

आयकर अपीलीय अधीकरण, न्यायपीठ – “A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
 (समक्ष)Before श्री ए. टी. वर्की, न्यायीक सदस्य एवं/and श्री एम .बालागणेश, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Shri M. Balaganesh, AM]

I.T.A. No. 2584/Kol/2013
Assessment Year: 2007-08

Deputy Commissioner of Income-tax Circle-5, Kolkata.	Vs.	The West Bengal Power Development Corporation Ltd., PAN:AABCT3027C
Appellant		Respondent

Date of Hearing	13.06.2017
Date of Pronouncement	03.08.2017
For the Appellant	Shri R. S. Biswas, CIT
For the Respondent	Shri S. K. Tulsiyan, Advocate

ORDER

Per Shri A.T.Varkey, JM

This is an appeal filed by the revenue against the order of Ld. CIT(A)-VI, Kolkata dated 30.08.2013 for AY 2007-08. The grounds of appeal raised by the revenue are as under:

“1. That on facts and in the circumstances, the CIT(A) erred in holding that the sundry debtors to be squared off against outstanding loan, though the assessee has not squared off the same in its books of account.

2. The CIT(A) erred in facts and in the circumstances in holding that liquidation of outstanding loan against sundry debtors without declaring the same as bad debt violating the basic principle of accounting.”

2. Both the aforesaid grounds raised by the revenue are against the deletion of Rs.2718,35,03,233/- made by the AO and, therefore, is being taken together. The assessee is engaged in generation of electricity. It had in the past received loan from Govt. of West Bengal out of it an amount of Rs.1536,61,94,000/- was outstanding as on 31.03.2007. Interest accrued thereon amounting to Rs.1181,73,09,233/-. The loan as well as the accrued

interest was shown as liability in the Balance Sheet for the preceding year. However, in the Balance Sheet as at 31.03.2007 the amount outstanding was shown as 'nil'. On being confronted by the AO, the assessee stated that the loan and accrued interest were adjusted with sundry debtors relating to sale of electricity to West Bengal State Electricity Board (hereinafter referred to as "WBSEB") as per Govt. of West Bengal order No.247/P/vi/5S-31/20019Pt dated 05.09.2007. Based on this fact, the AO reopened the assessment by issuing notice u/s. 148 of the Income-tax Act, 1961 (hereinafter referred to as the "Act") dated 31.03.2012. In the reassessment proceedings, the AO asked the assessee as to why liquidation of outstanding loan and accrued interest may not be treated as remission/cessation of liability and the taxed u/s. 41(1) of the Act. The assessee replied to the AO that the assessee being a power generating company has sold its entire electricity to WBSEB a different legal entity. The assessee was having outstanding dues from the WBSEB on account of sale of electricity to it. Simultaneously, the assessee was having liability towards State Government in respect of the loan and accrued interest thereon. It was brought to the knowledge of the AO that under the financial restructuring plan, the State Government agreed to discharge the liability owned by WBSEB towards Assessee Company. Consequently, the loan from the State Govt. along with interest was adjusted towards dues of the assessee from WBSEB. The AO did not accept the reply of the assessee and concluded that the adjustment of loan and accrued interest are remission/cessation of the assessee's liabilities towards State Govt. and made the addition. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the same. Aggrieved by the aforesaid decision of the Ld. CIT(A), the revenue is before us.

3. We have heard rival submissions and gone through facts and circumstances of the case. We note that the assessee company is a 100% Govt. of West Bengal undertaking and is exclusively engaged in the generation of power (electricity) in the State of West Bengal and run four power station units for generation of electricity namely (a) Kolaghat Thermal Power Project, (b) Bakreswar Thermal Power Project, (c) Santaldih Thermal Power Project and (d) Bandel Thermal Power Project. The assessee company used to generate power (electricity) and sold the same to WBSEB (which is a different legal entity). The

relationship between both the different entities is that of a seller and customer respectively being two separate juristic entities. The assessee company sold electricity to WBSEB and the entire sale was reflected in the P&L Account of the assessee company and outstanding dues on account of sale made to WBSEB were shown as sundry debtors. In the year under assessment, total sale made to WBSEB is to the tune of Rs.2608, 32, 30,877/- and opening balance of sundry debtors is Rs.3234, 17, 06,495/-. We note that the Govt. of West Bengal also provided loan to the assessee company against interest over the years which were duly accounted for and shown in the Balance Sheet of the assessee company. In the year under assessment opening balance of the said loan was to the tune of Rs.1536,94,000/- and balance of accrued interest amounting to Rs.1181,73,09,233/- which totals to Rs.2718,35,03,233/-. Under the financial restructuring plan, we note that the State Govt. had agreed to discharge the liability of WBSEB towards outstanding balance of sundry debtors lying due with the assessee and as such issued Govt. orders to the assessee company advising adjustment of balance of sundry debtors as stood in the name of WBSEB with the outstanding loan and interest amounting to Rs.2718,35,03,233/- which was payable to the Govt. of West Bengal by the assessee (vide order being No. 247-P/VI/5S-31/2001(Pt.) dated 05.09.2007) in the books of account for the FY 2006-07. Pursuant to the order of the State Govt. after taking approval of the Director Board and in terms of Accounting Standard AS4, the assessee made adjustment of outstanding dues respectively from WBSEB for sale of electricity amounting to Rs.2718,35,03,233/- against State Govt. loan and accrued interest thereon in the books of account which were reflected in the Balance Sheet for the year ended 31.03.2007. The said book adjustment made by the assessee company has been termed by the AO as cessation of liability and thereafter he invoked section 41(1) of the Act and made the addition which has been deleted by the Ld. CIT(A). We note that under the financial restructuring plan, the State Govt. agreed to discharge the liability owed by WBSEB towards Assessee Company. Consequently, the loan payable by assessee to State Govt. along with interest was adjusted towards dues towards the assessee from the WBSEB. This book adjustment made as per the order of the Govt. of West Bengal cannot be termed as a write off or cessation of liability. In the assessee's case, the loan and accrued interest

payable to State Govt. got extinguished as against the extinguishment of debit balance of an equal amount from its sundry debtors (WBSEB). By the Govt. order the State Govt. has cleared off the outstanding dues from WBSEB to the assessee and in turn the assessee cleared off the outstanding loan to State Govt. along with interest. However, it should be noted that no monetary transaction happened between the WBSEB and the assessee or between the assessee and the State Govt. It was merely a book entry, which was passed in the books of account to this effect. The assessee in its books reduced sundry debtors account by an amount of Rs.2718,35,03,233/- and the same amount was reduced from the account of the loan to the Govt. of West Bengal. The Ld. CIT(A) rightly noted that the net result is as if the assessee received payment from sundry debtors and the assessee passed on the same to the Govt. which reflected as loan and its interest as liability. Therefore, the Ld. CIT(A) has rightly observed that this arrangement cannot be considered as write off of loan in the books of the assessee and it was solely an adjustment of liability with debt due to it from WBSEB. Therefore, we do not find any infirmity in the order passed by the Ld. CIT(A). However, we would like to observe that the Ld. CIT(A) has taken an alternate view also in para 7 of the impugned order which we do not subscribe to. However, we uphold the view taken by the Ld. CIT(A) to delete the addition as per the reason stated in para 5 of the impugned order. We uphold the order of the Ld. CIT(A) as stated in para 5 of the impugned order. With this observation, we dismiss the appeal of the revenue.

4. In the result, appeal of revenue is dismissed.

Order is pronounced in the open court on 03.08.2017

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 3rd August, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – DCIT, Circle-5, Kolkata.
2. Respondent – The West Bengal Power Development Corporation Ltd.,
Bidyut Unnayan Bhawan, 3/C, LA-Block, Sector-III, Salt Lake City,
Kolkata-700098.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Sr. Pvt. Secretary