

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 3652/Del/2018
(Assessment Year: 2012-13)

ACIT, Circle-17(2), New Delhi	Vs.	National Projects Construction Corporation Ltd, Core-4, Scope Complex-7, Institutional Area, Lodhi Road, New Delhi PAN: AAACR6117Q
(Appellant)		(Respondent)

Revenue by :	Ms. Parmita M. Bishwas, CIT DR
Assessee by:	Dr. Rakesh Gupta, Adv Shri Somil Agarwal, Adv
Date of Hearing	19/07/2021
Date of pronouncement	16/09/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the revenue against the order of the Id CIT(A)-33, New Delhi dated 11.12.2017 for Assessment Year 2012-13.
2. The revenue raised the following grounds of appeal:-
 - “1. Whether on the facts and circumstances of the case, the Ld.CIT(A) is legally justified in deleting the disallowance of Rs. 4,44,994/- on account of ‘bad -debts written-off even when the assessed had failed to prove that the amount was actually trading liability and the corresponding amount was actually offered as income in earlier years and without considering the provisions of Section 36(1)(vii) and Section 36(2) of the Income Tax Act, 1961 (hereinafter referred as “the Act”)?
 2. Whether on the facts and circumstances of the case, the Ld.CIT(A) is legally justified in deleting the addition of Rs. 4,44,994/- u/s 36(1) (vii) of the Act by ignoring the procedure prescribed by Hon’ble Apex Court for write off an amount as irrecoverable in the case of TRF Ltd. vs. CIT (2010) 190 Taxman 391 (SC)?
 3. Whether on the facts and circumstances of the case, the Ld.CIT(A) is legally justified in deleting the-disallowance of Rs. 76,50,97,493/- u/s 37 (1) of the Act by ignoring the fact that the assessee could not discharge its initial onus under section 37 (1) of the Act by not justifying that expenses incurred on ‘land acquisition’ was of revenue nature?
 4. Whether on the facts and circumstances of the case, the Ld.CIT(A) is legally justified in deleting the disallowance of Rs. 8,48,30,839/- on account of ‘provision written

back' during the year even when the assessee had failed to furnish calculation of excess provision written back in the previous years during assessment proceedings and appellate proceedings?

5. *Whether on the facts and circumstances of the case, the Ld.CIT(A) is legally justified in deleting disallowances made in books profit u/s 115JB of the Act by accepting and admitting additional evidence adduced by the assessee during appellate proceedings even after specific denial of the Assessing Officer in his remand report?"*
3. Brief facts of the case shows that the Assessee is a public sector undertaking under the Ministry of Water Resources engaged in the business of civil construction of dams, bridges, tunnels, power houses, flyovers, buildings, canals and other infrastructure projects. It filed its return of income on 29.09.2012 at Rs. Nil, which was revised on 31.03.2014. The case was picked up for scrutiny and assessment u/s 143(3) of the Income Tax Act, 1961 was passed on 20.03.2015 determining the total income of the Assessee at Rs. 1,52,86,65,220/-. The ld AO disallowed the bad debt amounting to Rs. 4,44,994/-, disallowance of other incidental charges on works amounting to Rs. 76,50,97,493/- and disallowances of provisions written back of Rs. 8,48,30,839/-.
4. The Assessee preferred an appeal before the ld CIT(A)-33, New Delhi who passed an order, allowing the appeal of the Assessee and deleting the addition partially. Therefore, the revenue is aggrieved and has preferred this appeal.
5. The ld DR arguing the above appeal relied heavily on the order of the ld AO whereas the ld AR submitted that all the issues involved in this appeal are covered by the order of the coordinate bench in Assessee's own case for Assessment Year 2011-12 in ITA No. 102/Del/2018 dated 21.06.2021.
6. We have carefully considered the rival contentions and perused the orders of the lower authorities. We find that all the issues involved in this appeal are squarely covered in favour of the Assessee by the order of the coordinate bench for Assessment Year 2011-12 in Assessee's own as stated above.
7. The first and second ground of appeal is with respect to allowability of bad debt written off of Rs. 4,44,994/-. This issue was concerned with the written off of the bad debts. Identical issue in the earlier year arose which were dealt with by the coordinate bench vide para No. 8 of order as under:-

"8. Ground No. 1 and 2 of the appeal is with respect to deletion of the disallowance of Rs. 2,72,49,141/- on account of bad debts written off. Before the ld AO the assessee submitted unit wise details of such write off along with supporting evidences. The claim of the assessee is that debt is written off, it is taken into computation of income on earlier years, these amounts are 10 to 15 years old and amount was written off in the books of account and therefore, the claim is proper. The ld AO disallowed the above claim that the assessee has not produced the relevant details of old outstanding debts, therefore, he disallowed the same. The ld CIT(A)

allowed the claim of the assessee following the decision of the Supreme Court in TRF Ltd Vs. CIT 323 ITR 397 holding that when the assessee has written off the above sum, debts are already taken into income in earlier years, it is allowable. Nothing new was argued by the ld DR and the ld AR also reiterated the arguments before the ld CIT(A). We find that when the assessee has written off a debt in its books of account, which was taken into computation of income in earlier years, it satisfied all the characteristic of allowable bad debt u/s 36(2) of the Act. In view of this we do not find any infirmity in the order of the ld CIT(A) in allowing the claim of bad debt written off of Rs. 2,72,49,141/- and dismiss the ground No. 1 and 2 of the appeal.”

8. We confirm the order of the ld CIT(A) deleting the above disallowance of Rs. 444994/-.
9. The ground No.3 is with respect to the disallowance of expenditure incurred on land acquisition amounting to Rs. 76,50,97,493/- as revenue expenditure whereas, the ld AO held it to be capital expenditure. This issue is squarely covered by the ground No. 3 of the appeal for Assessment Year 2011-12 which has been dealt with in para No. 9 of the order as under:-

“9. Ground No. 3 of appeal is with respect to the disallowances of Rs. 113,50,15,51/- deleted by the ld CIT(A) that was held to be capital expenditure by the ld AO. During the course of assessment proceedings the ld AO noted that the assessee has debited Rs. 113.50 crores as miscellaneous expenditure on working of NEZ PMC. These expenditures were incurred in connection with land acquisition and service connection charges paid to Tripura State Electricity Board for Indo Bangladesh Border fencing project. The ld AO held that it created an asset and therefore it is capital expenditure. Claim of the assessee is that corresponding income against the above project awarded to the assessee by the Ministry of Home Affairs has already been taxed as revenue contract income. As the work was awarded by Ministry of Home Affairs and assessee is merely a contractor there is no capital expenditure in the hands of the assessee, that there is no asset creation in the hands of the assessee. The ld CIT(A) noted that the assessee is public sector undertaking, it executed border outpost work for the Ministry of Home Affairs and has incurred the expenditure on land acquisition compensation, service connection charges and miscellaneous expenditure amounting to Rs. 113.50 crores. This work was carried out on behalf of the Ministry of Home Affairs. As per work order (MOU) the assessee was required to acquire the land for the project and execute the contract. All the expenditures have been incurred by the assessee on the project and corresponding income of that project has already been offered for taxation. In view of this, the ld CIT(A) held that the above expenditure of the assessee is of revenue in nature and hence deleted the disallowances. We find that the assessee is a contractor, who according to terms of the contract was to acquire the land, create electricity infrastructure thereon and then handover the project after execution to Ministry of Home Affairs with respect to Indo Bangladesh border. The corresponding revenue received for execution of this work was already credited to the project income amount and taxed. The acquisition of land and payment of electricity charges were on account of above project and it did not create any asset in the hands of the assessee but assessee was merely a contract for construction of border outpost on behalf of Ministry of Home Affairs. We find that ld CIT(A) has correctly held that in the hands of the contractor, assessee the above expenditure was merely project expenditure and has not created any capital assets, hence, not a capital expenditure. Therefore, ground No. 3 of the appeal is dismissed, holding that expenditure of Rs. 113.50 crores incurred by the assessee on the project is revenue expenditure in the hands of the assessee.”

10. There is no change in the facts and circumstances of the case and in view of this we confirm the order of the ld CIT(A) and dismissed ground no. 3 of the appeal.
11. Ground No. 4 of the appeal is with respect to disallowance of Rs. 8,48,30,839/- on account of 'provision written back'. This issue is identical to the ground No. 4 in appeal of the ld AO for Assessment Year 2011-12 which has been dealt by the coordinate bench in its order in para No. 10 is under:-

“10. Ground no. 4 is with respect to deletion of disallowances of Rs. 12,20,71,176/- on account of provision of written back. The ld AO made the addition holding that assessee has failed to give the information. Claim of the assessee is that above provision which is written back during the year cannot be charged to tax for the reason that the year in which the provision was created, it was already disallowed and in that year the assessee did not claim the above provision as allowable expenditure. Thus, according to the assessee when the original provision was created it was not claimed as deduction but was disallowed in the computation of income itself. Therefore, when the above provision is written back in this year it cannot be once again charged to tax. The ld AO disallowed the above provision. Before the ld CIT(A) the above claim was contested and the computation of income for last three years was shown wherein, the above provision was disallowed. The ld CIT(A) also examined the details of the provision written back. The complete details as well as the justification is reproduced at para 3.3.2 of his order which clearly shows that the provision made by the assessee in earlier years was never claimed/allowed to the assessee. The ld CIT(A) also verified the same with respect to the computation of the total income of the assessee for earlier years. Before us the ld DR could not show that these provisions have already been allowed to the assessee in earlier years and therefore, they are required to be taxed in this year u/s 41(1) of the Act. In view of this we do not find any infirmity in the order of the ld CIT(A) in deleting the addition of Rs. 12,20,71,176/- on account of provision of written back. Ground No. 4 is dismissed.

12. There is no change in the facts and circumstances of the case and therefore, we confirm the order of the ld CIT(A).
13. The ground number five is with respect to the admission of the additional evidences adduced by the learned Assessing Officer during the assessment proceedings despite denial of the assessing officer in his remand report. The learned CIT(A) has categorically held that the learned Assessing Officer has merely opposed the admission of the additional evidences. The admission of the additional evidences is the prerogative of the learned CIT(A) according to Rule 46 of the Income Tax Rules, 1962. In paragraph No. 16.3 of the order he has categorically admitted the additional evidences and find that the issue is squarely covered by the decision of his predecessor in earlier assessment years, which has been upheld by the coordinate bench in the case of the assessee itself. Therefore, we do not find any infirmity in the order of the learned CIT(A). Even otherwise, on the merit issue is squarely covered in favour of the assessee. Accordingly, ground No 5 of the appeal of the AO is dismissed.

14. In the result the appeal of the ld AO for the Assessment Year 2012-13 is dismissed.
Order pronounced in the open court on 16/09/2021.

-Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 16/09/2021
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi