

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "A-SMC", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER**

**ITA No. 523/Hyd/2018  
Assessment Year: 2013-14**

Lanco Teesta Hydro Power vs. ITO,  
Limited, Hyderabad. Ward-16(1)  
Hyderabad.

PAN – AAACL7122M

(Applicant)

(Respondent)

Assessee by : Sri P. Murali Mohana Rao  
Revenue by : Sri K. Gopala Krishna

Date of hearing : 11-03-2019

Date of pronouncement : 22-03-2019

**ORDER**

**PER P. MADHAVI DEVI, J.M.:**

This is assessee's appeal for the A.Y 2013-14 against the order of the CIT(A)-4, Hyderabad dated 21.12.2017.

2. Brief facts of the case are that the assessee company, engaged in the business of thermal power, filed its return of income for the A.Y 2013-14 on 30.09.2013 admitting 'Nil' income under normal provisions as well as u/s 115JB of the Act. During the assessment proceedings u/s 143(3) of the Act, various details were called for and the assessee furnished the same. From the note to the balance sheet relating to expenditure during the construction period pending allotment, the A.O noticed that the assessee has

derived income from interest and miscellaneous income totaling to Rs. 14.10 lakhs. The assessee was asked to explain why this income should not be treated as income as the business had yet commenced.

3. The assessee submitted that the miscellaneous income has resulted from sale of empty cement bags etc., and therefore it is business income and was actually reduced from the total expenditure during the construction period. As regards the interest income, it was submitted that the company had obtained a bank guarantee of Rs. 25 Crores from Punjab National Bank (PNB) to be provided to Power Grid Corporation of India Limited (PGCIL) and as part of requirement, the company had to create fixed deposits of Rs. 135 lakhs with PNB as marginal money in lieu of the bank guarantee. It is submitted that the interest income of Rs. 12.31 lakhs comprises of interest on the fixed deposits and the same is adjusted against the interest paid during the year. It was also submitted that some of the interest is on some funds which were received for construction of the project and that the bank had enabled a feature of auto sweep in its current account and thus the amount in excess of Rs. 2 lakhs automatically got transferred to auto sweep account and the interest earned on such account also is adjusted against the interest paid during the year.

4. The A.O allowed the set off of interest paid from interest received from fixed deposits and also interest from other current accounts, but disallowed only the interest income from the PNB from auto sweep account, holding

that it is received on surplus funds available in the accounts. The total addition is of Rs. 1,65,865/-.

4.1. Further the AO also noticed that the assessee has claimed an expenditure of Rs. 170.75 lakhs toward donations and socio economic development expenses in the note to balance sheet year ended 31.03.2013 relating to expenditure during the construction period pending allotment. Observing that since the assessee is not entitled allocate this amount at the time of capitalization, he disallowed the said expenditure and brought it to tax.

5. Aggrieved by the above additions, the assessee preferred an appeal before the CIT(A), who confirmed the additions of interest income and also CSR expenditure, but has further held that the expenditure is not allowable even u/s 37(1) of the Act. Aggrieved by this observation and also the addition, the assessee is in second appeal before us by raising the following grounds of appeal:

*"1. The Ld. Commissioner of Income Tax (Appeals)-4, Hyderabad, has erred in both in law and on facts in passing the appellate order upholding the assessment order passed by the AO u/ s 143(3) on dt. 15.03.2016.*

*2. The Ld. CIT(A) erred in Upholding the addition of Rs 1,65,865/- made by the A.O. under the head "Income From Other Sources" towards receipt of interest income, without appreciating the facts of the case.*

*3. The Ld. CIT(A) erred in not adjudicating ground Nos. 3,4, 7, 8, 9, 10 in the appeal of the appellant.*

*4. The Ld. CIT(A) ought to have considered all submissions of the appellant and pass speaking order.*

*5. The Ld. CIT(A) ought to have considered the case laws submitted before her, which are in favour of the appellant.*

6. The Ld. CIT(A) erred in upholding the additions made by the AO towards income from other sources, without affording reasonable opportunity of being heard to the appellant.

7. The Ld. CIT (A) ought to have appreciated the fact that the interest income represents the income derived on the funds, which were received for the purpose of business i.e., for construction of the project. And the same was adjusted the interest paid during the year.

8. The Ld. CIT(A) ought have appreciated the fact that the appellant gave standing orders to Bankers through Auto sweep arrangement to transfer funds to Auto Sweep account where the funds in currant etc exceeds Rs.2 Lakhs.

9. The Ld. CIT(A) ought to have appreciated the fact that the appellant company has made the Auto-Sweep Deposit specifically for the purpose of business and interest income earned on the above deposit is part of business income.

10. The Ld. CIT(A) ought to have appreciated the fact that the AO erred in treating interest on business funds as income from other sources.

11. The Ld. CIT(A) ought to have appreciated the fact that Change of head of income of income from "Business Income" to "Income from Other Sources" is not permissible u/s 145 of the Act.

12. The Ld. CIT(A) ought to have appreciated the fact that Appellant Company has been following the same system of accounting consistently and accordingly the Interest Income on Auto-Sweep has been treated as income from business.

13. The Ld. CIT(A) erred in confirming the disallowance made by the AO towards the donation and socio economic development expenses claimed by the assessee company amounting to Rs. 170.75 Lakhs.

14. The Ld. CIT(A) erred in confirming addition of Rs.170.75 laks made by the AO towards disallowance of appellant claim of donations and socio economic development expenses.

15. The Ld. CIT(A) erred in not adjudicating ground No.5 of the appeal of the appellant.

16. The Ld. CIT(A) ought to have considered the submissions made by the appellant and pass a speaking order.

17. The Ld. CIT(A) erred in confirming addition of Rs.170.75 lakhs made by the AO towards disallowance of expenses

*towards donations and socio economic development opportunity of being heard to the appellant.*

*18. The Ld. CIT(A) ought to have appreciated the fact that the expenses towards socio economic development are part and parcel of the business of thermal power generation and therefore allowable.*

*19. The Ld. CIT(A) ought to have appreciated the fact that expenses of Rs.170.75 lakhs towards socio economic development are not capital in nature and incurred wholly and exclusively for the purpose of business and therefore allowable u/ s 37 of the Act.*

*20. The Ld. CIT(A) erred in directing the AO to verify the source of income to meet expenses towards donation and socio Economic Development which is beyond her jurisdiction.*

*21. The assessee may add, alter or modify any other points to the grounds of appeal at any time before or at the time of hearing of the appeal”.*

6. The Ld. Counsel for the assessee also reiterated the submissions made before the authorities below, while, the Ld. DR supported the orders of the authorities below.

7. Having regard to the rival contentions and material placed on record, I find that the interest income which has been disallowed by the authorities below is the interest on the funds which have been kept in the auto sweep account. These are not surplus funds of the assessee, but are the funds available for construction purposes and since they were lying in the bank pending utilization, the assessee has earned some interest income. I find that there was various other sources of interest income from current accounts, but the A.O has disallowed interest income from only these two accounts. The A.O has to maintain a uniform and consistent stand and since the finding of the A.O, that the interest income is out of surplus funds, is

also not correct, I deem it fit and proper to direct the A.O to allow the same to be set off against the interest expenditure. Thus the grounds relating to this issue are allowed.

7.1. As regards the claim of CSR expenditure, the Ld. Counsel for the assessee submitted that the assessee had acquired a large piece of land in Sikkim to establish a huge power plant, therefore, it was his duty to incur a corporate social responsibility and accordingly incurred a sum of Rs. 170.75 lakhs. He submitted that the assessee had to incur such expenditure in order to carry on its business and therefore it has to be allowed as business expenditure and since the assessee had not commenced its business, it has to be allowed to be capitalized. He submitted that the CIT(A) has exceeded her jurisdiction in further holding that the same is not allowable even u/s 37(1) of the Act even though the assessee had made no such claim in its books of account. On the other hand, the Ld. DR supported the orders of the authorities below.

7.2. Having regard to the rival contentions and material placed on record, we find that the assessee is required to incur expenditure towards the corporate social responsibility and accordingly it has incurred certain expenditure which is not disputed by the revenue authorities. The Income Tax Act does not provide that, the CSR expenditure has to be incurred only subsequent to the commencement of business. As long as it is CSR expenditure, it has to be allowed as a business expenditure after the business has commenced or it has to be

capitalized if the expenditure is prior to commencement of the business. Therefore, I allow the grounds of appeal raised on this issue. The grounds against enhancement by the CIT(A) are not adjudicated at this stage, since I have allowed the assessee's claim of capitalization.

8. In the result, the appeal filed by the assessee is partly allowed.

Pronounced in the open court on 22<sup>nd</sup> March, 2019.

Sd/-  
**(P. MADHAVI DEVI)**  
**JUDICIAL MEMBER**

Hyderabad, Dated: 22<sup>nd</sup> March, 2019

*KRK*

- 1) *Lanco Teesta Hydro Power Limited, C/o. P. Murali & Co. CA's, 6-3-655/2/3, 1<sup>st</sup> Floor, Somajiguda, Hyderabad – 82.*
- 2) *ITO, Ward – 16(1), Hyderabad.*
- 3) *CIT(A)-4, Hyderabad.*
- 4) *Pr.CIT-4, Hyderabad.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File.*