

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE-PRESIDENT AND
SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No. 622/Bang/2019
Assessment Year : 2009-10

M/s. Karnataka State Construction Corporation Ltd., 1096, Nirman Bhavan, 80 Feet Road, 1 st Block, Rajajinagar, Bangalore – 560 010. PAN: AAACK6471G	Vs.	The Assistant Commissioner of Income Tax, Circle – 11 (5), Bangalore.
APPELLANT		RESPONDENT
Assessee by	:	Smt. Pratibha, Advocate
Revenue by	:	Smt. Padma Meenakshi, JCIT (DR)
Date of hearing	:	26.08.2019
Date of Pronouncement	:	13.09.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A)-12, Bangalore dated 11.01.2019 for Assessment Year 2009-10.

2. The grounds raised by the assessee are as under.

	<i>GROUND OF APPEAL (enclosed separately)</i>	<i>Tax Effect relating to each Ground of appeal</i>
1	<i>The Id. CIT (A) erred in passing the order in the manner which he did.</i>	<i>General</i>
2	<i>The Id. CIT (A) ought to have appreciated that the claim of expenditure of Rs. 6,69,405/- has to allowed full instead of amortizing the same over a period of 5 years without any reason.</i>	<i>Rs. 6,69,405/-</i>

3	<i>The ld. CIT(A) ought to have appreciated that the expenditure amounting to Rs. 6,69,405/-paid towards interest on the VRS given to employees as per the direction of the Hon'ble High Court, the provision of section 35DDA of the Act will not applicable to the present facts of the case. Thus the addition confirmed by the CIT(A) ought to have been deleted.</i>	<i>Rs. 6,69,405/-</i>
4	<i>The ld. CIT(A) ought to have appreciated that the provision of section 35DDA of the Act will applicable to only VRS amount not the interest expenditure incurred on VRS as per the direction of the Hon'ble High Court of Karnataka and same has to be allowed full for the relevant assessment year</i>	<i>Rs. 6,69,405/-</i>
5	<i>The learned CIT (A) erred in confirming the levy of interest under Sections 234B and 234D of the Act.</i>	<i>General</i>
6	<i>Without prejudice the disallowances as confirmed by the learned CIT (Appeals) are arbitrary excessive and ought to be reduced substantially</i>	<i>General</i>
7	<i>For these and such other grounds that may be urged at the time of hearing the Appellant prays that the appeal may be allowed.</i>	<i>General</i>
	<i>TOTAL TAX EFFECT</i>	<i>Rs. 200800/-</i>

3. It was submitted by Id. AR of assessee that there was delay in payment of VRS amount and as per the court decisions, the assessee made payment of interest on such late payment of VRS of Rs. 6,69,405/- and claimed deduction for the same in the present year but the AO invoked the provisions of section 35DDA of the IT Act and allowed only 1/5th of this amount to the extent of Rs. 1,33,881/- and disallowed balance amount of Rs. 5,35,524/-. She submitted that the provisions of section 35DDA is applicable in respect of payment of VRS but not in respect of interest on such delayed payment of VRS and therefore, the disallowance made by the AO should be deleted. At this juncture, the bench pointed out that section 35DDA of the IT Act includes any expenditure in any previous year by way of payment of any sum to an employee in connection with his voluntary retirement and deduction is

allowable only 1/5th in the year of payment and equal amount is allowable in the succeeding four years. In reply, it was submitted by Id. AR of assessee that even if the disallowance in the present year is confirmed, then direction should be given to the AO to allow the remaining amount in succeeding four years as per law because the assessee has not made any claim on this account in the succeeding four years in view of entire claim by the assessee in the present year. The Id. DR of revenue supported the orders of authorities below.

4. We have considered the rival submissions and in our considered opinion, section 35DDA is applicable to any payment in connection with VRS payment to employees and since, the interest expenditure in dispute in the present case is in connection with VRS payment of employees, this amount is also hit by the provisions of section 35DDA of the IT Act and therefore, in the present year, only 1/5th is allowable as already allowed by the AO. But we find force in the alternative submission of Id. AR of assessee that the AO should be directed to allow the remaining amount in the succeeding four years as per law although no such claim is made by the assessee in those four years because the assessee claimed the full amount in the present year. Hence, we confirm the disallowance made by the AO in the present year with the direction that in the succeeding four years, the remaining amount should be allowed as per law even if no claim is made by the assessee in those four years.
5. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(N.V. VASUDEVAN)
Vice-President

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 13th September, 2019.
/MS/

Copy to:

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

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.