

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI JASON P BOAZ, ACCOUNTANT MEMBER

ITA No.126 & 1822/Bang/2016

Assessment years : 2011-12 & 2012-13

The Asst. Commissioner of Income-tax, Circle-1(2)(1), Bengaluru.	Vs.	M/s CEC. Soma CICI JV Opp.: Gate No. 20, Near M ChinnaSwamy Stadium, M.G Road, Bengaluru-560 001. PAN AAAAC 8081E.
APPELLANT		RESPONDENT

Appellant by	:	Dr. Pradeep Kumar, CIT(DR)
Respondent by	:	Shri V Srinivasan, Advocate

Date of hearing	:	26.04.2019
Date of Pronouncement	:	03.05.2019

ORDER

Per N.V. Vasudevan, Vice President

Both these appeals are by the Revenue against 2 orders dated 30/10/2015 and 18/7/2016 of CIT(A)-1, Bengaluru relating to asst. years 2011-12 and 2012-13.

2. The common issue involved in both these appeals is as to whether the CIT(A) was justified in deleting the addition made by the AO by holding that the provision made for future expenses are contingent in nature and cannot be allowed as a deduction.

3. The grounds raised by the assessee are identical in both the appeals. For the sake of ready reference we give below the grounds of appeal raised for asst. year 2012-13 which reads as follows:-

“1. The order of the Learned CIT (Appeals), in so far as it is prejudicial to the interest of revenue, is opposed to law and the facts and circumstances of the case.

2. The learned CIT(A) erred in holding that the provision made for future expenses are allowable, without appreciating that the assessee had failed to produce any clear basis during assessment proceedings or establish the certainty of expenditure and on what it would be expended, thus, proving the provision made towards the future expenses to be contingent in nature.

3. The learned CIT(A) erred in giving relief to the assessee without appreciating that the assessee had not incurred any such expenditure during previous year and such liability to be incurred on a future date was a contingent liability and therefore, could not be allowed u/s.37(1) of the Income Tax Act.

4. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A) be reversed and that of the Assessing Officer be restored.

5. The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of appeal.”

4. The assessee is an association of persons of 3 entities formed with specific purpose of participating in the tender floated by Bangalore Metro, Rail Corporation Ltd., (BMRCL) for laying metro line along with infrastructure facilities between Cricket Stadium and Kempe Gowda Bus Station (Majestic) in Bangalore. For asst. year 2011-12, the assessee filed a return of income on 29/9/2011 declaring a total income of Rs.76,77,270/-.

In the course of asst. proceedings on verifications of the details filed by the assessee, the AO noticed that the assessee had claimed deduction of a sum of Rs.6,66,64,500/- on account of provision for expenses. The Assessee explained claim for deduction of the aforesaid expenses as follows. That it had bid for laying underground metro line for BMRC. As per the agreement with BMRC, bills will be raised on the basis of completion of work upto a stage. These will be on the basis of actual. There are certain expenses that need to be incurred over the entire project that cannot be billed for the time being because of its non completion. The Structural design at various stages have to be obtained from professionals and these cannot be billed because of continuous running activity over the completion of the entire project. Similarly, digging of the road has to be done and later refilled. The cost of refilling is also part of the tender but the work has to be done in future. Such costs to be incurred in future are estimated and these expenses which are certain to be incurred and which are estimated scientifically are claimed based on the total project cost divided by the amount billed for each year of the project multiplied by the total of the unbilled future expenses to be incurred. The details of the same are based on the total tender value and billed amount up to 31/03/2011 the provision that is required to be made as on 31/03/2011 is Rs.6,66,64,500/- out of the total expenditure of Rs. 58,62,00,000/- to be incurred by the end of the Project.

<i>CEC-SOMA-CICI-JV</i>	
<i>On the basis of actual turnover (excluding variations)</i>	
<i>Provision for Expenses - Workings</i>	<i>Amount in Rs.</i>
<i>Total project revenue</i>	<i>9,95,20,00,000/-</i>
<i>Total turnover till 31.03.2011</i>	<i>1,13,17,81,330/-</i>
<i>Total projected future expenses (unbillable)</i>	<i>58,62,00,000/-</i>
<i>Provision for expenses as on 31.03.2011</i>	<i>6,66,64,500/-</i>

5. The AO on perusal of the aforesaid explanations given by the assessee asked the assessee to explain what is unbillable amount of Rs.58,62,00,000/- (of which the sum of Rs.6,66,64,500 claimed as deduction under the provision by the Assessee is forming part) as claimed by the assessee as above which was to be spread over for the period for which the contract was to be executed for BMRCL. According to the AO, the assessee was not in a position to explain what was unbillable amount. The AO, examined the Commercial Manager of the AOP and in his sworn statement he had explained that the unbillable amount are monies which need to be spent for construction of roads after completion of the project. The AO thereafter made a reference of provision of sec. 37 of the Income-tax Act (the Act) and was of the view that under the aforesaid provision, the only expenditure which is incurred by the assessee which is wholly and exclusively for the purpose of business of the assessee that can be allowed as deduction an expenditure claimed by the way of provision to meet a liability in a future date cannot be allowed as a deduction u/s 37 of the Act.

6. The assessee in a letter dated 14/11/2013 explained the basis on which the deduction was claimed. The basis on which provision was made along with a letter the assessee had given a technical estimate based on which provision for unbillable future expenses of Rs.58.62 crores was

made. The assessee also submitted that provision for liability in future expenses are allowable expenditure by relying on the following judicial pronouncements:-

1. *Calcuttal Co. Ltd Vs CIT (Reported in 37 ITR 1, SC)*
2. *Rotrok Controls India (F) Ltd. (Reported in 314 ITR 62 SC)*
3. *Siemens Public Communications networks ltd. Vs CIT (reported in 318 ITR page 13 Bangalaore ITAT)*
4. *Bharath Earth Movers Vs CIT (245 UR 428 SC)*

In particular attention was drawn to the decision of the Hon'ble Supreme Court in the case of Rotork Controls India P Ltd. (supra) at page 71 on Para 11 wherein it was observed that a provision is a liability which can be measure only by using substantial degree of estimation. A provision is recognized when (a) an enterprise has a present obligation as a result of a past event (b) it is probable that an outflow of resources will be required to settle the obligation; and (c) a reliable estimate can be made of the amount of the obligation. It was submitted that the provision for future works made by the Assessee based on which the above deduction was claimed fits in to the meaning of provision and it is an ascertained liability. The provision is made on the basis of reliable engineering estimate for possible outflow of resources to settle the obligation arising on account of contractual obligations as a whole and hence, the same is allowable. The Assessee also submitted that the provision made is consistent with the method of accounting under section 145 of the Act and Accounting standards 7 of Institute of Chartered Accountants of India (ICAI). The Assessee therefore prayed that the provision for expenses of Rs. 6,66,64,500/, provided to meet the definite future obligations should be allowed as deduction.

7. The AO however held that the claim for deduction made by the assessee was only on the basis of estimate and that incurring of expenditure by the assessee was purely contingent and therefore the deduction claimed cannot be allowed. For the aforesaid reasons the AO did not allow the claim of the assessee for deduction.

8. On appeal by the assessee, the CIT(A) directed the AO to allow the claim for deduction made by the assessee. The CIT(A) found that the assessee AOP was required to execute the entire work starting from the design to the execution of the work and thereafter it was also required to undertake restoration work with a view to restoring roads, foot paths and other amenities that were disturbed or diverted at the time of execution of the project. The AOP commenced operation during the financial year 2009-10 and the first balance sheet was drawn for the year ended 31/3/2010. No income was offered during the aforesaid asst. year since the extent of work had not progressed for recognizing the revenue. The AOP first recognized revenue only during the financial year 2010-11 relevant to asst. year 2011-12. The assessee followed percentage completion method of recognizing revenue. The CIT(A) found that the following was the basis of making provisions by the assessee. A sum of Rs.29,69,40,875/- was expenses for finishing work in the form of laying roads after completion of the construction. The CIT(A) also found that a sum of Rs.28,91,13,042/- was towards cost of designing on the entire contract which was paid to different parties over the period of execution of the work. The sum total of the aforesaid 2 expenses was sum of Rs.58.62 crores (figures rounded off). The cost of design work was fixed at 3% of project value which was 995.2 crores. The total future expenses anticipated for completing of the project for Rs.58.62 crores was claimed on the basis

of the running bills raised (turnover till the year end) to the total project cost multiplied by the projected future expense. The CIT(A) on the basis of the above details held that the incurring of the expenses in question was a certainty and that the basis on which the liability was estimated was reasonable and therefore the expenditure in question was not a contingent expenditure and had to be allowed as deduction.

9. Aggrieved by the aforesaid order of the CIT(A) Revenue has preferred present appeal before the Tribunal.

10. The Id DR placed reliance on the order of the AO and submitted that the CIT(A) had not given the basis on which he has come to the conclusion that expenditure in question was not a contingent and was certain liability.

11. The Id AR on the other hand brought to our notice various evidence filed to explain as to how the expenditure in question was not contingent in nature.

12. We have given a very careful consideration to the rival submission. As we have already noticed the projected future expenses was 58.62 cores and this comprises of a sum of Rs.29.69 crores which has to be spent for laying roads after completion of the tunneling work at various points. The other component of the project of future expenses is the cost of providing design to the entire project. As far as the estimation of expenses for laying of roads after completion of the tunneling work is concerned, the basis of estimate has been given by the assessee to AO in the letter dated 14/11/2013 filed before the AO along with all supporting and technical documents. A perusal of the aforesaid documents show that complete technical details was provided by the assessee. The breakup of the expenses on laying of roads given by the assessee to the AO is as follows:-

SN	Description	Unit	Qty	Rate	Amount (Rs)	Remarks
1	East Ramp	LS	1	27,408,437	27,408,437	
2	Cricket Stadium	LS		50,959,163	50,959,163	
3	Vidhana Soudha Station			60,166,620	60,166,620	
4	Central College			21,402,059	21,402,059	
5	City Railway Station			24,429,048	24,429,048	
6	Pocket Track			17,917,276	17,917,276	
7	West Ramp			22,412,164	22,412,164	
				Sub Total	224,694,766	
	Weigheages to be added for finished items At 5%				11,234,738	
				Sub Total	235,929,505	
	Add 25.86% for Escalation				61,011,370	
				Sub Total	296,940,875	

13. The Detailed workings for laying of roads on East ramp is at pages 84 to 90. The description like quantity of work to be done in terms of measurement and rates were also given in this working. Similarly for Cricket Stadium such detailed workings is at page 100 to 107. For Vidhana Soudha station the workings are at 112-199. For National College workings is at page 124 to 131. For City Railway station workings are at 135 to 140. For Pocket Track workings are at page 144 to 149 and for West Ramp the workings at page 191 to 197.

14. For escalation of cost at 25.86% the workings are at page 154 and 155 of the assessee's paper book. Similarly for design work the workings are at page 216 of the paper book and the same is as follows:-

SN	Particulars		BOQ	Paid/ Received	Payable/Receivable
	Receipts				
1	BMRCL BOQ		29,85,60,000	179136000	11,94,24,000
	Payments				
1	Mott MacDonald Pvt. Ltd.,		18,50,00,000	113978500	18,50,00,000
2	Mott MacDonald Pvt. Ltd., Variation		1,17,85,522	0	1,17,85,522

	CECI Design Consultant	USD 5,12,000	2,74,17,600		2,74,17,600
	Spar Geo Infra Pvt. Ltd.		6,49,09,920		6,49,09,920
			28,91,13,042	11,39,78,500	17,51,34,542

15. Perusal of the above shows that the amounts received from BMRCL of Rs. 17,91,36,000 has also been noticed in this chart. It has been claimed by the assessee before us that the amount received has been included in the total contract receipts and this may be verified by the AO and to the extent the receipt is not offered as income to treat the same as income, because the deduction of expenses on account of provision is to be allowed as per order of CIT(A), with which we are agreement for the reasons to be given in subsequent paragraphs.

16. The agreement with Mott Macdonald Pvt. Ltd., for providing design work is at page 221 and the related cost are at page 249. The variation contract with Mott Macdonald Pvt. Ltd is at page 251. The CECI Design Consultant and details of their design work are at page 253. The details of design charges payable to Spar Geo infra Pvt. Ltd., at a page 256.

16. In the light of the complete details filed by the assessee to show that expenditure in question was not contingent liability at a certain liability, it was not proper on the part of the AO to have ignored these documents. Though the CIT(A) has not made a reference to these documents but has

taken note of the fact that the basis of projected future expenses as claimed by the assessee was reasonable and cannot be regarded as contingent expenditure.

17. As far as law with regard to allowing deduction on account of a provision the same is well settled. The Hon'ble Supreme Court in the case of Calcutta Company Ltd., Vs. CIT 37 ITR page 1 has laid down that under the mercantile system of accounting an estimate of accrued liability to be discharged at a future date is an allowable expenditure. In that case the assessee bought lands and sold them in plots for constructing buildings. The assessee undertook development by laying roads, providing drainage system and installing lines. The sale was completed without the development work being completed but assessee claimed expenses to be incurred in future for carrying out development as an expenditure. The Hon'ble Supreme Court held that the liability of the assessee was unconditional and was therefore an accrued liability. The estimated expenditure to be incurred in future was to be allowed as a deduction. The Hon'ble Supreme Court in the case of BEML Ltd., 245 ITR 428 taken a view that provision can be allowed as a deduction provided 2 conditions are satisfied namely.

- 1) The incurring of the liability must be certain and
- 2) the basis of quantification of the future expenses should be scientific and reasonable.

18. In our view both the conditions laid down by the Hon'ble Supreme Court have been satisfied in the present case and therefore the expenditure in question should be allowed as a deduction and was rightly allowed as deduction by the CIT(A). We find no grounds to interfere with

the orders of the CIT(A) and accordingly appeal of the Revenue is dismissed.

19. As far as asst. year 2012-13 is concerned, the facts are identical to asst. year 2011-12 and the orders passed for asst. year 2011-12 have been followed by the AO and the CIT(A). In view of our conclusions on this issue for the asst. year 2011-12, we are of the view that there is no merit in the appeal of the Revenue for asst. year 2012-13. Accordingly the same is liable to be dismissed.

20. In the result, both the appeals are dismissed.

Order pronounced in the open court on **3rd May, 2019.**

Sd/-

Sd/-

(JASON P BOAZ)
Accountant Member

(N.V. VASUDEVAN)
Vice President

Bangalore,
Dated, 3rd May, 2019.
/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.