

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 356/Asr/2019
Assessment Year: 2007-08

M/s Jammu & Kashmir State Power Development Corporation Ltd. Exhibition Ground, Srinagar Vs. Deputy C.I.T., Circle-3, Srinagar

[PAN: AAACJ 9770H]
(Appellant)

(Respondent)

Appellant by : Sh. R. K. Gupta, CA
Respondent by: Sh. Rohit Mehra, CIT DR

Date of Hearing: 20.10.2022
Date of Pronouncement: 16.11.2022

ORDER

Per Dr. M. L. Meena, AM:

The present appeal has been filed by the assessee against the order dated 19.03.2019 passed by the Id. Commissioner of Income Tax (Appeals)-1, Amritsar (hereinafter referred to as 'the CIT(A)', in respect of Assessment Year 2007-08, wherein the assessee has challenged the

action of the Id. CIT(A) in confirming the addition on account of difference in sale energy treating it as understatement of income.

2. During the scrutiny proceedings, the AO was not satisfied with the reply of the assessee and observed that there was sufficient reasons to believe that financial account submitted by the appellant were incorrect and false and hence accordingly rejected. Therefore, the difference in the sale of energy amounting to Rs.56,20,70,000.00/- (1202070000/-64,00,00000/-) was stated as understatement of income on account of sale of energy shown by the assessee during the year under consideration.

3. While confirming the addition, the Id. CIT(A) has observed as under:

“Decision- As mentioned in the assessment order, as per point 13A(i) of annexure A of form 6B of the audit report of the auditor it has been observed that assessee had shown sale of energy amounting to Rs 64,00,00000/- which is the amount actually received by the assessee from sale of energy to the state government, whereas the company was required as per law to book the energy sale on accrual basis during the FY 2006-07 amounting to Rs 1202070000/- though not shown in the financial statements to the income tax department.

The argument of the assessee was that the revenue should be measured at the fair value of consideration received or receivable. That it may be appropriate to recognize revenue only when it is reasonably certain that ultimate collection will be made. Where there is no uncertainty as to ultimate collection, revenue is recognized at the time of sale or rendering of service even though payments are made by installments. When there is uncertainty relating to collect ability arises subsequent to the time of sale or the rendering of the service, it is more appropriate to make a separate provision to reflect the uncertainty rather than to adjust the amount of revenue originally recorded. When recognition of revenue is postponed due to the effect of uncertainties, it is considered as revenue of the period in which it is properly recognized.

The AO had rejected the argument of the appellant in the assessment order which interalia include-

1. *The ultimate collection of revenue cannot be set to be uncertain at the time of making sale of electricity to JKPDC. The assessee produces and sells electricity to the power development department for onward transmission. After selling the electricity the corporation bills the same to PDD on the basis of agreement. At the time of selling electricity and billing it to PDD, the electricity has been received by PDD and the amount of sale can be reasonably determined and there is no uncertainty as to the collectability of the billed amount at the time of sale of electricity. The only uncertainty is for the collection of interest charged on the late payments by the PDD.*
2. *The assessee has not claimed any bad debts/provision for bad debt in its accounts. As per AS 9 when the uncertainty relating to collectability arises subsequent to the time of sale or rendering of service, it is more appropriate to make a separate provision to reflect the uncertainty rather than to adjust the amount of revenue originally recorded. Hence the original amount billed amounting to Rs 120,20,60,000/- cannot be reduced.*
3. *The accounting policy for revenue recognition defined by the assessee corporation and appended to the financial statements signed by the CA, B K Vaid for FY 2005-06 says "revenue is recognized by the company on accrual basis as and when the energy is generated and supplied to the power development department, J&K government including the energy generated by Gas turbine." Since the company has defined its policy for revenue recognition for making financial statements audited under the companies act 1956, it cannot change its accounting policy for the purpose of filing of income tax returns under the IT act. Also there is no provision under the IT act 1961 to adopt a hybrid system of accounting.*
4. *The uncollectivity of the revenue by the assessee corporation cannot be determined as it has not produced any document either from state power of payment to the assessee corporation. Also as per assessee, the debtor is indirectly the government of the state of J&K. The funds receivable from the state government cannot be said to be unrecoverable.*

5. Assessee is a separate entity than the state government of J&K and cannot make its revenue recognition depended on the budgets of the state government.
6. As admitted by the assessee, the statutory audit was not carried out till filing of IT return.

In view of the above observations of the AO, I am fully in agreement with the AO that there are sufficient reasons to believe that the financial accounts submitted by the appellant are incorrect and false and were rightly rejected. Hence the difference in the sale of energy amounting to Rs 56,20,70,000/- (1202070000 - 640000000) was rightly treated as understatement of income on account of sale of energy shown by the assessee during the year under assessment which addition is confirmed.”

4. The Id. counsel for the assessee of Sh. R. K. Gupta, Adv. submitted that there was no understatement of the income as the assessee company has shown sales to this extent stands realized and the sales were in consistent with the method of accounting being followed by the appellant company. He filed a brief synopsis which reads as under:

“Ground of Appeal

That the Worthy CIT(A) is not justified in sustaining the impugned addition of Rs.56,20,70,000 on account of difference in sale of energy treating it as understatement of income whereas the appellant company has shown sales to this extent these stands realized and this is consistent with the method of accounting being followed by the appellant company.

Facts of the case emanating from Assessment order:

- i) *Returns of income filed on 14.11.2007 at nil income. Tax Audit Report and Annual Accounts filed with return of income are placed at page 5-22 of paper book.*

- ii) *Due to complexity alleged by Ld. A.O the appellant company was subject to Special Audit u/s 142(2A) of the I. Tax Act, 1961. Report of Special Audit is placed at page 23-95 of paper book.*
- iii) *Various questionnaires were issued and complied with.*
- iv) *Of the various additions which stands deleted by Worthy CIT(A) the department is not in appeal.*
- v) *The addition on which Worthy CIT(A) has not given relief is addition of Rs.56,20,70,000/- on account of sale of energy discussed in para 3.01 by Ld. A.O. in his order. The relevant page of assessment order are 14 to 16.*
- vi) *Although the appellant company has followed accrual system of accounting yet for sale of energy it has followed to book only that much sales which have been realized. This is right from the year of inception to the year of assessment under consideration. Both the Special Auditor as well as Ld. A.O have failed to appreciate that even the amount realized of prior years have been offered to tax in the year under consideration. Relevant para 11(a) of Form 3CD of statement of particulars required to be furnished under section 44AB of the I. Tax reveal about the method of accounting (placed at page 5-22 of paper book and relevant page 11). Even the Special Auditor has highlighted the system of accounting to be cash basis for sale of energy as per para 2 of Annexure 'A' to form 6B of Special Report (page 23-95 of paper book; relevant page 27).*
- vii) *The Worthy CIT(A) has confirmed the addition on similar line as Ld. A.O has discussed in order. The Worthy CIT(A) has also ignored the very fact that Revenue has taxed the sales of energy in preceding assessment years on cash basis only. The relevant pages of CIT(A)'s order are 5-7 of his order.*

Hence, we are in appeal before your Honour.

1. *That consistency of booking sales on cash basis should have been accepted by department. By this method of realization basis, there is no loss to revenue and due taxes are paid. Earlier the cash system of accounting has been followed is duly disclosed by Tax Auditors as well as by Special Auditor and it is not a disputed fact.*
2. *The assessment order passed by Ld. A.O in respect of Assessment year 2008-09 is placed at page 97-100 of paper book. Kind attention is invited to para 3 of the order; relevant page 98 of paper book. The Ld. A.O has specifically stated in 4th line of this para that "During the year under*

consideration the company has changed the system of accounting from cash to mercantile resulting in increase in revenue of Rs.36,86,66,000".

3. *Your Honours, this assessment order has been passed on 24.12.2010 for which return of income has been filed well within due date on 30.09.2009. The appellant company has Suo-moto declared the additional revenue of Rs.36,86,66,000/- due to change in method of accounting. Then application of this change in method by Special Auditor as well as by Ld. A.O in the year under consideration in April 2010 is a sheer mistake and mockery resulting into double laxation. The department without making any exercise on the issue has accepted the version of Special Auditors that bills of electricity have been raised for an amount of Rs.1,20,20,60,000/-. In order to change a method of accounting an exercise has to be done from inception that these are the dues; these are the realizations and this much is the short fall. Once this exercise has been done the excess or shortfall to be accounted for to follow the change in accounting method.*

4. *Your Honours two submissions for your kind consideration based on which the order of A.O in imposing this addition is bad in law:*
 - i) *Consistency: once the appellant company has offered its sales of energy on realization basis right from inception to year under consideration then principal of consistency must have been accepted. It is law of land laid down by Hon'ble Supreme Court in a Historical Judgement in the case of Radhasoami Satsang vs. CIT; [193 ITR 321 (SC)] Placed at page 101-109*

 - ii) *Change in Accounting Method: The appellant has changed the method of accounting for booking sale of energy from realization method to mercantile accounting from succeeding A.Y 2008-09. And after proper exercise has offered to tax additional revenue from sale of energy amounting to Rs.36,86,66,000/-. The Ld. A.O in his order passed u/s 143(3) dated 24.12.2010 has stated all about this and has accepted the additional revenue determined at Rs.36,86,66,000/-. Thus, if action of Ld. A.O in adding Rs.56,20,70,000/- on alleged account of booking sale on accrual basis is accepted it shall amount to two mistakes:*
 - a) *one double taxation as the appellant company has changed the method from cash to accrual in following year & has offered to tax additional revenue of Rs.36,86,66,000/- in addition to regular sales on accrual basis;*

b) second the Ld. A.O is not justified in his calculation of Rs.56,20,70,000/-. This exercise has to be done right from inception till the year under consideration and then he has to reduce from that amount the sum of Rs. 36,86,66,000/- offered to tax of preceeding years in following year. Thus without this exercise the addition made by Ld. A.O is wrong, unjustified and bad in law.

5. Thus, once the appellant company has itself offered to tax an amount of Rs. 36,86,66,000/- in A.Y. 2008-09 by making change in Accounting Method and Ld. A.O has accepted it in scrutiny then the order passed for A.Y. under consideration is absolutely wrong in adding Rs.56,20,70,000/- on the issue which stands addressed correctly and rightly and which is not controverted by Ld. A.O in the following year.

6. Other case laws of Hon'ble SC

(i) *UCO Bank vs CIT Placed at page 110-117*

(ii) *CIT Vs Realest Builders & Services Ltd; Placed at page 118-120*

It is, therefore, prayed that addition imposed by ld. AO amounting to Rs.56,20,70,000/- may kindly be deleted."

5. The ld. DR stands by the impugned order.

6. Heard both the sides and perused the material on record. Admittedly, the Ld. CIT(A) has sustained the addition of Rs.56,20,70,000 on account of difference in sale of energy treating it as understatement of income. The Ld. AR contended that the appellant company has shown sales to the extent of disputed amount of Rs.56,20,70,000 and the same sales stands realized as per the method of accounting being followed by the appellant company consistently.

7. It is seen that the appellant company was subject to Special Audit u/s 142(2A) of the I. Tax Act, 1961 and report of Special Audit is placed at page 23-95 of paper book. We find that although the appellant company has followed accrual system of accounting, yet for the purpose of sale of energy it has followed to book only sales to the extent of realization. This method of accounting of sales realization is followed right from the year of inception to the year of assessment under consideration. In our view, the Special Auditor as well as Ld. A.O have failed to appreciate that even the amount realized during prior years have been offered to tax as in the year under consideration. Relevant para 11(a) of Form 3CD of statement of particulars required to be furnished under section 44AB of the I.T Act reveal about the method of accounting (APB, Pgs. 5-22) where the Special Auditor specified the system of accounting to be cash basis for sale of energy as per para 2 of Annexure 'A' to form 6B of Special Report (APB, Pg.7).

8. From the record, it is evident that the CIT(A) has confirmed the finding of the AO, ignoring the very fact that Revenue has taxed the sales of energy in preceding assessment years on sales realization on cash basis only (APB, Pgs. 5-7). Moreover, it is an undisputed fact that the cash system of accounting has been followed is duly disclosed by Tax Auditors

as well as by Special Auditor. We are of the considered view that consistency in booking of sales on cash basis should have been accepted by department as there was no loss of revenue, by this method of realization of sales. From the para 3, of the assessment order for Assessment Year 2008-09, the AO has admitted on record that "During the year under consideration the company has changed the system of accounting from cash to mercantile resulting in increase in revenue of Rs.36,86,66,000".

9. It is noticed that the department has accepted the version of Special Auditors that bills of electricity have been raised for an amount of Rs.1,20,20,60,000/- without application its mind to the standard principles of accounting system, change of method of accounting sue moto by assessee company, the resultant revenue gains on the principle of consistency on the disputed issue of booking of sales of energy/electricity. As per accounting method, in order to change a method of accounting an exercise is required to be done from the very inception of business activity of sale of energy that these were the dues; these were the realizations and this much was the short fall. Once this exercise has been done, the excess or shortfall to be accounted for, to follow the change in accounting method is ignored by the authorities below.

10. In view of the settled principle of rule of consistency, by the Hon'ble Apex Court in a Historical Judgement in the case of Radhasoami Satsang vs. CIT (Supra), the authorities below ought to have been accepted, the appellant company's sales of energy on realization basis right from inception to year under consideration on principal of consistency. Over and above, if action of Ld. A.O and the Ld. CIT(A) in adding Rs.56,20,70,000/- on alleged account of booking sale on accrual basis is accepted, it would amount to double taxation as the appellant company has changed the method from cash to accrual in following year and has offered to tax additional revenue of Rs.36,86,66,000/- in addition to regular sales on accrual basis and further this exercise has to be done right from inception till the year under consideration subject to credit of the sum of Rs. 36,86,66,000/- offered to tax in following year.

11. Considering the factual matrix and the judicial precedents on rule of consistency, we accept the grievance of the assessee as genuine. Accordingly, we set aside the impugned order and as such the addition Rs.56,20,70,000/- stands deleted.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 16.11.2022

**Sd/-
(Anikesh Banerjee)
Judicial Member**

**Sd/-
(Dr. M. L. Meena)
Accountant Member**

GP/Sr/PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

True Copy
By Order