

IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH KOLKATA

BEFORE SHRI S.S.GODARA, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.1952/Kol/2017

(निर्धारणवर्ष / Assessment Year: 2004-05)

ACIT, Circle-2(2), Kolkata	Vs.	M/s West Bengal State Electricity Board (Now renamed West Bengal State Electricity Distribution Co. Ltd.) Bidyut Bhawan, "C" Block, Salt Lake City, Sector-II, DJ Block, Bidhan Nagar, Kolkata-700091
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAACW 2727 P		
(Appellant)	..	(Respondent)

Appellant by

:Shri RadheyShyam, CIT DR

Respondent by

:Shri N.K. Poddar, Sr. Advocate

सुनवाईकीतारीख/ **Date of Hearing**

: 21/02/2019

घोषणाकीतारीख/**Date of Pronouncement**

: 30/04/2018

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Revenue ,pertaining to Assessment Year 2004-05, is directed against an order passed by the Commissioner of Income Tax(Appeals)-22, Kolkata which in turn arises out of an order passed by the Assessing Officer u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), dated 22.12.2006.

2.The Revenue has raised the following grounds of appeal:

- "1. That in the facts and circumstances of the case the ld. CIT(A) is erroneous on facts and in law in deleting the addition on account of 'Excess interest charges'

for Rs. 382,43,48,710/- and thereby holding that the A.O. was not justified in making the disallowance as the order of high interest rate cannot have any effect under I.T. Act on computation of total income for the year under consideration and ignoring the fact that it was merely a provision of section 4 and 5 of the Income Tax Act, 1961.

- *That in the facts and circumstances of the case the ld. CIT(A) has failed to appreciate the fact that before proceeding for disallowances the A.O. has conducted necessary examination and ground work, which are evident from the recordings of note-sheet.*
- *That the Department craves leave to add, modify or alter any of the ground(s) of appeal and / or adduce additional evidence at the time of hearing of the case.*

3. The brief facts qua the issue are that assessee, “West Bengal State Electricity Board” is a body constituted under the provision of the Electricity (supply) Act, 1948. The Board maintained and compiled its Accounts as per Electricity Act 2003 read with The Electricity (Supply) Annual Accounts Rules 1985. The said books of accounts were audited and certified by the Principal Accountant General, West Bengal and a Chartered Accountant Firm as required under the Law, conducted the Tax Audit. The Board had suffered a loss of Rs.304.93 crores in the financial year 2003-04. It had submitted its return of income for the Assessment Year 2004-05 as per Income Tax Act and Rules and claimed a Loss of Rs.335.76 Crores. The Board provides for interest on Government Loans as per order issued by the Govt. from time to time in this regard. Accordingly the Board had provided for interest on Government Loans in its books of accounts for the financial year 2003-04 as per the Govt. Order dated 16.04.2004. The Govt. Order dated 16.04.2004 had cancelled its previous order dated 09.10.2002. The Ld. Assessing Officer, while passing the Assessment Order disallowed a sum of Rs.382.43 Crores against interest provided on Govt. Loans as per Government order dated 16.04.2004 on the ground that the order of the Govt. dated 16.04.2004 canceling the order of the Govt. dated 09.10.2002 reducing the rate of interest from the year 2001-02 as mentioned in the said order “has neither stated nor intended any retrospective effect”, even if the said order dated 16.04.2004 could have any retrospective effect, then too it could have effect for the previous year ended 31.03.2004. The assessee claimed that the A.O. made a wrong interpretation of

the Govt. order while disallowing the provision of interest payable to the Government.

4. Aggrieved by the stand so taken by the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has deleted the addition made by the Assessing Officer observing the following:

“1. I have carefully considered the action of the Ld.AO in making the impugned disallowance of the claim of interest, as made by the assessee-appellant. The impugned amount of interest disallowed is a figure of Rs.720,91,60,703/- The brief facts emanating in the case are that the appellant-company, West Bengal State Electricity Board, [now renamed as West Bengal State Electricity Distribution Company Ltd.] is a wholly owned corporation of the Government of West Bengal, and has been constituted under the provisions of Electricity (Supply) Act 1948. Further pertinent facts are that in terms of the Gazette Notification dated 3rd February 2001 issued by the Government of West Bengal Dept. of Power and Non-Conventional Energy Sources, the Hon'ble Governor of the State, in exercise of the Power under Section 131(4) of the Electricity Act 2003 was pleased to notify the Scheme for providing and giving effect to the transfer and resting of all properties and all interest, rights, and liabilities of West Bengal State Electricity Board in the State Government and re-vesting thereof by the State Govt. in the West Bengal State Electricity Transmission Co. Ltd and West Bengal State Electricity Distribution Co. Ltd along with other property, interest, rights and liabilities of the State Govt. with effect from 01.04.2009. It has been submitted that the assessee / Board maintains and comply its account as per Electricity (Supply) Act 1948. read with Electricity (Supply) Annual Accounts Rules 1985. The books of accounts of the Board are audited by the Principal Accountant General, West Bengal. It has been further brought to notice that the assessee regularly maintain its accounts in mercantile system on accrual basis which is accepted by the Income Tax Department as per Circular No. 717 Clause 44 dated 14.08.1995. It has been elaborated that the Mercantile or accrual basis of accounting means adjustment to assets and liabilities are required for information received after Balance Sheet date and before the accounts finally approved by the management affecting the accounts upto previous Balance Sheet date. It has been brought to notice that the Government of West Bengal grants loan to West Bengal State Electricity Board from time to time for their different project carrying different rate of interest varying from 8.5% P.A. to 15.75% P.A. Most importantly, it has also been highlighted that all such grants of loan are processed through the Principal Accountant General, West Bengal.

2. Further, pertinent facts are that in the year 2001, the assessee - Board approached the State Government of West Bengal to reduce the rate of interest on Govt. loan as the Board have been incurring huge financial deficit. On the basis of such approach and request of the assessee, the Government of West Bengal, Department of Power by their Letter No. 639-Power/II/71-9/2002 dated 9th October 2002 addressed to the Principal Accountant General (A & E) West Bengal Book II intimated that the rate of interest would be reduced by 2% for all loans taken by the assessee from the Government. According to the appellant, as it was following the mercantile system of accounting, and the accounts for the F.Y

2001-02 were already closed [before the receipt of the impugned letter] the necessary effect was given in the F.Y 2002-03, and the excess amount of interest charged in the F.Y 2001-02 was reduced by 2% and was shown in the accounts for the F.Y 2002-03, as "income relating to the previous year, being an amount of Rs.129,72,33,577/-. However, as brought out by the undisputed facts of the case, on 16th April 2004, the Board received another order No.164-Power/72-9/2002 dated 16th April 2004 from Govt. of West Bengal, Department of Power addressed to the Principal Accountant General West Bengal, Book Section II, Kolkata and a copy endorsed to the Secretary West Bengal State Electricity Board by which the earlier concession allowed to the appellant by the G.O No. 639-Power/II dated 09.10.2002 was cancelled by the Hon'ble Governor of the State. It is the contention of the appellant-company that as the closing of accounts for the Financial Year 2003- 2004 was then in progress, and after receiving the above order the Board incorporated the effect of the above order dated 16.04.2004 in the accounts for the Financial Year 2003-2004. It has been submitted that as a result the interest payable on Government loans were calculated according to the original sanctioned letters and the effect given on the basis of the order dated 09.10.2002 in the accounts of the 2002-2003 reducing the interest payable to the Govt. on loan, restored on the basis of the original sanctioned letter. It was submitted that the same was done in view of the fresh order dated 16.04.2004 cancelling the earlier Govt. order dated 09.10.2002 issued to the Principal Account General, West Bengal and a copy endorsed to the Secretary of the West Bengal State Electricity Board.

3. It has been further submitted by the appellant that the fact is that all Government orders in respect of loan sanctioned by the Government and interest payable on such loans are passed through Principal Accountant General West Bengal so that they can verify the accounts of the Board [appellant, in this case] on the basis of the orders passed by the Govt. from time to time. According to the appellant there was no contradiction / confusion in giving effect of the Govt. order passed on 09.10.2002 and 16.04.2004.

4. In the factual matrix, it is seen that the Ld.AO has not accepted the accounting entries as made by the appellant by making the following observation:

- a. The said 'Audit Certificate & Report' of the Principal A.G., West Bengal was gone through. Truly it contained no adverse comments as to the effect given on the G.O. dated. 16.04.2004. But it is also true that the said certificate speaks only about the provisions of Electricity Act, 2003 and Rules made thereunder, but nothing about the admissibility or otherwise of the said effects under the IT. Act, 1961.
- b. Explanation given by the assessee in its submissions is not acceptable either in law or on facts. The G.O. No.639, dated. 09.10.2002 was for all circumstances valid and effectively operative till the close of the relevant previous year on 31.03.2004. The G.O. No. 164, dt.16.04.2004 has neither stated nor intended any retrospective effect.
- c. If the Govt. had any such intention, it would have incorporated that in the body of the order itself-as it was done in the G.O. No. 639, dt.09.10.2002. Moreover, even if the said order dt.16.04.2004 could have any retrospective effect, then too it could have effect for the P.Y. ended on 31.03.2004 but not in the said year. Section 4 and 5 of the LT. Act, 1961 - as amended up to date

defines the basis of charge of income tax to be the 'total income of the previous year of every person which is received or is deemed to be received or accrues or arises or is deemed to accrue or arise during such year (previous year). Therefore, the order No.164 dt.16.04.04 cannot have any effect under the I.T. Act, on computation of income of the year ended on 31.03.2004.

5. The observations / action of the Ld.AO in making the impugned disallowance have been challenged by the assessee-appellant in summary with the following arguments.

a. The cancellation of the lesser rate of interest has clear an unambiguous retrospective effect, and the GO NO. 639 granting a concessional rate to the appellant has been cancelled / annulled.

b. If the said GO had no retrospective effect, the words since 2001-02 would not have been used.

c. Section 4 and 5 of the I.T. Act 1961 as amended up-to-date defined the basis of charge of income tax to be the total income of the previous year of every person***** which is received or is deemed to be received or accrues or arises or is deemed to accrue or arise during such year (previous year). Therefore, the order No. 164 dated 16.04.04 cannot have any effect under the IT Act, on computation of income of the year ended on 31.03.04.

d. The observations and view of the Ld. AO were incorrect, as the appellant-assessee always maintains its accounts on mercantile system on accrual basis.

e. Although the Govt. order no. 164 issued on 16.04.04 (Financial year 2004-05) the effect of this order relates from F.Y. 2001-02, as therefore was adjusted in the Financial Year 2003-04, as the closing of accounts of which year was in progress at that time. Such a view emanates from the accounting standard compiled by the institute of Chartered Accountants of India have clarified such probabilities.

f. The appellant as relied upon the Accounting standard (AS) 4, which relate to events occurring after the balance sheet date.

8.1. "Event which occurs between the balance sheet date and the date on which the financial statements are approved may indicate the need for adjustment to assets and liabilities as at the balance sheet date.

8.2 Adjustments to assets and liabilities are required for events occurring after the balance sheet date that provide additional information materially affecting the determination of the amounts relating to the conditions existing at the balance sheet date. "

g. The notification no. 9949 (F no. 132/T/95-TPL) dated 25.01.1996 notified u/s 145(2) of the I.T. Act. specify the accounting standards to be followed by all assesses following mercantile system of accounting, and that Para 4(i) of the said notification provides that "Provision should be made for all known liabilities and losses even though the amount cannot be determined with certainty and represent only a best estimate in the light of available information". The assessee always followed the accounting standard compiled

by the Institute of Chartered Accountants of India and notification No.9949 dated 25.01.1996 notified under sec 145(2) of the Income Tax Act 1961, and rightly gave effect of the Govt. order issued on 16.04.2004 in respect of earlier years as the accounts of the assessee for the F.Y. 2003-04 were not finalized and had not been placed before the Board for approval.

h. The appellant has relied upon the cases of of the Hon'ble Madhya Pradesh High Court Case: CIT Vs Audyogik Kendra Vikas Nigam (Raipur) Ltd (227.ITR.799) and Hon'ble Calcutta High Court case relating to United Bank of India - (69 Taxman 505 (Cal) .

i. It was contended that although there were no ambiguity or confusion in respect of the two Govt. orders dated 09.10.2002 and 16.04.2004, The Secretary, West Bengal State Electricity Board on receipt of the Assessment Order which took a different view, wrote to the Secretary, Power Department, Govt. of West Bengal to clarify the Financial implication of the Govt. Orders dated 16.04.2004 and whether it has got any retrospective effect. It was placed on record that in reply the Jt. Secretary, Department of Power, Govt. of West Bengal clarified the position to the Principal Accountant General (A & E) West Bengal and placed on record in unequivocal terms that the cancellation of the lower rate of interest was effective from the Financial Year 2001-2002 (i.e. with effect from 01.04.2001) .

j. It has been argued and pleaded that in view of the above submissions, the disallowance as made by the Ld. AO of the interest charged for Rs.7,20,91,60,703/- ought to be deleted, and the capitalized amount as calculated by the learned A.O. in clause 16 of page 4 of the assessment order should be re-computed, and the computation of total income as calculated in clause 17 of page 4-5 of the assessment order should be recomputed.

6. Having carefully considered the matter, I find that there is sufficient factual merit in the case of the appellant. The notification no. 9949 (F no. 132/T /95-TPL) dated 25.01.1996 notified u/s 145(2) of the LT. Act. has specified the accounting standards to be followed by all assesses following mercantile system of accounting, and that Para 4(i) of the said notification provides that "Provision should be made for all known liabilities and losses even though the amount cannot be determined with certainty and represent only a best estimate in the light of available information". It is well clear, in my considered reason that the assessee-appellant has consistently followed the accounting standards compiled by the Institute of Chartered Accountants of India and notification of the Board, No.9949 dated 25.01.1996 notified under sec 145(2) of the Income Tax Act 1961, and rightly given effect of the Govt. order issued on 16.04.2004 in respect of earlier years as the accounts of the assessee for the F.Y. 2003-04 were not finalized. It would therefore be, well worthwhile to produce the entire Notification of the Hon'ble CBDT on the method of accounting to be followed relating to disclosure of the accounting policies.

9. It is also to be observed that the Division Bench of the Hon'ble Guwahati High Court in CIT V. Doom Dooma India Ltd. [1993] 200 ITR 496(Gawahati) while dealing the concept of Section 145 of the Act has held as under:-

"It is for the assessee to adopt any recognized method of accounting for his business. The income shall be computed in accordance with the method of accounting regularly employed by the assessee. In other words, it is open to the assessee to opt for such method of accounting as he deems reasonable and appropriate. He may opt to adopt the manufacturing cost price method or the market price method provided the method is followed in regard to both the opening stock and the closing stock. It is not open to him to adopt one method for valuing the opening stock and a different method for valuing the closing stock so as to intentionally suppress the income derived or derivable in the particular previous year. Even where an assessee has adopted a particular method for a period of years, there is no provision of law which prevents him from changing to any other method, provided the change-over is not made in the same assessment year."

10. Similarly, in *CIT V. GuttoffnungashuttoSterkrado*, [1992] 197 ITR 66 (Orissa), it has been ruled thus:

*"We have heard learned counsel for the Department. From the records, we find that a similar dispute, i.e., whether the income has to be assessed on "complete contract" basis, was before the Tribunal for the assessment years 1965-66 and 1966-67. The Tribunal recorded a categorical finding that no defect in the accounts maintained by the assessee was pointed out by the Assessing Officer and, on the contrary, the profits of the assessee can be correctly determined from the method of accounting adopted by it. With these conclusions, the orders of the Commissioner of Income-tax passed under section 263 of the Act were set aside, and the orders of the Income-tax Officer were restored. It is not in dispute that the Revenue has not assailed the correctness of the conclusions of the Tribunal. The fact situation being identical, the Tribunal followed its earlier judgment and observed that the "complete contract" basis was the correct mode for determination of the assessee's income and its income can be correctly determined from the method of accounting adopted by it. It, therefore, upheld the direction of ITA No.848/2010 Page 8 of 12 the Commissioner of Income-tax (Appeals) given to the Assessing Officer for redoing the assessments on the "complete contract" basis. The question that has been referred to this court is whether the profits can be properly deduced from the method employed by the assessee by maintaining its accounts on "complete work" basis and by the method of dividing the net profit year-wise in proportion to the yearly gross receipts. The question whether the method employed by the assessee by maintaining its accounts on a particular basis will be sufficient for determination of profits is essentially one of fact. Whether the income, profits and gains could or could not be properly deduced from the method of accounting regularly adopted by the assessee is a question of fact. (see *ChhabildasTribhuvandas Shah v. CIT* [1966] 59 ITR 733 (SC)). Therefore, in our opinion, no question of law arises out of the order of the Tribunal ... "*

11. On similar lines, In the case of *Saurashtra Cement & Chemical Industries Ltd. V. Commissioner of Income Tax*, [1995] 213 ITR 523(Gujarat), the Division Bench of Gujarat High Court has expressed thus:-

"Merely because an expense relates to a transaction of an earlier year it does not become a liability payable in the earlier year unless it can be said that the liability was determined and crystallized in the year in question on the basis of maintaining accounts on the mercantile basis. In each case where the

accounts are maintained on the mercantile basis it has to be found in respect of any claim, whether such liability was crystallized and quantified during the previous year so as to be required to be adjusted in the books of account of that previous year. If any liability, though relating to the earlier year, depends upon making a demand and its acceptance by the assessee and such liability has been actually claimed and paid in the later previous years it cannot be disallowed as deduction merely on the basis the accounts are maintained on mercantile basis and that it related to a transaction of the previous year. The true profits and gains of a previous year are required to be computed for the purpose of determining tax liability. The basis of taxing income is accrual of income as well as actual receipt. If for want of necessary material crystallizing the expenditure is not in existence in respect of which such income or expenses relate, the mercantile system does not call for adjustment in the books of account on estimate basis. It is actually known income or expenses, the right to receive or the liability to pay which has ITA No. 848/2010 Page 9 of 12 come to be crystallized, which is to be taken into account under the mercantile system of maintaining books of account. An estimated income or liability, which is yet to be crystallized, can only be adjusted as a contingency item but not as an accrued income or liability of that year. To illustrate, we find from the details of the expenses that certain expenses related to the fees paid to the experts, out-of-pocket expenses incurred by the consultation firm and discharge of liability on account of demurrage claimed by the port authorities. Such items without investigation into the facts about the crystallization of such dues cannot be disallowed merely on the ground that they relate to transactions pertaining to an earlier accounting year ... "

12.In CIT V. Bilahari Investment P. Ltd., [2008] 299 ITR 1 (SC), while dealing with accounting standards, their Lordships referred to the decisions in Taporia Tools Ltd. v. Joint CIT, [2003] 260 ITR 102 (Bombay) and J.K. Industries Ltd. v. Union of India, [2007] 13 Scale 204 and thereafter adverted to the recognition and identification of income under the 1961 Act as is attainable by several methods of accounting. Their Lordships referred to the completed contract method and the percentage of completion method which were the issues in the said case. After so stating, the Apex Court expressed the view as follows:-

"19. In the judgment of the Bombay High Court in Taparia Tools Ltd., [2003] 260 ITR 102 it has been held that in every case of substitution of one method by another method, the burden is on the Department to prove that the method in vogue is not correct and it distorts the profits of a particular year. Under the mercantile system of accounting based on the concept of accrual, the method of accounting followed by the assessee is relevant. In the present case, there is no finding recorded by the Assessing Officer that the completed contract method distorts the profits of a particular year. Moreover, as held in various judgments, the chit scheme is one integrated scheme spread over a period of time, sometimes exceeding 12 months. We have examined computation of tax effect in these cases and we find that the entire exercise is revenue neutral, ITA No. 848/2010 Page 10 of 12 particularly when the scheme is read as one integrated scheme spread over a period of time.

20. As stated above, we are concerned with assessment years 1991-92 to 1997- 98. In the past, the Department had accepted the completed contract method and because of such acceptance, the assessee, in these cases, have followed the same method of accounting, particularly in the context of chit discount. Every assessee is entitled to arrange its affairs and follow the method of accounting, which the Department has earlier accepted. It is only in those cases where the Department records a finding that the method adopted by the assessee results in distortion of profits, the Department can insist on substitution of the existing method. Further, in the present cases, we find from the various statements produced before us, that the entire exercise, arising out of change of method from the completed contract method to deferred revenue expenditure, is revenue neutral. Therefore, we do not wish to interfere with the impugned judgment of the High Court. "

13. In *CIT v. Kataria Road Lines*, [2009] 316 ITR 115 (Raj), the Division Bench came to hold as under:-

"9. It is not in dispute that the mercantile accounting system was adopted by the assessee and was permitted by the Revenue for several years. By virtue of the said accounting system, the assessee was claiming benefit of finance commission in the year of hire purchase agreement itself irrespective of the fact that the amount of installments as per the hire-purchase agreement was actually paid in the subsequent years. Answer to the question whether such an accounting system was permissible or not, is not before us, further the Department itself was permitting the said accounting system according to which, the assessee was accounting the entire finance commission in the year of hire purchase itself irrespective of the fact that the installment pursuant to the hire-purchase agreement was actually paid in the subsequent years. The assessment on the aforesaid basis was continued for years together and it is only for the assessment years 1980-81 and 1981-82 that the said system was not accepted by the Department. It is also the fact that the firms have closed their business. Thus, looking to the aforesaid facts and circumstances, and also the judgment of the Hon'ble Apex court in the case of *CIT v. Bilahari Investment (P.) Ltd.* [2008] 299 ITR 1, we are of the view that the Department having permitted the assessee to claim the benefit of finance commission in the year in which hire-purchase agreement was entered, the same system is required to be continued for the assessment years 1980-81 and 1981-82, ... "

14. In view of the above judgments, and the facts and circumstances as emanating in the case, I find that the action of the Ld. AO in making the impugned disallowance of interest is not sustainable, and the assessee deserves to be relieved of the action of the Ld. AO. Accordingly, the impugned disallowance as made by the Ld. AO of the interest charged for Rs. 7,20,91,60,703/- is hereby deleted, and the capitalized amount as calculated by the Ld. AO in the assessment order has to be recomputed accordingly. In summary, the ground No 1 taken by the appellant is adjudicated in its favor and allowed accordingly.

5. Aggrieved by the order of the Id. CIT(A), the Revenue is in appeal before us. The Id. The Id. DR has primarily reiterated the stands taken by the Assessing

Officer which we have already discussed in our earlier para and the same is not being repeated for the sake of brevity and on the other hand, the Id. Counsel for the assessee has defended the order of Id CIT(A). We have heard both the parties and perused the material available on record. We have gone through the order of the Id. CIT(A) and the reasoning reached by the Id. CIT(A), we do not find any infirmity in order passed by Id CIT(A) as noted (supra).That being so, we decline to interfere in the order passed by the Id. CIT(A), his order on this issue, is hereby upheld and the grounds of appeal raised by the Revenue is dismissed.

6. In the result, the appeal of the Revenue is dismissed.

Order is pronounced in the open court on 30.04.2019.

Sd/-
(S.S.GODARA)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(DR. A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

दिनांक Dated 30/04/2019
SB, Sr. PS

Copy of the order forwarded to:

1. ACIT, Circle-2(2), Kolkata
2. M/s West Bengal State Electricity Board(Now renamed as West Bengal State Electricity Distribution Co. Ltd.)
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches