

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Sh. A.D. Jain, Vice President

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No.7701/Del/2018 : Asstt. Year: 2014-15

DCIT, Circle-17(2), New Delhi	Vs	M/s National Projects Construction Corporation Ltd., 30-31, Raja House, Nehru Place, New Delhi-110019
(APPELLANT)		(RESPONDENT)
PAN No. AAACR6117Q		

Assessee by : Sh. Somil Agarwal, Adv.

Revenue by : Ms. Shweta Yadav Sr. DR

Date of Hearing: 10.02.2022

Date of Pronouncement: 11.04.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of the Id. CIT(A)-6, New Delhi dated 12.09.2018.

2. The assessee company is a public sector undertaking under the Ministry of Water Resources. Its main business is civil construction of dams, bridges, tunnels, power houses, flyovers, buildings, canals and other infrastructure projects. Its clients are Central and State Government Departments and PSUs. The assessee filed its return of income on 29.09.2014 declaring total income of Rs.16,71,65,170/-. Subsequently, the assessee revised its return of income on 30.03.2016 declaring income at Rs.24,16,53,140/-. The Assessing Officer made an addition of

Rs.5.25 crores on account incidental charges on works and Rs.1.49 crores on account of unclaimed liabilities.

3. The Id. CIT(A) allowed the appeal of the assessee dismissing the additions made by the Assessing Officer. Aggrieved the revenue filed appeal before us.

4. The Revenue has raised only one ground which is as under:

"The AO has disallowed the expenditure amounting of Rs.5,25,93,191/- which was incurred as a part of project cost during the course of business, considered the same as capital expenditure for land acquisition and connection charges for electrification at Border Out Post for the client (Ministry of Home Affairs) during execution of Indo Bangladesh Border Fencing work (IBBE) without considering the full facts of this case which is grossly unjustified, erroneous and unsustainable are liable and urged to be deleted."

Land Acquisition for Border Out Posts (BOPs):

5. The facts relevant to the adjudication of the case are that the assessee was executing the Border Out Post (i.e. BOP) works for the Ministry of Home Affairs (GoI) and during the year under consideration the assessee has incurred expenditure of Rs.5.26 Crores for cost of land acquisition and electrification charges paid to various state towards compensation to land looser for construction of BOP and connection charges to the state government. The expenditure incurred towards land acquisition compensation for BOPs works on behalf of MHA and the asset was created in favour of BSF (an organization under the control of Ministry of Home Affairs).

6. While disallowing, the Assessing Officer has stated in his assessment order dated 29.12.2016 as under:

"From the submissions made by the assessee, it is clear that no title of land has admittedly executed in the assessee's favour. Further, it is also not disputed that the expenses were incurred on behalf of the third entity, i.e. Ministry of Home Affairs. Besides, the payment is for land acquisition and electrification, which is of capital nature and not allowable as revenue expenditure.

7. It was argued that the Assessing Officer has admitted that no title of land was executed in the assessee's favour and expenses were incurred on behalf of the third entity i.e. Ministry of Home Affairs. The AO added the same stating that it is of capital nature and not allowable as revenue nature. It was argued that this total expenditures were incurred as a part of project cost and corresponding revenue has been booked as turnover in the profit and loss account. It was argued that by virtue of business activity of the assessee, acquiring land for the projects on behalf of the clients and doing construction and other work as per agreements with clients, is part and parcel of the assessee's business. **It was argued that the Assessing Officer without considering the nature of assessee's business, fact of the case and the details submitted, considered the land acquisition of a particular project as capital asset of the assessee company.**

8. The Assessee Company was executing the Border Out Post(BOP) Works under Phase-II as per MOU signed in between NPCC & MHA (GoI) on Dt. 14.07.2010. Serial No. 17 of MOU it is clearly mentioned that:

"Land Acquisition for all BOPs will be made by NPCC and cost of the land acquisition shall be included in the cost estimates. BSP will provide necessary help to NPCC in land acquisition"

and serial No. 7 of the same MOU it is clearly mentioned that the

"NPCC shall hand over the BOPs and allied works after their completion to the designated agency nominated by MHA".

9. In continuation of MOU, as per MHA Memo No. F.No.11013/49/2006-BM.III, dt. 09.02.2010 regarding sanctioned of 380 Nos. BOPs in different states it is also clearly mentioned in para no.3 on page 11 as:

"Land Acquisition for all these BOP's will be made by the concerned construction agency and cost of land acquisition shall be included in the cost estimates".

10. During sanctioned /approved the estimates of each BOP from MHA tentative cost of land has been included in the Estimates. After, getting demand from Concerned State Government through BSF Authority (user of BOPs) the assessee company has paid on behalf of MHA (GoI) and corresponding income against these expenses has been booked as turnover in profit and loss account. From the above, it is clarified that expenditure incurred on by NER(IBBW) Zonal office during the financial year 2013-14 towards land acquisition compensation and Other Incidental charges as part and partial of the contract agreement and the same is included in the total project cost. Hence above expenditure on behalf of MHA (GoI) as project cost

and was not assets creation in name of the assessee company and the same cannot be treated as capital asset in the hands of the assessee.

11. MOU between MHA (GoI) and NPCC the assessee dated 18.12.2009 is also attached herewith as Annexure - 1 (d) to award the work of "Construction of Border Out Posts (BOPs) for Border Security Force along Indo - Bangladesh Border (IBB) to NPCC.

12. It can easily be seen from the above that it's -purely a cost of project of the assessee and there is no question of acquiring any capital asset by the assessee. The amount paid for Land acquisition compensation incurred by the assessee on behalf of MHA(GOI) and corresponding income against these expenses has been booked as turnover in the profit and loss account.

13. The copy of Profit and Loss account of NER (IBBW) Works: Silchar for the year ended 31.03.2014 and vouchers booking the turnover under the accounting head "2.01- Value of Work Done on Contract" along with other details are attached herewith as Annexure - 1(e). Documents for Certificates of handing over and transfer of land are attached herewith as Annexure - 1(f).

14. Hence, it can be seen from the above that the amount paid for land acquisition compensation and Other Incidental charges has been booked in revenue and on the other the same has been booked as revenue expenditure under the head Incidental Charges on Works and there was no capital asset in the name of assessee. It could be noted that no property is held by the

assessee. As mentioned above the expenditure incurred towards land acquisition compensation for BOPs works on behalf of MHA and the asset was created in favour of BSP and held by BSF not the assessee. For instance, copies of few Form-5 issued by the Government of Meghalaya and Assam as Annexure-1(g), reflects the name of the organization acquiring the land.

15. Thus, it is clear that expenditure incurred on by assessee during the financial year 2013-14 towards land acquisition compensation were the part and parcel of the contract agreement and the same were included in total project cost. Hence above expenditure on behalf of MHA (GoI) as project cost and there was not assets creation in name of the assessee company and cannot be treated as capital Expenditure in the hands of the assessee.

16. It is also an undisputed fact that the assessee has paid Land Acquisition Compensation of Rs. 1,95,30,311/- and amount of Rs.111.54 crores have been paid towards service connection charges to Tripura State Electricity Board. The AO instead of verifying the expenditure as per the submitted details and evidences, disallowed the expenditure considering whole expenditure as capital asset for land acquisition while the major portion of the expenditure was for service connection charges paid to Tripura State Electricity Board i.e. Rs.111,54,55,200/- and the Land Acquisition Compensation was Rs. Rs. 1,95,30,311 only.

17. After careful study and reviewing of the documents submitted, it is evident that the amount incurred for land acquisition was Rs. 1,95,30,311/- and the assessee Company

was executing the Border Out Post(BOP) Works under Phase-11 as per MOU signed in between NPCC and MHA (GoI) on Dt. 14.07.2010. Serial No. 17 of MOU clearly state that, "Land Acquisition for all BOPs will be made by NPCC and cost of the land acquisition shall be included in the cost estimates. BSP will provide necessary help to NPCC in land acquisition" and serial No.7 of the same MOU clearly mentioned that "NPCC shall hand over the BOPs and allied works after their completion to the designated agency nominated by MHA". The expenditure incurred towards land acquisition compensation was part and parcel of the contract agreement and the same was included in the project cost. The expenditure of Rs.111,54,55,200/- on service connection charges were paid to Tripura State Electricity Board (TSEB), Agartala for border flood lighting works in the state of Tripura as per MOU signed between assessee and MHA (GoI) dt. 30.09.2009 and the estimates of the expenditure were revised in the 22nd/2010 HLEC meeting held on 17.09.2010 vide agenda item No. IBB/9. It is also evident that the assessee has booked the corresponding income against these expenses in its turnover in the profit and loss account during the year under consideration.

18. Hence, the expenditure done on behalf of MHA (GoI) as project cost was not asset creation in the name of the assessee company, and cannot be treated of capital nature. Therefore on the basis of above facts and legal position, we decline to interfere with the order of the Id. CIT(A) in deleting the addition.

19. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 11/04/2022.

Sd/-

(A.D. Jain)
Vice President

Dated: 11/04/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR