

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI, SANJAY GARG, JM

आयकर अपील सं./ ITA NO. 1235/Chd/2018
निर्धारण वर्ष / Assessment Year : 2013-14

M/s Punjab State Power Corporation Ltd. Chief Financial Officer, PSEB, Head Office, The Mall, Patiala- Punjab	बनाम	ACIT, Circle Circle, Patiala, Punjab
स्थायी लेखा सं./PAN NO:		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 744/Chd/2019
निर्धारण वर्ष / Assessment Year : 2012-13

M/s Punjab State Power Corporation Ltd. Chief Financial Officer, PSEB, Head Office, The Mall, Patiala- Punjab	बनाम	ACIT, Circle Circle, Patiala, Punjab
स्थायी लेखा सं./PAN NO:		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Rajiv Saldi, CA
राजस्व की ओर से/ Revenue by : Dr. G.S. Phani Kishore, CIT DR

सुनवाई की तारीख/Date of Hearing : 02/12/2019
उद्घोषणा की तारीख/Date of Pronouncement : 06/12/2019

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

These appeals filed by the Assessee are directed against the separate orders dt. 02/07/2018 of CIT(A) Patiala and dt. 11/03/2019 of CIT(A)-1, Ludhiana for the A.Y. 2013-14 and 2012-13 respectively.

2. Since the issues involved in these appeals are common which were heard together so these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. At the first instance we will deal with the appeal in ITA No. 744/Chd/2019 for the A.Y. 2012-13 wherein assessee has raised the following grounds:

1. *That the Ld CIT(A) has wrongly and arbitrarily made an addition of Rs. 3,02,73,228/- on account of alleged prior period expenses although items are not Prior period, items as defined by AS-5. (Accounting Standard-5). Thus the addition is illegal, bad in law and against the facts of the case, hence is liable to be deleted.*

2. *That the Ld. CIT(A) has wrongly and arbitrarily made an addition of Rs. 48,77,19,013/- on account of alleged income from other sources as against the declared income from business which is illegal, bad in law and against the facts of the case as such is liable to be deleted.*

3. *That the Ld. CIT(A) has wrongly and arbitrarily made an addition of Rs. 259,79,18,803/- on account of alleged non payment of CPF and GPF which is against the facts of the case and bad in law.*

4. Vide Ground No. 1 the grievance of the assessee relates to the sustenance of addition of Rs. 3,02,73,228/- made by the A.O. on account of prior period expenses.

5. With regard to this issue the Ld. Counsel for the Assessee at the very outset stated that this issue is fully covered in favour of the assessee vide order dt. 24/05/2019 of this Bench of Tribunal in ITA Nos. 977-979/Chd/2018 for the A.Y's 2009-10 to 2011-12, copy of the said order was furnished which is placed on the record.

6. In his rival submissions the Ld. Sr. DR supported the orders of the authorities below and further submitted that there was nothing on record to suggest that the expenses were recognized / become payable during the previous year relevant to the assessment year under consideration.

7. We have considered the submissions of both the parties and perused the material available on the record. In the present case it is noticed that an identical issue was a subject matter of the assessee's appeal for the A.Y. 2009-10 to 2011-12 in ITA No. 977 -979/Chd/2018 wherein the issue has been decided in assessee's favour vide order dt. 24/05/2019 and the relevant findings have been given in para 4 of the said order which read under:

4. There is no quarrel between the parties about the fact that it is not the issue of genuineness of assessee's claim of total prior period expenditure amounting to Rs.127,95,27,809/- that calls for our adjudication since both the learned lower authorities are of the view that it has failed to prove the same to have crystallized during the relevant impugned previous year. There only case is that the assessee follows mercantile system of accounting and therefore, it ought to have raised claim in issue in the year of accrual going by mercantile system of accounting. Learned departmental representative vehemently contends during the course of hearing that the CIT(A) has rather erred in

partly restricting the impugned expenditure to Rs.65,74,705/- only after netting of above gross claim against the assessee's prior period income. We find no merit in Revenue's instant argument. Hon'ble Gujarat high court's decision in Tax Appeal No.566 of 2016 PCIT vs. M/s Adani Enterprise holds that this is a revenue's neutral issue in case the assessee concerned is assessed at the same rate in both years i.e. the year of accrual and crystallization. This is not the Revenue's case that the assessee has not been assessed at the same rate in all these assessment years. Coupled with this, it has further come on record that the department has itself assessed assessee's prior period income in all these assessment years but disallowed prior period expenditure. We see no reason to express our concurrence with such an inconsistent method of assessment of prior period income and prior period expenditure. We accordingly conclude that the assessee is entitled to claim the impugned prior period outgo as allowable business expenditure in the impugned assessment year going by the above stated legal position. This assessee's former substantive ground, Revenue's second substantive ground in cross-appeal No.1028/Chd/2018 as well as first and second substantive grounds in former cases pertaining to three assessment years are decided against the Revenue going a similar analogy. We accept the latter assessee's identical first substantive ground in both of its two appeals and decline the Revenue's first substantive grounds in its third cross-appeals (supra).

7.1 So respectfully following the aforesaid referred to order this issue is decided in favour of the assessee.

8. Next issue vide Ground No. 2 relates to the confirmation of action of A.O. by considering the amount of Rs. 48,77,19,013/- as "income from other sources" instead of "income from Business" declared by the assessee.

9. As regards to this issue the Ld. Counsel for the Assessee submitted that it is also covered vide para 11 of the aforesaid referred to order dt. 24/05/2019 in assessee's own case in ITA No. 1028-1029 & 1030/Chd/2018 wherein by following the earlier order dt. 15/04/2019 in ITA No. 1024 & 1022/Chd/2018 and the order dt. 22/01/2004 in ITA No. 446/Chd/2009 for the A.Y. 2005-06 the issue has been restored to the file of the A.O.

10. In his rival submissions the Ld.CIT DR although supported the impugned order passed by the Ld. CIT(A) but could not controvert the aforesaid contention of the Ld. Counsel for the Assessee.

11. After considering the submissions of both the parties and perusing the material available on the record, it is noticed that the fact for the year under consideration are similar to the facts involved in the appeal decided vide aforesaid referred to order dt. 24/05/2019 wherein the relevant findings on the similar issue had been given in para 11 which read as under:

11. Next comes Revenue's fourth substantive ground in assessment year 2010-11 that the CIT(A) has erred in law and on facts in treating the assessee's income derived from various sources i.e. interest on staff loan and advances, staff welfare activities, fixed deposits and other miscellaneous receipts amounting to Rs.1,02,10,31,582/- as business income than income from other sources during the course of assessment. It transpires that CIT(A) has restricted the impugned addition to the extent of Rs.59,59,89,053/-from Rs. 1,02,10,31,582/-. It further emerges that this tribunal's order in ITA No.1024 & 1022/Chd/2018 dated 15.04.2019 in ACIT Vs. M/s Punjab State Transmission Corporation Ltd. (group concern after restructuring) has restored the issue back to the Assessing Officer to be adjudicated afresh in light of yet another co-ordinate bench's direction in assessment year 2005-06 in ITA No.446/Chd/2009 decided on 22.01.2004. We adopt judicial consistency herein as well therefore and direct the Assessing Officer to carry out necessary factual verification as per law. This fourth substantive ground in the instant Revenue's appeal is accepted for statistical purposes therefore. The main appeal ITA No.1029/Chd/2018 filed at the Revenue's behest in assessment year 2010-11 is partly allowed for statistical purposes.

11.1 So respectfully following the aforesaid referred to order dt. 24/05/2019 this issue is set aside to the file of the A.O. to be adjudicated afresh in accordance with law and as directed in the earlier order dt. 24/05/2019 of the Tribunal.

12. The another issue raised by the assessee relates to the confirmation of addition of Rs. 5,03,46,41,315/- made by the A.O. on account of non payment of CPF and GPF.

13. The facts related to this issue in brief are that the A.O. during the course of assessment proceedings noticed that the Tax Audit Report of the assessee revealed that in respect of employees covered under CPF scheme, Rs. 2,62,83,922/- was deducted during the year which had not been deposited. He also observed that in respect of employees covered under GPF scheme, Assessee company had been deducting provident fund under Provident Fund Rules 1960 framed by erstwhile PSEB, however the deduction had not been remitted in any separate account and had been utilized for its operations. He therefore asked the assessee to show cause as to why the amount not deposited (but deducted) under CPF scheme and GPF scheme should not be disallowed under the provisions of Section 43B and 36(1)(va). In response the assessee submitted as under:

"In reference to the hearing on dated 17-03-2015, Regarding General Provident Fund Rs.253,02,49,471/- net accumulated during the year, it is submitted that the erstwhile Punjab State Electricity Board was treating the amount of Provident Fund under regulation 41 a & b of the Provident Fund Regulations 1960, reproduced below.

"41 a) GP Fund balances, after deducting final payments, permanent and temporary advances as admissible under these Regulations will be available for use by the Board in meeting its capital expenditure under the Plan. For this purpose budgetary provisions shall be made showing gross accretion to the GP Fund balances, final withdrawals, permanent and temporary advances as admissible under the regulations.

b) , The capital expenditure made out of the GP Fund balances will be reflected in the creation of the assets of the Board and the provident fund dues of the employees shall constitute the first charge on these assets of the Board.

As per above regulation the amount was to be retained by PSEB for utilization in capital Assets.

After unbundling on dated 16-04-2010, as per clause 10B, 10C & 10D of the notification dated 24-12-2012 of Govt, of Punjab, the amount of Provident Fund till 31-03-2013 and after that will be deposited in separate trust over period 10 years. Moreover, as per para no. 10-C of the said notification the company shall bear the interest from the transition period till the matter is settled through Trust i.e. upto 31-03-2013. The para 10B, 10C and 10D are reproduced below:-

"10-B The General Provident Fund Trust, shall be funded by Powercom and Transco both, as per the apportionment made in the Opening Balance Sheet, on and with effect from the 16th April, 2010, and the same shall be funded over a period of ten years commencing on and with effect from the 1st April, 2013, alongwith interest as applicable:

Provided that for the period commencing from 16th April, 2010 to 31st March, 2013, the Powercom and Transco shall be liable to pay interest on the apportioned General Provident Fund liability, at the rate as applicable for the respective financial years .

10-C The Powercom and Transco, shall be liable to pay interest, as applicable to General Provident Fund from time to time, on the net accruals (on monthly basis) of the General Provident Fund amount on and with effect from the 16th April, 2010 to the date of issuance of this notification, and thereafter all the General Provident Fund matters, shall be settled through Trust.

10-D Until otherwise directed by the State Government, the Powercom and Transco shall maintain common Trust for pension, gratuity, other terminal benefit liabilities and General Provident Fund, instead of individual Trusts for each of the companies and all the contributions shall be made to such Trusts in the aforesaid manner."

So far as the CPF of Rs.6,76,69,332/- accumulated during the year is concerned, it is stated that the employees recruited on or after 01-01-2004, they are covered under CPF 'scheme of the GOI. To deposit the same various formalities i.e. allocation of HOD code from the State Govt, registration of company with the NSDL, allotment of code/account no. to the employees etc. which took some time. The sequence of events that took place is attached as Annexure. So far as non-deposit of the same is concerned, it has already been disclosed at Note no.6 (iii).

From the facts state above it is very much clear that as per direction of the Govt, |the above amount has been retained under compulsion not by choice."

13.1 The A.O. however did not find merit in the submissions of the assessee and made the addition of Rs. 259,79,18,803/- by observing as under:

The reply filed by the assessee duly considered and found not tenable as the assessee has clearly violated the provisions of section 43B and 36(1)(va) of the Act. The assessee company not only delayed in actual payment but completely failed to deposit the amount of CPF and GPF of employees and employers even after the due date of filing of Income Tax Return. The assessee company has failed to deposit the total amount of Rs.259,79,18,803/- (GPF of fis.253,02,49,471/- + CPF of Rs.6,76,69,332/-). Therefore, the amount of Rs.259,79,18,803/- is disallowed and added back the returned income.

14. Being aggrieved the assessee carried the matter to the Ld. CIT(A) who sustained the addition by observing as under:

The aforesaid submissions of the appellant have been considered. It has been noted that the appellant corporation's cases for A.Ys. 2011-12, 2013-14 & 2014-15 have already been decided by the Ld. CIT (A), Patiala, where the analogous issues stand decided. Since the disputed issues in the present appeal are the same, this appellate authority adopts the reasoning put forth by the Ld. CIT (A), Patiala. Accordingly, the instant appeal is decided in the manner as decided by the Ld. CIT (A) for the preceding and succeeding Assessment Years 2011-12, 2013-14 and 2014-15. It is ordered accordingly.

15. Now the assessee is in appeal.

16. Ld. Counsel for the Assessee submitted that this observation was made first time by the A.O. and the Ld. CIT(A) has not adjudicated the same in the impugned order. It was further submitted that the A.O. had also not considered the facts of the present case in right perspective. It was stated that a trust was created in the year under consideration wherein amount deducted was to be deposited. It was further stated that the GP Fund after deducting the final payment of the advances was to be deposited but in the year under consideration the net accrual was negative therefore nothing was to be deposited, but this facts has not been appreciated and considered by the A.O. as well as the Ld. CIT(A). It was further submitted that no such disallowance was made in the previous assessment year 2011-12 in similar circumstances, therefore the disallowance made by the A.O. and sustained by the Ld. CIT(A) was not justified.

17. In his rival submissions the Ld. CIT(DR) submitted that the facts are not clear from the impugned order and it is also not clear what were the conditions in the notification dated 24/12/2012 of Government of Punjab. He therefore requested that the matter may be restored to the A.O.

18. We have considered the submissions of both the parties and perused the material available on the record. In the present case it is noticed that the Ld. CIT(A) had passed a non speaking order in other words he has not brought on record the relevant facts involved for the year under consideration. It also appears that the A.O. had not considered the explanation of the Assessee in right perspective particularly it is not brought on record that what were the distinguishable facts from the earlier assessment year, while the Ld. Counsel for the Assessee claimed at Bar that in the similar circumstances no disallowance was made for the A.Y. 2011-12. We, therefore in the

absence of clear facts on record deem it appropriate to set aside this issue back to the file of the A.O. for fresh adjudication in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

19. The facts involved in ITA no. 1235/Chd/2018 for the A.Y. 2013-14 are similar to the facts involved in ITA No. 744/Chd/2019 for the A.Y. 2012-13 and the issues raised are also similar. Therefore our findings given in the former part of this order shall apply mutatis mutandis for the A.Y. 2013-14 in ITA No. 1235/Chd/2018.

20. In the result, appeals of the Assessee are partly allowed for statistical purposes.

(Order pronounced in the open Court on 06/12/2019)

Sd/-
संजय गर्ग
(SANJAY GARG)
न्यायिक सदस्य/ Judicial Member
AG
Date: 06/12/2019

Sd/-
एन.के.सैनी,
(N.K. SAINI)
उपाध्यक्ष / VICE PRESIDENT

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File