

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri Abraham P. George, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I T.A. No. 1442/Chny/2018
निर्धारण वर्ष/Assessment Year:2010-11

The Deputy Commissioner of
Income Tax, Central Circle 1(1),
Chennai – 34.

M/s. East Coast Constructions &
Vs. Industries Ltd., No. 4, Moores Road,
Chennai 600 006.

[PAN:AAACE1662P]

(Appellant)

(Respondent)

अपीलार्थी की ओर से / Appellant by : Ms. Tripurasundari, CIT
प्रत्यर्थी की ओर से/Respondent by : Shri G. Baskar, Advocate
सुनवाई की तारीख/ Date of hearing : 11.09.2018
घोषणा की तारीख /Date of Pronouncement : 24.10.2018

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) 6, Chennai dated 30.01.2018 relevant to the assessment year 2010-11. The only effective ground raised in the appeal of the Revenue is that the Id. CIT(A) has erred in deleting the disallowance of ₹.25,24,97,133/- towards expenses relatable to the retention money withheld by the contractees.

2. Brief facts of the case are that the assessment in this case was completed under section 143(3) of the Income Tax Act, 1961 ["Act" in short]

on 28.03.2013. Subsequently, the assessment order was subject to revision under section 263 of the Act dated 24.03.2015. Accordingly, after considering the submissions of the assessee, the assessment under section 143(3) r.w.s. 263 of the Act was completed by making various additions.

2.1 With regard to the disallowance of expenditure relating to retention money, during the year, the assessee has excluded a sum of ₹.33,80,43,934/- as withheld amount. The corresponding expenditure has not been excluded. During the year, the total expenditure incurred was ₹.706.47 crores as against an income of ₹.722.79 crores. The net profit is 2.26%. Only this proportion of the withheld amount of ₹.33.80 crores relates to profits and the balance is the embedded expense. If this ratio is adopted, the expenditure incurred in respect of the withheld amount excluded from taxation is ₹.33,04,04,141/-. This amount was, therefore, excluded from the total expenditure of the year. During the course of revisionary proceedings, the Assessing Officer observed that during the year under consideration, a sum of ₹.7,98,96,430/- pertaining to the assessment year 2009-10 has been offered as release of withheld amount. In the previous year, the expenditure in respect of this amount was not allowed based on the reasoning above. The exclusion was done by adopting the profit ratio which was 2.49% for that year. The expenditure constituting 97.51% was excluded in that year. Since the amount has been offered to tax now, the corresponding expenditure is

now given credit. This comes to ₹.7,79,07,009 (97.51% of ₹.7,79,07,009). Thus, the Assessing Officer determined the net inclusion of expenditure at ₹.25,24,97,133/- [₹.33,04,04,141 – ₹.7,79,07,009] and brought to tax.

3. On appeal, by following appellate order for the assessment years 2013-14 & 2014-15, the Id. CIT(A) directed the Assessing Officer to delete the disallowance.

4. Aggrieved, the Revenue is in appeal before the Tribunal and the contention of the Department is that the appellate order passed for the assessment years 2013-14 and 2-14-15 by the Id. CIT(A) has not reached its finality since the Revenue has preferred further appeal before the Tribunal.

5. On the other hand, the Id. Counsel for the assessee has strongly supported the order passed by the Id. CIT(A).

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. Similar ground on identical facts was subject matter in appeal filed by the Revenue before the Tribunal for the assessment year 2011-12 vide its order dated 14.02.2018, the Tribunal remitted the issue back to the file of the Assessing Officer by following the decision of the Tribunal in the case of East Coast Consultants & Infrastructure Ltd. in I.T.A. Nos. 1176 & 1180/Mds/2016 dated 30.11.2016 and relevant portion of the order reads as under:

“2. The only common issue raised in both the Revenue’s appeal is with regard to deletion of disallowance made on the expenses pertaining to the retention of moneys withheld.

3. After hearing both the parties, similar issue came before this Tribunal in the case of M/s Consolidated Construction Consortium Ltd., in I.T.A. Nos. 1824/Mds/2011, 875, 701 & 702/Mds/2014 vide order dated 06.01.2016 wherein held that:-

“12. We have heard both the parties and perused the material on record. Generally, the expenditure which is actually incurred or is incurred in a relevant year would be allowed as deduction while computing the income from business. Such a liability has to be in praesenti. However, at the same time, it relates to the works undertaken by the assessee, completed contract method of accounting is followed which is consistent with the Accounting Standards and these Accounting Standards also laid down the norms indicting the particular point of time when the provisions for all known liabilities and losses have to be made. The making of such a provision by the assessee appears to be justified more so when the assessee had recognized gain as well on such project during the assessment year under consideration. This appears to be in consonance with the principle of matching cost and revenue as well. The reason given by the Department is that the retention money which is receivable was not recognized as income as such, retention payment also cannot be allowed as deduction while computing the income of the assessee. As rightly argued by the assessee, both these are governed by different Accounting Standards. Retention payment is governed by AS-7 issued by ICAI, New Delhi. On the other hand, retention money receivable is governed by AS-9. What is applicable to retention money receivable cannot be applied to retention money payable as these are governed by different Accounting Standard. Further it is undisputed that whenever assessee incurred expenditure on the project it is admissible for deduction. The only dispute raised by the Revenue is regarding the year of liability of expenditure. Considering that the assessee company is assessed at uniform rate of tax, the entire exercise of seeking to disturb the year of allowability of expenditure is, in any case, revenue neutral. We are reminded of the classic observation made by the Bombay High Court in the case of CIT vs Nagri Mills Co. Ltd, 33 ITR 681 which reads as under:

“We have often wondered why the income-tax authorities, in a matter such as this where the deduction is obviously a permissible deduction under the Income-tax Act, raise disputes as to the year in which the deduction should be allowed. The question as to the year in which a deduction is allowable may

be material when the rate of tax chargeable on the assessee in two different years is different; but in the case of income of a company, tax is attracted at a uniform rate, and whether the deduction in respect of bonus was granted in the assessment year 1952-53 or in the assessment year corresponding to the accounting year 1952, that is in the assessment year 1953-54, should be a matter of no consequence to the Department; and one should have thought that the Department would not fritter away its energies in fighting matters of this kind. But, obviously, judging from the references that come up to us every now and then, the Department appears to delight in raising points of this character which do not affect the taxability of the assessee or the tax that the Department is likely to collect from him whether in one year or the other."

12.1 *The aforesaid observation of the Bombay High Court was reiterated by the Delhi High Court in the case of CIT vs Shri Ram Pistos and Rings Ltd, 220 CTR 404, as under:*

"Finally, we may only mention what has been articulated by the Bombay High Court in CIT v. Nagri Mills Co. Ltd. [1958] 33 ITR 681 (Bom) as follows : . .

In the reference that is before us there is no doubt that the assessee had incurred an expenditure. The only dispute is regarding the date on which the liability had crystallized. It appears that there was no change in the rate of tax for the assessment year 1983-84 with which we are concerned. The question, therefore, is only with regard to the year of deduction and it is a pity that all of us have to expend so much time and energy only to determine the year of taxability of the amount."

12.2 *Further, in our opinion, the provision for accrued liability which has to be discharged at a future date by the assessee is an allowable expenditure. In the case of CIT vs Micro Land Ltd, 347 ITR 613[Karnataka High Court], the assessee claimed deduction u/s 37 of the Act for provision for future warranty. The Assessing Officer opined that provision for future warranty is contingent liability and cannot be allowed. The Supreme Court in the case of Rotork Controls India Pvt. Ltd vs CIT, 314 ITR 62, held that the provision made by the assessee for warranty claims on the basis of past experience is allowable deduction u/s 37 of the Act. In the case of Bharat Earth Movers vs CIT, 245 ITR 428, the Supreme Court held that where the assessee has incurred expenditure which is more than the provision for warranty obligation made in the books of account, it cannot be*

said that the provision made by the assessee is not capable of being estimated with the reasonable certainty though actual quantification was not possible and therefore, the Tribunal was justified in allowing the deduction. The Delhi High Court in the case of CIT vs Ericsson Communications P. Ltd, 318 ITR 340, held that provision for warranty claims on scientific basis which is consistently applied by the assessee for its business was allowable as deduction. The Madras High Court in the case of CIT vs Luk India Pvt. Ltd, 239 CTR 440, held that provision for warranty claimed by applying the settled principles of having regard to the fact that claim was based on a scientific approach and it was worked out on the average of previous year's warranty settlement is allowable expenditure. Same view was taken by the jurisdictional High Court in the case of Kone Elevator India Pvt. Ltd vs ACIT, 340 ITR 46. Further, the Supreme Court in the case of Calcutta Co. Ltd vs CIT, 37 ITR 1, held that where the assessee was following the mercantile system of accounting is entitled for deduction of the expenditure which is incidental to the business on accrual basis though it was not actually incurred during the relevant accounting year. The Kerala High Court in the case of CIT vs Indian Transformers Ltd, 270 ITR 259, held that provision created by the assessee for after sales services based on warranty was towards a definite and ascertained liability. On the basis of relevant facts the provision cannot be treated as a contingent liability and therefore, the same was allowable as deduction. Same view was taken by the Delhi High Court in the case of CIT vs Whirlpool of India Ltd, 242 CTR 245, wherein held that the assessee consistently making provision for warranty on the basis of actuarial valuation in respect of machines sold during the year could not be precluded from revising this provision after taking into consideration that warranty period of the goods sold under warranty was exceeding and provision already provided in a particular year is falling short of the expected claim that may be received. Such a provision is based on scientific study and actuarial basis and to be allowed as a business expenditure. Hence, in our opinion, the provision for payment made by the assessee towards sub-contract is allowable expenditure as the assessee recognized the revenue from the said contract as income in the assessment year under consideration. Further, we make it clear that the assessee cannot claim the same expenditure on actual payment basis, otherwise it amounts to double deduction – one on the basis of accrual and another on the basis of actual payment. Hence, we direct the Assessing Officer to allow this retention money payment only on accrual basis and not on actual payment basis. With these observations, we remit this issue to the file of the Assessing Officer for quantification. This ground is partly allowed.”

In view of the above order of the Tribunal, we remit the issue to the file of AO on similar line.”

By following the above decision in assessee's own case for the assessment year 2011-12 vide its order dated 14.02.2018, the Tribunal has remitted the issue to the file of the Assessing Officer. Similarly, for the assessment year under consideration also, we remit the matter back to the file of the Assessing Officer for fresh consideration in line with the decision of the Tribunal dated 30.11.2016. Thus, the ground raised by the Revenue is allowed for statistical purposes.

7. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on the 24th October, 2018 at Chennai.

Sd/-
(ABRAHAM P. GEORGE)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 24.10.2018

Vm/-

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.