2009	USD	5902	3,82,702	365	21049
Loan interest	31-03-2010	USD	5902	3,82,702	365	21049
Loan interest	Loan interest	USD	5902	3,82,702	365	21049
Total (A)						1,89,978

PARLITE FOODS SARL						
Description of transaction	Date of invoice	Currency	Net amount (In Foreign Currency)	Net amount (in INR)	No. of days outstanding for the FY 2017-18	Interest @5.5%
Loan interest	31/03/2010	EUR	93,778	75,60,565	365	415831
Total (B)						4,15,831

ANTARCTIC BISCUIT PVT LTD						
Description of transaction	Date of invoice	Currency	Net amount (In Foreign Currency)	Net amount (in INR)	No. of days outstanding for the FY 2017-18	Interest @5.5%
Loan interest	31/03/2013	NPR	29,16,974	18,21,402	365	100177
Loan interest	31/03/2014	NPR	28,95,682	18,08,106	365	99446
Loan interest	31/03/2015	NPR	33,30,137	20,79,388	365	128442
Loan interest	31/03/2016	NPR	37,40,000	23,35,312	365	128442
Loan interest	31/03/2017	NPR	37,40,000	23,35,312	265	128442
Total (B)						5,70,873

EQUATOR FOODS GHANA LTD							
Descri ption of transac tion	Date of invoice	Currency	Net amount (In Foreign Currency)	Net amount (in INR)	No. of days outstandi ng for the FY 2017- 18	Interest @10% Amount in INR)	
Loan interest	31-03-12	USD	1,07,585	69,97,750	365	699775	
Loan interest	31-03-13	USD	4,52,186	2,94,12,051	365	2941205	
Loan interest	31-03-14	USD	5,61,200	3,65,02,749	365	3649186	
Loan interest	31-03-15	USD	5,61,200	3,65,02,749	365	36502749	
Loan interest	31-03-16	USD	5,61,032	3,64,91,859	365	3649186	
Loan interest	31-03-17	USD	3,96,200	2,57,70,480	365	277048	
					Total (D)	1,71,67,764	
		G.Total (A+B+C+D)					1,79,28,615

11. The assessee contended before the DRP that interest on interest receivable is not a separate international transaction and that the interest is a hypothetical income not real income. Besides, the assessee also submitted entities specific reasons for the delay in interest receivable:-

Arctic Biscuits

Arctic Biscuits is based out of Bangladesh. As per the jurisdiction specific regulations, the entity is required to take an approval from the local regulatory authority for taking any foreign currency loan and its repayment. However, during the time obtaining the loan from PBPL, Arctic could not obtain the local regulatory approval.

Accordingly, at the time of repayment of the loan (along with interest), the repayment could not be undertaken as the approval (at the time of taking loan) was not in place.

In addition to above, the assessee submits that the said entity is a subsidiary of PBPL and has been loss making over the years. Arctic Biscuits has operating loss of TAKA 27,058,369 during FY 2017-18 and TAKA 37,202,479 during FY 2016-17. The same can be seen from the snapshot of the financials of Arctic Biscuits for FY 2017-18:

Arctic Biscuits Pvt. Ltd.
Statement of Profit or Loss and Other Comprehensive Income
For the year ended 31 March 2018

<u>Particulars</u>	<u>Notes</u>	<u>Amount in Takka</u>	
		<u>2017-2018</u>	<u>2016-17</u>
<u>Income</u>			
<u>Income</u>			
Sales- net of VAT		2,347,992	90,106,353
		2,347,992	90,106,353
		=====	=====
<u>Less : Expenditure</u>			
Cost of materials 15		4,864,310	66,687,003
Manufacturing Expenses 16		4,441,020	7,454,038
Admin & Selling expenses 17		4,677,064	31,398,794
Employee benefits expenses 18		7,456,004	31,398,794
Destroy of packing material		5,683,11	-
Depreciation and amortization Sch A&Sch.B		2,284,852	2,543,057
		29,406,361	127,308,832
		=====	=====
Operating loss for the year		(27,058,369)	(37,202,479)
		=====	=====

Further, the assessee also submits the snapshot of the Balance sheet of Arctic Biscuits for FY 2017-18, which shows that Arctic Biscuits had accumulated losses of TAKA 263,701,887 and TAKA 235,616,183 during FY 2017-18 and FY 2016-17 respectively.

SHAREHOLDER'S EQUITY AND LIABILITIES

Shareholder's equity

Share capital

11

190,000,000

150,000,000

32,047,454

40,050,618

Share money deposit

(263,701,887)

(235,616,183)

Share money deposit

Total shareholder's equity

(41,654,433)

(5,565,565)

In spite of the above financial position of Arctic Biscuits, PBPL has diligently charged interest from Arctic Biscuits on year on year basis. However, due to the above financial position of Arctic Biscuits, it was not in the position to pay interest and hence the same appeared as outstanding during FY 2017-18.

Parlite Foods

The interest from said entity is outstanding since there was an ongoing dispute between Parlite Foods and PBPL on the period that has to be considered from when the interest is due. Accordingly, the said interest is outstanding as on 31 March 2018.

However, the assessee submits that the amount has been paid in future once the dispute was resolved.

Equator Foods

Equator Foods was in its initial years of operation and had taken loan from PBPL for its business operations. Further, during the initial years, it was making losses. However, over the years, when the financial position of Equator Foods improved (i.e. since FY 2015-16), the entity started repaying its principal amount to PBPL. In the subsequent years, PBPL has received the entire amount of principal and hence it is proved that the intention of PBPL was not to provide interest free loan. PBPL provided the loan in order to support its subsidiary during the initial years of its operations.

Antarctic Biscuits

The said entity is based out of Nepal. As per the jurisdiction specific regulations, the entity is required to take an approval from the Nepal Rastriya Bank (“NRB”) for taking any foreign currency loan and its repayment. However, Antarctic Biscuits could not take the approval before obtaining the loan from PBPL.

At the time of repayment of the loan along with interest, the repayment could not be undertaken as the approval (at the time of taking loan) was not in place. Thus, subsequently Arctic Biscuits made application for loan and also an application for loan repayment. However, there was delay in receipt of the approvals from NRB due to which Antarctic could not proceed with the payment to PBPL as on 31 March 2018.

The assessee also submits below snapshots of the communication with AE, which shows that while AE had filed an application the same was lost by NRB, and hence the whole procedure of obtaining approval from NRB for repayment of loan was delayed.

*From: Poorcm S. Negi
To: “Santosh” <santosh@trunco.com.np>
Date: Tuesday, May 28, 2019 01: 57PM
Subject: Re: ; Application for Interest on Loan*

With reference to Application filed on 19.06.2014 towards obtaining approval for repayment of loan amount and interest on loan to Parle Biscuits Pvt. Ltd.. we were waiting for approval from NRD sine long time and we were waiting under impression that it is likely to be received within one or two months, but now we are informed by Mr. Vimal that our submitted file has been lost at NRB and we will have to initiate whole process again from beginning,

*I have seen asked about **status** of approval from our corporate office regularly and I have extended time line for obtaining approval according to feedback received from your side. Now I do not understand how I would inform to our senior management that after wasting for approval from more than five years, we will have to start all the processes again from beginning,*

Kindly advise me,

Prom:

*From: Poorcm S. Negi
To: Glenn M. Fonseca / Finance / Mumbai / PARLE@PARLE
Cc : antarcticnp@gmail.com, Hardevsinh H. Jadeja/Finance/Bhuj/PARLE@PARLE,
Maria R. Iyer/Finance/Mumbai/PARLE@PARLE*

Date: Tuesday, July 16, 2020 04:27 PM
Subject: Fw:RE:Confirmation of Loan from Parle India
History : #This message has been replied to and forwarded.

Dear Mr, Glenn

As you are aware that M/s Antarctic Biscuit Pvt. Ltd borrowed NPR 8.00 Crore loan amount from M/s Parle Biscuits Pvt Ltd. and loan amount remitted to Nepal on the basis of duly approved loan agreement from Department of Industries Nepal (copy attached), We were in process to get approved loan disbursement transaction from Nepal Rashtriya Bank which need complied to obtain repayment of loan principle and due interest amount, we could obtain this after three year of effort through T.R. & Company, on the basis of obtained approval now we can apply for repayment of principle and due interest @ prescribed rate by NRB.

*From: Santoh Lamichhane <santosh lamichane@pkf.com.np>
Sent: Monday, February 10, 2020 3:55 PM
To: Pooran S Negi' <pooran_negi@parle.biz>
Cc: TR Upadhyay' trupadhyay964@gmail.com
Subject: Confirmation of Loan from Parle India*

*Dear Negi Ji,
Finally after effort of 3 years we succeed in getting the loan approval letter from NRB asAttached.*

12. Thus the assessee submitted that the interest receivable from AEs cannot be termed as an international transaction, notional interest on interest receivables is equal to hypothetical income and not real income and there are entity specific reasons for the AEs for the outstanding interest receivables. Considering the said submissions the assessee prayed before the DRP that no interest should be levied on the interest receivables from the AEs as on 31 March 2018. The DRP after considering the submissions upheld the charging of interest by the TPO.

13. The Ld.AR submitted that as per the loan agreements (pages 305 & 330 of the paper book), there is no clause to charge interest on interest receivables. The Ld.AR further submitted that there are specific entity-wise reasons for the interest to be outstanding which have not been considered by the lower authorities. The Ld.AR further objected to treating the interest on interest receivables as a separate international transaction and charging of interest on the same would result in re-characterising the same as loan.

14. The Ld.DR, on the other hand, submitted that there has been an inordinate delay in the interest receivable and, therefore, the AEs are benefitted by not making the payment of interest which needs to be compensated. The Ld.DR further submitted that in a similar circumstances, the third party would have definitely charged interest on the interest outstanding. The Ld.DR also submitted that the TPO has correctly benchmarked the transaction separately and has applied the same rate of interest as has been applied by the assessee while lending the loan to its AE.

15. We heard the parties and perused the material on record. It is noticed that the assessee is charging interest @5.5% as per the terms of agreement with its AE. It is also noticed that the interest has been provided as receivable in the books of account of the assessee, but the same has been outstanding for a long time, i.e. more than 14 years in certain cases. The assessee contending charging of interest on interest receivables on 3 grounds, namely, the said transaction is not a separate international transaction; the interest is a notional income and that there are entity specific reasons for the delay; and on perusal of entity specific reasons. We notice that the loss is incurred by the AEs has been quoted as the main reason for delay in interest payment. In the case of Equator Food Ghana Limited from which major portion of the interest is outstanding, the

assessee submitted that the said entity was making losses and that the entity started repaying once the financial position improved. However, the assessee did not provide any details before the lower authorities to substantiate the said submissions. Further we notice that the assessee has also not shared any evidence or efforts made towards recovery of the interest amount. We, therefore, see merit in the argument of the Ld.DR that the assessee has not properly substantiated the reasons for delay in interest receivables which has resulted in improving the liquidity position of the AE and that the assessee needs to be compensated accordingly. The Ld.AR during the course of hearing argued that there is no provision to charge interest on interest since as per the loan agreement there are only interest terms agreed with the AEs. In our considered view, this contention cannot be accepted since in a transfer pricing transaction what needs to be looked into is that in an uncontrolled similar transaction whether the third party would charge such interest or not. The interest on a loan is a compensation received towards the utilisation of funds given by the assessee to its AE and the interest element on the said loan if not paid improves the liquidity position of the AEs and become part and parcel of the said loan transaction. Therefore, we see no infirmity in the action of the TPO in treating the interest receivable as a loan outstanding and charging interest on the same accordingly. In view of this discussion, we confirm the TP adjustment made and dismiss the ground raised by the assessee.

Ground No.2 (2.1 to 2.3)

16. The Ld.AR in this regard submitted that the AO while passing the final assessment order did not give effect to the directions of the DRP. The Ld.AR submitted that during the year under consideration, the assessee has made an addition of Rs.3,26,32,245/- while computing the total income as “any other addition u/s 28 to 44DA of the Act” . The assessee in the ITR form, Srl No.A(23) of the Schedule BP –

Computation of Income from business or profession had disallowed a sum of Rs.4,02,57,245/- includes the above sum and also donation of Rs.76,25,000/-. The Ld DRP after considering submissions of the assessee had given following directions:-

“7.3 Discussions and Directions of DRP

We have carefully considered the rival contentions on the above objection. The assessee has contended that this addition is actually a double addition. That, this amount is included in the amount of Rs 4,02,57,2457- which is shown in the ITR form at Sr no A(23). The amount of Rs 4.02.57.245/ includes this amount of Rs 3,26,32,2457- as well as a donation of Rs 76,25,000/-. That, the AO has added it without giving any opportunity to the assessee. The assessee has stated that the amount of Rs 3,26,32,2457- has already been added to the total income in the ITR form at Sr No A (23) of the Schedule BP- Computation of Income from Business or Profession. These being the facts of the matter, this objection of the assessee is being allowed, subject to the AO verifying the ROI and the annexures.”

17. However, in the final assessment order, it is noticed that the Assessing Officer had retained the disallowance without any detailed discussion on the directions of the DRP. We, in this regard direct the Assessing Officer to verify the submissions of the assessee in this regard and allow the claim in accordance with law.

Ground No.3

Prior period expenses

18. Before the DRP the assessee made additional claim booked and adjusted to the retained earnings as prior period expenses in assessment year 2019-20 (Rs.1,33,10,398) and 2020-21 (Rs.35,06,501). The relevant submission of the assessee is reproduced as under

"ix. Factual and legal arguments for claim of prior period expenses pertaining to assessment year 2018-19

- 1) *The financial statements of the assessee have been prepared in accordance with the Indian Accounting Standards (IndAS) as per the Companies (Indian Accounting Standards) Rules, 2015 notified under section 133 of the Companies Act, 2013. As per IndAS, prior period income/ expense is required to be booked in the year to which such income/ expense pertains. Therefore, the effect for the prior period income/ expense is not credited/debited to the profit and loss account of the year in which the same is realized and the same is routed through retained earnings.*
- 2) *The assessee submits that the prior period expenses amounting to Rs. 1,68,16,899 (Rs. 1,33,10,398 + Rs. 35,06,501), pertaining to assessment year 2018-19 was accounted and adjusted in the retained earnings of assessment years 2019-20 and 2020-21, while preparing the return of income for assessment years 2019-20 and 2020-21, the aforesaid expenses came to the knowledge of the assessee. Since, the expenses were pertaining to assessment year 2018-19, the said expenses were not claimed as deduction in assessment years 2019-20 and 2020-21. As the time limit for filing the revised return of income has expired, the assessee was not in a position to claim the said expenses in the original or revised return of income for assessment year 2018-19.*
- 3) *The assessee submits that it had inadvertently missed to upload the claim of prior period expenses on the e-filing portal at the time of making submissions during the assessment proceedings. The assessee submits that the failure to raise the claim at the time of assessment proceedings was neither deliberate nor contumacious and is therefore, essential to be adjudicated in the interest of justice. Accordingly, the assessee has now filed an additional claim before the Hon'ble Panel to claim the deduction of the said expenditure as the same pertains to assessment year 2018-19 and is revenue in nature.*
- 4) *The assessee submits that as the effect for the prior period income/expense is not credited/ debited to the profit and loss account of the year in which the same is realized and the same is routed through retained earnings, the same is reflected under statement of changes in equity of notes to financial statements of assessment years 2019-20 and 2020-21.*
- 5) *As per statement of changes in equity forming part of notes to financial statements of assessment year 2019-20, an adjustment for the net of prior period expense of Rs. 1,93,69,580 is made in the retained earnings. The net amount of prior period expense of Rs. 1,93,69,580 consists of income aggregating to INR 26,64,680 and expenses aggregating to INR 2,20,34,260 pertaining to earlier assessment years which were recognised in assessment year 2019-20. A copy of the extract of the financial statements as at 31 March 2019 is enclosed herewith at page 686 in the paper book volume IV.*
- 6) *The assessee company submits that prior period income of INR 26,64,680 pertaining to assessment year 2018-19 has been offered to tax in assessment year 2019-20. Out of the total prior period expenses of INR 2,20,34,260, tax was deducted and paid in the*

assessment year 2019-20 on the expenses aggregating to INR 47,92,159. Since, the tax been deducted and paid on these expenses in assessment year 2019-20, the same was claimed deduction in assessment year 2019-20. No deduction was claimed in relation to the balance prior period expense of INR 1,72,42,101 (INR 2,20,34,260 less INR 47,91,159). A copy of the statement of computation of income of assessment year 2019-20 is enclosed herewith at pages 687 to 711 in the paper book volume IV.

7) Out of the balance prior period expenses of INR 1,72,42,101 recognised in assessment year 2019-20, expenses to the extent of INR 1,33,10,398 are pertaining to assessment year 2018-19.

8) Similarly, as per statement of changes in equity forming part of notes to financial statements of assessment year 2020-21, an adjustment for the prior period expense of Rs. 1,66,15,439 is made in the retained earnings. The said expenses aggregating to INR 1,66,15,439, pertaining to earlier assessment years were recognised in assessment year 2020-21. A copy of the extract of the financial statements as at 31 March 2020 is enclosed herewith at page 712 in the paper book volume IV.

9) Out of the total prior period expenses of INR 1,66,15,439, tax was deducted and paid in the current AY 2020-21 on the expenses aggregating to INR 26,60,360. Since, the tax been deducted and paid on these expenses in AY 2020-21, the same was claimed as deduction only in AY 2020-21. No deduction was claimed in relation to the balance prior period expense of INR 1,39,55,079 (INR 1,66,15,439 less INR 26,60,360), A copy of the statement of computation of income of assessment year 2020-21 is enclosed herewith at pages 713 to 734 in the paper book volume IV.

10) Out of the balance prior period expenses of INR 1,39,55,079 recognised in assessment year 2020-21, expenses to the extent of INR 35,06,501 are pertaining to assessment year 2018-19.

11) The details of the said expenses are provided below:

Particulars	Amount(Rs)	Amount(Rs)
<i>Expenses booked in assessment year 2019-20</i>		
<i>Administration Charges of Provident Fund</i>	211	
<i>Contribution to Provident Fund Pension Scheme</i>	2,703	
<i>Contribution to ESIC</i>	1,522	
<i>Contribution to Provident Fund</i>	1,192	
<i>Excise expense</i>	59,988	
<i>Legal and professional expense</i>	5,32,531	
<i>Other general expense</i>	17,500	
<i>Sales incentive</i>	8,783	

<i>Travel expense</i>	75,48,826	
<i>VAT/CST expense</i>	1,68,779	
<i>Discount / refund on account of shortage and damage of goods supplied given at the time of settlement of sales invoice</i>	49,68,363	1,33,10,398
<i>Expenses booked in assement year 2020-21</i>		
<i>Contractor wages</i>	21,21,578	
<i>Water charges</i>	42,000	
<i>Annual Maintenance charges</i>	49,459	
<i>Travel and conveyance expense</i>	34,798	
<i>General repairs</i>	18,842	
<i>Electricity charges</i>	4,49,231	
<i>Consumption-stores and spares</i>	12,769	
<i>Building repairs</i>	3,26,624	
<i>Consultancy charges</i>	4,60,200	35,06,501
Total		1,68,16,899

12) *The assessee submits that since the expenses of Rs.1,68,16,899 are revenue in nature, the same should be allowed as deduction in assessment year 2018-19.*”

19. Before the DRP, the assessee also submitted additional evidence to substantiate the various prior period expenses. The DRP, after considering the submissions o the assessee held that –

8.2.1 We have carefully considered the rival contentions on this issue. The assessee has also filed additional evidence during the course of proceedings which are nothing but a write-up on Prior Period Expenses claimed. The same were uploaded on the system for the remand report or counter-comments from the Faceless Assessing Officer. However, despite lapse of a considerable period of time, there has been no response from the Faceless Assessing Officer. As such, the DRP has gone ahead with the hearing .We have also considered the additional evidence/ additional submissions made. We admit them .

8.2.2 We find that there were certain expenditure totalling to Rs 1,68,16,6997- which pertained to actually AY 18-19. However, they were adjusted in the retained earnings AY 19-20 and 20-21. However, since they pertained to AY 18-19, they were obviously not claimed in AY 19-20 and 20-21. Now, the assessee wants to claim the same. The "Panel wanted to know the reasons why they could not be booked in AY 18-19 and in fact, why some of it had to wait for to be booked in AY 20-21 also! After all, mercantile system allows the assessee to book all such expenses which arise even if all the documentation is not complete by the stipulated time. There is no doubt that prior-period expenses can

indeed be claimed in appropriate cases . However, we find that the specific reasons could not immediately be provided by the assessee explaining the lack of knowledge about these expenses. The expenses range from VAT/CST expenses, discount / refund on account of shortage"; legal professional expenses, contractors wages, to electricity charges, building repairs and consultancy charges etc . As a concept, prior period expenses are allowable provide the assessee furnishes satisfactory reasons for not claiming it in the relevant year but in a subsequent year or years. Accordingly, the AO is directed to verify these claims and the reasons for their delayed claim and allow if found satisfactory. This objection is disposed off in these terms."

20. The Ld.AR submitted that the Assessing Officer did not consider the directions of the DRP and has retained the same income as in the draft assessment order.

21. We heard the parties and perused the material on record. We notice that the assessee has submitted additional evidences before the DRP and the DRP after perusing the details submitted, has given a clear direction to the AO to verify and allow the expenditure in accordance with law. However, the AO in the final assessment order did not consider the said directions of the DRP. We, therefore, remit the issue back to the AO with a direction to consider the evidences submitted and allow the claim of the assessee in accordance with law after giving a reasonable opportunity of being heard to the assessee.

22. Ground 4 is consequential not warranting any separate adjudication.

23. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 30/06/2023.

Sd/-

sd/-

(KULDIP SINGH)	(PADMAVATHY S)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 30th June, 2023

Pavanan

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

**Asstt. Registrar / Senior Private Secretary
ITAT, Mumbai**