

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, " ए " चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A', CHANDIGARH

श्री एन. के. सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 533/CHD/2018

निर्धारण वर्ष / Assessment Year : 2013-14

M/s Haryana State Road & Bridges Development Corporation Ltd., Bays 13-14, Sector 2, Panchkula	Vs. बनाम	The ACIT, Panchkula Circle, Panchkula
स्थायी लेखा सं./PAN NO: AACH9435M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

&

आयकर अपील सं./ITA No. 739/CHD/2018

निर्धारण वर्ष / Assessment Year : 2014-15

The ACIT, Panchkula Circle, Panchkula	Vs. बनाम	M/s Haryana State Road & Bridges Development Corporation Ltd., Bays 13-14, Sector 2, Panchkula
स्थायी लेखा सं./PAN NO: AACH9435M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Harry Rikhy, Advocate
राजस्व की ओर से/ Revenue by : Shri Chandrajit Singh, CIT DR

सुनवाई की तारीख/Date of Hearing : 04.09.2019
उद्घोषणा की तारीख/Date of Pronouncement : 22.10.2019

आदेश/Order

Per Sanjay Garg, Judicial Member:

Out of the captioned appeals, ITA No. 533/Chd/2018 has been preferred by the assessee, whereas, ITA No.739/Chd/2018 has been

preferred by the Revenue relating to different assessment years but pertaining to the same assessee.

2. The issue involved in both the appeals is identical, hence, these appeals were heard together and are being disposed of by this common order.

3. The brief facts of the case are that assessee is a Public Limited Company incorporated by the Government of Haryana dealing in the business of construction and up-gradation of Roads and Bridges in the State of Haryana. During the assessment proceedings for the assessment year under consideration, the Assessing Officer noticed that the assessee had debited the interest expenditure of an amount of Rs. 72,44,13,474/- in the previous year relevant to the assessment year 2013-14 and further an amount of Rs. 99,66,91,956/- during the previous year relevant to the assessment year 2014-15, however, the said expenditure was relating to the interest liability of the earlier assessment years. He, therefore, disallowed the aforesaid amount of Rs. 72.44 Crores for the assessment year 2013-14 and Rs. 99.66 Crores for assessment year 2014-15, as prior period expenses.

In both the cases, the assessee preferred appeals before the Ld. CIT(A). It was explained to the Ld. CIT(A) that the assessee for the purpose of improvement /up-gradation of roads in the State of Haryana

had taken loan from HUDCO in four projects. That out of the total project cost, 80% was to be financed by HUDCO and balance 20% was to be provided by the Government of Haryana as 'Counter Part Funding'. The 'Counter Part Funding' to be provided by the Government of Haryana was without any interest. That the loan due to HUDCO was to be repaid from the collection from Toll Points on various roads improved & maintained by the assessee Corporation. However, the Toll point collection was not sufficient for the repayment of quarterly loan installment to HUDCO during the year. Subsequently, the assessee made request to the State Government for the release of 'Counter Part Funding' for the repayment of the quarterly installments. The State Government accordingly released the counterpart funding due to the corporation time and again which was without any interest. However, subsequently, in the month of March 2013 in the Board of Directors meeting. Director of Finance Department Haryana conveyed the decision of the Government to charge charge interest from the assessee @12% per annum calculated on the monthly basis from the date of advance taken from the State Government. Accordingly interest of Rs. 25 Crores had been provided for in F.Y. 2012-13 and interest of Rs. 72.44 Crores had been provided up to the extent of surplus available (out of the interest of Rs. 172.66 cr.) totaling Rs. 97.44 crores during the year with assessee. That decision to levy the interest @12% was later on communicated to the assessee vide memo letter dated

10.05.2013 No. 2/1/2013/SA/FA/HBPE(FD) by the Member Secretary, Haryana Bureau of Public Enterprises, Finance Department.

The Ld. counsel, therefore, has submitted that though the decision of the State Government to charge the interest on the amount funded by the State Government was conveyed orally in a meeting of Board of Directors, whereas, an express written communication was received by the assessee to this effect vide letter dated 10.5.2013. The assessee, therefore, has pleaded that since the liability to pay the interest to the Government crystalized during the assessment years under consideration, hence, the disallowance by the Assessing Officer on these interest payments on the ground that these were prior period expenses was not justified.

4. The Ld. CIT(A) considering the submissions made by the assessee observed that the liability in fact was crystalized on receipt of the written communication vide letter dated 10.5.2013, he, therefore, held that the payment by the assessee of Rs. 72.44 crores during the financial year 2012-13 relating to assessment year 2013-14 and relating to the interest liability of earlier assessment year was not allowable as such liability was crystalized in the subsequent year i.e. during the previous year relevant to the assessment year 2013-14.

The CIT(A) however, allowed the remaining payment of Rs. 99.66 cores relating to the prior period interest expenditure while deciding

the appeal of the assessee of assessment year 2014-15. Therefore, the assessee has come in appeal against the findings of the CIT(A) for assessment year 2013-14 rejecting the claim of expenditure, whereas, the Revenue has come in appeal against the findings of the Ld. CIT(A) dated 15.3.2018 allowing the claim of interest expenditure in assessment year 2014-15.

5. We have heard the rival contentions and have gone through the record. It is apparent from the record that the decision to charge the interest retrospectively was taken by the Government subsequently and not during the prior assessment years, hence, the liability to pay the interest had not accrued or crystalized during the years prior to the assessment year 2013-14. In the assessment year 2013-14, the assessee was conveyed in the meeting of Board of Directors in the month of March 2013 about the decision of the Government to charge interest retrospectively relating to the earlier assessment years, however, formal communication was received by the assessee in this respect on 10.5.2013. The assessee, therefore, in the financial year 2012-13 relating the assessment year 2013-14 not only paid the interest relating to the financial year 2012-13 but also paid an amount of Rs. 72.44 cores which was extent to surplus available with the assessee at the end of the year. The remaining amount of Rs. 99.66 cores was paid by the assessee during the next financial year 2013-14 relating to assessment year 2014-

15. Under the circumstances, it cannot be said that the liability to pay the interest had accrued or crystalized during any of the year prior to the financial year 2012-13 relating to assessment year 2013-14. The assessee out of the accrued liability relating to the interest expenditure of the earlier years paid the actual liability relating to the financial year 2012-13 as well the amount of surplus available to the assessee during the financial year 2012-13 and paid the remaining amount in the next financial year 2013-14 after receipt of the written communication dated 10.5.2013. The Assessing Officer, allowed the interest liability of financial year 2012-13 which was paid during the year, however, disallowed the remaining payment of interest being prior period expenses. The Ld. CIT(A) surprisingly observed that the liability had been actually crystallized on 10.5.2013 on receipt of the written communication. However, he did not question the action of the Assessing Officer to allow interest expenses of financial year 2012-13 amounting to Rs. 25 crores. If as per the CIT(A) the liability was crystallized in the subsequent financial year 2013-14, then under the circumstances, the assessee was not justified to pay any interest amount in financial year 2012-13, however, the same has been allowed by both the lower authorities.

The facts itself speaks that though the assessee was conveyed the decision of the Government to charge the interest relating to the earlier years in the meeting held in the month of March 2013 and the assessee

accordingly paid the surplus available to it during the financial year 2012-13, however, the full and final liability was crystallized during the financial year 2013-14 relating to assessment year 2014-15 and accordingly paid the remaining amount out of the interest expenditure relating to the earlier assessment years which was allowed by the CIT(A).

We, therefore, do not find justification on the part of the CIT(A) in disallowing the interest expenditure paid by the assessee during the financial year 2012-13 relating to assessment year 2013-14. However, the Ld. CIT(A) rightly deleted the disallowance made by the Assessing Officer in the appeal relating to assessment year 2014-15. We accordingly set aside the order of the Ld. CIT(A) dated 13.02.2018 relating to assessment year 2013-14 and delete the disallowance made by the Assessing Officer on this issue, whereas, the findings of the CIT(A) relating to assessment year 2014-15 are upheld.

In the result, the appeal of the assessee for assessment year 2013-14 is allowed, whereas, the appeal of the Revenue of assessment year 2014-15 is dismissed.

Order pronounced in the Open Court on 22.10.2019.

Sd/-
(एन. के. सैनी / N.K. SAINI)
उपाध्यक्ष /Vice President
Dated : 22.10.2019

Sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिकसदस्य/ Judicial Member

‘Rkk ‘

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,

सहायकपंजीकार/ Assistant Registrar