आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ "बी" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B" CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SH. SANJAY GARG, JUDICIAL MEMBER & SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No. 583/CHD/2012
निर्धारण वर्ष / Assessment Year : 2008-09

M/s S.J.V.N. Ltd. (Formerly Satluj Jal Vidyut Nigam Ltd.), Himfed Building, New Shimla (HP). .	बनाम	The Addl. CIT, Shimla Range, Shimla.
स्थायी लेखा सं./PAN NO: AAICS1307F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

&

ITA No. 596/CHD/2012
निर्धारण वर्ष / Assessment Year : 2008-09

The ACIT, Circle, Shimla.	बनाम	M/s S.J.V.N. Ltd. (Formerly Satluj Jal Vidyut Nigam Ltd.), Himfed Building,New Shimla (HP).
		स्थायी लेखा सं.: AAICS1307F
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Rajeev Sood
राजस्व की ओर से/ Revenue by : Smt. Mona Mohanti, CIT-DR
सुनवाई की तारीख/Date of Hearing : 19.02.2019
उदघोषणा की तारीख/Date of Pronouncement : 19.02.2019

आदेश/Order

Per Sanjay Garg, Judicial Member :

These are the cross-appeals, one by the assessee and the other by the Revenue preferred against the order of ld. Commissioner of Income Tax (Appeals), Shimla (hereinafter referred to as CIT[A])dated 22.03.2012 for assessment year 2008-09. Since common issues are involved in both the appeals, hence, these were heard together and are being disposed of by this common order.

2. First we take up assessee's appeal. Though the assessee in its appeal has taken so many grounds and sub-grounds, out of which following issues arise:

I. Computation of Gross total income as per normal provisions

II Denial of Deduction u/s 80IA of the Act on the following –

(i) Interest from employees and contractors – Rs. 5763604/-

(ii) Machinery hire charges of Rs. 2989865/- and rent recovered from staff Rs. 2404593/-

(iii) Profit on sale of assets Rs. 1115530/-

(iv) Miscellaneous income derived from rents from transit camps, other recoveries from employees, receipts from buses Rs. 1397668/-

(v) Insurance claim Rs. 231898830/-

(vi) Sale of forms – Rs. 8 lacs

III Incidental expenditure allowed only @ 2% as against 5% claimed on interest income

IV. Computation of income as per provisions of section 115JB on –

a) Advance against deduction depreciation

b) Addition of 8.57 crores and 50.13 crores to the book profits on account of unascertained liability.

c) Addition of Rs. 46089897/- to book profits on account of interest on arbitration awards.

3. The first ground/issue is relating to the disallowance u/s 40(a)(ia) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). In respect of the interest and other expenses incurred by the assessee, the assessee did not deduct tax at source while making/crediting the aforesaid payments to payees. Therefore, the disallowance of

expenditure u/s 40(a)(ia) of the Act has been made by the Assessing Officer (hereinafter referred to as AO) which has been further confirmed by the CIT(A).

4. Before us, ld. counsel for the assessee, though could not convince us about the non-deduction of TDS on the aforesaid amount, however, the only submission of the ld. counsel for the assessee in this respect is that the assessee may be given the benefit in the shape of allowance of the said expenditure in the year in which the TDS has been deducted on the aforesaid payments. The ld. DR has also fairly agreed that the assessee is entitled to the allowance of expenditure in the year in which TDS has been deducted. In view of this, this ground of appeal is dismissed with the observation that the assessee will be at liberty to claim the aforesaid expenditure in the year in which the TDS has been deducted.

5. Vide ground No. 2, the assessee has agitated the action of the lower authorities in denying the benefit of exemption u/s 80IA of the Act in respect of income received on various counts. First is the interest from employees and Directors of Rs. 5763604/-. The ld. Counsel has fairly admitted that this income has not accrued from the manufacturing/generation of electricity activity of the assessee so this allowance has rightly been made by the lower authorities.

6. Second issue is regarding income from machinery hire charges and rent recovered from staff. This income is also apparently not related to manufacturing/generation of electricity activity of the assessee. Hence, no interference is

required on this issue also. Similarly the profit from sale of assets of Rs. 11,15,530/- is not linked to the manufacturing/generation of electricity activity of the assessee. The same has also been rightly disallowed by the lower authority.

7. We do not find any reason to interfere in the order of the lower authorities in respect of denial of claim u/s 80IA of the Act in respect of miscellaneous income from rent from transit camps and other recoveries from employees and receipts from buses etc., the same does not link to the manufacturing activity of the assessee. The sole issue pressed upon by the counsel under this head is regarding the insurance claim of Rs. 23,18,98,830/-. The ld. Counsel has submitted that the aforesaid claim received from insurance company was in view of the compensation received on account of loss of assets. That the aforesaid loss has already been booked as expenditure in the earlier years, therefore, the amount received as compensation to indemnify the loss is business income of the assessee. We restore this issue for the limited purpose to the AO to verify whether the insurance claim received by the assessee is on account of loss of trading assets and the same has been booked as an expenditure in the earlier years. If it is found so, then to allow the insurance claim to be included into the income for the purpose of benefit u/s 80IA of the Act. This ground is, accordingly, partly allowed in favour of the assessee.

8. The next contention raised by the assessee is regarding income from sale of forms which admittedly is not related to the manufacturing activity of the assessee and we do not find any reason to interfere in the orders of the lower authorities in denying the aforesaid claim.

9. The next issue raised by the ld. counsel for the assessee in respect of incidental expenditure incurred for the purpose of earning of interest income from the banks. The ld. counsel for the assessee has submitted that the assessee generates huge interest income from the banks for which certain administrative expenses such as employment of full time employees etc. is incurred, therefore, a reasonable expenditure incurred for the purpose of investment/generating interest income from the banks is required to be allowed as an expenditure. Ld. Counsel has further submitted that the assessee has been allowed 5% of the total income as incidental expenditure in the previous and subsequent assessment year, however, in the year under consideration only 2% of the interest income has been allowed as expenditure.

10. After considering rival contentions, in our view the allowing of expenditure on certain percentage of bank interest does not seem to be a correct and proper method for the same. We are of the view that if investment or deposit is made to the bank, same effort is to be made irrespective of the quantum of the investment i.e. whether it is regarding the deposit of Rs. 1 lac or Rs. 10 Crores, subject to a very few

additional formalties. Under the circumstances, we restore this issue to the AO to examine the calculations given by the assessee in respect of expenditure incurred for making deposits with the bank and to decide the issue a fresh having regard to the accounts of the assessee, the manpower and the administrative infrastructure used for the same and also the direct and indirect expenditure being incurred in this respect.

11. The next issue is relating to the addition of a sum of Rs. 515.45 Cr into the book profits and thereby assessing the same as per the provisions of Section 115JB of the Act. The ld. counsel for the assessee has submitted that the aforesaid amount of Rs. 515.45 Cr was infact 'advance against depreciation' which the assessee in the earlier years had booked under the head 'Sales'. However, subsequently in the light of the decision of the Hon'ble Supreme Court in the case of NHPC Vs CIT 320 ITR 374 wherein it has been held that the same is not a reserve or income accrued, rather the advance against depreciation is the income received in advance which is subject to adjustment in future. The assessee rectified its accounts and accordingly, deleted/taken back the same from the head income/sales income and claimed that the same is not income of the assessee in the light of the decision of the Supreme Court in the case of NHPC. However, the AO was of the view that since the aforesaid amount has been debited from the book profits which had already been booked as sales in the earlier years which was not allowable, hence he taken up this

amount as income of the assessee for computing the book profits u/s 115JB of the Act.

12. Now the contention of the ld. counsel for the assessee before us is that since assessee has wrongly booked the aforesaid amount as income of the assessee in the earlier years, hence, by way of an accounting entry for the year under consideration, the said amount has been reduced from the book profits as the taxes have already been paid by the assessee on the aforesaid amount. It is pertinent to mention here the ld. CIT(A), however, has made some observations that the assessee has tried to take undue benefit of the decision of the Hon'ble Supreme Court in the case of NHPC (supra) by stating that the assessee was required to rectify entries in the respective years in which sales were booked and that the act of the assessee in revising the entire amount during the current year's book profit was not justified.

12. We have considered the rival contentions. In our view, even if we go by the analogy adopted by the CIT(A), it will result into complicated and multiplied assessment of different years whereas the net effect for the year under consideration will remain the same. Admittedly, the assessee has already booked the aforesaid amount as income in the earlier years and has paid the due taxes; if the same is reduced in the respective year, same will have bearing on the next year. Hence, instead of making adjustment one by one in each of the year, the assessee made the requisite entry in the current year. However, the question of allowability of the

aforesaid claim in respect of 'advance on depreciation', in our view is required to be looked into by the AO. We, therefore, restore this issue to the file of the AO to examine the nature of the income received and apply the decision of the Hon'ble Supreme Court in the case of 'NHPC' or any other case law as may be available at that time. However, if the claim of the assessee is found allowable, then to reduce the income from the book profits of the current year as per our observations made above.

14. The next issue raised by the assessee is regarding addition of Rs. 8.57 Cr, Rs. 50.13 Cr and Rs. 4.60 Cr made by the AO on account of unascertained liability. The ld. Counsel, in this respect has submitted dispute was going on of the assessee with the other parties before the arbitrator. There were ascertained liabilities of the assessee to pay the amounts in question, however, the exact quantum was not determined. Therefore, assessee booked the said amounts as liability in the books of account. The ld. counsel for the assessee has submitted that after the Award of the Arbitrator, the aforesaid amounts had been adjusted in the books of account as paid by the assessee as per the Arbitration Award. We restore this issue to the file of the AO to verify whether the aforesaid liability has been paid/adjusted in the subsequent years, if found correct, then to allow claim of the assessee in the year under consideration.

15. Now coming up to the Revenue's appeal. Revenue has taken three effective grounds of appeal. The first ground is against the action of the CIT(A) in directing the AO to treat Rs. 1.62 Crores on account of Catchment Area Treatment Expenditure as revenue expenses. The ld. counsel for the assessee has invited our attention to the order of the Tribunal dated 04.08.2015 in ITA 1309/2012 for assessment year 2009-10 wherein the said issue has been dealt with and the Tribunal after relying upon various decisions including the decision of the Hon'ble Supreme Court in the case of Empire Jute Co. Vs CIT 124 ITR 1, the Supreme Court did not find reason to interfere in the order of the CIT(A) in identical facts in earlier assessment year. The relevant part of the order of the Tribunal is reproduced as under :

> *10. On consideration of the rival submissions, we find that CAT payments were made for maintaining the environment and afforestation of the catchment area of the project, which is an operational project, to minimize silt erosion. The expenditure is vital for the continued power-generation by any hydro-power generating company. It is incurred on land not owned by the assessee and is incurred every year. No tangible or intangible asset comes into existence by virtue of this expenditure. All these facts are undisputed and have not been rebutted by the Revenue.*
>
> *It is evident from the above facts that the CAT expenditure is related to carrying on of the business operations of the assessee. It is an integral part of the profit earning process. Moreover the expenditure has not resulted in the acquisition of any tangible/ intangible asset. The expenditure therefore is revenue in nature. Merely because the expenditure results in ending benefit is not enough to categorize it is capital in nature. This issue has been settled by the Supreme Court in Empire Jute Co. Ltd, Vs. CIT 124 ITR 1 (SC) wherein the Court has held :*
>
> > *" ii. There may be cases where expenditure, even if incurred for obtaining an advantage of enduring benefit, may, none the les, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. The test of enduring benefit is, therefore, not a certain or conclusion test and it cannot be applied blindly*

> *and mechanically without regard to the particular facts and circumstances of a given case.*
>
> *We do not therefore find any reason to interfere with the order of the CIT(A) on this issue. Accordingly, this ground of appeal filed by the revenue is dismissed.*

16. Since the issue is squarely covered by the decision of the Tribunal, hence we do not find any reason to interfere in the order of the CIT(A) on this issue.

Ground No. 2

17. In ground No. 2, the Revenue has agitated the issue in directing the AO to treat Rs. 1,19,62,353/- on account of "write back of provisions of leave salary and pension" as income eligible u/s 80IA of the Income Tax Act. We find that the leave salary and pension etc. are the expenditures incurred by the assessee which are directly relating to the running of the business operations. Therefore, ld. CIT(A) has rightly allowed the write back of the provisions for the same as income of the assessee as eligible for deduction u/s 80IA of the I.T. Act.

18. Ground No. 3 is relating to the excess provisions written back for stores of Rs. 398,890/-. Provisions for stores is relating to the trading assets of the assessee hence, any excess provisions written back will also constitute income of the assessee relating to the business operations of the assessee.

19. No other point or ground is pressed. In view of this, we do not find any merit in the appeal of the Revenue and the same is dismissed.

20. In view of our findings, appeal of the assessee is partly allowed whereas appeal of the Revenue is dismissed.

Order dictated and pronounced in the Open Court immediately on completion of hearing on 19/02/2019.

Sd/- Sd/-

(अन्नपूर्णा गुप्ता) **(संजय गर्ग)**
(ANNAPURNA GUPTA) **(SANJAY GARG)**
लेखा सदस्य/ Accountant Member **न्यायकि सदस्य/ Judicial Member**

'Poonam'

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order
सहायक पंजीकार/ Assistant Registrar