

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'D' 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.767 and 1876/Chny/2018
निर्धारण वर्ष/Assessment Year: 2013-14

M/s. Kaveri Gas Power Ltd.,
No. 3, Ranganathan Garden,
15th Main Road Extension, Anna Nagar,
Chennai 600 040.
[PAN:AABCK4793Q]

Vs. The Assistant Commissioner of
Income Tax, Corporate Circle 4(2),
No. 121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri D. Anand, Advocate
प्रत्यर्थी की ओर से/Respondent by : Ms. R. Anita, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 22.12.2021
घोषणा की तारीख /Date of Pronouncement : 09.03.2022

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

Both the appeals filed by the assessee are directed against different orders of the Id. Commissioner of Income Tax (Appeals) 8, Chennai dated 07.04.2018 relating to quantum addition and order dated 10.04.2018 of confirmation of levy of penalty under section 271(1)(c) of the Income Tax Act, 1961 ["Act" in short] relevant to the assessment year 2013-14.

2. Brief facts leading the ground raised by the assessee are that as per the profit and loss account furnished by the assessee company at

Note No. 19, the Assessing Officer has observed that three amounts i.e., ₹.3,65,73,361/-, ₹.7,20,000/- and ₹.31,00,000/- debited as expenses towards replacement of crank shaft, connected service and provision for civil work respectively. These expenses were claimed under the head "Repairs & Maintenance – Site". As per the explanation offered by the AR of the assessee during the course of assessment proceedings and also as per the facts of the case, these expenses were not incurred during the year, but, where only provisions made by the assessee-company. On being questioned why the entire expenditure of ₹.4,03,93,361/- should not be disallowed, as the expenditure was only a provision made but not an expenditure that was incurred by the assessee, the assessee vide its reply dated 18.02.2016 stated before the Assessing Officer that the provision was made on estimate basis and was recognized in the books of account during the year and the actual expenditure was incurred after two years. By reply of the assessee and also basing on the facts, as the expenditure of ₹.4,03,93,361/- was only a provision made and not an expenditure that was actually incurred during the year, the Assessing Officer disallowed the entire expenditure of ₹.4,03,93,361/- and brought to tax. On appeal, the Id. CIT(A) directed the Assessing Officer to allow the deduction claimed after due and complete examination.

3. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that in order to repair of certain machinery, the expenditure claimed by the assessee is an ascertained liability and in support of the same, the assessee has furnished copy of offer for supply of spare parts, inspection & observation report, etc. and prayed that the claim of the assessee be allowed as ascertained liability.

4. On the other hand, the Id. DR has submitted that the entire expenditure claimed by the assessee is not incurred since the cost is estimated from the supplier of spare parts M/s. Rolls –Royce and the same has been claimed in its report and thus, the claim of the assessee is contingent liability and supported the order passed by the Id. CIT(A).

5. 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 of expenditure of ₹.4,03,93,361/- towards replacement of crank shaft, connected service and provision for civil work respectively under the head “Repairs & Maintenance – Site”. The Id. CIT(A) as well as the Assessing Officer have opined that the claim of expenditure was neither ascertained nor clearly ascertainable.

5.1 In this case, as per the Operation and Management Contract with M/s. Rolls Royce, an order for repair or replacement has been entered into and the supplier and the operator inspected and estimated the replacement cost of crank shaft at ₹.4.45 crores after the Inspection and Observation Report of M/s. Rolls-Royce dated 21.03.2013. Vide Offer No. BE/Q/1126/ R/2013-14 DATED 07.06.2013, the assessee has placed order for supply of spare parts against variation order for B35:40V16 AG Engine (S. No. 17027). Copy of the Inspection & Observation Report as well as offer for supply are brought on record. The part that is to be repaired is not a small part, but without which the power plant cannot be operated at all. In view of the above, the assessee has initiated all measures to keep ready the formalities and it is also an undisputed fact that M/s. Rolls-Royce repaired subsequently and the liability was discharged when the assessee made payment to M/s. Rolls Royce as per invoices at Page Nos. 30-34 of the paper book as well as receipts issued by M/s. Rolls Royce in pages 72-79 of paper book filed before the Tribunal. In fact, the discharge of the liability has been recognised in the subsequent years and the same is reflected in the returns of income filed for the assessment years 2015-16 and 2016-17 which was also filed at pages 114-154 and 175-209 of the paper book filed before the Tribunal.

In view of the above facts and the entire details brought on record, we are of the considered opinion that the provision made for repairs and maintenance is an ascertained liability and not a contingent liability. Accordingly, we set aside the order of the Id. CIT(A) on this issue and direct the Assessing Officer to allow the claim of deduction.

6. So far as levy of penalty under section 271(1)(c) of the Act is concerned, since we have deleted the quantum addition, the penalty levied under section 271(1)(c) of the Act cannot survive and accordingly the penalty is deleted.

7. In the result, both the appeals filed by the assessee are allowed.

Order pronounced on 09th March, 2022 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 09.03.2022

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.