

आयकर अपीलीय अधिकरण 'डी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.2877/Chny/2018
(निर्धारण वर्ष / Assessment Year: 2010-11)

M/s. OPG Powergeneration Pvt Ltd. 6, Sardar Patel Road, Guindy, Chennai-600 032.	बनाम/ Vs.	DCIT International Taxation, Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAACO-8193-M		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri V. Ravichandran (CA)-Ld. AR
प्रत्यर्थी की ओरसे/Respondent by	:	Shri G. Johnson (Addl. CIT) –Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	22-03-2022
घोषणा की तारीख / Date of Pronouncement	:	22-03-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2010-11 arises out of the order of learned Commissioner of Income Tax (Appeals)-16, Chennai [in short 'CIT(A)'] dated 14-08-2018 in the matter of order u/s 201(1) / 201(1A) passed by Ld. DCIT (Int. Taxation)-2(1) (in short 'AO'), Chennai on 31.03.2017.
2. In the order dated 31.03.2017, the assessee has been held to be assessee-in-default and a demand of Rs.20.61 Lacs has been raised

against the assessee u/s 201(1) / 201(1A) of the Act. The said conclusion stem from the fact that the assessee paid international ocean freight charges for import of coal to various shipping agencies including M/s Noble Chartering Inc., a British Virgin Islands incorporate entity. Such payments aggregated to Rs.3061.50 Lacs and no tax was deducted at source by the assessee on these payments. After considering assessee's submissions, Ld. AO held that M/s Noble Chartering Inc. was a tax resident of British Virgin Islands with which India did not enter into Double Taxation Avoidance Agreement (DTAA) and therefore, the charges so paid by the assessee would be taxable in the hands of payee in terms of Sec.5(3) of the Act. The payment made to M/s Noble Chartering Inc. amounted to Rs.358.49 Lacs and accordingly, impugned demand was raised against the assessee for want of TDS on payment of Rs.358.49 Lacs.

3. During appellate proceedings, the assessee submitted that these payments were not liable to withholding tax. However, Ld. CIT(A) confirmed the demand against which the assessee is in further appeal before us and filed various grounds of appeal along with Form No.36.

4. We find that the assessee, vide application dated 21.03.2019, has raised a pertinent additional ground which read as under: -

1. The appellant, OPG Power Generation Pvt. Ltd., has filed this present appeal against the order of the Commissioner of Income Tax Appeals-16 upholding the order of the Respondent, the Deputy Commissioner of Income Tax, International Taxation 2(1) Chennai, passed under section 201(1) and 201(1A) of the Income Tax Act 1961 for Assessment Year 2010-11.

2. The impugned order relates to the payment of ocean freight on cargo of coal imported by the appellant of Rs.3,58,49,468 to Noble Chartering Inc.

3. While preparing for the appeal hearing, the appellant realised that no such payments had been made during the previous year relating to Assessment Year 2010-11 but such a payment had been made during financial year 2013-14.

4. The appellant therefore seeks this hon'ble Tribunal's leave to raise the following additional ground of appeal:

" The order is erroneous as it pertains to ocean freight payments made in a subsequent year"

Along with additional ground, the assessee has filed additional evidences which are in the shape of certificate of a Chartered Accountant and affidavit of director of the assessee-company.

5. The certificate of Chartered Accountant read as under: -

Certificate

We have verified the books of accounts of M/s. OPG Power Generation Private Limited (CIN:U40109TN2005PTC055442 & PAN AAACO8193M) having registered office at No 6, Sardar Patel Road, Guindy Chennai 600032 and based on the said verification of the books of accounts / records produced and the explanations / details furnished by the company, we confirm the following:

1. The said company had no transactions with Noble Chartering Inc., during the financial year 2009-10 (Assessment Year 2010-11) nor was any payment made to Noble Chartering Inc.
2. The said company had made freight payment of USD 5,77,751.20 (Indian Rupee equivalent Rs.3,58,49,468) on 30th December 2013 against invoice number NCHAR16168 dated 27-12-2013 during the financial year 2013-14.

This certificate is issued at the request of M/s. OPG Power Generation Private Limited.

6. The content of affidavit filed by the director of assessee-company is as under: -

AFFIDAVIT

I, AJIT PRATAP SINGH, Director OPG Power Generation Private Limited (PAN: AAACO8193M) having registered office at No. 6, Sardar Patel Road, Guindy, Chennai - 600032 do solemnly affirm and declare as follows:

1. OPG Power Generation Private Limited had no transactions with Noble Chartering Inc., during the financial year 2009-10 (Assessment Year 2010-11) nor was any payment made to Noble Chartering Inc.
2. The company had made freight payment of USD 5,77,751.20 (Indian Rupee equivalent Rs.3,58,49,468) during financial year 2013-14 and the payment was made on 30th December, 2013 against invoice number NCHAR16168 dated 27.12.2013.

7. When these documents were confronted to the revenue, Ld. Sr. DR placed on record the report of concerned Assessing Officer, which read as under:

Sub: Assessee Appeal in the case of OPG Power Generation Pvt. Ltd. for AY 2010-11 – Reg.

Ref.: Letter No. ITA/287/2019/"D" Bench dt. 04.02.2020 received from your office

Vide the above referred letter, it was stated that M/s. OPG Power Generation Pvt. Ltd., the assessee, has given an additional ground and raised following plea, viz:

"2. The impugned order relates to the payment of ocean freight on cargo of coal imported by the appellant of Rs,3,58,49,468 to Noble Chartering Inc.

3. While preparing for the appeal hearing the appellant realized that no such payments had been made during the previous year relating to Assessment Year 2010-11 but such a payment had been made during Financial Year 2013-14"

This office was asked to clarify whether the payment of Rs. 3,58,49,468, on which the assessee was held to be in default for not deducting TDS during financial year 2009-10, was made or not.

It is submitted that upon verification of the file, it was seen that no invoices pertaining to financial year 2009-10 were available on record. From the perusal of 15CA in the system also, it was seen, that there were no payments, to Noble Chartering Inc. during financial year 2009-10 either. Hence from these records, it appears that such remittance amounting to Rs.3,58,49,468 was not made by OPG Power Generation Pvt. Ltd. during financial year 2009-10.

8. Thus, the undisputed position that emerges is that impugned payments have not been made by the assessee during AY 2010-11 and these payments have been made in subsequent years. This being so, the impugned demand as raised against the assessee in this year would have no legs to stand. Therefore, considering the aforesaid position, we delete the impugned demand as raised against the assessee. Consequently, other grounds have been rendered academic in nature.

9. The appeal stands allowed in terms of our above order.

Order pronounced on 22nd March, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 22-03-2022
EDN/-

आदेश की प्रतिलिपि प्रेषित/Copy of the Order forwarded 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