आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गा राव,न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER&
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./**I.T.A.No.437/Viz/2017**
(निर्धारण वर्ष/ **Assessment Year: 2012-2013**)

M/s Dredging Corporation of India Ltd. Dredge House, Port Area Visakhapatnam **[PAN : AAACD6021B]**	Vs.	DCIT Circle-3(1) Visakhapatnam
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

आयकर अपील सं./**I.T.A.No.464/Viz/2017**
(निर्धारण वर्ष/ **Assessment Year: 2012-2013**)

ACIT Circle-3(1) Visakhapatnam	Vs.	M/s Dredging Corporation of India Ltd. Dredge House, Port Area Visakhapatnam **[PAN : AAACD6021B]**
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

निर्धारिती की ओर से/ Assessee by	:	Shri G.V.N.Hari, AR
राजस्व की ओर से/ Revenue by	:	Shri Deba Kumar Sonowal, DR
सुनवाई की तारीख / Date of Hearing	:	26.09.2018
घोषणा की तारीख/Date of Pronouncement	:	05.10.2018

आदेश /O R D E R

PER D.S. SUNDER SINGH, Accountant Member:

These appeals are filed by the assessee and the revenue against the order of the Commissioner of Income Tax(Appeals) [CIT(A)]-1, Visakhapatnam vide I.T.A.No.1173/2014-15/DCIT/C-3(1),VSP/2017-18 dated 02.05.2017 for the assessment year 2012-13. Since issues involved in these appeals are common, both the appeals are clubbed , heard together and disposed of in a common order for the sake of convenience as under:

2. The assessee is a public sector undertaking engaged in the activity of dredging operations. Normally the business income of the assessee has to be computed under the provisions of sections 28 to 43Cof the Income Tax Act, 1961 (hereinafter called as 'the Act'). However, the resident assessee is engaged in the business of dredging/operation of ships has the option to declare the income under tonnage scheme under the provisions of section 115V to 115VZC of Chapter XII-G of the Act (‘core Income’ in short). This is known as Tonnage Tax Scheme under which the income is computed at specified rates based on net tonnage of a ship under section 115VG of the Act. There is no dispute that the assessee had opted for this scheme and the same has been accepted by the department.

2.1. For the assessment year2012-13, the assessee filed return of income declaring total income of Rs.12,92,02,576/-. The Assessing Officer (AO) has assessed the following income as non core income :

S.No.	Particulars	Amount
1.	Exchange Differences	30,79,175.71
2.	Sale Scrap, Empties, Condemned Stores, Waste Oil, Condemned Assets	50,79,282.00
3.	Provision for bad debts previously created now written back	6,88,01,067.00
4.	Provision no longer required, written back – Finance & Accounts Section	8,78,893.00
5.	Provision for expenses written back	39,28,989.00
6.	Liquidated damages	9,03,93,437.00
7.	Damages – IHC Holland for deficiency in the dredger supplied	6,24,00,000.00
8.	EMD and SD forfeiture	12,54,473.00
9.	Staff Car recoveries	11,960.00
10.	Recovery towards leased quarters	11,45,980.00
11.	Sale of tender documents	2,75,521.00
12.	Training fee	19,722.00
13.	Financing & Storage charges Recovery	5,724.00
14.	Rent on hiring of quarters/offices	1,78,292.00
15.	Service charges-Recovery of tower rent from the BhartiAirtel	5,920.00
16.	RTI Fee	1,908.00
17.	Late Attendance Recovery	44,624.00
18.	Other Income-Others (Miscellaneous)	83,972.59
19.	Vendor Registration fee – Refunded	-2,00,000.00
20	Insurance-Others	-33,32,172.00
	Total	23,40,56,768.00

3. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the following additions made by

the AO(non core income) following the order of this Tribunal in the assessee's own case for the assessment year 2006-07, 2007-08 and 2008-09 in I.T.A. Nos 6 to 8 & 15 to 17 of 2011 dated 25.07.2011.

(i) Liquidated damages -Rs.9,03,93,437/-

(ii) Damages-IHC Holland for deficiency in dredger supplied – Rs.6,24,00,000/-

(iii) Miscellaneous Receipts – 16,89,651/-

(iv) EMD and SD Forfeiture – Rs.12,54,473/-

The Ld.CIT(A) held that the following receipts are from the core activity and accordingly directed the AO to include the receipts for the tonnage tax purpose.

(i) Sale of scrap

(ii) Sale of empties

(iii) Sale of condemned assets

In the case of provision for bad and doubtful debts, provision no longer required written back and the provision for expenses written back the Ld.CIT(A) has remitted the issue back to the file of the AO for verification of the fact with regard to the creation of provisions from tonnage income or from normal income and to decide the issue accordingly.

4. Aggrieved by the order of the Ld.CIT(A), both the assessee and revenue have filed cross appeals.

I.T.A. No.437/Viz/2017 A.Y 2012-13 -Assessee's appeal

5. Ground No.1 and 8 are general in nature which does not require specific adjudication.

6. Ground No.2 is related to the addition of Rs.9,03,93,437/- relating to the liquidated damages assessed as separate income other than the core income. During the assessment year under consideration, the assessee has received liquidated damages of Rs.9,03,93,437/- which was included in the tonnage tax scheme. The AO has called for the explanation of the assessee and after considering the explanation, the AO held that the liquidity damages does not fall into the definition of core income as per section 115VI r.w.Rule 11R of income tax rules and accordingly excluded the receipt of liquidated damages from the core income of the shipping activity and brought to tax as per the normal provisions and made the addition to the returned income.

7. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the addition made by the AO

following the order of this Tribunal in the assessee's own case for the assessment year 2006-07, 2007-08 and 2008-09 in I.T.A. Nos. 6 to 8 & 15 to 17 of 2011 dated 25.07.2011. For the sake of clarity and convenience, we extract relevant part of the order of the Ld.CIT(A) made available in para No.4.2.2. which reads as under :

4.2.2. I have perused the details filed. It is seen that the following amounts were received as liquidated damages with the reasons given as follows :

Date	*Amount*	*Details*
02.05.2011	*19,53,600*	*Delay in work for 8-14 weeks*
02.05.2011	*33,60,000*	*Delay in commencement of work for 14 days*
08.07.2011	*21,59,957*	*Towards liquidated damages*
11.08.2011	*44,50,551*	*Liquidated damages towards delay in dry docking*
30.08.2011	*17,10,002*	*Liquidated damages towards delay in dry docking*
29.12.2011	*50,04,404*	*Liquidated damages towards delay in dry docking*
26.03.2012	*53,71,546*	*Liquidated damages towards payment made to WISL, Goa*
31.12.2011	*6,42,22,750*	*Delay in delivery of dredge*
31.12.2011	*21,60,627*	*Other miscellaneous items*

Thus, it could be seen that the major amount of Rs.6.42 Crone represent compensation received on account of delay in delivery of dredger and nothing to do with any repair work. Apparently, this amount does not relate to any core activity. The other Items relate to delay in commencement of work, delay in dry docking and as such has no nexus with any expenditure relating to repair work. The immediate & proximate source for the impugned liquidated damages was as a result of breach of the contractual obligations by the other parties and on account of enforcement of the compensation clause provided in the said agreements (as evident from the order sheet noting filed) and has nothing to do with the core activity of dredging. The manner in which the transaction accounted by the assessee for book keeping is of no relevance, as the

determination of income in regard to a transaction has to be examined with regard to its legal nature. Therefore, the pleas raised in this regard are rejected and the impugned addition of Rs.9,03,93,437/- is upheld.

8. We have considered the submissions made by both the parties and perused the material placed on record. This Tribunal has decided the identical issue for the assessment year 2009-10 to 2011-12 in I.T.A. Nos.555/Viz/2013, 602/Viz/2013, 78-80/Viz/2014 and 167/Viz/2016 in assessee's own case dated 25.10.2017 and upheld the addition made by the AO with regard to the receipt of liquidated damages. For the sake of clarify and convenience, we extract relevant part of the order of this Tribunal in para Nos. 4.3. to 4.4 which reads s under :

"4.3 We have heard both the parties and perused the material placed on record. In the earlier order the coordinate bench interpreted the word used in shipping income u/s 115VI 'Income from' holding that it is akin to the term derived from since both the Ld. A.R. and the Ld. D.R. agreed that the term derived from is akin to 'Income from'. However, in the present appeals, the Ld. D.R. vehemently opposed and argued that there is no reason to interpret the 'Income from' since the shipping income and the incidental income is clearly defined in section 115 VI and Rule 11R. We have carefully considered the argument of the Ld. D.R. and the Ld. A.R. and also gone through the orders of the Hon'ble ITAT. Since the Ld. D.R. disagreed, we are of the considered view that section 115VI and Rule 11R defined the income from shipping and incidental activities very clearly and there is no ambiguity in the Act and there is no need for separate interpretation using the word 'derived from'. Accordingly, we decide the issue whether liquidated damages forms part of core income or not? The liquidated damages are collected from the various contractors as compensatory payment for failure to execute the contract works within the stipulated time. Those are the receipts compensatory in nature but not from the activity of shipping. The income from shipping activity for the purpose of computation of tonnage tax is defined in section 115VI as under:

Relevant shipping income.

115VI. (1) For the purposes of this Chapter, the relevant shipping income of a tonnage tax company means—

(*i*) its profits from core activities referred to in sub-section (2);

(*ii*) its profits from incidental activities referred to in sub-section (5):

Provided that where the aggregate of all such incomes specified in clause (*ii*) exceeds one-fourth per cent of the turnover from core activities referred to in sub-section (2), such excess shall not form part of the relevant shipping income for the purposes of this Chapter and shall be taxable under the other provisions of this Act.

(2) The core activities of a tonnage tax company shall be—

(*i*) its activities from operating qualifying ships; and

(*ii*) other ship-related activities mentioned as under:—

(*A*) shipping contracts in respect of—

(*i*) earning from pooling arrangements;

(*ii*) contracts of affreightment.

Explanation.—For the purposes of this sub-clause,—

(*a*) "pooling arrangement" means an agreement between two or more persons for providing services through a pool or operating one or more ships and sharing earnings or operating profits on the basis of mutually agreed terms;

(*b*) "contract of affreightment" means a service contract under which a tonnage tax company agrees to transport a specified quantity of specified products at a specified rate, between designated loading and discharging ports over a specified period;

(*B*) specific shipping trades, being—

(*i*) on-board or on-shore activities of passenger ships comprising of fares and food and beverages consumed on board;

(*ii*) slot charters, space charters, joint charters, feeder services, container box leasing of container shipping.

(3) The Central Government, if it considers necessary or expedient so to do, may, by notification in the Official Gazette, exclude any activity referred to in clause (*ii*) of sub-section (2) or prescribe the limit up to which such activities shall be included in the core activities for the purposes of this section.

(4) Every notification issued under this Chapter shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification, or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

(5) The incidental activities shall be the activities which are incidental to the core activities and which may be prescribed[4] for the purpose.

(6) Where a tonnage tax company operates any ship, which is not a qualifying ship, the income attributable to operating such non-qualifying ship shall be computed in accordance with the other provisions of this Act.

(7) Where any goods or services held for the purposes of tonnage tax business are transferred to any other business carried on by a tonnage tax company, or where any goods or services held for the purposes of any other business carried on by such tonnage tax company are transferred to the tonnage tax business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the tonnage tax business does not correspond to the market value of such goods or services as on the date of the transfer, then, the relevant shipping income under this section shall be computed as if the transfer, in either case, had been made at the market value of such goods or services as on that date:

Provided that where, in the opinion of the Assessing Officer, the computation of the relevant shipping income in the manner hereinbefore specified presents exceptional difficulties, the Assessing Officer may compute such income on such reasonable basis as he may deem fit.

Explanation.—For the purposes of this sub-section, "market value", in relation to any goods or services, means the price that such goods or services would ordinarily fetch on sale in the open market.

(8) Where it appears to the Assessing Officer that, owing to the close connection between the tonnage tax company and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the tonnage tax company more than the ordinary profits which might be expected to arise in the tonnage tax business, the Assessing Officer shall, in computing the relevant shipping income of the tonnage tax company for the purposes of this

Chapter, take the amount of income as may reasonably be deemed to have been derived therefrom.

Explanation.—For the purposes of this Chapter, in case the relevant shipping income of a tonnage tax company is a loss, then, such loss shall be ignored for the purposes of computing tonnage incom e.

4. *See* rule 11R.

Similarly, profits from incidental activities are defined in Rule 11R as under :

Incidental activities for purposes of relevant shipping income.

11R. The incidental activities (details given in Note 5 appearing after the corresponding Form No. 66) referred to in sub-section (5) of section 115V-I shall be the following, namely :—

(*i*) maritime consultancy charges;

(*ii*) income from loading or unloading of cargo;

(*iii*) ship management fees or remuneration received for managed vessels; and

(*iv*) maritime education or recruitment fees.

4.4. The liquidated damages collected from various contractors do not cover any of the receipts in section 115VI or within the scope of Rule 11R of I.T. Act. There is no dispute that the assessee had opted for tonnage tax scheme and the income has to be computed as per section 115VI and Rule 11R of I.T. Act. Under the tonnage tax scheme, only the receipts from core activities and receipts from incidental activities are included, which means that core activities and incidental activities should be the source of profit to be included under tonnage scheme. As regards the liquidated damages the source of such income is payment for failure to execute the contract works within the stipulated time and not the shipping activity either core or incidental. Though the liquidated damages may be incidental business income but the same is not the profit from core activities or incidental activities which have been defined in the Act. They are not directly received from the shipping activity but are compensatory in nature collected from the contractors for failure to execute contract. Therefore, liquidated damages cannot be held to be from the core activity of the shipping and does not form part for computation in tonnage tax. The reliance placed by the Ld.AR in the case of Prakash Oils Ltd of Hon'ble High Court of Madhya Pradesh is related to the computation of profits and gains derived from industrial undertaking u/s 80IA but not related to the tonnage tax u/s 115VI of

> *I.T. Act. Profits and gains for the purpose of industrial undertaking required to be computed as per the provisions of section 28 to 43C of I.T. Act and the deduction required to be allowed u/s 80IA of I.T. Act from the business income. Whereas in the case of tonnage tax as provided u/s 115VI, the income required to be computed as per Chapter XIIG of I.T. Act at the option of the assessee. Once, the assessee opts tonnage tax scheme, the income of the assessee from shipping company required to be computed as provided in Chapter XIIG .Therefore, the decision relied upon by the Ld.AR is distinguishable and not applicable in the assessee's case. Accordingly, we hold that Ld.CIT has rightly confirmed the addition and dismissed the appeal of the assessee on this ground.*

8.1. Since the issue involved in this appeal is identical, respectfully following the view taken by the Coordinate Bench of this Tribunal, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the assessee on this ground.

9. Ground No.3 is related to the following additions made by the AO.

(i) Provision for bad and doubtful debts Rs.6,88,01,067/-

(ii) Provision no longer required written back Rs.8,78,893/-

(iii) Provision for expenses written back Rs.39,28,989/-

The AO held that the above receipts are not pertaining to the core activity of the assessee accordingly assessed the same outside the purview of section 115VI of the Act.

On appeal to the CIT(A), the Ld.CIT(A) observed that the assessee had not furnished the basic information for creation of provision for bad and doubtful debts and provision for expenses was neither furnished nor

examined by the AO. Therefore, the Ld.CIT(A) remitted the matter back to the file of the AO to verify whether the provisions were created in relation to core transactions as per the test already laid down in the order of the ITAT and for re adjudication. For the sake of clarity and convenience, we extract relevant part of the order of the Ld.CIT(A) which reads as under :

> *"5.3. 1 have considered the above submissions. I find that the basic information relating to the impugned creation of provision for bad and doubtful debts and provision for expenses has not been furnished nor examined by the AO. Hence, the AO A directed to verify whether the provisions were created in relation to core activity transactions as per the test already laid in the order of the ITAT, and in such event, these write backs may be considered as part of core income and the impugned addition may be deleted; otherwise the impugned addition would remain."*

9.1. The revenue also has challenged the order of the Ld.CIT(A) in Ground Nos. 4 to 6 on the provision for bad and doubtful debts, provisions written back and provisions no longer required in I.T.A. No.464/Viz/2017.

10. We have heard both the parties and perused the material placed on record. During the appeal hearing, the Ld.AR did not place any material to support the claim of Provisions for bad and doubtful debts and the provisions written back are related to the core activity of the assessee which was already offered as income in the tonnage tax, but not related to the income other than the tonnage tax scheme. the revenue also failed to

establish the same with relevant information. Therefore, we do not find any reason to interfere with the order of the Ld.CIT(A). Accordingly, we uphold the order of the Ld.CIT(A) and remit the matter back to the file of the AO to verify whether the provisions are created in relation to the core activity transaction or not. If the provisions are related to the income from core activity which was already included in tonnage income in the earlier years the same are required to be excluded from the noncore income. Accordingly, the AO is directed to verify the facts and reconsider the issue on merits after giving opportunity to the assessee. The appeal of the assessee as well as the revenue on this ground is dismissed.

11. Ground No.4 is related to the damages –IHC Holland for deficiency in the Dredger supplied amounting to Rs.6,24,00,000/-. The AO during the assessment proceedings, observed that the damages – IHC Holland for deficiency in the dredger supplied amounting to Rs.6,24,00,000/- held to be other than core income and accordingly brought to tax separately.

12. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) with two propositions. Firstly, the Ld.AR argued that the amount received by the company was for the deficiency in the dredger supplied and had the direct nexus with the capital asset and therefore, it was in the

nature of capital receipt. The second proposition made by the assessee before the Ld.CIT(A) is that the damages received from IHC Holland for deficiency in the dredger supplied was directly related to the dredging activity of the assessee company, the same should be treated as a core income or alternatively it should be treated as capital receipt. However, the Ld.CIT(A) observed that it was received as compensation for deficiency in the dredger supplied from IHC Holland and on account of compromise with the other party and the said compensation cannot be held to be derived from the dredging activity. Similarly with respect to the assessee's argument for capital receipt, there is no information that the compensation was received in relation to losses suffered by the assessee. Accordingly rejected the claim of the assessee and upheld the addition. We extract relevant part of the order of the Ld.CIT(A) which is made available in para No.6.2 and 6.3 which reads as under :

> *"6.2. I have considered the submissions and the details filed. It is evident the assessee had obtained compensation for deficiency in dredger supplied from IHC, Holland. From the perusal of Board Resolution, it is seen that the assessee did not succeed much before the Arbitration, and that the impugned - compensation was received subsequently, on account of compromise entered with the other party. Apparently the said compensation cannot be said to be income derived from dredging activity. It is relevant to note that the Honourable ITAT following the ratio laid down by the Apex court in the case of Pandian Chemicals laid down the criteria that receipts derived from the dredging activities would be considered as core activity and eligible to be considered under Tonnage Scheme, and any receipt from an activity which is a step removed from the core activity of dredging would not be so eligible. Thus it could be seen that the appellant became entitled to compensation based on the*

compromise entered with IHC Holland, which is a step removed from the dredging activity, and such compensation amount cannot be considered to be derived from core shipping activity.

5.3. As regards other pleas, it is relevant to note from the perusal of the details furnished by the assessee that there is no information that the said compensation was in relation to losses suffered by the assessee. The compromise agreement was not filed. The assessee also did not furnish any information as to alleged loss suffered by it. No evidence filed as to assessee's claim of alleged loss being accepted by the other party in consenting to pay the said compensation. Therefore, the contention that the compensation was obtained in regard to losses suffered by the assessee in regard to its core activity is prima facie unacceptable. The assessee also did not furnish any information as to alleged repairs undertaken by it for rectifying the deficiencies. In the circumstances, the pleas that the damages was towards recoup of losses suffered by DCI and as to expenses incurred to rectify the deficiencies are not acceptable. As a result, the AO's action in making the impugned addition is upheld."

13. During the appeal hearing, the Ld.AR reiterated the submissions made before the Ld.CIT(A).

14. On the other hand, the Ld.DR relied on the orders of the Ld.CIT(A).

15. We have heard both the parties and perused the material placed on record. The first argument of the Ld.AR was that the damages received by the assessee towards the deficiency in supply of dredger required to be treated as core income. According to the assessee, IHC Holland has supplied the dredger with lot of deficiencies and the assessee had incurred the expenses to rectify the deficiencies to make it operational. For the said deficiencies, the assessee had received the damages from IHC Holland

which are directly relatable to the core activity of the assessee. Therefore, required to be assessed as core income. The assessee's activity is dredging operations. The damages received from the IHC Holland were for compensation of the deficiencies in the dredger. The receipt was neither from dredging activity nor from any other operational activity of shipping of the assessee. The receipts are similar to that of liquidated damages and the receipt should fit into the definition of the shipping activity as specified in section 115VI of the Act r.w.Rule 11R to treat the same as core income. In the instant case, the receipt was neither from the shipping activity nor from the operational activity, therefore, the receipt cannot be held to be from core activity. Accordingly, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the assessee on this issue.

16. The next argument of the assessee was that since the damages were received to compensate the deficiencies for receipt of the dredger supplied with deficiencies, the said receipts should be treated as capital receipt, but not the revenue receipt. The CIT(A) has examined this issue in detail and given a finding that the assessee did not furnish any details with relation to the losses suffered by the assessee. The compromise agreement was not filed before the Ld.CIT(A) and the assessee did not furnish any information

as to alleged repairs undertaken by it for rectifying the deficiencies. During the appeal hearing also for a query from the bench, the Ld.AR submitted that the expenditure for repairs was debited to the Profit & Loss account and no details were available with regard to the incurring of expenditure. The assessee did not furnish any break-up of the details with regard to the date of purchase of ship, date of operation of the ship, whether it was purchased after tonnage tax scheme introduced or before the introduction of tonnage tax scheme. In the absence of any details, we are unable to accept the contention of the assessee that the expenditure was capital expenditure. Accordingly, the argument raised by the Ld.AR to treat the receipt as a capital receipt is unacceptable and the same is rejected.

Going through the Board Resolution filed in paper book page No.66-71, the assessee has made the compromise agreement for receipt of 6.24 crores with IHC Holland. No details were furnished in the Board Resolution with regard to the losses suffered by the assessee, date of purchase of the dredger, the details of expenses incurred, claims made before the IHC Holland for arbitration etc. The assessee has credited the receipts to the profit and loss account and debited the expenditure to the P&L account but not capitalized the expenditure and the receipt. Therefore, we hold that the receipts does not fit into the tonnage tax scheme and cannot be treated

as capital receipt and theLd.CIT(A) has rightly confirmed the addition. Accordingly, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the assessee.

17. Ground No.5 is related to the addition of Rs.16,89,651/- by treating the under mentioned receipts as receipts not relating to core activity.

(a)	Recovery towards leased quarters to employees	Rs.11,45,980/-
(b)	Staff car recoveries	Rs.11,,960/-
(c)	Fee for right to information	Rs.1,908/-
(d)	Sale of Tender documents	Rs.2,75,521/-
(e)	Rent for hiring of the quarter/office	Rs.1,78,292/-
(f)	Late attendance receipt	Rs.44,624/-
(g)	Recovery of tower rent from Bharti Airtel	Rs.5,920/-
(h)	Training fee	Rs.19,722/-
(i)	Financing & Storage charges recoveries	Rs..5,724/-

The AO has treated the above receipts as non core income and brought to tax other than the tonnage tax scheme.

18. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the additions made by the AO. The Ld.CIT(A), followed the order of this Tribunal in the assessee's own case supra and the order of his predecessor in assessee's own case for the A.Y. 2010-11 and accordingly decided the issue against the assessee. For ready

reference, we extract relevant part of the order of the CIT(A) in para No.7.2 to 7.4 which reads as under :

"7.2. I have considered the submissions. I find that the AO has treated the following receipts as receipts not relating to core activity :

(a)	Recovery towards leased quarters to employees	Rs.11,45,980/-
(b)	Staff car recoveries	Rs.11,,960/-
(c)	Fee for right to information	Rs.1,908/-
(d)	Sale of Tender documents	Rs.2,75,521/-
(e)	Rent for hiring of the quarter/office	Rs.1,78,292/-
(f)	Late attendance receipt	Rs.44,624/-
(g)	Recovery of tower rent from Bharti Airtel	Rs.5,920/-
(h)	Training fee	Rs.19,722/-
(i)	Financing & Storage charges recoveries	Rs..5,724/-

"7.3. It is seen that the Hon'ble ITAT vide order dated 25.11.2011 in ITA Nos. 6 to 8 and 15 to 17/Vizag/2011 in the appellant's case for A.Y.2006-07 to A.Y.2008-09 has held that these receipts, mentioned above in (a) to (f) & (h) to (j) are from independent sources of income and cannot be considered to be connected with the dredging activity. As the factual situation is similar, the above decision of Hon'ble ITAT, Vizag is respectfully followed. Accordingly, the additions referred in items (a) to (f) and (h) to (j) in above para are confirmed.

7.4. With reference to other miscellaneous income, the issue was dealt by the then CIT(A) in the assessee's own case for A.Y. 2010-11. The then CIT(A) in his order in ITA No.283/12/-13/Addl.CIT,R-3, Vsp/2013-14, dated 30.07.2013, after carefully examining the matter took the view that these miscellaneous receipts are not in the nature of the receipts from core activity of the assessee. As such, receipts cannot be said to be derived from dredging activity. I am also of the view that the decision taken by the then CIT(A) Is correct and accordingly, the assessee's ground is dismissed."

19. The Ld.CIT(A) has followed the order of this Tribunal in assessee's own case. Similar issue has come up before this Tribunal in the assessee's own case with regard to the above nature of receipts including

miscellaneous income. This Tribunal in I.T.A. No.78-80/Viz/2014 dated 25.10.2007 held that the income from the above receipts cannot be considered to be connected with the dredging activity. For ready reference, we extract para No.9.3 of the order of the Tribunal which reads as under :

> *"9.3 We have heard both the parties and perused the material placed on record. While deciding the issue with regard to the liquidated damages and arbitration award, we have elaborately discussed the issue what constitutes core income. The assessee has opted for tonnage tax scheme under the provisions of 115VI under Chapter XIIG of I.T. Act. This is known as tonnage tax scheme under which the income is computed at specified rate, net tonnage of the ship under section 115VG. The definition of core activities has been defined as activities from operating qualifying ships and other shipping related activities. Therefore, the interest received on delayed payments and other miscellaneous receipts such as recruitment fee, cancellation of DD, seminar expenses, EMD forfeited, vender registration form/tender form, transportation of pipeline guarantee amount forfeited and miscellaneous receipts (bifurcation under process) cannot be held to be received from the shipping activities. Therefore, we do not find any infirmity in the order of the Ld. CIT(A) and the appeals of the assessee are dismissed."*

19.2. Respectfully following the view taken by the Tribunal in the assessee's own case, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the assessee.

20. Ground No.6 is related to the EMD and SD forfeiture amounting to Rs.12,54,473/- which was upheld by the Ld.CIT(A) following the order of this Tribunal in the assessee's own case for the assessment year 2006-07 to 2008-09.

21. We have considered arguments of the both the parties and perused the material placed on record. The issue of EMD forfeiture was decided against the assessee in the assessee's own case in I.T.A. No.78-80/Viz/2014 dated 25.10.2007. Since the receipts of EMD and SD amounts are of the same nature, we hold that the receipts are not connected to dredging activity and cannot be held to be core income for the purpose of tonnage tax scheme. Accordingly, the receipts of EMD and SD are one step away from the dredging activity and would not be eligible for tonnage tax scheme. Therefore, we do not find any reason to interfere with the order of the Ld.CIT(A) and dismiss the appeal of the assessee.

22. Ground No.7 is with regard to the deduction of expenses in respect of incomes considered as not forming part of core activity. Identical issue has come up before this Tribunal in the assessee's own case for the assessment year 2012-13. The issue was decided against the assessee in para No.8 of the order of this Tribunal which reads as under :

> *"8. The next issue is related to the claim of expenses. The Ld.AR raised the ground that if the assessee's contention that the above receipt constitute as a core income is not accepted the income should be computed as per section 28 to 43 C of I.T. Act and allow the deduction towards the expenditure for earning the above receipts of non core income. The Ld.CIT(A) has dismissed this ground of the assessee following the order of this Tribunal in ITA 6 to 8 and 15 to 17/Vizag/2011 cited supra. The Hon'ble ITAT in the assessee's own case cited supra decided the issue against the assessee as under :*

> *10.1. The assessee has also taken a stand that if any item of receipts is not considered as receipts relating to the core activity of dredging, then the deduction towards the expenditure incurred towards earning such receipts should be allowed as a deduction and accordingly only net income should be charged to tax. The tax authorities have pointed out that all the expenses incurred by the assessee shall be deemed to have been allowed while computing the income of the assessee under the special provisions of the Act, cited above and hence there cannot be any further deduction of the same expenditure. We agree with the observations of tax authorities in this regard. If the claim of the assessee is allowed, then it would amount to double deduction of the same expenditure, which is not permitted under the Act. Accordingly we dismiss this ground of the assessee.*

> *In this case, the assessee did not demonstrate that it had incurred the expenditure separately over and above the expenditure debited to the Profit & Loss Account. No separate books of accounts are maintained for non core income and core income and this issue is squarely covered by the decision of this Tribunal cited supra. Therefore, following the order of this Tribunal, we dismiss the appeal of the assessee on this ground for the assessment year 2009-10 to 2011-12 and 2006-07, 2007-08 and 2008-09."*

22.1. Since the facts are identical, respectfully following the view taken by the Tribunal in assessee's own case, we dismiss the appeal of the assessee on this ground and uphold the order of the Ld.CIT(A).

In the result, the appeal of the assessee is dismissed.

I.T.A. No.461/Viz/2017 – Revenue's Appeal

23. Ground Nos.1 and 7 are general in nature which does not require specific adjudication.

24. Ground Nos. 2 and 3 are related to the receipts on account of sale of scrap, sale of empties, sale of condemned stores and spares and sale of waste oil, sale of assets and exchange difference. The AO treated the

receipts from the above activity as non core receipts and accordingly brought to tax other than the income from tonnage tax scheme.

25. On appeal before the CIT(A), the Ld.CIT(A) held that the receipts by way of sale of scrap, exchange difference, insurance claim are having direct nexus with the dredging activity and such receipts are required to be considered as income from core activity. The Ld.CIT(A) followed the order of this Tribunal in assessee's own case for the assessment year 2006-07 to 2008-09 supra. The Ld.CIT(A) also applied the ratio of the decision of Hon'ble Apex Court in the case of Pandian Chemicals Ltd. Vs. CIT(2003) (262 ITR 278).

26. Against the order of theLd.CIT(A), the revenue has filed appeal before this Tribunal.

27. We have heard both the parties and perused the material placed on record. The issue is squarely covered against the revenue in the assessee's own case for the assessment year 2009-10 to 2011-12 in I.T.A. Nos.555/Viz/2013, 602/Viz/2013, 78-80/Viz/2014 and 167/Viz/2016. For the sake of clarity, we extract para No.12 of the order which reads as under :

12. We have heard both the parties and perused material placed on record. The Hon'ble ITAT, Visakhapatnam in ITA No. 6 to 8 and 15 to 17/Vizag/2011 dated 25.7.2007 in assessee's own case allowed the appeal of the assessee holding that the income from the above receipts forms part of the income from the core activity of operating the qualifying ships. For ready reference, we reproduce Para No.9 of the ITAT's order supra which reads as under:

> ***9.** In the case of Dy. CIT v. Core Healthcare Ltd. [2009] 308 ITR 263 (Guj.), the question whether the income generated from the sale of empty containers can be treated as income derived from industrial undertakings was raised before the High Court. The question was answered in affirmative and for the sake of convenience, we extract below the relevant head note:*
>
> > *"Held that it was an accepted position that the empty containers, which were sold, were containers in which raw material in bulk had been purchased by the assessee. The cost of the containers was part of the purchase price which went to make up the total cost of the manufactured product and was thus directly relatable to the manufacturing activity of the industrial undertaking. The income generated on sale of such empty containers could be set off against the purchase cost, in other words bringing down the purchase price of raw material, or it could be treated as income directly relatable to the activity of industrial undertaking. The net result would be the same-either the cost of raw material gets reduced and thus increases profits of manufactured products on sale or the sale price of containers is directly added to swell the total profits. Therefore, in the light of the decision of this High Court in the case of Dy.CIT v. Harjivandas Juthabhai Zaveri [2002] 258 ITR 785 , there was no infirmity in the impugned order of the Tribunal".*
> >
> > *Applying the above said ratio, the income received by the assessee on sale of scraps and sale of assets could be treated as income directly relatable to the activity of operating qualifying ships. Accordingly, we affirm the order of Learned CIT(A) on these two types of income.*
>
> ***9.1** The amount received on insurance claim was held to be derived from industrial undertaking by Hon'ble Delhi High Court in the case of CIT v. Sportking India Ltd . [2010] 324 ITR 283/[2009] 183 Taxman 312. By following the ratio of the said decision, we uphold the decision of Learned CIT(A) on this issue.*

The Ld. D.R did not controvert or bring any other order to support that the income was from non core activity. Therefore respectfully following the order of this Tribunal we uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue for the above assessment years."

28. Since the facts are identical, respectfully following the view taken by the coordinate bench of this Tribunal, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue.

29. Ground Nos. 4 to 6 are related to the provision for bad and doubtful debts, provision no longer required which was remitted back to the file of the AO by the Ld.CIT(A). This issue was decided in the assessee's appeal in Ground No.3 and confirmed the order of the Ld.CIT(A). Therefore, the appeal of the revenue on this ground is dismissed.

30. In the result, the appeals of the assessee as well as the revenue are dismissed.

The above order was pronounced in the open court on 5th October, 2018.

Sd/-	Sd/-
(वी.दुर्गा राव)	**(डि.एस. सुन्दर सिंह)**
(V. DURGA RAO)	**(D.S. SUNDER SINGH)**
न्यायिक सदस्य/JUDICIAL MEMBER	**लेखा सदस्य/ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam
दिनांक /Dated : 05.10.2018
L.Rama, SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – Dredging Corporation of India Ltd. Dredge House, Port Area, Visakhapatnam530 035
2. प्रत्यार्थी / The Respondent–DCIT, Circle-3(1),Visakhapatnam
3. The Pr.Commissioner of Income Tax-1, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-1, Visakhapatnam
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम **/**DR, ITAT, Visakhapatnam
6**.** गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM