

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.2020/Del/2015
Assessment Year: 2011-12**

M/s Mohan Energy Corporation P. Ltd., Mohan House, 8-9, Zamrudpur Community Centre, Kailash Colony Extn. New Delhi. PAN: AAECM6956G	vs	Asstt. Commissioner of Income-tax, Circle 5(1), New Delhi.
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Assessee by	Shri N.K. Gupta
Revenue by	Sh. Ravi Kant Gupta, Sr. DR

Date of Hearing	14.08.2018
Date of Pronouncement	23.08.2018

ORDER

PER K. NARASIMHA CHARY, J.M.

This is an appeal by the Assessee against the orders dated 27.01.2015 in Appeal No.305/14-15 passed by the Ld. Commissioner of Income- tax (Appeals)-6, New Delhi (for short hereinafter called "Ld. CITA").

2. Assessee is a company engaged in the business of turnkey projects in conventional and unconventional energy like transmission lines, distribution networks, substations, solar installations, bio mass based power generation etc. Its area of operations is mainly in the African continent in countries like Burkina

Faso, Nigeria, Togo, Mozambique, Cote d'ivoire, Gambia etc. These projects are generally financed under lines of credit extended by the Government of India or international funding agencies like World Bank and regional development banks. The assessee is not a manufacturer. The raw material and component parts are obtained from third parties suppliers/manufacturers, exported and thereafter erected/installed at site by the assessee or through local subcontractors under supervision. The turnover during the year was Rs.74,51,17,114/- and net profit declared was Rs.9,61,74,010/- giving a net profit ratio of 12.9%.

3. The assessee filed their return of income on 30.09.2011 declaring a total income of Rs.9,99,03,558/-. However, learned AO made certain additions, namely, on account of short provisions of export incentive, disallowance on account of Section 14A addition on account of deemed dividend and disallowance on account of element of personal expenses and determined the income of the assessee at Rs.19,76,33,120/-. In appeal, learned CIT(A) sustained the addition of Rs.10,44,778/- on account of the value of DEPB license, deemed dividend and a sum of Rs.25,500/ out of the telephone expenses for personal use by the employees , Rs.10,48,368/- out of business promotion expenses and Rs.44,000/- out of local conveyance on estimate basis. Though the assessee challenged in this appeal all the three additions, however, during the course of arguments, Ground No.2 relating to the deemed dividend is not pressed. Therefore, what remains to be adjudicated is the addition of Rs.10,44,778/- on account of the value of DEPB license and the disallowance of the portion of the telephone expenses, business promotion expenses and local conveyance.

4. Ground No.1 relates to the addition on account of value of DEPB license. The assessee is entitled to DEPB license against the export of goods. Since the assessee is not a manufacturer, the assessee cannot make use of the benefits of DEPB license and was selling to different entities. According to the assessee, basing of their earlier experience, they valued the DEPB license at 90% and the chart filed in the paper book shows that as a matter of fact the DEPB was sold at a price much lower than 90% and some licenses were even lapsed in the year 2014. The authorities below held that the estimate of sale price of DEPB at 90% of its actual value was without any justification and a provision is made notionally to cover future probable forecast of loss. It is further recorded that Section 37(1) states that only expenses incurred during the year is allowed as deduction and since the provisions are not expenses, those are not allowed as deduction.

5. It is the argument of the learned AR that here the matter does not relate to any expenditure or any provision created there for but it is only the income derivable on the sale of the DEPB. It is further submitted by the learned AR that the rule of prudence requires that the provision should be made for all notional liabilities and losses even though the amount cannot be determined with certainty and represents only a best estimate in the light of the available information and it is permissible under the notified accounting standards. He further submits that the rule of consistency refers to the assumption that accounting policies are consistent from one party to another and well recognized by the Notification No. SO 69(E) dated 25.1.1996 issued by the Board under section 145 of the Act.

6. Learned DR submits that since the assessee was writing off the loss that was accrued on the sale of DEPB or the lapse of DEPBs at a subsequent point of time, in the same manner, in the year of accrual the assessee should have declared the actual value of DEPB as income and whenever their arises loss on either sale or the lapse, the assessee could have written off such loss in the year of such sale or lapse.

7. Having gone through the record and the chart furnished by the assessee, we find that in respect of the sales that were made in the Financial years 2012-13, 2013-14, 2014-15, when the DEPB was sold to Vicky Bhalla, Jain International and Mehta Export Corporation, the assessee realized only 83.14% to 88.08% of the actual value of DEPBs necessitating them to written off the loss. So also in the year 2014, there was lapse of DEPBs. There is no dispute from the revenue as to the actual value realized by the assessee in respect of the DEPB on their sale which is something around 90% or less of their actual value. The statistics furnished by the assessee suggests that there is a basis for the assessee to estimate the realizable value of the DEPBs as against their actual value and inasmuch the DEPBs that fetched the highest price from Bajaj Overseas Impex was at 90%, we are convinced to believe that there is a scientific basis for the assessee to estimate the probable realizable value of the DEPB at 90%.

8. Further in view of the Notification No. SO 69(E) dated 25.1.1996, it is permissible for the assessee to make provision for all known liabilities and losses even though the amount cannot be a certainty and represents only a best estimate in the light of available information and if the fundamental accounting assumptions relating to going concern consistency and accrual are followed in the

financial statements, specific disclosure in respect of such assumptions is not required and in this context consistency is referred to the assumption that accounting policy are consistent from one period to another. In view of this, we do not find anything irregular in the assessee declaring the realizable value of the DEPBs on their sale at 90% and to write off the losses arising on the sale or lapse of DEPBs in the subsequent years. With this view of the matter, we are inclined to accept the submissions made by the assessee and to direct the learned AO to delete the addition made on this score.

9. Now coming to Ground No.3 which relates to the ad hoc disallowance of the telephone expenses, travelling and conveyance expenses and export promotion expenses, learned AO recorded that there is an element of personal use by the directors and employees of the assessee company, the assessee was not maintaining any log book for vehicles, no details regarding telephone expenses were maintained phone wise and in respect of tour and travel, proper supporting evidence was not available to prove that expenses under that head are purely for the business purposes. On this, learned AO proceeded to disallow 10% of the expenses to prevent the leakages of revenue.

10. Learned CIT(A) granted relief to the assessee on this score to some extent to sustain the disallowance of 10% of mobile expenses of the employees to the tune of Rs.27500/-, 10% of local conveyance expenses to the tune of Rs.44,000/- and a sum of Rs.10,48,368/- in respect of the export promotion expenses.

11. Though the learned CIT(A) had given some relief to the assessee on this still there is no reason or logic behind the sustaining of the disallowance as enumerated above. It is purely an ad hoc addition on estimate basis without

reference to the books of accounts of the assessee or finding out any particular discrepancy therein. The assessee produced the details of the telephone expenses, export promotion expenses by way of page Nos.6 to 9 of the paper book and none of these expenses would go to show the involvement of the personal expenses in this. In these circumstances, we are of the considered opinion, without pointing out to any particular discrepancy in the books of accounts of the assessee or without rejecting the books of accounts, such disallowance on estimate basis has no logic behind it and we find it difficult to sustain the same. We, therefore, direct the learned AO to delete the same.

12. In the result, appeal of the assessee is allowed.

Order pronounced in the Open Court on 23rd August, 2018.

Sd/-

**(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

sd/-

**(K. NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 23rd August, 2018
VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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