

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI**  
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।  
**Before Shri V. Durga Rao, Judicial Member &  
Shri Manoj Kumar Aggarwal, Accountant Member**

आयकर अपील सं./I.T.A. Nos.3016 & 3017/Chny/2019  
निर्धारण वर्ष/Assessment Years: 2015-16 & 2016-17

The Deputy Commissioner of  
Income Tax,  
Corporate Circle 3(1),  
Chennai 600 034.

Vs. M/s. Tamilnadu Generation &  
Distribution Corporation Limited,  
No. 144, NPKRR Maaligai,  
Anna Salai Chennai 600 002.  
**[PAN:AADCT4784E]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A. Nos. 3077 & 3078/Chny/2019  
निर्धारण वर्ष/Assessment Years: 2015-16 & 2016-17

M/s. Tamilnadu Generation &  
Distribution Corporation Limited,  
No. 144, NPKRR Maaligai,  
Anna Salai Chennai 600 002.

Vs. The Assistant Commissioner of  
Income Tax,  
Corporate Circle 3(1),  
Chennai 600 034.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Department by : Shri M. Rajan, CIT  
Assessee by : Shri R. Vijayaragahavan, Advocate  
सुनवाई की तारीख/ Date of hearing : 03.01.2023  
घोषणा की तारीख /Date of Pronouncement : 06.01.2023

**आदेश /O R D E R**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

These cross appeals filed by the Revenue as well as assessee are directed against common order of the Id. Commissioner of Income Tax (Appeals) 11, Chennai, dated 07.08.2019 relevant to the assessment

years 2015-15 and 2016-17. Considering the common grounds raised in both the assessment years, all the appeals were heard together and being disposed off by this common order for the sake of brevity.

2. The first ground raised in the appeal of the Revenue is relating to deletion of understatement of income of ₹.39,32,37,000/- for the assessment year 2015-16 and undisclosed lease rental income ₹.6,69,00,000/- for the assessment year 2016-17. In the assessment order for the assessment year 2015-16, on verification of the details furnished by the assessee, the Assessing Officer has noted that the assessee has not accounted the income of ₹.39,32,37,000/- as per the observations of the Accountant General. The observations of the Accountant General were not contested but the assessee has stated that the same would be accounted in the subsequent assessment years, which was not accepted and accordingly, the entire income of ₹.39,32,37,000/- was brought to tax.

2.1 Similarly, for the assessment year 2016-17, as per the observations of the Accountant General that an amount of ₹.6,69,00,000/- towards lease rental income has not been accounted, the Assessing Officer brought to tax the understatement of income.

2.2 On appeal, after considering the submissions of the assessee, the Id. CIT(A) has observed and held as under:

*“22. The submissions are considered. The Office of Accountant General had pointed out understatement of income by the assessee for AY 2015-16. The income of ₹.39,32,37,000/- for AY 2015-16 has been accounted by the assessee in AY 2016-17 considering the fructification of income in Financial Year 2015-16 on account of audit observation. To this extent, there is no need to bring this amount for taxation for AY 2015-16. Assessing Officer is directed to delete this addition of ₹.39,32,37,000/- for AY 2015-16. The explanation filed by the assessee for AY 2016-17 with respect to the amounts of ₹.6,69,00,000/- is accepted on facts considering the revenue neutral nature of accounting for ₹.3,72 crores and disputed lease rent with respect to ₹.2.97 crores. The Assessing Officer is directed to delete this addition of ₹.6,69,00,000/- for AY 2016-17.*

3. The next ground raised in the appeal of the Revenue is relating to prior period expenses. In the grounds of appeal, the Revenue has contended that the Id. CIT(A) failed to apply the rationale for income as applied by the Id. CIT(A) in assessee's own case on an appeal against order u/s. 143(3) on the issue of prior period expenses of ₹.848,69,68,749/- for AY 2011-12, which was disallowed in the original assessment and was sustained on account of omission and negligence on the part of the assessee by the Id. CIT(A) while rendering judgement for the assessment years 2006-07 to 2013-14.

4. With regard to the above grounds raised by the Revenue, the Id. DR has submitted that after considering various details furnished by the assessee with regard to the claims for the first time before the Id. CIT(A), the Id. CIT(A) has directed the Assessing Officer to delete the additions

made without granting an opportunity to the Assessing Officer to verify the claims of the assessee is in violation of Rule 46A of the Income Tax Rules, 1962 and pleaded that the above issues may be remitted back to the file of the Assessing Officer for detailed verification of the claims of the assessee against, which, the Id. Counsel for the assessee has not raised any serious objections.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. Against the disallowances of (1) understatement of income as well as lease rental income and (2) prior period expenses, on perusal of the appellate order, we find that the Id. CIT(A) has not called for remand report upon various detailed submissions of the assessee, before deciding the issues, appears to be in violation of Rule 46A of the Income Tax Rules, 1962. Accordingly, we set aside the order of the Id. CIT(A) on the above issues and remit the matter back to the file of the Assessing officer for fresh adjudication after detailed verification of claims of the assessee in accordance with law by affording sufficient opportunities of being heard to the assessee.

6. The first common ground raised in the appeals of the assessee relates to confirmation of disallowance of guarantee commission. In the

assessment order, the Assessing Officer has noticed from the schedules annexed to the Profit and Loss account that the assessee-company has claimed guarantee commission to State under the Head "INTEREST AND FINANCE CHARGES". However, the Assessing Officer has observed that the guarantee commission was only a provision and never a payment for any of the earlier years. This commission is provided for the guarantee given by the Government of Tamilnadu on the portion of loans raised by it for its resource mobilization. It was further noted that the information furnished in earlier years, the assessee company has also received waiver from Government of Tamilnadu from payment of guarantee commission. However, in the letter filed on 21-12.2018, it was stated that TANGEDCO could not pay this amount and the waiver request by TANGEDCO was not accepted by the Government. Since the provision of guarantee commission, never seriously intended to be paid and never subsequently paid, cannot be allowed as expenditure and accordingly, the amount claimed under the above head was disallowed for both the assessment years under appeal and brought to tax.

6.1 On appeal, after considering the submissions of the assessee, the Id. CIT(A) has observed as under:

*“12. The facts and circumstances of the case have remained to be the same. The assessee company had not paid any guarantee commission of any earlier years up to 31.03.2016. The assessee company has now*

*submitted that it has been directed by GoTN to pay the outstanding guarantee commission in 15 EMIs starting from August 2018. The assessee company claims to have started remitting the guarantee commission to GoTN. However, it is noted that events and actions subsequent to 31.03.2016 cannot be considered for deciding the allowability of the claim for AY 2015-16 and AY 2016-17. The guarantee commission debited of Rs.169,64,35,896/- for AY 2015-16 and Rs.211,85,00,000/- for AY 2016-17 shall continue to remain disallowed. The grounds on this issue are rejected.”*

6.2 On being aggrieved, the assessee is in appeal before the Tribunal for both the assessment years. By referring to the letter dated 09.07.2018 addressed to the Principal Secretary to Government, the Id. Counsel for the assessee has submitted that the assessee has proposed to settle the outstanding guarantee commission of earlier years including the assessment years 2015-16 and 2016-17 and therefore, the addition made towards disallowance of the above expenses should be allowed.

6.3 On the other hand, the Id. DR has submitted that the assessee has not produced any evidence for the payment of outstanding guarantee commission and hence the expenses should not be allowed.

6.4 We have heard the rival contentions and perused the materials available on record. Admittedly, the assessee has proposed for payment of outstanding guarantee commission in 15 equal monthly instalments. However, the assessee has not produced any evidences towards approval of the Government for the above proposal of the assessee or

payment of guarantee commission as proposed by the assessee. Thus, we are of the considered opinion that in case the assessee has incurred expenses towards payment of guarantee commission as proposed pertaining to the relevant assessment years, the Assessing Officer is required to allow the expenses. Accordingly, we direct the assessee to produce necessary evidences before the Assessing Officer and the Assessing Officer is also directed to consider and decide the issue afresh after verification of the evidences as may be filed by the assessee in accordance with law by affording an opportunity of being heard to the assessee.

7. The next common ground raised in the appeals of the assessee relates to confirmation of disallowance of contribution to recognised provident fund. The assessee has debited contributions to recognised provident fund and claimed. Since the amounts payable to statutory authorities have not been paid, the Assessing Officer disallowed the same and brought to tax, which was confirmed by the Id. CIT(A). We find that the expenses are eligible to be claimed as a revenue expenditure only on the remittance of the same to PFRDI approved CPS fund. In case, the assessee made any remittance and incurred the expenses for the relevant assessment years, the Assessing Officer is directed to allow

the same. Thus, the ground raised by the assessee is allowed for statistical purposes.

8. The next common ground raised in the appeals of the assessee relates to confirmation of certain prior period expenses for both the assessment years. Since, similar issue raised by the Revenue for both the assessment years hereinabove have been remitted back to the file of Assessing Officer, we remit the ground raised by the assessee also to the file of the Assessing Officer for fresh consideration.

9. The next common ground raised in the appeals of the assessee relates to confirmation of disallowance of over statement of expenditure. As per the observations of the Accountant General of Tamil Nadu, the Assessing Officer has disallowed the over statement of expenditures for both the assessment years, which was confirmed by the Id. CIT(A). Before us, the Id. Counsel for the assessee has submitted that the overstatement of expenses were corrected through rectification journal vouchers in the ensuing financial year and alternatively it was submitted that the amount of ₹.293,66,00,000/- is disallowed in the assessment year 2015-16, the same may be directed to be allowed in the assessment year 2016-17. Similarly, it was also submitted for the assessment year 2016-17 towards disallowance of ₹.10,80,00,000/- that ₹.7.83 crores may be

directed to be allowed in the assessment year 2015-16 and ₹.2.97 crores may be directed to be allowed in the assessment year 2017-18. Accordingly, we direct the Assessing Officer to examine and decide the issue afresh in accordance with law for both the assessment years by considering the explanations as may be submitted by the assessee.

10. In the result, all the appeals filed by the Revenue as well as assessee are allowed for statistical purposes.

Order pronounced on 06<sup>th</sup> January, 2023 at Chennai.

Sd/-  
(MANOJ KUMAR AGGARWAL)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 06.01.2023

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.