

IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH KOLKATA

BEFORE SHRI S.S.GODARA, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.268/Kol/2018

(निर्धारणवर्ष / Assessment Year:2008-09)

ACIT, Circle-10(2), Kolkata	Vs.	M/s South City Projects (Kolkata) Ltd. 375, Prince Anwar Shah Road, Kolkata-700068
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACD 8933 A		
(Appellant)	..	(Respondent)

C.O. No. 45/Kol/2018

(Arising out ofआयकरअपीलसं./ITA No.268/Kol/2018)

(निर्धारणवर्ष / Assessment Year: 2008-09)

M/s South City Projects (Kolkata) Ltd. 375, Prince Anwar Shah Road, Kolkata-700068	Vs.	ACIT, Circle-10(2), Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACD 8933 A		
(Cross Objector)	..	(Respondent)

Appellant by : Shri Ram Bilash Meena, CIT DR

Respondent by :Shri AkkalDudhwewala, FCA

सुनवाईकीतारीख/ Date of Hearing : 16/01/2020

घोषणाकीतारीख/Date of Pronouncement : 26/02/2020

आदेश / ORDER

Per Dr. A. L. Saini:

The captioned appeal filed by the Revenue and the cross objection filed by the assessee, pertaining to assessment year 2008-09, are directed against the common order passed by the Commissioner of Income Tax (Appeal)-4, Kolkata, in appeal no. 86/CIT(A)-4/2016-17/Kol, which in turn arise out of common assessment order passed by the Assessing Officer u/s 147 / 143(3) of the Income Tax Act, 1961 (in short the 'Act') dated 29/03/2016.

2. The grounds of appeal raised by the revenue are as follows:

1. The ld. CIT(A) has erred in law as well as in fact in deleting an addition of Rs. 12,00,00,000/- made on account of provision for unascertained liability as it appears that the provisions made remained unascertained and was eventually written back.

2. The ld. CIT(A) has erred in law as well as in fact in considering that if the assessee has claimed u/s 80IB(10) and income on account of addition would have been set off is only hypothetical.

3. That the appellant craves to add, alter or delete any or all of the grounds of appeal during the course of appellate proceedings.

3. Brief facts qua the issue are that the assessee filed e-return of income for the A.Y.2008-09 on 22.09.2008 disclosing total income of Rs. 12,42,46,566/-. The assessee company was engaged in the construction of building & real estate development. Later on, assessee's case was reopened u/s 147 of the Act and a notice dated 09.03.2015 u/s.148 of the I.T. Act, 1961 was issued and duly served on the assessee. The reasons recorded for reopening of the assessment are reproduced as below:

The assessee on 02.06.2008 paid a sum of Rs.80,00,000/- through cheque no.049479 on HDFC Bank to M/s. Kolkata Municipal Corporation for development of roads and other infrastructure at Prince Anwar Shah Road. The balance of Rs.9,20,00,000/- remain outstanding as on 31.03.2009, 31.03.2010 and 31.03.2011. On 31.03.2012 the assessee has written back a sum of Rs. 8,71,51,000/- to its Profit&Loss Account for the F.Y.2011-12 related to A.Y.2012-13. The assessee has also claimed deduction of Rs. 8,03,50,538/- u/s.80IB(10) of

the Act that almost nullifies the income written back. Hence, there was no justification for the provision created in the assessment year 2008-09.

Since the amount of Rs.9,20,00,000 was a provision created not for any definite expenditure the said provision remained an unascertained liability for the A. Y. 2008-09. The assessee also did not receive any bill or Demand Notice from Kolkata Municipal Corporation during F.Y. 2007-08 as such the creation of provision in A Y.2008-09 was unwarranted in so far as no liability for expenditure actually fructified or crystallized during A.Y. 2008- 09. Assessee has already claimed deduction on account of mere provision of income to the extent of 9,20,00,000/-. Therefore, Rs.9,20,00,000/- has escaped assessment within the meaning of section 147 for the 2008-09. I consider this to be a fit case for issue of notice u/ s. 148 for the A.Y. 2008- 09."

4. In response to the notice issued by the Assessing Officer the assessee filed written submission before the Assessing Officer which are reproduced below:

3. In response to that the assessee filed a letter dated 09.04.2015 with a request to treat the return filed on 22.09.2008 for A.Y. 2008-09 to treat as return filed in compliance with the notice dated 09.03.2015 issued U/s 148 of the I. T. Act, 1961. The assessee asked for the copy of reasons recorded for reopening of assessment and was provided a copy of the same. The assessee had raised certain objections with regard to reasons recorded for reopening of assessment vide a letter dated 22.07.2015. The objections raised by the assessee had not been accepted and the reasons for not accepting the same was communicated to the assessee vide a letter dated 24.11.2015. The objections raised by you with regard to reasons recorded for reopening of assessment have been perused and duly considered. The objections raised by the assessee. with regard to the reasons recorded for reopening of the assessment are summarized below for sake of convenience:-

- (i) Provision for road and other infrastructure at P.A. Saha Road, (hereinafter referred to as "Provision for")to be paid to KMC/KMDA, is Rs.12,00,00,000/- instated of Rs.9,20,00,000/- as recorded in reason for reopening.*
- (ii) Rs.2,00,00,000/- was already paid by cheque to KMC on 14.03.2008.*
- (iii) Provision of 12,00,00,000/- was debited as follows:
 - (a) Rs.8,19,48,000/- added to cost of construction of Tower 1 to 4,*
 - (b) Rs.53,40,000/- added to cost of construction of Tower 5 & Club,*
 - (c) Rs.2,90,88,000/- capitalised has fixed assets on Mall account,*
 - (d) Rs.36,24,000/- capitalised has fixed assets on School account.**
- (iv) Rs.9,20,00,000/- was not claimed as deduction from total income during the A.Y. 2008-09*

- (v) Provisions of 12,00,00,000/- was made as actual liability based on the commitment made to the KMDA & KMC (West Bengal Government Authority) in the meeting held with their officials were time to time during F.Y.2007-08 including on 31.03.2008.
- (vi) The unpaid amount of Rs.9,20,00,000/- was written back during the F.Y. 2011-12 relevant to A.Y. 2012-13, on insistence of the auditor of the company as under:
- (a) Rs.6,48,50,800/- is credited to Profit & Loss Account in respect of expenses in Tower 1 to 4.
 - (b) Rs.20,70,000/- is reduced from Inventory (WIP) in respect to Tower 5 and Club.
 - (c) Rs.2,23,00,800/- credited to Fixed Assets on Mall account
 - (d) Rs.27,78,400/- credited to Fixed Assets on School account.
- (vii) Provisions to the extent of Rs.6,48,50,800/- was written back and credited to Profit & Loss account instead of 8,71,51,000/- as recorded in reasons for re-open.
- (viii) The assessee company is following mercantile / accrual method of accounting. Accordingly all accrued liabilities assets, income and expenditures have to be accountants for in the year which liability is metalized. In the case, any liability is not fully/ partly quantified, provisions is required to be made on fair estimates. Based on the accounting policy consistently followed by the assessee company made provisions of Rs.12,00,00,000/- in the F.Y.2007-08 i.e. in the year in which the liability arose. As a evidence a copy of minutes dated 18.12.2013 of the meeting of the Directors of the company and Government officials including Minister In-charge of Urban Development & Chairman KMDA, Mayor, KMC. The assessee company also relied upon case law CIT-VI vs. Valvoline Cummins Ltd. ITA 319/2014, 2014(12) TMI 63 Delhi High Court.
- (ix) Further the assessee company summed up :
- (a) In F.Y.2007-08 did not claim any deduction of provision of Rs.9.20 crore from its total income, so there is no revenue loss.
 - (b) In F.Y. 2007-08 only Rs.8,72,88,000/- was debited to cost of construction of flats and such cost was carried over to subsequent year so there is no revenue loss on this account.
 - (c) As and when the Inventory of the flats were sold, the company claimed deduction u/s.80IB(10) which has been allowed also.

In case provision was not made the claim u/s.80IB(10) would increase. Again there is no revenue loss.

- (d) Rs.3,27,12,000/- debited to fixed assets towards cost of Mall & School in F.Y.2007-08 does not lead to any benefit /deduction from total income. Revenue from Mall is rental income from House Property for which no deduction for depreciation is allowed. Again there is no revenue loss.*
- (e) Liability of Rs.12,00,00,000/- was actual crystallised fructified liability and rightly provided.*
- (f) Rs.9,20,00,000/- has not escaped assessment within the many of section 147 of the Act.*
- (g) Even if for sake of argument for said liability is treated as contingent liability, then corresponding amount is required to be reduced from value of closing inventory (WIP) of the flat. This will be revenue neutral.*
- (h) Unpaid liability was written back in F.Y.2011-12 as the management of the assessee company was of the opinion that the infrastructure development work is not going ahead.*
- (i) The cost of contribution was increased to Rs.30,00,00,000/- from Rs.12,00,00,000/- as per the meeting dated 18.12.2013. For this purpose the company arranged bank guarantee of Rs.28,00,00,000/-(30,00,00,000 - 2,00,00,000) form Kodak Mahindra Bank Ltd. as commitment to pay balance amount.*

The Assessing Officer rejected the assessee's plea of reopening u/s 147 of the Act and framed the assessment on merits and made addition to the tune of Rs. 12,00,00,000/-.

5. Aggrieved by the stand so taken by the Assessing Officer the assessee carried the matter in appeal before the Id. CIT(A) who has deleted the addition made by the Assessing Officer observing the following:

"I have perused the assessment order, the submissions of the Id. A.R. I have also seen the correspondences with KMDA and KMC.

- i) The AO has made the disallowance on the ground that it was an Unascertained liability as the work has not yet started and its quantum was also not definite. However, it has to be noted that:*
- ii) The provision of Rs. 12,00,00,000/- was made towards development of road and other infrastructure at Prince. Anwar Shah Road based on commitments made to KMDA and KMC in the meeting held with their officials during Financial Year 2007- 08.*

- iii) *The Assessee during the course of appellate proceedings also produced Minutes of the Meeting and correspondence with KMDA and KMC authorities evidencing this commitment and the plan.*
- iv) *The fact remains that the Assessee has paid Rs. 2,00,00,000/- on 14.03.2008 and Rs. 80,00,000/- on 02.06.2008. This indicates that this project was not at conceptual level but was definitely in the implementation phase. Had there been no accrued liability, the Assessee would not have paid such substantial sum of Rs. 2,80,00,000/- to Government Authorities.*
- v) *The Assessee's reliance on Bharat Earth Movers Vs. CIT (245 ITR 428) (SC) and on the case of Metal Box Company of India Limited Vs. Workmen (73 ITR 53) (SC) is also on the issue at hand and supports the case of the assessee where it has been held that*
"the law is settled: if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied the liability is not a contingent one. The liability is in present though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain"
In the case of Metal Box Company of India Ltd Vs Workmen(1969) 73 ITR 53 the honourable Supreme Court has held as under:-
condition subsequent, the fulfillment of which may result in the reduction or even extinction of the liability, would not have the effect of converting that liability into a contingent liability.
- vi) *Since the assessee is following Mercantile method of accounting, therefore, all accrued liability have to be accounted for in the year in which the liability materialize. In case any liability cannot be accurately quantified, the provision can be made on basis of fair estimates. This is an accepted principle of accounting.*
- vii) *In any case the assessee was entitled to deduction u/s. 80IB(10) on its income, therefore, the AO would have allowed deduction u/s 80IB(10) on the increased income as a result of the addition.*
- viii) *In any case the Assessee has written back the provision in subsequent years and has therefore, offered this amount fortaxation in A.Y. 2012-13, therefore, revenue would not be substantially impacted by the provisioning.*

In view of the above discussion I am of the opinion that the liability for construction of bridge / road had crystallized in F.Y. 2007-08 and therefore, the provision made by the assessee in that year is allowable.

Therefore, Ground No. 2 is Allowed."

6. Aggrieved by the order of the Id. CIT(A), the revenue is in appeal before us.

7. The Id. DR has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and the same is not being repeated for the sake of brevity and on the other hand, the Id. Counsel for the assessee has relied on the order of the Id. CIT(A).

8. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other material available on record. We note that the learned AO has added a sum of Rs. 12,00,00,000/- to the total income although in the reasons recorded the amount referred by him is Rs. 9,20,00,000/- whereas the amount debited to profit and loss account is Rs. 8,72,88,000/ - out of the total provisions of Rs. 12,00,00,000/-.The provision ofRs. 12,00,00,000 was made by the assessee during FY 2007-08 towards development of roads and other infrastructure at Prince Anwar Shah Road; based on the commitments made to KMDA & KMC i.e. West Bengal Government Authority in the meeting held with their officials from time to time during FY 2007-08 including on 31-03- 2008.

The assessee company is following mercantile/ accrual method of accounting. Accordingly, all accrued liabilities, assets, income and expenditures have to be accounted for in the year in which liability is materialised. In case, any liability is not fully/ partly quantified, provisions are required to be made on fair estimates. Based on the accounting policy consistently followed by the assessee company made provisions of Rs. 12,00,00,000 in the FY 2007-08 i.e, in the year in-which liability arose. As an evidence copy of minutes dated 18-12-2013 of the meeting of the Directors of the company and Government officials including the Minister incharge of Urban Development & Chairman KMDA, Mayor, KMC has been referred.

Further, the assessee did not debit the entire amount of Rs. 12,00,00,000/- (as submitted during the appellate proceedings) to its Profit & Loss Account but accounted for as under:

Cost Centre	Provision Apportioned	Accounting treatment in the year of creation
Towers 1 to 4	819,48,000	<i>Added to the cost of construction by debiting Profit & Loss A/c and carried over to inventory to next year</i>
Club & Tower 5	53,40,000	
Sub Total - I	8,72,88,000	
Mall	290,88,000	<i>Capitalised to Fixed Asset and not debited to the Profit & Loss A/c</i>
School	36,24,000	<i>Capitalised to Fixed Asset and not debited to the Profit & Loss A/c</i>
Sub Total - II	3,27,12,000	
Total (I + II)	12,00,00,000	

However, the learned AO has wrongly concluded that the entire amount of Rs. 12,00,00,000/- was debited to Profit&Loss Account and claimed as deduction. The provision of Rs. 12,00,00,000/- as above was created against actual, ascertained and committed liability. **No part of the same was claimed as deduction from the total income for the year under assessment. The amount debited to Profit & Loss Account was carried as inventory and subsequently adjusted against the sale proceeds of the housing project eligible for deduction u/s 80IB(10)of the Act.**

The assessee was engaged in the development of a housing project whose income was eligible for deduction u/s 80IB(10) of the Act. The claim has been considered and allowed in various assessment years commencing from AY 2009-10 and onwards. So even in case if the provision for liability towards KMDA and KMC was not made; then the claim u/s 80IB(10) would increase; which again shall result in no revenue loss. Out of above provision of Rs. 12,00,00,000/- Rs. 2,80,00,000/- was paid as follows:

Rs. 2,00,00,000 on 14-03-2008 and

Rs. 80,00,000 on 02-06-2008

The balance amount of Rs. 9,20,00,000/- remained outstanding as on 31.03.2009, 31.03.2010 and 31.03.2011 and was subsequently written back during FY 2011-12 as under (which is submitted by the assessee during the appellate proceedings):

Cost Centre	Provision Written back	Accounting treatment in the year of write back (FY 2011-12)
Towers 1 to 4	648,50,800	Credited to Profit & Loss A/c
Club & Tower 5	20,70,000	Reduced from Inventory (WIP)
Mall	223,00,800	Credited to Fixed Assets on Mall Account
School	27,78,400	Credited to Fixed Assets on School Account
Total	9,20,00,000	

The learned AO has wrongly alleged that the write back of Rs. 9,20,00,000 in FY2011-12 is not supported by any evidence. In the reasons recorded for re-opening the assessment; the learned AO has himself stated that the assessee has written back amounts to its Profit & Loss Account in FY 2011-12. The assessment for AY 2012-13 is already completed wherein the amount of write back was subject matter of consideration.

As per provisions of section 147 of the IT Act; an assessment shall be re-opened if there is any reason to believe that any income chargeable to tax has escaped assessment. However, in this case, no income has escaped assessment during AY2008-09 (there is no tangible material) for the reasons stated below:

Cost Centre	Provision Apportioned	Accounting treatment in the year of creation
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Towers 1 to 4	819,48,000	1) Added to the cost of construction which was carried to inventory as Work in Progress next year
Club & Tower 5	53,40,000	2) Hence this amount was included both in opening stock and closing stock (for unsold inventory) and hence no deduction was claimed in Profit & Loss A/c
Sub Total - I	8,72,88,000	
<u>Items not debited to Profit & Loss A/c</u>		
Mall	290,88,000	This amount was capitalised to Fixed Asset and was shown under "Land & Building" on which no depreciation is claimed under income tax and hence there is no impact of Profit & Loss A/c
School	36,24,000	It was added to cost of construction of School and was subsequently transferred to South City International School (a company registered u/s 25 of the Companies Act, 1956) vide Calcutta High Court sanctioned scheme of demerger
Sub Total - II	3,27,12,000	
Total (I+II)	1200,00,000	

Thus, in view of above explanation submitted by the assessee during the appellate stage; it is evident that provision of Rs. 12,00,00,000 created by the assessee during FY 2007-08 was not claimed as deduction from total income and therefore no income has escaped assessment for AY 2008-09 relevant to FY 2007-08. That being so, we decline to interfere in the order passed by the Id. CIT(A), his order on this issue, is hereby upheld and the grounds of appeal raised by the revenue is dismissed.

9. The cross objection raised by the assessee in C.O. No. 45/Kol/2018 is only supportive to the order of the Id. CIT(A). Since we have confirmed the order passed by the Id. CIT(A), therefore, the cross objection raised by the assessee becomes infructuous.

10. In the result, the appeal of the Revenue is dismissed and the cross objection of the assessee is also dismissed being infructuous.

Order pronounced in the Court on 26.02.2020

Sd/-
(S.S. GODARA)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

दिनांक/ Date: 26/02/2020
(SB, Sr.PS)

Copy of the order forwarded to:

1. DCIT, Circle-10(2), Kolkata
2. M/s South City Projects (Kolkata) Ltd.
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches