

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA Nos. 252 & 253/Bang/2019
Assessment Years : 2013-14 & 2014-15

M/s. Bangalore Electricity Supply Co. Ltd., Corporate Off: 1 st Floor, Belaku Bhavana, K.R. Circle, Bangalore – 560 001. PAN: AACCB1412G	Vs.	The Deputy Commissioner of Income Tax, Circle 1 (1)(2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Abhishek, CA
Revenue by	:	09-02-2022 (Dr. Manjunath Karkihalli, CIT-DR) & 13-05-2022-None

Date of Hearing	:	13-05-2022
Date of Pronouncement	:	13-05-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals are filed by assessee arising out of two separate orders both dated 28.11.2018 passed by Ld.CIT(A)-1, Bangalore for Assessment Years 2013-14 and 2014-15 on following grounds of appeal:

ITA No. 252/Bang/2019 (A.Y. 2013-14)

“1. The order of the CIT-A is opposed to law and fact of the case.

2. The CIT-A erred in not allowing the materials which has been lost due to pilferage even after filing FIR the appellant is not in a position to recover the same.

3. The CIT-A erred in confirming the materials lost due to pilferage holding the same used for creating capital asset, the material lost is a business loss should have been allowed.

4. The CIT(A) erred in confirming the expenses towards CSR "holding that appellant belong to the era before introduction of clarificatory explanation to the statute " which should be valid ground for allowance of CSR expenses since the explanation 2 to section 37 is applicable from asst. year 2015-16 onwards only and not for the year C.t under appeal.

5. For these and other grounds that may be adduced at the time hearing the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered."

ITA No. 253/Bang/2019 (A.Y. 2014-15)

"1. The order of the CIT-A is opposed to law and fact of the case.

2. The CIT-A failed to consider the submission on merit that if the provision reduced from the Debtors the provision is no longer a unascertained liability to be added in the computation of book profit U/s 115JB of the I.T. Act, 1961 for which the appellant relied on various Apex Court decisions which the CIT-A failed to consider

3. The CIT-A erred in following the decision of the Appellant for the earlier year when the appellant has also relied on the various other decision on the same issue of the Jurisdictional high court which was passed earlier and subsequently to the appellant's case on the same issue.

4. The CIT-A failed to consider the issue on which the addition was made in the earlier Asst. Year 2003-04 that SLP filed by the appellant which was admitted and pending for disposal should have given direction to follow the H'ble Supreme Court decision instead of confirming the addition on the basis of H'ble High Court decision which is contested in Appeal before H'ble Supreme Court and admitted and pending for disposal. Based on Form 8 filed in terms of Section 158A of the I.T. Act, 1961

5. The CIT(A) erred in confirming the expenses towards CSR "holding that appellant belong to the era before introduction of clarificatory explanation to the statute " which should be valid ground for allowance of CSR

expenses since the explanation 2 to section 37 is applicable from asst. year 2015-16 onwards only and not for the year under appeal.

6. For these and other grounds that may be adduced at the time hearing the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered.”

Assessment Year 2013-14:

Brief facts of the case are as under:

2.1 Assessee is a company and filed its return of income for year under consideration on 28.09.2013 declaring a loss of Rs.2,26,25,31,801/-. Subsequently a revised return was filed declaring current year loss of Rs.5,85,52,56,897/-. Book profits of the assessee for the year under consideration was shown at Rs.(-)4,22,70,84,328/-. The Ld.AO noted that assessee is engaged in the business of supply of electricity. The case was selected for scrutiny and statutory notices were issued in response to which the representative of assessee appeared before the Ld.AO and filed requisite details as called for.

2.2 The Ld.AO observed that in the financial statements, assessee made provision towards loss on obsolescence of stores in stock amounting to Rs.1,10,81,766/- and claimed under the head “Other Expenses” as seen in Note 24. The assessee was called to explain why the said amount should not be disallowed. The Ld.AO also observed that assessee debited sum of Rs.33,21,116/- towards loss of materials by pilferage, etc. as seen from Note 24 to the financial statements under the head “Other Expenses”.

Before the Ld.AO, assessee could not prove these expenditure and accordingly addition was made in the hands of the assessee.

2.3 The Ld.AO further observed that assessee has debited Rs.27,60,693/- towards CSR. Assessee vide letter dated 05.03.2016 filed certain details however, the Ld.AO being unsatisfied disallowed the claim.

Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

3. The Ld.CIT(A) in respect of loss of material due to pilferage observed as under:

“3.2 DISALLOWANCE OF LOSS OF MATERIAL DUE TO PILFERAGE

a. The Assessing Officer erred in disallowing the loss due to pilferage since the same was incurred during the course of the Appellant's business.

b. The Assessing Officer erred in not allowing the loss due to pilferage since the same is allowable as business loss of the Appellant.

It is submitted that the above sum was debited to profit and loss account since the materials were lost due to pilferage. The Appellant the system of identifying the pilferage after due process and then only the same is debited to the profit and loss account. Since the pilferage is relatable to the business carried on by the Appellant, the same is allowable business expenditure.

Further, it is submitted that the loss of materials happened on 13-06-2006, due to theft and after filing the case with the police, the appellant has undertaken to write off the same as a loss after waiting for nearly 6 years. I am in agreement with the appellant that it is an accepted write off. Nothing has been brought on record to show case that the same is on account of the revenue. However, as the appellant is not in trading and is into power transmission, the materials available with the appellant can only be capital assets. Thus, the same could only be reduced from the Block of assets if capitalised and as such this claim cannot be allowed as revenue expenses. In the result, this ground is dismissed.”

3.1 In respect of the CSR expenditure being disallowed, the Ld.CIT(A) was of the opinion that the said expenditure could not

be allowed under Explanation 2(ii) to Section 37(1) as this is substantive provision. The Ld.CIT(A) thus upheld the additions of Ld.AO.

4. Aggrieved by the order of Ld.CIT(A), the assessee is in appeal before us.

4.1 The Ld.AR submitted that **Ground no. 1** is general in nature and therefore do not require adjudication

4.2 Ground nos. 2-3 relates to the claim disallowed in respect of loss due to pilferage. The Ld.AR submitted that, the loss relates to the materials that was stolen from the premises. The Ld.AR relied on the FIR filed with the jurisdictional police station, that was placed in the paper book, and submitted that, nothing could be traced even after six years, and therefore the amount has been written off during the year under consideration.

4.3 On the contrary, the Ld.CIR.DR relied on the categorical observations by the authorities below. He submitted that, nothing is brought on record to show that, the loss could be considered as revenue loss. He submitted that, the materials that is alleged to have been stolen are capital asset in the hands of the assessee, then even if it has to be considered to be genuine loss, it has to be considered capital loss.

4.4 We have perused the submissions advanced by both sides in the light of records placed before us.

4.4.1 We agree with the argument advanced by Ld.CIT.DR. The loss recorded by assessee is relating to the business carried on. Except for filing a FIR, no steps were taken by assessee in order to recover the lost property. This is admitted position that assessee is not in sale of such materials like power transmission

etc. that these materials and also forms part of block of assets. Therefore such materials assumes character of capital asset in the hands of assessee. To our mind, under such circumstances what maximum could be done is to reduce the block of asset to the extent the loss suffered by assessee, on such capital assets, we therefore do not find any infirmity in the view taken by Ld.CIT(A) and the same is upheld.

Accordingly, ground nos. 2-3 raised by assessee stands dismissed.

5. Next common ground in both appeals relates to the disallowance of CSR expenditure. Both the authorities below have disallowed the claim by applying Explanation 2(ii) to Section 37(1) which is prospective in nature. The said explanation is w.e.f. 01.04.2015 and the assessment year under consideration is prior to relevant date. The Ld.AR has referred to page 26 of paper book wherein assessee has incurred a sum of Rs. 63,000/- towards Establishment of Continuous School Development Programme. It is submitted that the said expenses is voluntary in nature and that assessee was statutorily required to incur such expenditure as alleged by the revenue.

5.1 On the contrary, it is the case of the assessee that the expenditure relates to educational schemes incurred by assessee for educating the children studying in Government schools and also providing basic infrastructure facilities to the school.

The Ld.AR has placed reliance on the decision of *Hon'ble Jurisdictional High Court* in case of *CIT vs. Infosys Technologies Ltd.* reported in 360 ITR 714.

5.2 We have perused the submissions advanced by both sides in the light of records placed before us.

5.2.1 We note that the above expenditure incurred by assessee is towards contribution of public welfare. However, we also note that apart from placing reliance on the amendment brought in by Finance Act, 2015, the authorities below do not find any other justification to disallow the claim. We therefore are unable to agree with the view taken by the authorities below.

We refer to the decision of *Hon'ble Mumbai Tribunal* in case of *ACIT vs. Jindal Power Ltd.* in ITA No. 99/BLPR/2012 dated 23.06.2016 wherein the *Tribunal* observed as under.

*"The amendment in the scheme of [Section 37\(1\)](#), which has been introduced with effect from 1st April 2015, cannot be construed as to disadvantage to the assessee in the period prior to this amendment. This disabling provision, as set out in Explanation 2 to [Section 37\(1\)](#), refers only to such corporate social responsibility expenses as under [Section 135](#) of the Companies Act, 2013, and, as such, it cannot have any application for the period not covered by this statutory provision which itself came into existence in 2013. Explanation 2 to [Section 37\(1\)](#) is, therefore, inherently incapable of retrospective application any further. In any event, as held by Hon'ble Supreme Court's five judge constitutional bench's landmark judgment, in the case of *CIT Vs Vatika Townships Pvt Ltd* [(2014) 367 ITR 466 (SC)], the legal position in this regard has been very succinctly summed up by observing that "Of the various rules guiding how legislation has to be interpreted, one established rule is that unless a contrary intention appears, legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit*: law*

looks forward not backward. As was observed in Phillips vs. Eyre [, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law." It may appear to be some kind of a dichotomy in the tax legislation but the well settled legal position is that when a legislation confers a benefit on the taxpayer by relaxing the rigour of pre-amendment law, and when such a benefit appears to have been the objective pursued by the legislature, it would a purposive interpretation giving it a retrospective effect but when a tax legislation imposes a liability or a burden, the effect of such a legislative provision can only be prospective. We have also noted that the amendment in the scheme of [Section 37\(1\)](#) is not specifically stated to be retrospective and the said Explanation is inserted only with effect from 1st April 2015. In this view of the matter also, there is no reason to hold this provision to be retrospective in application. As a matter of fact, the amendment in law, which was accompanied by the statutory requirement with regard to discharging the corporate social responsibility, is a disabling provision which puts an additional tax burden on the assessee in the sense that the expenses that the assessee is required to incur, under a statutory obligation, in the course of his business are not allowed deduction in the computation of income. This disallowance is restricted to the expenses incurred by the assessee under a statutory obligation under [section 135](#) of Companies Act 2013, and there is thus now a line of demarcation between the expenses incurred by the assessee on discharging corporate social responsibility under such a statutory obligation and under a voluntary assumption of responsibility. As for the former, the disallowance under Explanation 2 to [Section 37\(1\)](#) comes into play, but, as for latter, there is no such disabling provision as long as the expenses, even in discharge of corporate social responsibility on voluntary basis, can be said to be "wholly and exclusively for the purposes of business". There is no dispute that the expenses in question are not incurred under the aforesaid statutory obligation. For this reason also, as also for the basic reason that the Explanation 2 to [Section 37\(1\)](#) comes into play with effect from 1st April 2015, we hold that the disabling provision of Explanation 2 to [Section 37\(1\)](#) does not apply on the facts of this case."

Based on the above discussion and respectfully following the view taken by *Hon'ble Karnataka High Court* in case of *CIT vs. Infosys Technologies Ltd. (supra)*, we allow the claim of assessee towards CSR expenditure.

The Ld.AR submitted that Ground no. 4 and Ground no. 5 for Assessment Year 2013-14 and 2014-15 are identical relating to disallowance of CSR expenditure.

Accordingly, ground no. 4 for A.Y. 2013-14 and ground no. 5 for A.Y. 2014-15 stands allowed.

Assessment Year : 2014-15:

The only issue needs to be adjudicated for Assessment Year 2014-15 being issue alleged by assessee in ground nos. 2-4.

Brief facts of the case are as under:

The Ld.AO observed from the Notes to financial statements Note 27-Exceptional Items of Financial statements, that assessee had debited provision of Rs. 39,34,91,638/- as Bad and doubtful debt. Assessee was asked to show cause why this provisions should not be disallowed as per Sec. 43B such unpaid fees are to be added back to the tax computation.

Assessee in response did not furnish any detail. The Ld.AO referred to the decision dt. 23.06.2014 of *Hon'ble Karnataka High Court* in assessee's own case for A.Y. 2003-04 in *ITA 564/2008* and added the amount to the book profit for purpose of section 115JA.

Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A). The Ld.CIT(A) observed as under:

5.1 Addition for the provision of bad and doubtful debts of ₹39,34,91,638

In respect of Bad and doubtful debts of Rs. 39,34,91,638, the appellant made detailed submissions in respect of the claim in the submissions dated 14.11.2018. In this regard, I have perused the records to find that the identical issue was involved in various previous assessments and came up for adjudication before the Commissioner of Income tax (Appeals)-1, Bengaluru for the Asst. Year ~~2010-11~~ and the same was decided against the appellant. The relevant portion of the same are reproduced below:

"Having considered the submissions, the ground of appeal in this regard is regarding the addition of provision of bad and doubtful debts while computing income u/s 115JB of the Act. In this regard, it is observed that the Assessing officer has discussed this issue on page 3 of the assessment order which was a subject matter of the appeal filed by the appellant to the Hon'ble High Court of Karnataka involving the earlier Asst. years. The Hon'ble High Court of Karnataka, by their judgement dated 23.6.2014, has decided this very identical issue while disposing of the appeal filed by the Revenue involving the Asst. year 2003-04, in favour of the Revenue. Respectfully following the decision of the Hon'ble jurisdictional High Court in appellant's own case, I confirm the action of the Assessing officer in this regard and accordingly this ground of appeal is dismissed."

As the facts and the circumstances in the AY 2010-11 and earlier years, being identical to that of the current Asst Year, by respectfully following the judgment of the Hon'ble Karnataka High Court of Karnataka, I take the same view and confirm the action of the AO in this regard while rejecting this ground of appeal.)

Aggrieved by the order of Ld.CIT(A), assessee is in appeal before us.

The Ld.AR at the outset submitted that identical issue has been considered by *Coordinate Bench* of this *Tribunal* in assessee's own case as under:

"3. At the very outset, we noticed that the Hon'ble High Court in assessee's own case for assessment year 2003-2004 has decided an identical issue in favour of the Revenue and the CIT(A) had followed the judgment of the Hon'ble High Court. Further, the assessee had filed declaration u/s 158A of the I.T.Act read with Rule 16 of

the I.T.Rules, in Form No.8 for both the assessment years, claiming identical question of law is pending adjudication before the Hon'ble Apex Court u/s 261 of the I.T.Act for assessment year 2003-2004 in assessee's own case.

4. We have heard the rival submissions and perused the material on record. In respect of addition of provision for bad and doubtful debts u/s 115JB of the I.T.Act, we find that an identical issue is pending adjudication before the Hon'ble Apex Court in assessee's own case for assessment year 2003-2004 in SLP No.31797/2014. Therefore, both the appeals filed by the assessee are restored to the file of the Assessing Officer. The Assessing Officer shall take a decision in accordance with the terms of provisions of section 158A of the I.T.Act as regards filing of Form No.8 by the assessee (Section 158A of the I.T.Act read with Rule 16 of the I.T.Rules). It is ordered accordingly.

5. In the result, the appeals filed by the assessee are allowed for statistical purposes.”

Both the parties submitted that the issue may be remand to the Ld.AO to consider the claim in accordance with law having regard to Form 8 filed by assessee regarding identical issues pending before *Hon'ble Supreme Court* as observed by *Coordinate Bench*.

Accordingly, we remand this issue back to the Ld.AO with the above directions.

Accordingly, this ground raised by assessee stands allowed for statistical purposes.

In the result, the appeal filed by assessee for A.Y. 2013-14 stands partly allowed and for A.Y. 2014-15 stands allowed as indicated hereinabove.

Order pronounced in the open court on 13th May, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 13th May, 2022.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore