

आयकर अपीलिय अधीकरण, न्यायपीठ – “C” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “C” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and  
**Shri, M. Balaganesh, Accountant Member**

**ITA No.1850/Kol/2016**  
Assessment Year :2008-09

The Calcutta Tramways Company (1978) Ltd. 12 R.N. Mukherjee Road, Kolkata-700 001 <b>[PAN No.AABCT 7674D]</b>	<b>V/s.</b>	DCIT, Circle-4(2), Aykar Bhavan, 4thFloor, P-7, Chowringhee Square,Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri A. Biswas, FCA
प्रत्यर्थी की ओर से/By Respondent	Shri P.K. Srihari, CIT-DR
सुनवाई की तारीख/Date of Hearing	15-11-2018
घोषणा की तारीख/Date of Pronouncement	30-11-2018

**आदेश /O R D E R**

**PER S.S.Godara, Judicial Member:-**

This assessee's appeal for assessment year 2008-09 arises against the Commissioner of Income Tax (Appeals)-2 Kolkata's order dated 05.08.2011, passed in case No.928/CIT(A)-2/14-15 u/s 147/154143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The assessee raises following substantive ground in it instant appeal:-

*"1. For that the Learned Commissioner of Income Tax (Appeal) wrongly and arbitrarily did not consider in the order under appeal the contention of the appellant as to the*

*(a) Issuance of notice under section 148 dated 22.03.2013*

*(b) Non-furnishing of the date of recording of the reason for issuance of the notice*

*(c) Non-disposal of the objection of the re-assessment proceedings filed by the Appellant and*

*(d) The 'Change of opinion on the issues"*

2. For that the Learned Commissioner of Income Tax (Appeal) failed to consider the fact

(a) that the sanction letter of loan states that "Regarding the terms and conditions of the Loan sanctioned hereby a further G.O will be issued.

(b) that as per Notification No. 3173-FB dated 30.03.2012 issued by the Government of West Bengal, Finance Department, Budget Branch the rate of interest for the Financial Year was 11.50% per annum for loan to State Transport Corporations.

(c) that in note number '8' of the Notes on Accounts the fact about charging interest "ending determination of rate of interest" of ₹537.34 lakhs for the year under appeal as well as accumulated provision upto 31.03.2006 of ₹9,489 lakhs were disclosed.

(d) that in their Audit Report/Comments

(i) the Statutory Auditor of the appellant had reported that interest @ 6.25% was provided instead of prevailing rate of 12.50% to 15.50%,

(ii) that in FY 2006-07 the C&AG had commented u/s. 619(4) of the Companies Act 1956 that there was short provision of liability towards interest on Government loans upto February, 1994.

(e) That Tax Auditor of the appellant in his report u/s. 44AB of IT ct 1961 had reported "NIL" against sl. No. 17(k) of Form No.3CD signifying that "any liability of a contingent nature" has not been debited to the P&L A/c.

3. For that the Learned Commissioner of Income Tax (AI) further erred in not taking into account the Accounting Standard notified under section 145(2) of the Act with regard to para

A.(6) (b) "Accrual"

A.(6) (c) "Consistency"

B.(13)(a) "Accounting estimate"

So much so that he failed to consider that estimated provision may be recognized as allowable expenditure.

4. For that on the fact and in the circumstances the Learned Commissioner of Income Tax (Appeal) was wrong in sustaining addition of interest of ₹5,37,34,000 on loan from Government of West Bengal.

3. The assessee appears to have pleaded two folded grievances in its pleadings. Its former grievance challenges validity of the re-assessment to be without jurisdiction not sustainable on account of not furnishing of date of recording of re-opening reasons before issuing u/s 148 notice, non disposal of

objection against re-opening before fanning the impugned re-assessment as well as terming the same to be mere “change of opinion”; respectively. Its latter substantive ground on merits seeks to reverse both the lower authorities findings adding interest of ₹5,37,34,000/- as income on loans obtained from government of West Bengal.

4. Both the parties state at the outset that above latter issue on merits pertaining to interest addition on loan availed from the government of West Bengal is very much a recurring one. They place on record this tribunal’s order in ITA No.590/Kol/2014 dated 18.10.2017 in assessee’s case itself for immediate preceding assessment year 2007-08 restoring the very issue back to the Assessing Officer as follows:-

“3. First we take assessee’s appeal in ITA No.846/Kol/2014, for Assessment Year 2007-08, wherein the assessee has raised the following grounds of appeal:

*1.For that on the fact and in the circumstances the Ld. Commissioner of Income Tax(Appeal) was wrong in sustaining addition of interest of Rs.5,37,34,000 on loan from Govt. of West Bengal.*

*2.For that the Id. Commissioner of Income Tax (Appeal) failed to consider the fact*

*(a)that in note number ‘8’ of the Notes on Accounts the fact about charging interest “Pending determination of rate of interest” of Rs.537.34 lakhs for the year under appeal as well as accumulated provision upto 31.03.2006 of Rs.9,489 lakhs were disclosed.*

*(b)that neither the Statutory Auditor of the assessee had u/s 227 of the Companies Act 1956 reported nor the C&AG had commented u/s 619(4) of the Companies Act 1956 that the Loan was interest free and/or that interest should not have been debited to the P&LA/c and*

*(c)that Tax Auditor of the assessee in his report u/s 44AB of IT Act 1961 had reported “NIL” against sl. No.17(k) of Form No.3CD signifying that “any liability of a contingent nature” has not been debited to the P&L A/c.*

*3.For that the Id. Commissioner of Income Tax(Appeal) further erred in not taking into account the Accounting Standard notified under section 145(2) of the Act with regard to para*

*A.(6)(b) “Accrual”*

*A.(6)(c) “Consistency”*

*B.(13)(a) “Accounting estimate”.*

*4.For that on the facts and in the circumstances the Id. Commissioner of Income Tax(appeal) wrongly and arbitrarily held that “any expenditure claimed on the estimate basis for an unascertained liability is not allowable deduction under the provisions of Income Tax Act.*

*5.The assessee craves leave to add to and/or alter, amend, modify or rescind the grounds hereinabove before or at the time of hearing of this appeal.”*

3.1 Although, in this appeal, the assessee has raised a multiple grounds of appeal , but at the time of hearing the solitary grievance of the assessee has been confined to the issue that addition and confirmed by the CIT(A), whereas the said loan was Pending determination of rate of interest.

3.2 The brief facts qua the issue are that the assessee has filed its return of income on 30.10.2007 declaring total income at Rs.NIL. The assessee's return of income was duly processed u/s 143(1) on 24.12.2008. The assessee's case was selected for scrutiny u/s 143(2) of the Act and Assessing Officer has completed the assessment by making addition on account of interest expenditure on estimate basis of Rs.537.34 lakhs. During the assessment proceedings, the assessee submitted before AO that as per notes on account No.8, of its financial statements, it has been mentioned that interest was pending to be provided, that is, interest was pending because rate of interest was yet to be determined on the loan of Government of West Bengal which was disbursed till February 1994 under Plan Scheme. However the provision for interest had been made at an estimated rate of 6.25% p.a. (simple); interest and the same was charged in Profit and Loss Account amounting to Rs.537.34 lacs. The assessee had further submitted before the AO, vide letter dated 07/10/09 that as per Note No.8 of "**Notes to Accounts**" of the financial statements, the loan was sanctioned by West Bengal Government, who is 100% owner of the company, wherein it was not mentioned that the loan was interest free. Although the exact rate of interest was not intimated by the Government of West Bengal, however, during the period of loan sanctioning the interest on loan varied from 6.50 percent to 12.50 percent (which would also be evident from the Audit Memo. No.RAO/CTC/Aud/2006-07/3, dt.22/11/2007 of the Resident Audit Officer from the Office of the Principal Accountant General (Audit) West Bengal. Therefore, the company on a conservative basis was taking the interest expenditure @ 6.25% and charging the same to the Profit and Loss Account. As the company is following the accrual system of accounting it had to consider the fact that the loan was not sanctioned as interest free. The said fact was duly disclosed in the financial statements, which were approved by the West Bengal Government nominated directors. The financial statements were audited by the CAG appointed Statutory Auditors and also vetted by the Commercial Audit wing of the Comptroller & Auditor General of India. The Statutory Auditors and the Commercial Audit wing of CAG never objected in principle to account for the interest on the said loan and the charging of the interest expenditure to the Profit and Loss Account.

However, the AO after going through the reply of the assessee held that the expenditure claimed on estimate basis is not an allowable expenditure as per provision of I.T. Act, 1961. Therefore, it proves that the sum of Rs.537.34 lacs debited as interest on plan loan to the Profit and Loss Account, was merely a provision and the actual quantum of the liability on this part of plan loan was unascertainable during the year and any year prior to this. As per Income Tax Act, provision for any unascertainable liability is not an admissible expenditure. The assessee could not produce any corroborative evidence to prove the reason behind charging interest @ 6.5%. Therefore, the AO disallowed the notional interest expenditure claimed on estimate basis of Rs.537.34 lacs and added back to total income of the assessee.

3.3 Aggrieved by the order o the Assessing Officer, the assessee filed an appeal before the Id. CIT(A) who has confirmed the addition made by the Assessing Officer. The Id. CIT observed that the disallowance of Rs.5,37,34,000/- in respect of interest, as the said interest had been claimed by the assessee on loan received from Government of West Bengal disbursed till February, 1994. It was observed by the assessing officer, that the provision for the interest had been made on estimated rate of 6.25%. In reply to the query raised by the assessing officer, it was stated by the

assessee that the loan had been sanctioned by the West Bengal Government who was 100% owner of the company. At the time of sanction, had it had not been mentioned that the loan was interest free. Although the exact rate of interest had not been intimated by the Government, in the period of sanctioning of loan, the interest rate varied from 6.5% to 12.5%. Hence the company provided interest at the rate of 6.25%. This fact had been duly disclosed in the financial statements, which were approved by Government nominated directors as well as auditors. The assessing officer, however, observed that expenditure claimed on estimate basis was not an allowable expenditure under the provisions of Income Tax Act. He therefore disallowed the claim of interest on account of being unascertained liability.

The assessee had re-iterated, before the CIT(A), the submission dated 7.10.2009 in the matter made before the assessing officer. In addition to this, it was also submitted by the assessee that in the audit conducted by C & AG, a comment was made that interest in respect of the unsecured loan from the Government was short provision resulting in understatement of loss. Therefore it was contended that the interest provided by the assessee was rather on lower side and should be allowed.

The Id CIT(A) after considering the submissions of assessee held that the interest under consideration had been provided in respect of loans received from Government of West Bengal. It was undisputed that while sanctioning the loan, the Government had not specified that any interest was to be charged. The assessee had pointed out that it had also not been mentioned that the loan was interest free. The Id CIT(A) observed that any actual payment of interest had also not been made so far, nor any letter of demand etc. had been received from government. The loan was from the West Bengal government who is 100% owner of the company. Thus, it was not a case that the loan was from, say, a bank or financial institution or NBFC engaged in business of giving loan on interest. Therefore it cannot be said that the loan had been taken on commercial terms and interest would have to be necessarily paid on the same. It was well-known that the assessee company had huge accumulated losses and the government, being 100% owner, may very well decide to give interest free funds to the assessee company. Under these circumstances, in absence of any specific stipulation for interest, there cannot be a presumption that the assessee is liable to pay any interest. Even if interest would have to be paid, as long as the rate of interest was not specifically known, any provision made for the same remains a provisional and unascertained liability. So far as the remark of C&AG was concerned, while an auditor may make certain remarks based on his perception, the same cannot determine allowability of a claim for deduction in income tax assessment. Such allowance has to be considered strictly in accordance with the provisions of Income Tax Act. It is well settled, that any expenditure claimed on the estimate basis for an unascertained liability is not allowable deduction under the provisions of Income Tax Act. Same view had been taken in the decision in the case of Rajasthan State Mines and Minerals Ltd. vs. CIT (Raj.) 208 ITR 1010 and a number of other cases. Therefore, considering these factual position, the CIT(A) confirmed the disallowance of Rs.537.34 lacs.

3.4 Not being satisfied with the order of the CIT(A), the assessee is in further appeal before us. The Id. Counsel for the assessee has submitted before us that rate of interest on the loan is yet to be decided. Therefore, the assessee has been making the provisions in respect of the interest on the loan taken from Govt. Of West Bengal. The Id. Counsel for the assessee pointed out that as per note No.8 of the Notes to Accounts of the financial statements which clearly states that "pending determination of rate of interest" of Rs.537.34 lakhs for the current year and accumulated interest up to 31st March 2006 of Rs.9,489 were disclosed. Therefore, the assessee under consideration since the rate of interest was yet to be decided but on estimate basis

the assessee made the provision for interest for the Assessment Year under consideration at Rs.537.34 lakh and accumulated interest which has been coming since last years was to the tune of Rs.9489/- lakhs. Therefore, current year interest which is pending determination of rate of interest and the accumulated provision for interest has been duly disclosed by the assessee in the balance sheet. The Id counsel also pointed out that neither statutory auditor u/s 227 of the Companies Act 1956 nor the C&AG had commented u/s 619(4) of the Companies Act 1956 that the loan was interest free and the interest should not have been debited to P&L A/c. In addition to this, the Id. Counsel pointed out that tax auditor of the assessee in the tax audit report u/s44AB of the I.T. Act 1961 had reported "NIL" against sl. No.17(k) of Form no.3CD signifying that "any liability of a contingent nature" has not been debited to the P&L A/c. The Id. CIT(A) did not consider the Accounting Standards notified u/s145(2) of the Act. Therefore, by following the accounting standards prescribed u/s 145(2) of the Act, the assessee has accrued interest on the basis of estimate. The Id. Counsel submitted that the loan sanctioned by West Bengal Government, 100% owner of the company, wherein it was not mentioned that the loan was interest free. Although, the exact rate of interest was not intimated by the Government of West Bengal, during the period of loan sanctioning, the market interest on loan varied from 6.50 percent to 12.50 percent. Therefore, the company provided interest at the rate of 6.25% on the said loan. The Id. Counsel submitted that the said fact had been duly disclosed in the financial statement which was audited by the Government as well as Auditors. The Assessing Officer however observed that expenditure claimed on estimate basis is not an allowable expenditure as per provision of I.T. Act, 1961. Therefore, he disallowed the claim of the interest on account of unascertainable liability. However, the Id. CIT(A) observed that the company has not specified that any interest on the loan is to be charged. The assessee had also pointed out before the Id. CIT(A) that loan was interest free therefore, the Id. CIT(A) observed that based on the facts no any interest is to be charged. The Id. CIT(A) also observed that the said loan had not been taken on commercial term. Therefore, the provision for interest should not be allowed and the Id. CIT(A) held that any expenditure claimed on the estimate basis for an unascertained liability is not allowable deduction under the provisions of Income Tax Act and therefore, he disallowed the interest claimed by the assessee at Rs.537.34 lakhs. The Id. Counsel pointed out that the rate of interest is yet to be decided, therefore, he prayed the Bench to remand the matter back to the file of the Assessing Officer to adjudicate the issue after taking into account the rate of interest which would be provided by the Govt. of West Bengal. The Id Counsel has submitted before the Bench that they have made an application to the Govt. of West Bengal to reply in connection with the said loan whether it is an interest free or not. If it is not interest free loan, and the rate of interest is applied on the said loan should be declared by the West Bengal Government then in that case the rate of interest declared by the Government will be taken into account. Therefore, the Id. Counsel prayed the Bench to remand the matter back to the file of the Assessing Officer to adjudicate the issue as per the interest rate which is to be declared by the Govt. of West Bengal.

3.5 On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the AO, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

3.6 Having heard the rival submissions and perused the materials available on record, we are of the view that in the assessee's case under consideration, the rate of interest, on the loan, is yet to be decided by the Government of West Bengal. We note that the Interest expenditure claimed on estimate basis is not an allowable expenditure under the provisions of Income Tax Act. It is the claim of interest on account of being unascertained liability. We also note that in the audit conducted by

C & AG, a comment was made that interest in respect of the unsecured loan from the Government was short provision resulting in understatement of loss, and therefore based on this comment, it was contended by the assessee that the interest provided by the assessee was rather on lower side and should be allowed. We do not agree with this contention of the assessee because there is no any cogent evidence available on record from the Lender (Govt. of West Bengal) by the West Bengal Government then in that case the rate of interest declared by the Government will be taken into account. Therefore, the Id. counsel prayed the Bench to remand the matter back to the file of the Assessing Officer to adjudicate the issue as per the interest rate which is to be declared by the Govt. of West Bengal.

3.5 On the DR for the Revenue has primarily reiterated the sad taken by the AO, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

3.6 Having heard the rival submissions and perused the materials available on record, we are of the view that in the assessee's case under consideration, the rate of interest, on the loan, is yet to be decided by the Government of West Bengal. We note that the interest expenditure claimed on estimate basis is not an allowable expenditure under the provision of Income Tax Act. It is the claim of interest on account of being unascertained liability. We also note that in the audit conducted by C&AG, a comment was made that interest in respect of the unsecured loan from the Government was short provision resulting in understatement of loss, and therefore based on this comment, it was contended by the assessee that the interest provide by the assessee was rather on lower side and should be allowed. We do not agree with this contention of the assessee because there is no any cogent evidence available on record from the Lender (Govt. of West Bengal) of the said loan about interest to be charged.

However, the Counsel for the assessee has prayed the Bench that assessee company will get the sanction letter/confirmation from the Government of West Bengal about the rate of interest to be charged, or not to be charged, on such loan. Therefore, the Counsel prayed the Bench that the assessee has already applied to the Govt. of West Bengal, for confirmation letter and will get it very soon. Therefore, we direct the Assessing Officer to take into account the sanction letter/confirmation letter of the Government of West Bengal in respect of the rate of interest which is to be charged on such loan and adjudicate the issue as per the provisions of the Income Tax Act. Therefore, we allow this appeal for statistical purposes.

3.7 In the result, the appeal filed by the assessee, is allowed for statistical purposes."

5. Learned Representatives are unanimous during the course of hearing that we need to issue similar remand direction in the impugned assessment year as well. No distinction on facts or law emerge from the case file in these two assessment years regarding the impugned issue. We therefore adopt judicial consistency in these facts and circumstances to restore assessee's latter substantive ground back to the Assessing Officer in the same terms. No

other argument has been raised before us during the course of hearing on former legal issue.

6. This assessee's appeal is partly allowed for statistical purpose.

Order pronounced in the open court 30/11/2018

Sd/-

(लेखा सदस्य)

(M.Balaganesh)

(Accountant Member)

Kolkata,

\*Dkp, Sr.P.S

दिनांक:- 30/11/2018 कोलकाता ।

Sd/-

(न्यायिक सदस्य)

(S.S.Godara)

(Judicial Member)

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-The Calcutta Tramways Co. Ltd. 12 R.N. Mukherjee Rd.Kolkata-001
2. प्रत्यर्थी/Respondent-DCIT, Cir-4(2), Aykar Bhavan,4<sup>th</sup> Floor, P-7, Chowringhee Sq. Kol-69
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता ।