

आयकर अपीलिय अधिकरण, "बी" न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री रमित कोचर, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri Ramit Kochar, Accountant Member &
Shri Duvvuru R.L. Reddy, Judicial Member

आयकर अपील सं./I.T.A. No. 1251/Chny/2018
निर्धारण वर्ष/Assessment Year: 2012-13

The Deputy Commissioner of
Income Tax,
Corporate Circle 1(2),
Chennai 600 034.

M/s. Chennai International
Vs. Terminal Pvt. Ltd., No. 1-A,
New Avadi Road, High Court Colony,
Villivakkam, Chennai 600 049.
[PAN:AACCC9433A]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri Guru Bashyam, Addl. CIT
प्रत्यर्थी की ओर से/Respondent by : Shri Vikram Vijayaraghavan, Advocate
सुनवाई की तारीख/ Date of hearing : 25.11.2019
घोषणा की तारीख /Date of Pronouncement : 27.12.2019

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals) 4, Chennai dated 18.12.2017 relevant to the assessment year 2012-13. The only effective ground raised in the appeal of the Revenue is that the Id. CIT(A) erred in deleting the addition made towards insurance claim receipts by following the decision in the case of CIT v. Saurashtra Cement Ltd. 325 ITR 422 (SC).

2. The appeal filed by the Revenue is delayed by 4 days, for which, the Revenue has filed a petition for condonation of the delay, to which; the Id.

Counsel for the assessee has not raised any serious objection. Consequently, since the Revenue was prevented by sufficient cause, the delay of 4 days in filing of the appeal stands condoned and the appeal is admitted for adjudication.

3. Brief facts of the case are that the assessee is operating the second container terminal in Chennai Port. It accommodates and caters to deep-draft container vessels. The assessee has filed its return of income for the assessment year 2012-13 on 29.11.2012 admitting NIL income and claiming current year loss of ₹.58,47,99,631/-. The case was selected for scrutiny and against the statutory notices, the assessee furnished the details as called for. On perusal of the records, the Assessing Officer noticed that the assessee had received an amount of ₹.3,18,84,680/- as insurance claim and had reduced the said amount from the computation statement. On being confronted by the Assessing Officer, after considering the submissions of the assessee, by observing that the insurance claim receipt as revenue in nature, the Assessing Officer disallowed the said amount of ₹.3,18,84,680/- and brought to tax. On appeal, by following the decision in the case of CIT v. Saurashtra Cement Ltd. (supra), the Id. CIT(A) held that the insurance claim receipt has to be considered as capital receipt.

4. Aggrieved, the Revenue is in appeal before the Tribunal. The Id. DR has submitted that the assessee might have incurred certain expenditure

within the period of setting up of business or profession and when the same was claimed as revenue expenditure, the insurance receipt cannot be claimed to be capital receipts. It was further elaborated that the Id. CIT(A) has erroneously held that the insurance claim receipt is not liable to tax as it is a capital receipt in view of the fact that receipts was received after the setting up of its business and that when the expenditure connected with repair, maintenance on account of the damage to shipping vessels would be allowable as revenue expenditure, the corresponding insurance claim received for damages caused to its vessel would also be treated as revenue in nature and pleaded for reversing the findings of the Id. CIT(A). On the other hand, the Id. Counsel for the assessee strongly supported the order of the Id. CIT(A) by relying upon the decision in the case of CIT v. Saurashtra Cement Ltd. (supra).

5. We have heard both the parties, perused the materials available on record and gone through the orders of authorities below. When the Assessing Officer confronted with the assessee regarding correctness of treating insurance claim receipt as capital in nature, it was the submission of the assessee that the said claim pertain to the period prior to the commencement of commercial production, wherein, while berthing of the vessel of MV Grant Quest, it made contact with the assessee company's Gantry Crane due to collision. The above amount was excluded from the

taxable income in as much the receipt constitute capital receipt and further the asset was not discarded and the receipt does not constitute scrap value by relying upon the decision in the case of CIT v. Saurashtra Cement Ltd. (supra). Upon the submission, the Assessing officer observed that as per section 3 of the Act, the previous year is defined as in the case of a business or profession newly set up in the said financial year, the previous year shall be the period beginning with the date of setting up of business or profession and ending with the said financial year. By the above definition, the date of setting up of the business of the company as per the Assessing Officer should be 01.12.2006 and all expenses incurred after the date of setting up of the business is allowed as expenditure. The Assessing Officer further observed that the assessee company must have incurred certain expenditure within the period and when the same is claimed as revenue expenditure, the insurance receipt cannot be claimed to be exempt from tax.

6. However, as per Income Tax Act, where a deduction has been allowed in respect of a bad debt or part of debt under the provisions of clause (vii) of sub-section (1) of section 36, then, if the amount subsequently recovered on any such debt or part is greater than the difference between the debt or part of debt and the amount so allowed, the excess shall be deemed to be profits and gains of business or profession, and accordingly chargeable to income tax as the income of the previous year in which it is

recovered, whether the business or profession in respect of which the deduction has been allowed is in existence in that year or not. With the same analogy, the Assessing Officer has not given any finding as to whether, the assessee has claimed and allowed any depreciation on the asset acquired and adjusted subsequent to the insurance claim receipt, the excess, if any, shall be chargeable to tax. The assessee is claiming these expenses to be capital receipts and exempt from taxation. Hence, the onus will be on the assessee to prove that these amounts received by the assessee are exempt from tax. Reference is drawn to the decision of the Constitutional Bench of the Hon'ble Supreme Court in the case of Commissioner of Customs (Import) v. Dilip Kumar And Company in Civil Appeal No. 3327 of 2007 dated 30.07.2018, wherein, it is held that if the income is claimed to be exempt, it is for the tax payer to prove that the said income is exempt from tax within the four corners of the provisions of the Income Tax Act, 1961. Thus, it is for the assessee to bring on record with cogent evidence to prove that the said amounts received by the assessee are capital receipts exempt from tax. Thus, the assessee is directed to produce relevant evidence/record before the Assessing Officer in set aside proceedings as to:

- (a) date of setting up of business as is relevant and provided under section 3 of the Income Tax Act and the date since when the

assessee is claiming the expense as revenue expense in the earlier years.

- (b) Details of expenses incurred on repairs as claimed for repairs of Gantry Crane in earlier years in the return of income filed with the Revenue.
- (c) Depreciation claimed by the assessee on the said Gantry Crane in earlier years.

Accordingly, we set aside the order of the Id. CIT(A) and remit the matter back to the file of the Assessing Officer to adjudicate the issue afresh in view of the provisions of section 41(4), Explanation to sub-section (3) of section 41 of the Act as well as section 43(6) of the Act and, the Assessing Officer is also directed to examine the issue and pass speaking order in accordance with law after affording an opportunity of being heard to the assessee.

7. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on the 27th December, 2019 at Chennai.

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 27.12.2019

Vm/-

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.