



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.122/CTK/2015
Assessment Year : 2011-2012

ACIT, Circle -1(1), Cuttack	Vs.	Paradip Port Trust, At: Paradeep, Jagatsinghpur
PAN/GIR No.AAALP 0055 A		
(Appellant)	..	(Respondent)

Assessee by : Shri J.M.Patnaik, AR
Revenue by : Shri Kunal Singh, CIT DR

Date of Hearing : 05/10/ 2017
Date of Pronouncement : 10 /10/ 2017

ORDER

Per N.S.Saini, AM

This is an appeal filed by the Revenue against the order of the CIT(A)- Cuttack, dated 29.12.2014 for the assessment year 2011-12.

2. In Ground No.1 of the appeal, the grievance of the Revenue is that the CIT(A) was not justified in deleting the various additions made for Rs.3,65,15,77,786/- under the head "provisions for accrued expenses" on the ground that there is no change in the nature of such claim of current liabilities in the balance sheet.

2. The brief facts of the case are that the Assessing Officer found that the assessee had shown in the current liabilities an amount of



Rs.3,65,15,77,786/- for the assessment year 2011-12 for accrued expenses. Before the Assessing Officer, the assessee furnished the details of accrued expenses as under:

Details of accrued expenses as on 31.3.2011

Sr. No	particulars	Op.balance as on 31.3.10	Provision for 2010-11	Payment made during 10-11	Bal. as on 31.3.11
1.	Police exp.	32,47,940.79	-	-	32,47,940.79
2.	Audit fee	80,00,000.00	40,00,000.00	40,00,000.00	80,00,000.00
3.	Payment to contractor	77,12,08,152.64	4,20,51,608.00	15,37,37,830.00	65,95,21,930.64
4.	Other charges	45,03,51,527.14	25,78,93,653.00	18,41,02,389.80	52,41,42,790.34
5.	Int. accrued on Govt. of India loan	229,97,23,247.20	-	-	229,97,23,247.20
6.	Int. liability on initial investment by GOI	15,48,11,418.00	21,30,459.00	-	15,69,41,877.00
	Total:	368,73,42,285.77	30,60,75,720.00	34,18,40,219.80	365,15,77,785.97

3. The Assessing Officer found that that no explanation was furnished by the assessee as to why the provisions were made. Therefore, in the absence of details, the Assessing Officer observed that the claim could not be verified and, therefore, he disallowed the amount and added the same to the income of the assessee.



4. Before the CIT(A), it was submitted by the assessee that the amounts being accrued expenses are purely current liabilities in nature. Out of the above, Rs.245 67 crores relate to interest liability on Govt, of India loan. The interest liability of Govt, of India loan was an ascertained liability and provisions of Section 43B would not be applicable in the case of the Govt, of India and as such the liability has not been claimed in the P & L A/c. Similarly the other current liability namely audit fees payable to the C & AG, amounts payable to contractors and other payments were also part of the current liabilities which were explained to the Assessing Officer. The assessee further submitted that the Learned CIT(A), in the appeal order in the case of the assessee for AY 2009-10 have verified such current liabilities and decided that the same were ascertained liabilities.

5. After considering the submission of the assessee, the CIT (A) held that the assessee submitted that the above amounts were in the nature of current liabilities and have furnished the details of the same. It was further submitted that there has been no provision claim for such liabilities in the P & L A/c. except for interest payable on initial investment of Govt, of Odisha and India amounting to Rs.21,30,459/- for the assessment year under consideration. In fact, the amount has been kept in the provision for a number of years from earlier period as the same was though ascertained have not yet been paid to the Govt, of



Odisha/India. The CIT(A) relying on the order of the CIT(A),Cuttack in the case of the assessee for AY 2009-10, where the CIT(A) had forwarded the details submitted by the assessee to the Assessing Officer for further verification and considering the remand report given by the Assessing Officer, considered the provisions for accrued expenses such as audit fees, payments to contractors, other charges, interest of Govt, of India loan and interest on initial investment of Govt, of India to be ascertained liabilities. He observed that there has been no change in the nature of such claim of current liabilities made by the assessee in the Balance Sheet. He, therefore found the same as ascertained liabilities and very much part of current liabilities and deleted the addition made by the Assessing Officer.

6. Before us, Id D.R. relied on the order of the Assessing Officer whereas Id A.R. of the assessee supported the order of the CIT(A).

7. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. The undisputed facts of the case are that the Assessing Officer disallowed the claim of the assessee on the ground that no details were furnished by the assessee to ascertain the actual liability and as to why the provisions were made.



8. On appeal, the CIT(A) deleted the addition following the decision of the CIT(A) in assessee's own case for the assessment year 2009-10, wherein, the CIT(A) based on the remand report of the Assessing Officer considered the provisions for accrued expenses such as audit fees, payments to contractors, other charges, interest of Government of India loan and interest on initial investment of Government of India to be ascertained liabilities and there was no change of facts in the assessment year under consideration.

9. Ld D.R. could not point out any specific mistake in the above findings of the CIT(A) except relying on the order of the Assessing Officer. Also the findings of the CIT(A) that the provisions for accrued expenses such as audit fees, payments to contractors, other charges, interest of Government of India loan and interest on initial investment of Government of India to be ascertained liabilities, were uncontroverted by Ld D.,R.

10. In view of above, we find no good reason to interfere with the order of the CIT(A), which is hereby confirmed and ground of appeal of the revenue is dismissed.



10. In Ground No.2 of the appeal, the grievance of the revenue is that the CIT(A) was not justified in deleting the addition made towards pension fund for Rs.2,94,94,640/-.

11. We find that this ground does not arise out of the order of the CIT(A) for the assessment year 2011-12. Hence, we dismiss this ground of appeal of the revenue.

12. In Ground No.3 of the appeal, the grievance of the Revenue is that the CIT(A) was not justified in deleting the addition of Rs.50 crores made by the Assessing Officer relying upon the ratio of decision by the ITAT for the assessment year 2007-08.

13. The Assessing Officer observed that Rs.50,00,00,000/- was created by the assessee but not credited to profit and loss account. He felt that the income earned/accrued on the investments on account of this fund should be considered as income of the assessee for the concerned financial year and added the same accordingly,

14. On appeal before the CIT(A), the assessee submitted that the fund was created as per the specific direction of the Government of India, the interest of which is to be utilised for the specific purpose of development



of the Port and not in connection with the regular operation of the business.

15. The CIT(A) deleted the addition made by the Assessing Officer considering the decision of this Bench of the Tribunal in assessee's own case for the assessment year 2007-08 in ITA No.99/ & 114/CTK/2011, wherein, it was held that the fund was created under the specific direction of the Government of India and the interest on funds is to be utilised for the development of Port, and, therefore, the interest income cannot be added to the revenue income of the assessee.

16. Before us, Id D.R. submitted that income from investment of this fund has been credited directly to the respective fund account and, therefore, the Assessing Officer was right in adding the same to the income of the assessee.

17. Ld A.R. of the assessee supported the order of the CIT(A).

18. After considering the rival submissions and perusing the materials available on record, we find that the CIT(A) while deleting the addition has followed the decision of the Cuttack Bench of the Tribunal in assessee's case for the assessment year 2007-08 (supra). No good reasons could be shown by Id D.R. as to why the order of the Tribunal for assessment year 2007-08 in the case of the assessee itself should not have been followed by the CIT(A). Therefore, we find no good reason to



interfere with the order of the CIT(A), which is hereby confirmed and ground of revenue is dismissed.

19. Ground No.4 of the appeal reads as under:

"In the facts and circumstances of the case, the CIT(A) is not justified in directing the AO to allow depreciation at the higher rate @ 15% on railways and rolling stock treating the same as plant and machinery as against depreciation of 10% allowed in the impugned assessment order treating the same as "building"

20. The Assessing Officer observed that the assessee has claimed depreciation @15% on railways and rolling stock treating the same as a part of plant & machinery. The Assessing Officer further observed that the depreciation should be 10% as per the law and also noted that the A/R of the assessee accepted the same and submitted a revised chart claiming 10% of depreciation on the above. Accordingly, the Assessing Officer disallowed the excess depreciation claimed by the assessee and added an amount of Rs.11.20 crore to the income of the assessee.

21. Before the CIT(A), the assessee submitted that the fixed assets as above served some special purpose for the working of the port and therefore are considered as plant & machinery of the assessee. Reliance was placed on the decision of Hon'ble Apex Court in the case of CIT v. Dr. B.Venkata Rao (243 ITR 82).

22. The CIT(A) held that this Bench of the Tribunal in the case of the assessee for the AY 2007-08 (ITA No.99 & 114/CTK/2011) held that "The



assessee was denied of the higher rate of depreciation on the assets finding that they are not "plant & machinery". But as can be seen from the admitted facts and circumstances of the case, the fixed assets serve some special purpose of the working and thereby they are considered as "plant & machinery" in the working process of the assessee. This claim of the assessee is fortified by the decision of Hon'ble Supreme Court rendered in the case of *CIT v. Dr. B.Venkatrao* (243 ITR 82}, *CCI(Admn) v. Viswesarayya Iron & Steel Ltd.,Karnataka* (199 ITR 98} and *Kalinga Tubes Ltd. v. CIT* (96 ITR 20). In the light of the dictums stated supra, the assessee's claim is substantiated and hence found entitled to higher rate of depreciation at 15% on the fixed assets as claimed by the assessee." Following the decision of the Tribunal in assessee's own case for the assessment year 2007-08 (supra), the CIT(A) directed the Assessing Officer to allow deprecation @ 15% on railways and rolling stock.

23. Ld D.R. supported the order of the Assessing Officer whereas Id A.R. supported the order of the CIT(A).

24. After considering the rival submissions and perusing the orders of the lower authorities, we find that the CIT(A) has directed the Assessing Officer to allow depreciation @ 15% on the assets following the decision of this Tribunal in assessee's own case for the assessment year 2007-08(supra).



25. Before us, Id D.R. could not point out any specific mistake in the above quoted findings of the CIT(A). Therefore, we find no good reason to interfere with the order of the CIT(A), which is hereby confirmed and ground of appeal of revenue is dismissed.

26. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 10/10/2017.

Sd/-

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 10 /10/2017

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : ACIT, Circle -1(1), Cuttack
2. The Respondent. Paradip Port Trust, At:
Paradeep, Jagatsinghpur
3. The CIT(A)-Cuttack
4. Pr.CIT- Cuttack
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack