

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No.1366/Chny/2017
निर्धारण वर्ष/**Assessment Year: 2011-12**

M/s. FLSmidth Private Limited,
No.34, Egatoor, Kelambakkam,
Rajiv Gandhi Salai,
Chennai – 603 103.
[PAN: AAACF4997N]

The Deputy Commissioner of
Income Tax,
Corporate Circle – 2 (1),
Chennai – 600 034.

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri G. Baskar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri G. Johnson, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 04.08.2021
घोषणा की तारीख /Date of Pronouncement : 08.10.2021

आदेश /ORDER

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is against the order of the Id. Commissioner of Income Tax (Appeals)-6, Chennai dated 13.04.2017, relevant to the assessment year 2011–12. The grounds raised by the assessee are as under:

- “1. *The Commissioner of Income Tax (Appeals) ought to have directed the Assessing Officer to exclude the interest expenditure while computing the disallowance of deduction u/s.14A of the Income-Tax Act.*
- 2.1 *The order of the Commissioner of Income Tax (Appeals) is wrong, illegal and opposed to facts in so far as it confirms the disallowance of provision of estimated loss of Rs. 1,14,45,495 on contracts.*

- 2.2 *The Commissioner of Income Tax (Appeals) erred in disposing of the aforesaid ground in a summary manner without adverting to the facts of the case and the submissions made before him in the proper prospective.*
- 2.3 *The Commissioner of Income Tax (Appeals) erred in stating that the Appellant had not demonstrated how it considered the provision of estimated loss on contract to be an ascertained liability.*
- 3.1 *The Commissioner of Income Tax (Appeals) erred in confirming the disallowance of provisions for administrative expenses, consultancy expenses and Zambia branch expenses.*
- 3.2 *The Commissioner of Income Tax (Appeals) erred in holding that the said expenses are contingent and unascertained, without noticing the fact the assessee maintained accounts on mercantile basis.”*

2. The first ground raised in the appeal of the assessee relates to disallowance of deduction under section 14A of the Income Tax Act. The Id. Counsel for the assessee Shri G. Baskar has submitted that this ground of appeal is not pressed and prayed that the same may be dismissed. Accordingly, as per the request of the Id. Counsel for the assessee, this ground raised by the assessee is dismissed.

3. Ground Nos. 2.1 to 2.3 relates to provision of estimated loss of ₹.1,14,45,495/- on contracts. The assessee is in the business of manufacturing and supply of machinery parts, cement / mineral industries. For the assessment year 2011-12, the assessee has made a provision of estimated loss on contracts and the same was disallowed by the Assessing Officer. In the assessment order, the Assessing Officer has noted as under:

***“Provision for estimated loss of contracts:** As per Schedule 12 to the financials, Rs.4,38,99,923 has been created as a provision for estimated*

future losses on contracts. Vide the notice u/s.142(1) dated 05.02.2015, the assessee was asked to justify the claim. Vide letter dated 24.02.2015, the assessee stated as follows:

“Para 21 of AS-7 stipulates that when the outcome of a construction contract can be estimated reliably, contract revenue and contract costs associated with the construction contract should be recognized as revenue and expenses respectively by reference to the stage of completion of the contract activity at the reporting date. An expected loss on the construction contract should be recognized as an expense immediately in accordance with paragraph 35 of AS-7.

In view of the above, wherever the company expects that it is going to incur a loss on a contract, it ascertains the expected loss and provides for the same in the books of account. The company makes a proper estimate of the relevant cost in revenue and accordingly recognizes the loss. As this is an ascertained provision, the same is not been disallowed in the computation total income”.

The submission has been considered. The fact is that the said loss on an estimate, which is bound to vary due to variation in input costs. Accounting Standards are binding on the Company, in so far as the preparation of books are concerned but are not binding for Income Tax purposes. AS-7 in any case has not been notified by the Board and so reliance on the said code to claim deduction under the Income Tax Act is not permissible. In any case, the jurisdictional ITAT while deciding an exactly similar issue, has held that since there was no legal right on any person for claiming for claiming a cost which was still to be incurred, the said loss could not be allowed. This decision was rendered in the case of EDAC Engineering Limited [2013] 30 Taxmann.com 355 (Chennai – Trib.). Therefore, the provision created in this year of Rs.1,14,45,495 is disallowed.”

4. On appeal before the Id. CIT(A), the assessee has relied on the decision of the Hon'ble Supreme Court in the case of Rotork Controls India Limited (2009) 314 ITR 62 and submitted that the provision for estimation of loss on contracts is an ascertained liability and is an allowable expenditure under section 37 of the Act. By considering the above decision of the Hon'ble Supreme Court, the Id. CIT(A) has observed that the assessee has

not able been able to demonstrate in this appeal with reference to the facts despite the specific opportunity given, as to how it considered the provision of estimated loss on contract to be an ascertained liability. Instead, it has loaded its submissions with a plethora of judgements, which can only be helping the cause of the assessee if the assessee is able to demonstrate its applicability to the facts and circumstances of its own case. With the above observations, the Id. CIT(A) confirmed the order of the Assessing Officer.

5. On being aggrieved, the assessee is in appeal before the Tribunal. Before us, the Id. Counsel for the assessee has submitted that the loss estimated by the assessee is an ascertained liability and submitted that simply because the loss is estimated, it cannot be said that it is an unascertained liability. In his gist of submissions, the Id. Counsel for the assessee has submitted that in assessee's own case in earlier assessment year 2005-06 vide order in I.T.A. No. 1697/Mds/2015 dated 03.08.2017, the Tribunal remitted the matter back to the file of the Assessing Officer to consider afresh and accordingly, he prayed that the same may be followed and remit the matter back to the file of the Assessing Officer.

6. On the other hand, the Id. DR has submitted that there is no provision in the Act to estimate the ascertained liability and make a provision for it and therefore, pleaded that the Assessing Officer as well as Id. CIT(A) have

rightly disallowed the same and strongly supported the order passed by the authorities below.

7. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The case of the assessee is that as per the Schedule 12 to the financials, ₹.4,38,99,923/- has been created as a provision for estimated future losses on contracts. The Assessing Officer has asked the assessee to justify the claim vide notice dated 05.02.2015. Vide letter dated 24.02.2015, the assessee has submitted that Para 21 of AS-7 stipulates that when the outcome of a construction contract can be estimated reliably, contract revenue and contract costs associated with the construction contract should be recognized as revenue and expenses respectively by reference to the stage of completion of the contract activity at the reporting date and an expected loss on the construction contract should be recognized as an expense immediately in accordance with paragraph 35 of AS-7. The Assessing Officer has considered the explanation of the assessee and observed that the said loss on an estimate, which is bound to vary due to variation in input costs. Accounting Standards are binding on the Company in so far as the preparation of books are concerned, but, are not binding for Income Tax purposes. Further, the Assessing Officer, by following the decision in the case of EDAC Engineering Limited [2013] 30 Taxmann.com 355 (Chennai –

Trib.), disallowed the same and the same was confirmed by the Id. CIT(A). The assessee, neither before the Assessing Officer nor before the Id. CIT(A) substantiated the provision made by it is an ascertained liability. Even before us, the assessee has not been able to explain as to what was the necessity for the assessee to make such a provision. The Id. Counsel for the assessee has simply stated that the provision made by the assessee is an ascertained liability. If at all, it is an ascertained liability, it is the onus on the assessee to establish that the liability is an ascertained liability. No material was placed on record before the Tribunal. Under these facts and circumstances of the case, we are of the opinion that the provision made by the assessee for a loss on contract is not an ascertained liability and it is a simple provision made by the assessee which is not allowable under section 37 of the Act.

8. So far as case law placed by the assessee are concerned, the decision in the case of Rotork Controls India Limited v. CIT (supra) has no application to the facts of the present case. In the order passed by the Tribunal for the AY 2005-06 dated 03.08.2017, the issue dealt by the ITAT relates to provision of warranty and therefore, in our opinion, the issue under consideration need not be remitted back to the Assessing Officer. In view of the above, the ground raised by the assessee is dismissed.

9. Ground No. 3.1 and 3.2 are relating to provision made by the assessee in respect of various expenditures. In the assessment order, the

Assessing Officer has noted that the assessee has created provision for various expenses, such as, administrative expenses provision of ₹.8,00,000/-, consultancy expenses provision of ₹.30,99,292/- and provision for Zambia branch expenses of ₹.9,54,127/-. The assessee has not given any explanation before the Assessing Officer. Therefore, the Assessing Officer disallowed the entire provisions for various expenditures. Before the Id. CIT(A), the assessee has not been able to establish that the liabilities are ascertained liabilities and not only that the basis for making such provisions for expenses were not explained. Therefore, the Id. CIT(A) confirmed the order of the Assessing Officer.

10. Before us, the Id. Counsel for the assessee has submitted that the assessee made a provision for the assessment year 2011-12. Subsequently, in the assessment year 2012-13, the provision was reversed and submitted that if the same amount is offered as income in the subsequent year, the Assessing Officer may be directed to delete, otherwise, this amounts to double taxation.

11. On the other hand, the Id. DR strongly supported the orders of authorities below.

12. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The assessee has

made a provision for ₹.48,53,419/-. However, no explanation was given before the Assessing Officer. Even before the Id. CIT(A), the assessee has not given any explanation the reason for making such provisions of expenses. Even before us, the assessee has not been able to explain the reason for making such provisions. Considering the facts and circumstances of the case, we are of the opinion that the provision created by the assessee in respect of various expenses is an unascertained liability and not allowable as an expenditure for the assessment year under consideration. Therefore, we confirm the order passed by the Id. CIT(A).

13. So far as alternative submission is concerned, we direct the Assessing Officer to verify as to whether the assessee has reversed the provision and the same is offered for taxation for the assessment year 2012-13 and decide the alternative plea in accordance with law. This ground is partly allowed.

14. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on the 08th October, 2021 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, the 08.10.2021

Vm/-

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.