

**IN THE INCOME TAX APPELLATE TRIBUNAL "D"
BENCH, MUMBAI**

**BEFORE HON'BLE SH. SHAMIM YAHYA, AM &
HON'BLE SH. SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 5809/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2012-13)

ACIT- 1 (1) (1), 579, Aayakar Bhavan, M. K. Road, Mumbai-400 020	बनाम/ Vs.	Deep Water Services (India) Ltd. 81 Energy House, Dr. D. N. Road Fort, Mumbai-400001.
स्थायीलेखासं./जीआइआरसं./PAN No. AABCD7108E		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri S. K. Saikia, CIT- DR
प्रत्यर्थीकीओरसे/ Respondentby	:	None

सुनवाईकीतारीख/ Date of Hearing	:	06.06.18
घोषणाकीतारीख / Date of Pronouncement	:	05/07/2018

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The present Appeal filed by the revenue is against the order of Ld. CIT (Appeal) – 2, Mumbai dated 06.06.16 for AY 2012-13 on the grounds mentioned herein below:-

1. *"Considering facts and circumstances of the case, was CIT(A) right in deleting amount of Rs. 12,18,74,984- claimed as capital expenditure by assessee in its book of amount while claiming the same as revenue expenditure for income tax purpose ."*

2. *"Whether the CIT(A) was right in allowing the expenses of special survey, repairs, maintenance and refurbishing of Rig Bardinath of Rs. 1,12,18,74,984/- as revenue expenses even when this has long term benefits to the assessee."*

The appellant craves leave to add to, amend or withdraw the aforesaid ground of appeal.

2. At the very outset, it is noticed that none has appeared on behalf of assessee in spite of several calls and even no application for adjournment was moved. On the other hand Ld. DR is present in the court and is ready with arguments. Therefore, we have decided to proceed with the hearing of the case ex-parte with the assistance of the Ld. DR and the material placed on record.

3. The brief facts of the case are that the assessee company is in the business of Water Drilling, Development in Drilling Services. The appellant company filed its return of income on 28.09.2012 for A.Y. 2012-13 declaring total loss of Rs. (-) 100.76,97,949/-. An assessment order u/s. 143(3) of the Income-tax Act, 1961 was passed on 13.03.2015 and a total income of Rs. 20,41,77,035/- was determined under section normal provision of the Act. In the assessment order an amount of Rs. 121,18,74,984/- was disallowed and added back to the total income under the head business.

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties partly allowed the appeal of the assessee.

Now before us, the revenue has preferred the appeal by raising the above grounds.

Ground No. 1 & 2.

4. Since both the grounds raised by the assessee are inter connected and inter related and relates to challenging the order of Ld. CIT(A) in deleting amount of Rs. 12,18,74,984- claimed as

capital expenditure by assessee in its book of amount while claiming the same as revenue expenditure for income tax purpose, therefore we thought it fit to dispose of the same by this common order.

5. We have heard Ld. DR and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find as per the facts of the present case that in the order of assessment, an amount of Rs. 1,21,18,74,984/- was disallowed and added back to the total income under the head 'Business' by the AO and while doing so, AO had noticed that during the course of proceedings, assessee had reduced the above amount from the business income in the computation of income. This amount was shown to be on account of 'special survey and dried docking on rig Badrinath'. It was also noticed that the assessee had capitalized the said amount in the books, but had claimed the same in return. After providing opportunity to the assessee, it was observed by the AO that the above mentioned amount have been added to the fixed assets, but at the same time the assessee has claimed the above amount as revenue expenses

in its return for which no reasons were submitted by the assessee. Ld. AO after appreciating the provisions of section 45A of the I.T. Act had concluded that the return of income and the books of account cannot be sent insolation in each other and the two have been harmoniously married in the scheme of things. Therefore, it was concluded that the assessee cannot use one accounting treatment in its regular course of business and use something else for the purpose of filing its return. Therefore, the said amount claimed as revenue expenses in the return was disallowed and added back to the total income under the head 'Business'.

On appeal, Ld. CIT(A) while relying upon the judgment of Uttarakhand High Court in the case of CIT Vrs. Oil and Natural Gas Corporation Ltd. had deleted the additions.

Now before us, none had appeared on behalf of the assessee and even no paper books or any other documentary evidence was filed. From the written submissions filed by the assessee which is reproduced in para no. 4.2 of the order of Ld. CIT(A), it was mentioned by the assessee that it was his contractual requirement for carrying out 'special survey' as per

terms of contract to be awarded by ONGC. But, on the contrary no contract was shown to us during the course of proceedings. Even the Ld. CIT(A) has simply relied upon the judgment of Hon'ble Uttarakhand High Court in the case of CIT Vrs. Oil and Natural Gas Corporation Ltd had deleted the additions. Ld. CIT(a) has no where mentioned and discussed **the nature of expenses carried out by the assessee.**

In our considered view, Ld. CIT(A) simply by relying upon the judgment of Hon'ble Uttarakhand High Court, could not have deleted the additions without mentioning or discussing the facts of the present case and more particularly without discussing the **nature of expenses** carried out /claimed by the assessee.

Be that as it may, keeping in view the above facts in the order of revenue authorities, we set aside the order of Ld. CIT(A) and remit the matter back to the file of AO with a direction to verify the nature of expenses claimed by the assessee and thereafter decide these grounds afresh.

Before parting, we may make it clear that our decision to restore the matter back to the file of AO shall in no way be

construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the AO independently in accordance with law. Resultantly these ground raised by the revenue are **allowed for statistical purposes.**

6. In the net result the appeal filed by the revenue **is allowed for statistical purposes.**

Order pronounced in the open court on 5th July, 2018

Sd/-
(Shamim Yahya)
लेखासदस्य / Accountant Member
मुंबई Mumbai; दिनांक Dated : 05.07.2018
Sr.PS. Dhananjay

Sd/-
(Sandeep Gosain)
न्यायिकसदस्य / Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार
(Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai