

आयकर अपीलीय अधिकरण , 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI**

श्री एन.आर.एस .गणेशन, न्यायिक सदस्य एवं
श्री एस जयरामन, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos. 482 & 484/Chny/2018

निर्धारण वर्ष/Assessment Years : 2003-04 & 2007-08

The Assistant Commissioner of Income
Tax,
Circle -1,
Salem.

M/s. Tamil Nadu State Transport
Vs. Corporation (Salem) Ltd.,
No. 12 Ramakrishna Road,
Salem 636 007.

[PAN: AAAC 7678J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Revenue by
Assessee by

: Shri. S. Bharath, CIT
: Shri. G. Baskar, Advocate

सुनवाईकीतारीख/Date of Hearing

: 20.11.2018

घोषणाकीतारीख/Date of Pronouncement

: 27.11.2018

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The Revenue filed these appeals against the orders of Commissioner of Income Tax (Appeals)-7, Salem in ITA Nos. 64/2008-09 & 203/2009 , both dated 30.11.2017 for assessment years 2003-04 & 2007-08, respectively.

2. M/s. Tamil Nadu State Transport Corporation (Salem) Ltd., the assessee, a government transport company carrying on a business of running buses for the transport of travelling public. While making the assessment for assessment year 2003-04, the Assessing Officer, inter alia, disallowed damages for remittance of Pension Fund Trust paid by the assessee at Rs. 95,88,351/- holding that the damages paid by the assessee for the delayed payments of contribution is not compensatory but damages in the nature of penalty. Aggrieved, the assessee filed an appeal before the CIT(A).

3. Before the CIT(A), the assessee pleaded that "the nomenclature "Damage" used in account head represent interest @ 9.5% charged for the dues pending to be remitted to Pension Fund Trust, based on the interest rate on Provident Fund accumulations declared by the Central Government. The interest rate is only compensatory in nature for the interest loss faced by the Pension Fund Trust for non-remittance of dues to the Trust by the Corporation. So far the Government has not quantified any penal part for the same" and relied on the Supreme Court decision in the case of Swadeshi Cotton Mills Co., vs CIT 233 ITR 199 wherein it was held that

"the authority under the Income Tax Act, 1961 ('the Act') irrespective of the nomenclature given to the imposts in the statute whether termed penalty or damages or otherwise, has to find out whether it is

compensatory or penal in nature in order to allow compensatory part as deduction under section 37(1) of the Act. The Court further held that the amount of damages for the delayed payment of contribution under section 14B of the Employee's Provident Fund Act, comprises both the element of penal levy as well as compensatory payment and that is for the authority under the Act to decide the extent to which it is compensatory. "

4. The Ld CIT(A) considered the plea etc and held that the assessee has submitted that it is only the interest component @9.5% for the dues and there is no penalty involved. In absence of any finding by AO to establish that there is a penalty component. Respectfully following the Apex Court's directions on this issue discussed, supra, the Ld CIT(A) directed the A.O. to treat the above expenditure as 'compensatory' in nature and allow the deduction under section 37(1) and allowed the appeal .

5. Aggrieved against the order of the Ld CIT(A), the Revenue filed this appeal with the following grounds of appeal:

"(i) The Learned CIT(A) failed to appreciate the assessment order framed by the AO with regard to Damages on Pension Fund Trust.

(ii) The learned CIT(A) erred in allowing the assessee's appeal with regard to payment of Damages to Pension Fund Trust as the assessee had not proved beyond doubt that the expenditure incurred was purely compensatory in nature during the assessment and remand report proceedings before the AO.

(iii) The learned CIT(A) ought to have considered the assessment order and remand report while deciding the assessee's claim which he failed to do so -

(iv) The learned CIT(A) failed to consider that in CIT Vs. Anglo French Textiles Ltd. (254 ITR 314 (2002) the Madras High Court held "the question is as to whether the damages paid by the assessee under Section 14B of the Employees' Provident Funds and Miscellaneous provisions Act for the delayed payment of contribution of provident fund is deductible in computing the income the business of the assessee. The Supreme Court in the case of Swedeshi Cotton Mills Co. Ltd. Vs.CIT (1998) 233 ITR 199 (SC) has held that the authority under the Income-tax Act, irrespective of the nomenclature given to the imposts in the statute whether termed as penalty or damages or otherwise has to find out whether it is compensatory or in penal in nature, in order to allow the compensatory part as deduction under Section 37(1) of the Income-tax Act. The Court further held that the amount of damages for the delayed payment of contribution under Section 14B of the Employees Provident Funds and Miscellaneous Provision Act, 1952, comprises both element of penalty levy as well as compensatory payment and this is for the authority under the Act to decide the extent to which it is compensatory. Having regard to the law laid down by the Apex Court, the order of the Tribunal in holding that the amount of damages paid to be allowed as deduction even without examining the extent to which the same can be regarded as compensatory, is not an order which is in accordance with Law".

(v) For the above reasons, it is prayed that the order of Commissioner of Income Tax (Appeals) be cancelled and the order of the Assessing officer be restored."

The Ld. DR presented the case and argued on the lines of grounds of appeal.

6. Per contra, the Ld. AR submitted a copy of "order giving effect to CIT(A) order" passed by the ACIT, Circle -1, Salem for assessment year 2011-12 dated 15.11.2017, wherein, the AO held as under:

"3. Accordingly, the case was posted for hearing and the assessee was asked to furnish necessary documents and evidences in support of their claim. In response, the assessee appeared and represented that the damages paid for remittance to Pension fund trust is nothing but interest @ 9.5% on the delayed pay pent monthly contribution and the payments were compensatory in nature and not a penalty. In support, the assessee company had furnished Government's order, details of interest paid and detailed explanation in this regard. Considering the reply furnished, the assessee's claim of damages for remittance to Pension fund trust for Rs 2,35,91,384/ is allowed."

furnishing a copy of interest rate declared by Pension Fund accumulation since 1952 to 2014, the AR submitted that since the AO has already decided the nature of this payment i.e., the damages paid by it in assessment year 2011-12, is compensatory in nature, this appeal may be allowed.

7. We heard the rival submissions and find merit in the submissions made by the Id. AR, supra, and hence, do not find any merit in the submission of the Revenue. The appeal grounds of the Revenue are dismissed.

ITA No. 484/Chny/2018:

8. While making the assessment for assessment year 2007-08, the Assessing Officer added MACT provisions of Rs. 1,56,25,446/- to the

loss and completed the assessment. Aggrieved, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal.

9. Aggrieved against the order of the Ld. CIT(A), the Revenue filed this appeal with the following grounds of appeal:

- "(i) The CIT(A) failed to consider the fact that the AO had correctly disallowed the MACT provisions made during the year. Any provisions created during the year is to be added to the net profit in the computation statement and the expenditure actually incurred should be reduced from the profit arrived. However, the assessee had not added the provision made during the year in the income computation statement.*
- (ii) The learned CIT(A) has failed to appreciate the finding depicted on Page 49-G of the 35th Annual Report referring to the provision of Rs.135.40 lakhs for the payment towards MACT claims.*
- (iii) The Learned CIT(A) has failed to appreciate as per page no.35 & 46 of the 35 Annual Report relied upon by the assessee. The Profit & Loss account was not found debited towards MACT claims / provisions.*
- (iv) The learned CIT(A) also failed to appreciate and give a finding on the various provisions made by the assessee aggregating to Rs.22.39 crores as per the break up filed the Deputy General Manager.*
- (v) Thus, the CIT(A) has erred to arrive at the finding of the fact with regard to the allowability of MACT provisions, which were disallowed by the assessing officer, more particularly, when the CIT(A) co-terminates with the powers of the Assessing officer.*
- (vi) The learned CIT(A) ought to have considered the remand report of the Assessing officer while deciding the assessee's claim which he failed to do so.*
- (vii) For the above reasons, it is prayed that the order of Commissioner of Income Tax (Appeals) be cancelled and the order of the Assessing officer be restored."*

The Ld. DR presented the case on the lines of grounds of appeal. Per contra, the Ld. AR took us to the copies of relevant portion in the paper book.

10. We heard the rival submissions. The order of the Ld. CIT(A) is extracted as under:

"6. I have perused the Assessment Order & the submissions made by the assessee. The appellant has filed details of payments made to claimants on the basis of various judgements and statutory liability. In the assessment order, the A.O. has not discussed elaborately regarding the addition made on 'MACT provision.' The Assessment order is just a single page order and nothing is discussed or elaborated for the addition made. The assessment order is very sketchy and non speaking to say the least. The AO has not bothered to carry out proper investigation at the time of assessment proceedings or at the time of sending the remand report. In the absence of any concrete material in the assessment order, I am constrained to accept the argument of the assessee and allow all the grounds of appeal of the assessee.

7. In the result the appeal is allowed."

from the above, it is clear that the facts and circumstances associated with this issue neither brought out by the Assessing Officer nor by the Ld CIT(A). In the facts and circumstances, we deem it fit to remit this issue back to the AO for a fresh examination. The assessee shall lay relevant materials in support of its contention before the AO and comply with the requirements of the AO in accordance with law. The AO is free to conduct appropriate enquiry as deemed fit, but he shall furnish

adequate opportunity to the assessee on the material etc to be used against it and decide the matter in accordance with law.

11. In the result, the Revenue's appeal in ITA No. 482/Chny/2018 is dismissed and its appeal in ITA No. 484/Chny/2018 is treated as allowed for statistical purposes.

Order pronounced on Tuesday, the 27th day of November, 2018 at Chennai.

Sd/-

(एन.आर.एस .गणेशन)

(N.R.S. GANESAN)

न्यायिकसदस्य/Judicial Member

Sd/-

(एसजयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 27th November, 2018

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त) अपील(/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF