

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री जॉर्ज माथन, न्यायिक सदस्य एवं

श्री एस जयरामन, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.1917 & 2120/Chny/2015

निर्धारण वर्ष /Assessment Years: 2011-12 & 2012-13

The Dy. Commissioner of-
Income Tax,
Corporate Circle-2(2),
Room No.512, 5th Floor,
Wanaparthi Block, 121, M.G.Road,
Chennai-600 034.

Vs. M/s.Indian Potash Ltd.,
No.727, Ambal Building,
Anna Salai,
Chennai-600 006.

[PAN: AACCI 0888 H]

(अपीलार्थी/ **Appellant**)

(प्रत्यर्थी/ **Respondent**)

Department by	:	Mr.Sailendra Mamidi, Pr.CIT
Assessee by	:	Mr.R.Vijayaraghavan, Adv.
सुनवाई की तारीख/Date of Hearing	:	06.03.2018
घोषणा की तारीख / Date of Pronouncement	:	06.03.2018

आदेश / ORDER

PER GEORGE MATHAN, JUDICIAL MEMBER:

ITA No.1917/Chny/2015 is an appeal filed by the Revenue against the Order of Commissioner of Income Tax (Appeals)-6, Chennai, in ITA Nos.6 & 162/CIT(A)-6/2013-14 dated 30.03.2015 for the AY 2011-12 & ITA No.2120/Chny/2015 is an appeal filed by the Revenue against the Order of Commissioner of Income Tax (Appeals)-6, Chennai, in ITA No.87/CIT(A)-6/2015-16 dated 31.08.2015 for the AY 2012-13.

2. Shri Sailendra Mamidi, Pr.CIT, represented on behalf of the Revenue and Shri R.Vijayaraghavan, Adv., represented on behalf of the assessee.

3. It was submitted by the Ld.DR that the assessee is a company which is doing the business of importing Potash on behalf of the government and trading in the same, trading in non-potash fertilizers, trading in milk, manufacturing of cattle feed, poultry feed and trading in gold and silver. It was a submission that the assessee was importing and selling Potash on behalf of the government and the sale price was fixed by the government. It was a submission that the sale price was less than the cost incurred by the assessee. Consequently, the difference was paid by the government in the form of subsidy. The assessee had shown the subsidy as income and the same was shown as receivable from the government. On account of the shortage of funds, the government converted the receivable into fertilizer bonds. The said fertilizer bonds were subsequently, purchased by the government on expiry at less than the face value. It was a submission that the assessee had claimed the loss as Revenue loss. It was a submission that in the assessment the AO had treated the said loss as a Long Term Capital Gains loss. The AO had treated the investment in the fertilizer bonds issued by the government as investment in the hands of the assessee. It was a submission that on appeal, the Ld.CIT(A) had allowed the claim of the assessee and held that the loss was Revenue loss. It was a submission that the order of the Ld.CIT(A) was liable to be reversed.

4. In reply, the Ld.AR submitted that the issue is now squarely covered by the decision of the Hon'ble ITAT Delhi Benches in the case of M/s.DCM Shriram Consolidated Ltd., in ITA No.1447/Del/2012 dated 20.05.2015 for the AY 2008-09 reported in 2015-TIOL-706-ITAT-Del, wherein, it has been held that the fertilizer bonds received by the assessee was in lieu of cash subsidy and the loss on account of the diminution in the market value of the fertilizer bonds, the same was liable to be treated as Revenue loss.

5. The Ld.DR vehemently supported the order of the AO & the Ld.CIT(A).

6. We have considered the rival submissions.

7. As it is noticed that the issue is now squarely covered by the decision of the Hon'ble ITAT Delhi Benches in the case of M/s.DCM Shriram Consolidated Ltd., referred to supra, wherein the Co-ordinate Bench has followed the principles laid down by the Hon'ble Supreme Court in the case of M/s.Patnaik Co. Ltd., reported in 2002-TIOL-617-SC-IT, wherein, it has been held that where the investments were made under commercial expediency for the purpose of carrying on the assessee's business, then the loss suffered by the assessee on the sale of such investments must be regarded as Revenue loss, because the investment did not bring into existence any asset of capital nature, the same was

liable to be treated as Revenue loss. Consequently, the findings of the Ld.CIT(A) on this issue stands confirmed.

8. In the result, the appeals filed by the Revenue in ITA Nos.1917 & 2120/Chny/2015 are dismissed.

Order pronounced in the Open Court on March 06, 2018, at Chennai.

Sd/-

(एस जयरामन)

(S. JAYARAMAN)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: March 06, 2018.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF