

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री इंटूरी रामा राव, लेखा सदस्य एवं

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1631/Chny/2017
निर्धारण वर्ष **Assessment Year: 2011-12**

The Assistant Commissioner of
Income Tax,
Central Circle 3 (1),
No.46, Nungambakkam High Road,
Chennai – 600 034.

(अपीलार्थी/Appellant)

M/s. PPN Power Generating
Company P. Limited,
Vs. Jhaver Plaza, III Floor,
No.1A, Nungambakkam High
Road, Chennai – 600 034
[PAN: AABCP 8131D]
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr. A. Sundararajan, Addl.CIT
प्रत्यर्थी की ओर से /Respondent by : Mr. S. Vidya, Advocate

सुनवाई की तारीख/Date of Hearing : 06.01.2020
घोषणा की तारीख /Date of Pronouncement : 06.01.2020

आदेश / ORDER

PER GEORGE MATHAN, JUDICIAL MEMBER:

This is an appeal filed by the Revenue against the order of the learned Commissioner of Income Tax (Appeals)-3 Chennai in I.T.A. No.98/2015-16/CIT(A)-3 dated 28.03.2017 for the Assessment Year 2011-12.

2. Mr. A. Sundararajan, Additional CIT represented on behalf of the Revenue and Mr. S. Vidya represented on behalf of the Assessee.

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3. It was submitted by the learned Departmental Representative that the assessee is a company which is in the business of power generation (electricity). For the relevant assessment year, the assessee had filed its return of income declaring an income of Rs.1,06,19,920/-. In the course of scrutiny, it was noticed that the assessee had disclosed an amount of Rs.566.64 crores, as the revenue of the assessee on account of the order received from Tamil Nadu Electricity Regulatory Commission [TNERC] vide order dated 17.06.2011. The said amount of Rs.566.64 crores related to the assessment year 2009-10 and the earlier assessment years. In respect of the write back of the rebate to the extent of Rs.90.00 crores, the balance representing Rs.88.00 crores was the sale of power for the Tamil Nadu Electricity Board during the period 2001 to 2009 and the balance of Rs.388.64 crores represented the interest compensation on the delayed compensation from the Tamil Nadu Electricity Board for the same period of 2001 to 2009. It was a submission that as the order of the Tamil Nadu Electricity Regulatory Commission was passed on 06.11.2009 relevant to the assessment year 2012-13, the Assessing Officer on a substantial basis assessed the said amount of Rs.566.64 crores for the assessment year 2012-13 but as the said amount had been shown by the assessee as the income for the relevant assessment year, the same was assessed on the protective basis. It was a submission that on appeal the learned CIT(A) had

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followed the principles laid down by the Hon'ble Jurisdictional High Court in the case of Commissioner of Income Tax vs. M/s. Madras Motors Limited/M.M. Forgings Limited reported in 257 ITR 60 (Mad.), wherein it has been held that the interest being directly relatable only to the amount receivable by the assessee during the course of its business on account of the sale of forging, the said interest would have to be included as the profit and gains derived from the business of the assessee. Consequently, the learned CIT(A) has held that the appellant was correct in admitting the income of Rs.566.64 crores in the assessment year 2011-12. It was a submission that the order of the Tamil Nadu Electricity Regulatory Commission was dated 17.06.2011 and consequently the amount was liable to be assessed only for the assessment year 2012-13.

4. In reply, the learned Authorized Representative submitted that the dispute as to whether the amount is liable to be assessed during the assessment year 2011-12 or 2012-13 was on account of the fact that the assessee was enjoying the tax holiday on account of its business of generation of power. The tax holiday expired with the assessment year 2011-12. It was a submission that the assessee had entered into the power purchase agreement with Tamil Nadu Electricity Board. As per the Power Purchase Agreement [PPA] it had been entered on 03.01.1997. Consequent to the setting up of the PPA, the assessee has set up a 330.5

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Megawatts [MW] power generating station and had been generating power through the Combined Cycle Gas Turbine [CCGT] Power Station situated at Nagapattianam District, Tamil Nadu. The assessee had commenced commercial operations on 26.04.2001. The assessee had been raising monthly invoices ever since 26.04.2001 and annual invoices for the years 2001 to 2007 as contemplated under the PPA. Since 2001, the Tamil Nadu Electricity Board has been paying adhoc payment without providing any details for such payments, in contravention of the PPA. The assessee had been adjusting the ad hoc payment received on a First In First Out basis, whereby the payments made were adjusted on chronological order with the payments first being appropriated to the first pending invoices and the balance to the next invoice and so on. These facts are coming out of the order of the Tamil Nadu Electricity Regulatory Commission dated 17.06.2011. Consequent to the order of the Tamil Nadu Electricity Regulatory Commission, the amounts had been quantified and paid to the assessee. It was thus a submission that the amounts relate to the period 2001 to 2007 and consequently the same was liable to be assessed only for the relevant period in so far as the assessee is a company and the assessee is following the mercantile system of accounting and the assessee has also raised the necessary invoices for which the payments

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had not been received during these periods. It was thus a submission that the order of the learned CIT(A) on this issue was liable to be upheld.

5. We have considered the rival submissions and perused the materials on record.

6. A perusal of the facts in the present case clearly shows that the learned Departmental Representative has argued on Ground Nos.4, 3.1 to 3.7 of the Revenue's grounds. A perusal of the order of the Tamil Nadu Electricity Regulatory Commission clearly shows that the dispute relates to the period right from 2001 to 2007. It was also an undisputed fact that the necessary invoices had been raised by the assessee at the appropriate time as per the Power Purchase Agreement [PPA] . There is no murmur by the Electricity Board who is the respondent in the said petition that the assessee has not raised the invoices. Thus, clearly the order passed by the Tamil Nadu Electricity Regulatory Commission vide order dated 17.06.2007 is in respect of the bills raised by the assessee on the Tamil Nadu Electricity Board for the period from 2001 – 2007 and the interest accrued thereon. Thus it clearly shows that these amounts relate to the invoices which have been offered by the assessee and disclosed by the assessee for the relevant assessment year. The quantification has also been clearly made. It is not a contingency claim as the figures are absolute. This being so, the

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amounts received by the assessee is a consequence of the order of the Tamil Nadu Electricity Regulatory Commission relate to the assessment years to which those invoices have been raised. Admittedly, these years are not open for assessment now, nor are the accounts open for setting off the amounts received against the debts recorded. The amounts having been received by the assessee when the accounts are open, the assessee is right offering the same for the assessment year 2011-12, especially in view of the fact that the amount relate to the period when the assessee was enjoying the tax holiday. Further, the Revenue has not been able to dislodge any of the findings on the facts as has been arrived by the learned CIT(A) in his order in paras-6.18 to 6.28 of his order. In the circumstances, the findings of the learned CIT(A) on this issue stands confirmed. In the result, the appeal of the Revenue in Ground Nos.4 and 3.1 to 3.7 stands dismissed.

7. In respect of the Ground No.3 and 2.1 to 2.2, it was submitted by the learned Authorized Representative that the issue was against the action of the learned CIT(A) in restricting the disallowance made by the Assessing Officer u/s.14A of the Act to the extent of the dividend income earned by the assessee.

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8. The learned Departmental Representative vehemently supported the order of the learned Assessing Officer. The Authorized Representative supported the order of the learned CIT(A).

9. We have considered the rival submissions and perused the materials available on record.

10. The fact of the present case clearly shows that the assessee has invested an amount of Rs.32.15 crores in mutual funds. The assessee had earned an exempt income to an extent of Rs.1,54,664/-. The Assessing Officer has made a disallowance u/s.14A to the extent of Rs.8,41,250/-. It is noticed that the learned CIT(A) following the decision of the Co-ordinate Bench of this Tribunal in the case of M/s. Rayalla Corporation Private Limited vs. The Deputy Commissioner of Income Tax reported in I.T.A. No.908/Mds/2015 restricted the disallowance u/s.14A to the extent of the dividend income earned.

Now, the issue is squarely covered by the decision of the Hon'ble Supreme Court in the case of ABCAUS by the dismissal of the S.L.P filed by the Revenue. Consequently, the decision of the Hon'ble Delhi High Court in the case of ABCAUS reported in 2639 (2018)(11) SC, wherein it has been held that the disallowance u/s.14A should not exceed the exempt income itself as attained finality. The issue is also squarely covered by the

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decision of the Hon'ble Delhi High Court in the case of Joint Investment Private Limited Vs. Commissioner of Income Tax reported in 372 ITR 694. In the circumstances, as it is that the learned CIT(A) has followed judicial discipline in following the decision of the Co-ordinate Bench of this Tribunal, as also it is noticed that the issue is now squarely covered by the decision of the Hon'ble Delhi High Court and against which the S.L.P by the Revenue is also dismissed, the findings of the learned CIT(A) on this issue stands confirmed.

In the result, Ground Nos.2.1 and 2.2 of the Revenue's appeal stands dismissed.

11. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 6th January, 2020 in Chennai.

Sd/-
(इंटूरी रामा राव)
(INTURI RAMA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(जॉर्ज माथन)
(GEORGE MATHAN)
न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 6th January, 2020

IA, Sr. PS
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