

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.128 & 129/Viz/2019
(निर्धारण वर्ष/Assessment Year : 2011-12 & 2012-13 respectively)**

M/s Bharat Heavy Electricals Limited Vs. Addl. Commissioner of
(HPVP) Unit Income Tax
Formerly known as Bharat Heavy Range-3
Plate & Vessels Ltd. Visakhapatnam
D.No.10-3, Administrative Building
Natayyapalem, Visakhapatnam
[PAN :AAACB7076N]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri I Kama Sastry, AR
प्रत्यर्थी की ओर से / Respondent by : Shri V.Appala Raju, DR

सुनवाई की तारीख / Date of Hearing : 13.08.2019
घोषणा की तारीख/Date of Pronouncement : 25.09.2019

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

These appeals are filed by the assessee against the order of the
Commissioner of Income Tax (Appeals) [CIT(A)]-1, Visakhapatnam
in ITA.No.181/2014-15, Vsp/2018-19 dated 28.11.2018 and I.TA.No.

1154/2014-15, Vsp/2018-19 dated 27.11.2018 for the Assessment Year (A.Y.) 2011-12 and 2012-13.

2. All the grounds of appeal are related to the disallowance of depreciation on assets taken on lease by the assessee. In this case, for the A.Y. 2011-12 the assessee filed the return of income declaring total income of Rs.Nil after set off of brought forward losses of Rs.15,06,61,419/- pertaining to the earlier years and the assessment was completed on total income of Rs.15,11,25,333/-, after set off of earlier years losses the taxable income was Rs.Nil. In the assessment the Assessing Officer (AO) made the addition of Rs.48,46,819/- representing the disallowance of depreciation on leased assets. The entire income was allowed to be set off against the brought forward business losses and computed the taxable income at Rs. Nil.

2.1. The AO during the assessment proceedings noticed that the assessee has claimed the depreciation on EDP equipment to the tune of Rs.48,46,819/- in the revised return. The AO called for the information and found from the details filed by the assessee that the ownership on the equipment was not transferred to the assessee and it was vested with the lessor only. Therefore, the AO held that the assessee is not entitled for

depreciation, accordingly, disallowed the depreciation on EDP equipment which was taken on lease. The AO discussed the issue in detail in para No. 4.2.1. to 4.2.3 of the assessment order which is made available in page No.2 and 3 of the assessment order and for the sake of clarity and convenience, the same is extracted as under :

"4.2.1.It is seen from a copy of the agreement, at 02.01.10 entered into between the assessee company and M/s. HCL Infosystems Ltd (being the supplier) that the said supplier had entered into a rate contract for supply, installation and maintenance of computer equipments on 5 years lease basis to the assessee and that the terms and conditions for the said rate contract work are the same as that of the terms and conditions stated to be in the rate contract of the supplier with another public sector undertaking i.e. M/s. BHEL. A copy of the said agreement of the supplier with M/s. BHEL was enclosed by the assessee and the same has been perused. As seen from the said rate contract agreement which M/s. BHEL had with the above supplier for the 5 year leasing of IT / EDP equipments, the terms and conditions clearly specify that, only after the completion of the 5 years lease period, M/s. BHEL would have the right to acquire or surrender of the equipments and that in case M/s. BHEL decides to acquire the equipment it could do so at a nominal charge of Re.1.00 per equipment which will be paid as a terminal payment and thereafter it could claim depreciation as per the provisions of Income Tax Act. Clause3 of the said terms and conditions are reproduced as under :

"Lease period 5 years as mentioned above from the date of installation and acceptance. After completion of the lease period- BHEL- shall have the right to acquire or surrender all the equipments. In case, BHEL decides to acquire the equipments, a nominal charge of Re.1.00 per equipment will be paid as terminal payment. Further BHEL will claim depreciation as per provisions of Income Tax Act.

4.2.2. It is also pertinent to mention in this regard that the insurance for the equipments / goods vested only with the supplier and also that even the shifting of - equipment from one location to another after the initial installation as per the location details is also the responsibility of the supplier and that for such shifting etc. the mutually agreed cost could be paid by the lessee i.e BHEL to the lessor / supplier.

4.2.3. This apart, it is also agreed with the supplier that it would post qualified resident engineers for meeting the necessary technical requirements and support.

4.3. In view of the foregoing reasons, it can be stated that the ownership on the assets did not in any way pass on to the assessee-company so as to entitle it to claim depreciation. Accordingly the assessee's claim on this count is rejected, In view of the above, the depreciation on leased assets of EDP equipments to the time of Rs.48,46,819/- is hereby disallowed and added to the total income of the assessee."

The identical issue is involved for the A.Y.2012-13 also and the depreciation claimed and disallowed on data processing equipment was Rs.9,69,364/-.

3. The assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the order of the AO following the order of his predecessor in assessee's own case for the earlier years.

4. Against the order of the Ld.CIT(A), the assessee filed appeal before this Tribunal.

5. We have heard both the parties and perused the material placed on record. Identical issue has come up before this Tribunal in assessee's own case for the A.Y. 2005-06 and 2010-11 in I.T.A No.405 & 406/Viz/2017 and the Coordinate Bench of ITAT in it's order dated 21.03.2018 decided the issue in favour of the revenue and confirmed the orders of the Ld.CIT(A).

We extract relevant part of the order of the ITAT in para No.31 and 32 which reads as under :

“31. We notice that the assessee has not furnished the relevant agreement entered with M/s HCL Infosystems Ltd. Instead, the assessee has furnished the copy of agreement entered between M/s HCL Infosystems Ltd and M/s BHEL. It has been claimed by the assessee that the said agreement was identical with the agreement entered by the assessee. Hence, the Ld CIT(A) has taken the view that the claim of the assessee to allow depreciation was not prima facie admissible, in the absence of relevant agreement. We notice that the Ld CIT(A) has, however, proceeded to examine the terms and condition of the Contract and has given a finding that the assessee was only a lessee and the ownership has remained with lessor only. He has also given a finding that the assessee had got the right to use the equipments only and the lessor continued to have legal possession over the assets. The Ld CIT(A) has also observed that the assessee did not furnish any information about similar claim made in the succeeding years. Under these set of facts, the Ld CIT(A) has confirmed the rejection of claim for depreciation.

32. Before us, the assessee did not furnish any document to contradict the interpretation given by the Ld CIT(A). The ld A.R disputed the observations of the AO by stating that the supplier of equipment and lessee were one and the same. However, in our view, what is required to be shown is that the ownership of the equipments has transferred from M/s HCL infosystems ltd to the assessee. In our view, the assessee has failed to show the same. In any case, in the absence of relevant agreement, it may not be proper to understand the terms and conditions of the lease on the basis of some other agreement. Hence we are of the view that the Ld CIT(A) was justified in confirming the order passed by the AO on this issue. “

Since the issue is identical and there is no change in the facts of the case, respectfully following the view taken by the coordinate bench, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the assessee for the A.Y. 2011-12 and 2012-13.

6. For the A.Y. 2012-13 in ground No.1 and 2, the assessee challenged the order of the CIT(A) with regard to disallowance of provisions

amounting to Rs.2,79,43,000/-. Brief facts of the case are that the assessee filed the return of income declaring total income of Rs. Nil after set off of brought forward losses of Rs.16,02,00,223/-. The case was taken up for scrutiny and the assessment was completed by making addition of Rs.9,69,364/- relating to depreciation of leased equipment and Rs.69,40,196/- relating to employees contribution towards provident fund. However the AO did not make any addition to the returned income relating to the provisions.

7. Against the order of the AO, the assessee went on appeal before the CIT(A) and submitted that the assessee is a company and had debited the amount of Rs.279.43 lakhs on various accounts under the head 'provisions' to its Profit & Loss account consisting of Rs.103.44 lakhs for contractual obligation and Rs.175.99 lakhs for percentage of cost of non moving stores.. The assessee contended that these provisions were not allowed by the AO though the assessee placed notes to the Income Tax Return. The Ld.CIT(A) considered the submissions of the assessee and dismissed the appeal of the assessee since no addition was made by the AO and thus there is no grievance for the assessee.

8. Against the order of the Ld.CIT(A), the assessee filed appeal before his Tribunal.

9. We have heard both the parties and perused the material placed on record. From the perusal of the orders of the lower authorities we, find that the assessee had not claimed the said expenditure as deduction in the return of income and the assessee itself has disallowed the said amount and the AO did not make any addition. The assessee stated to have made the claim in the notes, which does not form part of the income tax return. Since the assessee did not make the claim and the AO did not make any addition, there was no occasion for the AO to examine the issue and there was no grievance to the assessee. Therefore, the Ld.CIT(A) held that there is no grievance to the assessee, hence the appeal was dismissed. In the instant case, there was no error in the assessment order and the assessee did not make any claim in the return of income towards the expenses relating to the provisions for contractual obligations/ percentage of cost of non moving stores which was never examined by the AO. In case, there was genuine omission in the return filed by the assessee, remedial action is available in the Income Tax Act to file the revised return or to approach the Ld.CIT u/s 264 of the Act. Since no addition was made by the AO in the

assessment order, and no material was placed by the assessee before us substantiating the genuineness of expenditure we concur with the view of the Ld.CIT(A) that there is no grievance to the assessee and accordingly, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the assessee.

10. In the result, appeals of the assessee are dismissed.

Order pronounced in the open court on 25th September 2019.

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 25.09.2019

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – M/s Bharat Heavy Electricals Limited (HPVP) Unit, Formerly known as M/s Bharat Heavy Plate & Vessels Ltd., D.No.10-3, Administrative Building, Natayyapalem, Visakhapatnam
2. राजस्व/The Revenue - Addl. Commissioner of Income Tax, Range-3, Visakhapatnam
3. The Pr.Commissioner of Income Tax-1, Visakhapatnam
4. The Commissioner of Income-Tax (Appeals)-1, Visakhapatnam
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam