

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 2752/MUM/2022
Assessment Year: 2014-15**

ACIT, Circle-14(1)(1),
Room No. 432, 4th floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

Vs.

M/s Maharashtra State Power
Generation Company Limited,
Plot No. G9, Prakshgad, 2nd
floor, Anant Kanekar Marg,
Station Road, Bandra East,
Mumbai-400051.

**PAN No. AAECM 2935 R
Respondent**

Appellant

**CO No. 153/MUM/2022
(Arising out of ITA No. 2752/MUM/2022)
Assessment Year: 2014-15**

M/s Maharashtra State Power
Generation Company Limited,
Plot No. G9, Prakshgad, 2nd
floor, Anant Kanekar Marg,
Station Road, Bandra East,
Mumbai-400051.

Vs.

ACIT, Circle-14(1)(1),
Room No. 432, 4th floor,
Aayakar Bhavan, M.K.
Road,
Mumbai-400020.

**PAN No. AAECM 2935 R
Appellant**

Respondent

Assessee by : Mr. Niraj Sheth, AR
Revenue by : Smt. Mahita Nair, DR

Date of Hearing : 12/01/2023
Date of pronouncement : 19/01/2023



ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue and cross-objection by the assessee are directed against order dated 29.08.2022 passed by the National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2014-15 respectively. The ground raised by the Revenue is reproduced as under:

1. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition made by the AO of ₹5,14,18,327/- on account of prior period expenses merely relying on the submissions made by the AR of the assessee and on the basis of various judicial decisions made by the courts without considering the genuine fact of the case.*

2. The grounds raised by the assessee in cross-objection are reproduced as under:

1. *The appellant submits that, in case it is held that the prior period expenditure of ₹5,14,18,327/- are not to be allowed then the prior period income of ₹1,64,78,59,865/- credited to the profit and loss account too should not be taxed following the same logic/rationale as is applied for disallowance of the prior period expenditure.*



2. *In case it is held that the prior period expenditure are not to be allowed for the captioned assessment year then the Assessing Officer be directed to allow the expenses for the earlier year(s) to which they pertain to.*

2.1 Further, the assessee has also raised additional cross-objection, which is reproduced as under:

1. *The respondent submits that levy of interest under sections 234A, 234B and 234C of the Income-tax Act, 1961 is bad in law and the Commissioner of Income-tax (Appeals)-NFAC ought to have held as such.*

3. Briefly stated, facts of the case are that the assessee, a public sector undertaking of the state of Maharashtra, during the relevant year under consideration was engaged in the business of generation of electricity. The assessee filed return of income for the year under consideration on 27.11.2014 declaring net loss of ₹714,84,163,368/-. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. The assessment u/s 143(3) of the Act was completed on 30.12.2016 after making disallowance including prior period expenses of ₹514,18,327/-. In the demand notice interest u/s 234A, 234B, 234C and 234D of the Act were also levied.



4. Aggrieved, the assessee filed appeal before the Ld. CIT(A) but could succeed partly. Aggrieved with the order of the Ld. CIT(A), the Revenue is by way of appeal whereas, the assessee is by way of cross-objection as reproduced above.

5. In the ground raised by the Revenue in its appeal, the sole issue is regarding deleting the addition made by the AO of ₹514,18,327/- on account of prior period expenses.

6. We have heard rival submissions of the parties on the issue-in-dispute and perused the relevant material on record. Before the Ld. CIT(A), it was submitted by the assessee that prior period expenses were of the routine nature of the business and payments were deleted because of procedure delay and due to various administrative reasons. The assessee provided detailed breakup of prior period income/expenditure before the Ld. CIT(A). For ready reference, the said details is reproduced as under:

“2. The detailed breakup of the prior period income/expenditure is given hereunder for your Honour’s ready reference :

Particulars	Amount in ₹
<i>Other Income</i>	<i>4,78,01,845</i>
<i>Other excess provisions in prior periods</i>	<i>1,42,14,32,383</i>
<i>Coal/ Gas related gain</i>	<i>--</i>
<i>(Excess)/ short provision for depreciation</i>	<i>5,53,80,107</i>

In the consolidated order dated 22nd April 2021 the appeal in ITA No. 4440/M/2015 pertains to ‘Maharashtra State Power



Generation Co. Ltd.’ and ITA No. 3634/M/2017 pertains to ‘Maharashtra State Electricity Transmission Co. Ltd.’ – however, in the said order of the ITAT only the name of ‘Maharashtra State Power Generation Co. Ltd.’ has been erroneously mentioned against both the appeal numbers.

3.

Receipts from consumers	12,32,45,530
[A]	1,64,78,59,865
Expenses	
Fuel related (gains/losses)	2,09,24,739
Net interest and finance charges	-
Operating expenses	1,36,94,209
Employee costs	9,00,177
Excess in billing of earlier years	1,18,43,904
Material related expenses	40,55,298
[B]	5,14,18,327
Prior period (credits)/charges (Net (B-A))	1,59,64,41,538

During the course of assessment proceedings, the Assessing Officer had inter-alia called upon the Appellant to explain as to why the prior period expenses amounting to ₹5,14,18,538/- should not be disallowed while arriving at its normal profits.

6.1 The Ld. CIT(A) after considering the submission of the assessee held as under:

“I have considered the facts and circumstances of the case, the observations of the AO, submissions of the appellant and material available on record on the above matter. During the year under consideration appellant has shown prior period income of Rs 1,64,78,59,865 and prior period expense of Rs 5,14,18,327/-. AO accepted the income and disallowed the



prior period expenses of Rs 5,14, 18,327/- stating that the Act do not provide for claim of any prior period expenses. Appellant claims that the same should be allowed as the expenditure has crystallized during the year under consideration. This is recurring issue in the case of the appellant and the same has been decided in the favour of the appellant by the Hon'ble Mumbai TAT Bench. Appellant has submitted the copy of Hon'ble ITAT order ITA No 1394/MUM/2015 for AY 2010-11, ITA No 4440/Mum/2015 for AY 2011-12 in appellant case and ITA No 3634/Mum/2017 for AY 2012-13. ITA-No 3813/Mum/2009 for AY 2001-02, ITA No 1647/Mum/2010 for AY 2002-03 and ITA No. 1648/Mum/2010 for AY 2003-04 in the case of Maharashtra State Electricity Transmission Co Ltd. Thus in view of the above, following the decision of the Hon'ble ITAT Mumbai 'B' Bench, I hereby allow the claim of prior period expenses. Accordingly, the grounds of appeal No 2 to 2.3 of the appellant are hereby allowed.”

6.2 We find that the Ld. CIT(A) has deleted the addition on the reasoning that the expenditure in question had crystallized during the year under consideration. During the course of hearing before us, the Ld. Counsel of the assessee was asked to explain as how the relevant expenses have crystallized during the year under consideration. However, he could not file any documents or evidence in support of the claim that expenses crystallized during the year under consideration. In view of above facts, the reasoning



given by the Ld. CIT(A) for deleting the addition for prior period expenditure cannot be accepted. Accordingly, we set aside the finding of the Ld. CIT(A) and restore the matter back to the file of the Ld. Assessing Officer for deciding afresh with the liberty to the assessee to produce all the necessary evidence in support of its claim that prior period expenses under reference were crystallized during the year under consideration. The ground of appeal of the Revenue is accordingly allowed for statistical purposes.

7. In the additional cross-objection, the Ld. Counsel of the assessee raised the issue of levy of interest u/s 234A, 234B and 234C of the Act.

8. On perusal of the order of the Ld. CIT(A) on the issue-in-dispute, we find that the assessee was aggrieved for not granting credit of advance tax amounting to ₹162 crores. In this respect, the Ld. CIT(A) has directed the Assessing Officer to verify the claim of the assessee and allow the credit accordingly. The relevant finding of Ld. CIT(A) is reproduced as under:

“6.2 I have considered the facts and circumstances of the case, submissions of the appellant and material available on record on the above matter. Appellant has claimed that it has not been granted the Advance tax payment credit of Rs 1,62,00,00,000/-. Appellant has submitted copy of challan reflecting the payment made. In view of the above AO is directed to verify the contentions of the appellant and if it is



found that credit has not been given for advance tax paid, the same may be rectified. The ground of appeal no 3 to 3.3 are hereby allowed subject to verification by AO.”

8.1 Due to non-grant of credit for advance tax of ₹162 crores, the Assessing Officer has computed interest u/s 234B and 234C of the Act. The assessee filed an application for rectification of the said interest before the Assessing Officer. However, same has been stated to be pending. We find that the Ld. CIT(A) directed the Assessing Officer to recalculate interest u/s 234A, 234B and 234C of the Act. In our opinion, the computation of the interest has to be allowed after verification of due payment by the assessee and therefore, the Ld. CIT(A) has rightly directed the Assessing Officer to verify the said issue. We find that application of the assessee seeking rectification on this issue is also been stated to be pending before the AO. In the circumstances, we feel it appropriate to direct the Assessing Officer to comply with the direction of the Ld. CIT(A) if the rectification application of the assessee has not been disposed off by him. The ground raised in additional cross-objection of the assessee is accordingly allowed for statistical purposes.

9. Since, the ground raised in the cross-objection by the assessee are connected with the issue of prior period expenses which we have already restored to the file of the Assessing Officer and therefore, no separate adjudication required that ground of cross-objection are also allowed for statistical purposes.



10. In the result, both the appeal of the Revenue and cross-objection of the assessee are allowed for statistical purposes.

Order pronounced under Rule 34(4) of the ITAT Rules, 1963 on 19/01/2023.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated:19/01/2023
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,
(Sr. Private Secretary)
ITAT, Mumbai