

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.6854/Del./2017
(Assessment Year : 2013-14)**

M/s. National Projects Construction Corporation Limited,
30-31, Raja House, Nehru Place,
New Delhi – 110 019

vs. DCIT, Circle 17(2),
New Delhi.

(PAN : AAACR6117Q)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Dr. Rakesh Gupta, Advocate
Shri Somil Agarwal, Advocate
REVENUE BY : Ms. Paramita M. Biswas, CIT DR

Date of Hearing : 20.09.2021
Date of Order : 24.09.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. National Projects Construction Corporation Limited (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 27.09.2017 passed by the Commissioner of Income - tax (Appeals)-37, New Delhi qua the assessment year 2013-14 on the grounds inter alia that:-

“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.4,61,876/- on account of bad debts written off u/s 36(2) of Income Tax Act, 1961 and that too by recording incorrect facts and finding and without observing the principles of natural justice.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.3,61,31,904/- on account of expenses incurred as a part of project cost by treating it as capital expenditure for land acquisition of 'Border out Post' during execution of 'Indo Bangladesh Border Fencing Work (TBBF) and that too without observing the principles of natural justice.

3. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs.3,61,31,904/- on account of expenses incurred as a part of project cost by treating it as capital expenditure for land acquisition of 'Border out Post' during execution of 'Indo Bangladesh Border Fencing Work (IBBF) is bad in law and against the facts and circumstances of the case.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.25,07,7A01/- on account of provisions written back and that too by recording income facts and findings and without observing the principles of natural justice.

5. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.25,07,47,401/- on account of provisions written back is bad in law and against the facts and circumstances of the case.

6. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.25,07,47,401/- under the MAT provisions.

7. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not admitting the additional evidences filed by assessee under rule 46A of Income Tax Rules.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee company is a public sector

undertaking under the Ministry of Water Resources having business of civil construction of dams, bridges, tunnels, power houses, flyovers, buildings, canals and other infrastructure projects. Clients of assessee company are Central and State Government, Departments and Public Sector Undertakings.

2. During the scrutiny proceedings, Assessing Officer (AO) noticed from the financial statement of the assessee company that under the head "Other expenses – Administration", assessee company has claimed deduction on account of bad debts written off to the tune of Rs.4,61,876/-. AO following his own order passed in AY 2012-13 disallowed deduction claimed by the assessee company on account of bad debts written off on ground of absence of any evidence and made addition thereof to the total income of the assessee. AO also made addition of Rs.3,61,31,904/- being a claim lodged by the assessee company for deduction on account of other incidental charges on works. AO again by following his own order for AY 2012-13 disallowed the same on the ground that expenditure is capital in nature and no supporting evidence has been brought on record to prove that these expenditure have been incurred wholly and exclusively for the assessee. AO also made addition of Rs.25,07,47,401/- by way of

disallowance of provisions written back reduced from the computation under MAT provisions.

3. Assessee carried the matter before the Id. CIT (A) by way of filing appeal who has confirmed the disallowance/addition by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Ld. AR for the assessee challenging the impugned order passed by the Id. CIT (A) contended that identical issue qua the ground raised in the present appeal has already been decided by the **coordinate bench of the Tribunal in favour of the assessee company for AYs 2011-12 & 2012-13 in ITA Nos.102/Del/2018 & 3652/Del/2018 vide orders dated 21.06.2021 & 16.09.2021** respectively, which order has been followed by the AO/CIT(A).

6. However, on the other hand, Id. DR for the Revenue though relied upon the order passed by the AO/Id. CIT (A) has failed to bring on record distinguishable facts and evidence, if any, or that the order passed by the Tribunal (supra) has been set aside or its operation has been stayed by the higher forum.

7. We have perused the order passed by **the coordinate Bench of the Tribunal in assessee's own case for AYs 2011-12 & 2012-13** (supra) wherein identical grounds raised by the Revenue has been decided in favour of the assessee company.

GROUND NO.1

8. AO made disallowance of Rs.4,61,876/- on account of bad debt written off u/s 36 (2) of the Income-tax Act, 1961 (for short 'the Act'), which the Id.CIT (A) has upheld.

9. Coordinate Bench of the Tribunal upheld the findings returned by Id. CIT (A) in **assessee's own case for AY 2012-13** (supra) deleting the identical disallowance by returning following findings :-

“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 Id 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 Id AO disallowed the above claim that the assessee has not produced the relevant details of old outstanding debts, therefore, he disallowed the same. The Id 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 Id DR and the Id AR also reiterated the arguments before the Id 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 Id 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 Id CIT(A) deleting the above disallowance of Rs.444994/-.”

10. Since facts are identical and there is no change in the business model of the assessee company qua the year under consideration vis-à-vis earlier years, we are of the considered view that when the assessee has written off debts in its books of account which was taken into computation of income in earlier years, it has to be allowed as bad debt u/s 36(2) of the Act. So, ground no.1 is determined in favour of the assessee.

GROUND NO.2 & 3

11. AO/CIT(A) have made/confirmed disallowance of Rs.3,61,31,904/- claimed by the assessee company on account of expenses incurred as a part of project cost by treating the same as capital expenditure for land acquisition of “Border Out Post” during the execution of “Indo Bangladesh Border Fencing Work (IBBF)”.

12. This issue has also been decided by the coordinate Bench of the Tribunal in assessee's own case for AY 2012-13 (supra) by returning following findings :-

“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.” Page \ 4

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.”

13. Following the order passed by the coordinate Bench of the Tribunal on identical facts, we hereby delete the addition made by the AO and confirmed by the ld. CIT (A) on the ground that expenses incurred by the assessee company for acquisition of land for IBBF Project has not created any assets in the hands of assessee as the assessee company has merely executed a contract for construction of Border Out Post on behalf of Ministry of Home Affairs. Consequently, addition made by the AO and sustained by the ld. CIT (A) is ordered to be deleted. So, grounds no.2 & 3 are determined in favour of the assessee.

GROUND NO.4, 5 & 6

14. AO/ld. CIT (A) made/confirmed the addition of Rs.25,07,47,401/- on account of provisions written back under MAT provisions.

15. This issue has also been decided by the **coordinate Bench of the Tribunal in assessee's own case for AY 2011-12** (supra) by returning following findings :-

“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.”

16. Again following the order passed by the **coordinate Bench of the Tribunal in assessee's own case** (supra), we are of the

considered view that addition made by the AO and sustained by the Id. CIT (A) is not sustainable in the eyes of law because the provisions made by the assessee in earlier years were never claimed or allowed to the assessee, which fact however needs to be verified by the AO. Consequently, addition made by the AO and sustained by the Id. CIT (A) is ordered to be deleted subject to verification by the AO qua the computation of total income of the assessee for earlier years if these provisions have not been allowed to the assessee in earlier years. Consequently, grounds no.4, 5 & 6 are determined in favour of the assessee.

GROUND NO.7

17. Ground No.7 being general in nature does not require any adjudication.

18. Resultantly, the appeal filed by the assessee is allowed.

Order pronounced in open court on this 24th day of September, 2021.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 24th day of September, 2021
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-37, New Delhi.
- 5.CIT(ITAT), New Delhi.

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