

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री इंदूरी रामा राव, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2382/Chny/2018
निर्धारण वर्ष /Assessment Year: 2012-13

**M/s.Koncar Inzenjering ZA
Energetiku,
C/o.K.Sekar,
Essveeyar Chartered Accountants,
Dhanasri Apartments,
Flat No.1-A,First Floor,
Old No.34,New No.64,
Venkatakrisnan Road,
R.A.Puram,Chennai 600 028.**

**Vs. The DCIT,
International Taxation 1(2),
Chennai 34.**

[PAN: AACCK 4018 R]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr. K.Balasurbamanian,
Advocate

प्रत्यर्थी की ओर से /Respondent by

: Mr.R.Clement Ramesh Kumar
Addl C.I.T D.R

सुनवाई की तारीख/Date of Hearing

: 07.08.2019

घोषणा की तारीख /Date of Pronouncement

: 07.08.2019

आदेश / O R D E R

PER GEORGE MATHAN, JUDICIAL MEMBER:

This is an appeal filed by the assessee against the Order of
Commissioner of Income Tax (Appeals)-16, Chennai, in ITA

No.19/C.I.T(A)-16/2012-13 dated 28.08.2017 for the assessment year 2012-13.

2. Mr. K.Balasurbamanian represented on behalf of the Assessee and Mr.R.Clement Ramesh Kumar represented on behalf of the Revenue.

3. It was submitted by Id.AR that only issue in the assessee's appeal was against the action of Assessing Officer in confirming the finding of Assessing Officer that assessee was not entitled to claim u/s.44BBB of the Act. Further, Id.AR submitted that the issue raised in this appeal was squarely covered by the decision of Co-ordinate Bench of this Tribunal in assessee's own case for immediately preceding assessment year in ITA No.2382/Chny/2018 for assessment year 2011-12 vide order dated 10.11.2016.

3. In reply, Id.D.R vehemently supported the orders of Id. Assessing Officer and the Ld.CIT(A).

4. We have considered the rival submissions and perused the material available on record. In the assessee's appeal, the assessee has raised the following grounds for our adjudication.

"1. Authorities below erred in holding that Appellant is not eligible for its claim u/s.44BBB of the Act.

1.2 Id.CIT(A) erred in holding that Appellant did not satisfy the condition u/s.44BBB.

1.3. He failed to appreciate that TNEB awarded the contract on EPC basis for BKB-2 & BKB-2 (i.e. Bhavani Kattalai Barrage) to the Consortium of M/s.Litostroj,Slovenia and M/s.Koncar, Croatia (Appellant herein) for

design, manufacture, supply, erection (excluding civil works), testing, commissioning and handing over the turbine generating equipment with auxiliaries and accessories which satisfies the condition in Sec.44BBB(1).

1.4 He erred in not following the binding nature of the Chennai ITAT C Bench in ITA No.1204/2016 in the Appellant's own case for A.Y 2011-12 dated 10.11.2016 copy of which was filed before him.

1.5 Contrary to Circular No.552 dated 9.2.1990 issued by the CBDT, he erred in holding that the letter of Department of Power cannot be construed as an approval from the Central Government.

1.6 Authorities below failed to follow Rule of consistency in as much as the first appellate authority in the Appellant's own case for assessment year 2006-07 on similar facts in ITA No.114/09-10 dated 16.04.2010 held that the provisions of section 44BBB are applicable to the Appellant's case which decision was accepted by the Department by not filing an appeal.

A perusal of the order of Co-ordinate Bench of this Tribunal in assessee's own case cited supra shows that the Co-ordinate Bench of this Tribunal, after considering the identical situation in respect of non-granting of benefit of provisions of section 44BBB of the Act, has held as follows:-

"7. We heard the rival submissions and perused the material placed before us. The assessee has signed the agreement for the execution of turnkey project with Tamilnadu Electricity Board on 27.12.2006. From the certificate issued by the Central Electricity Authority, Ministry of Power, it was clarified that it is a turnkey project to be treated at par with Power Projects approved by the Government of India for the purpose of section 44BBB of the Act. The letter was issued by the Central Electricity Authority, Government of India, and Ministry of Power on 24.11.2008 which was placed before the Assessing Officer also. By Circular No. 552 dated

9.12.1990, it was clarified by the CBDT that an approval issued by the Department of Power in the Ministry of Energy shall be deemed to be approval of the Central Government for the purposes of sec. 44BBB of the Act. Now Ministry of Energy Sources was dispensed with and the Ministry of Power started functioning independently therefore the letter issued by the Ministry of Power is a valid communication on the subject of Electricity and power. The Id. AR has placed reliance on the evidences filed before the Assessing Officer regarding approval of Central Government, we have no reason to reject the claim of the assessee in the absence of any evidence disproving the genuiness and authenticity of the furnished by the revenue. Secondly, the Assessing Officer rejected the claim stating that the Central Government approval is not available at the time of signing of the contract. Now it is well settled issue that additional claims and supporting documents such as approvals etc may be furnished at the time of assessment before the Assessing Officer or before the appellate authorities which will be treated as sufficient compliance. Since the approval was submitted before the Assessing Officer during the pendency of assessment proceedings, furnishing complete details of the power project and certificate that the contract work of the assessee may be treated as turnkey project for the purposes of sec. 44BBB of the Act and the assessing officer has not disproved the same. we do not find any reason for rejecting the claim of the assessee. Therefore, we hold that condition (a) is satisfied by the assessee. Condition (b) It was not financed by an international and payment as was required by the then prevailing condition of sec. 44BBB. This condition has been omitted from the Act with effect from 1.4.2004 and hence cannot be invoked. From the above it is clear that the assessee has satisfied all the conditions for the purposes of computing the income u/s 44BBB as a turnkey project. Therefore we set aside the orders of the lower authorities and direct the Assessing Officer to compute the income as per sec. 44 BBB of the Act. This ground of appeal is allowed."

As it is noticed that the issue raised in assessee's appeal is identical, and the Co-ordinate Bench of this Tribunal in assessee's own case cited above has already adjudicated on this issue, respectfully following the decision of Co-ordinate Bench of Chennai Tribunal referred to supra, Assessing Officer is directed to grant the benefit u/s.44BBB of the Act as claimed by the assessee.

5. In the result, appeal filed by assessee is allowed.

Order pronounced in the open Court after conclusion of hearing on the 07th August, 2019 in Chennai.

Sd/-
(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 07th August, 2019.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF