

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.261 & 262/Chny/2018

निर्धारण वर्ष /Assessment Years : 2008-09 & 2009-10

M/s BGR Energy Systems Ltd.,
Corporate Office, Guna Complex,
443, Anna Salai, Teynampet,
Chennai - 600 018.

v. The Assistant Commissioner of
Income Tax,
Central Circle – 3(1),
Chennai - 600 034.

PAN : AABCG 2202 J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.472 & 473/Chny/2018

&

C.O. Nos.74 & 75/Chny/2018

(in I.T.A. Nos.472 & 473/Chny/2018)

निर्धारण वर्ष /Assessment Years : 2008-09 & 2009-10

The Assistant Commissioner of
Income Tax,
Central Circle – 3(1),
Chennai - 600 034.

(अपीलार्थी/Appellant)

v. M/s BGR Energy Systems Ltd.,
Corporate Office, Guna Complex,
443, Anna Salai, Teynampet,
Chennai - 600 018.

(Respondent & Cross-objector)

निर्धारितकी ओर से/Assessee by : Ms. Jharna B. Harilal, FCA

राजस्वकी ओर से/Revenue by : Shri S. Bharath, CIT

सुनवाई की तारीख/Date of Hearing : 27.12.2018

घोषणा की तारीख/Date of Pronouncement : 02.01.2019

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both the assessee and Revenue filed appeals for assessment years 2008-09 and 2009-10 against the common order passed by the Commissioner of Income Tax (Appeals)-19, Chennai, dated 14.11.2017. The assessee has also filed cross-objections for both the assessment years to support the order of the CIT(Appeals) wherein certain issues were decided in favour of the assessee. Since common issues arise for consideration in all these appeals and cross-objections, we heard these appeals and cross-objections together and disposing the same by this common order.

2. Let's first take assessee's appeals in I.T.A. Nos.261 & 262/Chny/2018.

3. The first issue arises for consideration for the assessment years 2008-09 and 2009-10 is with regard to provision for warranty.

4. During the course of hearing, Ms. Jharna B. Harilal, the Ld. representative for the assessee, very fairly submitted that this issue was examined for the very same assessment years by the Hyderabad Bench of this Tribunal in I.T.A. Nos.1513/Hyd/11 and I.T.A. No.985/Hyd/12 and decided the issue against the assessee.

5. We heard Shri S. Bharath, the Ld. Departmental Representative also. As rightly submitted by the Ld. representative for the assessee, the Hyderabad Bench of this Tribunal in the assessee's own case for the very same assessment years found that the provision for warranty cannot be allowed. In fact, the Hyderabad Bench in para 29 of its order dated 05.09.2013 observed as follows:-

“29. We heard both sides and perused the material available on record. We are of the considered opinion that this item of disallowance, viz. warranty provision, is merely a provision and not an expenditure already incurred and laid out for the purpose of business. Unless the liability for such expenditure crystallises, assessee is not entitled to claim for deduction in respect of such expenditure. The CIT(A) has not given any valid reason for substantiating his finding, while allowing the claim of the assessee. We accordingly, set aside the impugned order of the CIT(A), and restore the disallowance made by the Assessing Officer in this behalf. Revenue's ground on this issue is allowed.”

6. In view of the above, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

7. The assessee has taken one more ground with regard to interest on advances to subsidiary companies for assessment year 2009-10. The Ld. representative for the assessee very fairly submitted that she is not pressing this issue. The Ld. representative has also made an

endorsement to this effect on the grounds appeal filed before this Tribunal. The Ld. D.R. has no objection to dismiss this ground as not pressed. In view of the above, the issue with regard to interest on advances to subsidiary companies is dismissed as not pressed.

8. Now let's take Revenue's appeals in I.T.A. Nos.472 & 473/Chny/2018.

9. The only issue arises for consideration in both the appeals is with regard to repayment of principal amount for the assets taken on lease by the assessee.

10. Shri S. Bharath, the Ld. D.R. submitted that before the date of search, the Assessing Officer found that the principal amount paid on the assets taken on lease is a capital expenditure and the Assessing Officer has also allowed depreciation. According to the Ld. D.R., this was confirmed by the CIT(Appeals) and also Hyderabad Bench of this Tribunal in I.T.A. Nos.1244 & 1513/Hyd/11 and I.T.A. No.985/Hyd/12 by an order dated 05.09.2013. Therefore, according to the Ld. D.R., the issue of repayment of amount in respect of the assets taken on lease is not pending before the Assessing Officer on the date of search. According to the Ld. D.R., the issue was concluded by the order of this Tribunal dated 05.09.2013. The assessee has also filed appeal before

the High Court of Andhra Pradesh and the same was admitted and pending for adjudication. Therefore, the CIT(Appeals), according to the Ld. D.R., is not justified in deleting the addition for the years under consideration. According to the Ld. D.R., the CIT(Appeals) ought not to have deleted the addition.

11. On the contrary, Ms. Jharna B. Harilal, the Ld. representative for the assessee, submitted that admittedly the issue of repayment of amount on the assets taken on lease was the subject matter of adjudication by the Assessing Officer himself for the very same assessment years before the date of search. According to the Ld. representative, this Tribunal by an order dated 05.09.2013 confirmed the order of the Assessing Officer holding that it is a capital in nature, therefore, the assessee is eligible only for depreciation. According to the Ld. representative, the assessee has already filed an appeal before the Andhra Pradesh High Court and the same is pending for adjudication, therefore, the Assessing Officer cannot make another addition after search proceeding. According to the Ld. representative, the concluded assessment on the date of search cannot be reopened and make further addition in the block assessment. Therefore, according to the Ld. representative, the CIT(Appeals) has rightly deleted the addition made by the Assessing Officer.

12. We have considered the rival submissions on either side and perused the relevant material available on record. As rightly submitted by the Ld. D.R. and the Ld. representative for the assessee, the very same issue of repayment of principal amount and interest on the assets taken on lease was the subject matter of adjudication by the Assessing Officer for the very same assessment years before the date of search. The Assessing Officer found that the payment is capital in nature. Accordingly, he allowed the depreciation. This finding of the Assessing Officer was confirmed even by the Hyderabad Bench of this Tribunal. The assessee has already filed an appeal before the Andhra Pradesh High Court which was admitted by the High Court and pending for adjudication. Consequent to the search operation, the assessment records were transferred to Chennai for consolidated investigation. The Assessing Officer for the block period made very same disallowance with regard to repayment of loan on the assets taken on loan.

13. The question arises for consideration is when the issue of repayment of amount on the assets taken on lease was concluded by the Assessing Officer, which was further confirmed by the Hyderabad Bench of this Tribunal, can the Assessing Officer again make very same disallowance for the block period after the search? This Tribunal is of the considered opinion that once the proceeding was terminated and it is not

pending before the Assessing Officer during the search, there cannot be any addition in respect of the same issue. Therefore, the CIT(Appeals) has rightly deleted the addition. It is not open to the Assessing Officer to reopen the concluded assessment. In fact, this issue is said to be pending before the High Court against the order of the Hyderabad Bench of this Tribunal dated 05.09.2013. In view of the above, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

14. The cross-objections filed by the assessee are only to support the order of the CIT(Appeals). Since this Tribunal finds no reason to interfere in the order of the CIT(Appeals), the cross-objections become infructuous.

15. In the result, the appeals filed by both the assessee and Revenue and the cross-objections filed by the assessee are dismissed.

Order pronounced in the court on 2nd January, 2019 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 2nd January, 2019.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती /Assessee
2. Assessing Officer
3. आयकर आयुक्त (अपील)/CIT(A)-19, Chennai-34
4. Principal CIT, Central-1, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.