

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

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
BEFORE SHRI V DURGA RAO, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2640/Chny/2019
निर्धारण वर्ष /Assessment Year: 2013-14

The Dy. Commissioner of Income Tax, Vs. M/s. TIDEL Park Ltd.,
Corporate Circle-3(1), No.4, Rajiv Ghandi Salai,
Chennai. Taramani, Chennai-600 034.
[PAN: AABCT 0666R]

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by : Mrs. R. Anitha, JCIT
प्रत्यर्थी की ओर से /Respondent by : Shri R. Vijayaraghavan, Advocate
सुनवाई की तारीख/Date of Hearing : 08.03.2021
घोषणा की तारीख /Date of Pronouncement : 21.04.2021

आदेश / **ORDER**

PER SHRI S. JAYARAMAN, ACCOUNTANT MEMBER:

The Revenue filed this appeal against the order of the Commissioner of Income Tax (Appeals)-7, Chennai, in ITA No.140(T)/CIT(A)/2016-17 dated 28.06.2019 for the assessment year 2013-14.

2. M/s. TIDEL Park Ltd., the assessee, is promoted by TIDCO & ELCOT (Government of Tamil Nadu undertakings) and is engaged in the business of developing, operating and maintaining Information Technology Park (Software Technology Park – STP) which is approved by the Government of India and Central Board of Direct Taxes (CBDT). While making the assessment for A.Y 2013-14, the AO, inter alia, disallowed reversal of project consultancy income

and made certain disallowances u/s. 43B of the Income Tax Act, 1961 (in short 'the Act') and completed the assessment. Aggrieved, the assessee filed an appeal before CIT(A). The Id. CIT(A) allowed the appeal. Aggrieved against that order, the Revenue filed this appeal with the following grounds:

"1. The order of the learned CIT(A) is contrary to law and facts and circumstances of the case.

2. The Id.CIT(A) erred in considering the claim of the assessee that the assessee had recognized Rs.7.5 crores in its books of account till the FY:2011-12 and directing the A.O. to delete addition made even while not granting an opportunity to the A.O. to verify the claim of the assessee submitted before the CIT(A) under Rule 46A?

3. The Id.CIT(A) erred in appreciating the fact that the assessee had recognized Rs.7.5 crores as revenue in its books of account till the FY:201 1-12 and had claimed exempt income u/s.801A till the AY:2012-13 and when the deduction claim u/s.801A was not allowable during the AY:2013-14, the same revenue receipt is reversed and set off against the current year taxable revenue receipt to reduce the real tax liability of the company?

4. The Id.CIT(A) erred in considering the claim of the assessee that the assessee had already disallowed excess provisions of Earned Leave & Gratuity in the earlier years Returns of Income and also the claim of disallowance of provision for bonus in the current year and directing the A.O. to delete addition made even while not granting an opportunity to the A.O. to verify the claim of the assessee submitted before the CIT(A) under Rule 46A?

5. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer be restored."

3. The case was heard through video conferencing. The Ld. DR submitted that the assessee has not explained both the transactions before the AO during the assessment proceedings. However, the Ld. CIT(A) without giving an opportunity to the AO on the basis of assessee's

claim made before him for the first time as a bad debt allowed the appeal. Similarly, the assessee has not furnished the particulars of provisions made under the head of Earned Leave, Gratuity, exgratia, bad debt etc. before the AO and hence, he disallowed the assessee's claim u/s. 43B of the Act. The Ld. CIT(A) without granting an opportunity to AO to verify the claim made before the Ld. CIT(A), directed the AO to take cognizance of the material and delete the additions. Therefore, the Ld. D.R submitted that the order of the Ld. CIT(A) may be set aside and the order of the AO may be restored.

4. Per contra, the Id. counsel for the assessee has explained that the assessee-company has provided services to M/s.Tamil Nadu Coimbatore Ltd. (TNCL) for design, contracting and construction of the Coimbatore Information Technology Park by an agreement dated 21.08.2008. Since, TPCL was facing financial difficulties, revised supplementary agreements were entered into for reducing the consultancy fees. Based on such agreements, the income recognized in the books in the earlier years and offered for tax in the respective assessment years based on the original agreement was revised and accordingly certain income was now revised and reduced and the effect was given in the books and hence, the income offered for in the earlier years were to be treated as bad debts written off as irrecoverable, which is allowable u/s. 36(i)(vii) r/w s. 36(ii) of

the Act. The Id. counsel for the assessee invited our attention to the paper book and supported the order of the Ld. CIT(A) .

5. We heard the rival parties, and gone through the relevant material available on record. It is clear from the assessment order that the impugned transactions have not been properly explained before the AO, the facts and the associated circumstances have not been examined properly. Therefore, we deem it fit to remit these issues back to the AO for fresh examination. The assessee shall furnish relevant material in support of its contention and comply with the requirements of the AO in accordance with law. The AO on due examination and after affording due opportunity to the assessee decide the issues in accordance with law.

6. In the result, the appeal filed by the Revenue is allowed for statistical purpose.

Order pronounced on the day of 21st April, 2021 in Chennai.

Sd/-
(वी दुर्गा राव)
(V DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(एस. जयरामन)
(S. JAYARAMAN)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai, दिनांक/Dated: 21st April, 2021.
EDN, Sr. P.S

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