

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. Nos.2429 and 2430/Chny/2017
निर्धारण वर्ष/Assessment Years: 2001-02 & 2003-04

M/s. Electronics Corporation of
Tamilnadu Ltd., No. 692, MHU
Complex, Anna Salai, Nandanam,
Chennai 600 035.
[PAN:AAACE1670K]

Vs. The Deputy Commissioner of
Income Tax,
Corporate Circle 2(1),
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri N. Arjun Raj, C.A.
प्रत्यर्थी की ओर से/Respondent by : Shri P. Sajit Kumar, JCIT
सुनवाई की तारीख/ Date of hearing : 21.02.2023
घोषणा की तारीख /Date of Pronouncement : 28.02.2023

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

Both the appeals filed by the assessee are directed against the common order of the Id. Commissioner of Income Tax (Appeals) 9, Chennai, dated 23.06.2017 relevant to the assessment years 2001-02 and 2003-04. The assessee has raised the following grounds for the assessment year 2001-02:

1. *The order of The Commissioner of Income Tax (Appeals) 9, Chennai dated 23.06.2017 in I.T.A.No.19/CIT(A)-9/2009-10 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.*

2. *The CIT (Appeals) erred in confirming the re-assessment completed for the Assessment Year under consideration without assigning proper reasons and justification and ought to have appreciated that the order of reassessment under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.*

3. *The CIT (Appeals) went wrong in recording the findings in this regard from para 7.2.1 to 7.2.20 of the impugned order without assigning proper reasons and justification.*

4. *The CIT (Appeals) erred in sustaining the taxation of monies received from M/s ELNET Technologies Limited in the hands of the appellant without assigning proper reasons and justification.*

5. *The CIT (Appeals) went wrong in recording the findings in this regard from para 7.3.1 of the impugned order without assigning proper reasons and justification.*

6. *The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.*

7. *The Appellant craves leave to file additional grounds/ arguments at the time of hearing.”*

2. Ground No. 1 is of general in nature requires no adjudication and accordingly, the same is dismissed.

3. Ground No. 2 & 3 is relating to reopening of assessment under section 147 of the Income Tax Act, 1961 [“Act” in short].

3.1 Facts are, in brief, that the assessee is a Public Limited Company, filed its return of income for the assessment year 2001-02 on 30.10.2001 admitting loss of ₹.3,72,900/- and book profit under section 115JB of the Act of ₹.6,67,950/- and claimed refund of ₹.33,99,523/-. The return of income was processed under section 143(1) of the Act on 30.09.2003

accepting the income returned. Thereafter, the case was selced for scrutiny and assessment under section 143(3) of the Act was completed on 29.10.2003 by raising demand of ₹.45,28,749/-.

3.2 Subsequently, the Assessing Officer has issued notice under section 148 of the Act on 31.03.2008 on the ground that there is an escapement of income within the meaning of section 147 of the Act and asked the assessee to file its reply. The assessee has filed its reply. The Assessing Officer has recorded the reasons for reopening as noted in the assessment order that the assessee company, M/s. ELCOT has promoted a joint venture with Elnet Technologies Limited for establishing Software Technology Parks. The Govt. of Tamil Nadu has allotted land in favour of the assessee company, which in turn agreed to lease out such allotted land for 90 years for construction and use by STPs. The lease deposit is liable to be repaid on the termination of the lease. However, one-time payment of ₹.14.29 crores inclusive of 20 per cent service charges on the land value were paid to the assessee company by Elnet Technologies. M/s. Elnet Technologies Ltd. requested the assessee company to receive payment in quarterly instalments and agreed to pay interest at 10.5 per cent on the outstanding balance. Government orders are awaited approving the above proposal. Meanwhile, M/s. Elnet

Technologies Ltd. has started paying instalments to the assessee company and so far paid ₹.475.15 lakhs. While making the above said payments, Elnet Technologies has deducted tax on the interest component of the payment. Pending orders from the Government of Tamil Nadu, the assessee company has kept the full amount including interest portion under 'Suspense' under the head 'other liabilities'. As the assessee company is adopting mercantile System of accounting, the interest income of ₹.50.01 lakhs from M/s. Elnet Technologies Limited to the assessee company has accrued and requires to be added to the total income. Therefore, the Assessing Officer has issued notice under section 148 of the Act as there is an escapement of income from taxation. Before the Assessing Officer, the assessee company has submitted as under:

“...M/s. Elnet Technologies Ltd was leased out land for establishing a Software Technology Park for 90 Years. It is a fact that Elnet was accorded permission to pay the Lease deposit in quarterly instalments with an interest rate of 10.50% p.a. As pointed out in our earlier correspondences, the Lease Deposit amount along with interest had been remitted to the Government of Tamil Nadu except the amount receivable from the Income Tax Department by way of refund which was deducted by M/s. Elnet Technologies Ltd. ELCOT was entitled to levy service charges @ 3.5% on the leased amount which had been recognised as income during the years concerned. As such, the interest accrued on the deposits was also shown under "Other Liabilities" Account as we were liable to pay the same to the Government of Tamilnadu. Hence we request you not to include the interest income of Rs.50.01 lakhs to the total income for the assessment year 2001-02.”

After considering the submissions of the assessee and in the absence of various details called for by the Assessing Officer, the assessment was completed under section 143(3) r.w.s. 147 of the Act dated 23.12.2009 by

assessing total taxable income at ₹.1,82,39,997/- after making addition towards disallowance of interest income of ₹.50,01,000/-. On appeal, the Id. CIT(A) confirmed the assessment order.

4. On being aggrieved, the assessee is in appeal before the Tribunal. So far as reopening of assessment is concerned, the Id. Counsel for the assessee has submitted that the notice issued under section 148 of the Act, which is beyond four years, there is no failure on the part of the assessee to disclose fully and truly all the details and therefore, the Assessing Officer, based on the information available on record, which were already filed by the assessee i.e., return of income, came to a conclusion that there is an escapement of income and reopened the assessment is invalid.

4.1 The Id. Counsel for the assessee has further submitted that in the return of income this amount was clearly shown under the head "other liabilities" and therefore, there is no failure on the part of the assessee to disclose truly and fully all the details. The Id. Counsel has relied on the decisions of Hon'ble Madras High Court in the case of Tenzing Match Works v DCIT 419 ITR 338 and also in the case of CIT v Elgi Tread (India) Ltd. 96 taxmann.com 254 (Mad).

5. On the other hand, the Id. DR has pointed that the assessee has simply shown in the return of income under Notes on account by giving the details. Therefore, the assessee has not fully disclosed all the details before the Assessing Officer and submitted that the reopening is valid.

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including notes of arguments and case law relied upon. In the return of income, the assessee had shown the receipt of interest income from M/s. Elnet Technologies Ltd. and M/s. Elnet Technologies Ltd. deducted TDS in the interest component and the entire amount was shown under "other liabilities" in the return. The assessee has not explained what "other liabilities" is by showing it under Notes of accounts. Therefore, it cannot be said that the assessee has disclosed fully and truly all the details before the Assessing Officer. Thus, in our opinion the Assessing Officer rightly reopened the assessment under section 147 of the Act. On appeal, the Id. CIT(A) has noted that there is no information that the Assessing Officer has examined either issues in the original assessment order or any questionnaire was issued on the matter or any submission was furnished by the assessee inviting the attention of the Assessing Officer on the issue. The Id. CIT(A) has further observed that no case was made

out to show that there was opinion already expressed by the Assessing Officer on the matter which is sought to be reviewed under the reassessment proceedings. He further noted that while hearing took place on 24.04.2017, the AR of the assessee was requested to furnish copy of the questionnaire issued by the Assessing Officer during the course of original assessment proceedings regarding the issue of assessability of interest income, in response to which, on 09.06.2017, when the AR appeared, has stated that such questionnaire could not be produced. Accordingly, the Id. CIT(A) has held that reopening was based on the tangible material and there had been reasons to believe that the income has escaped assessment from taxation and the reopening is in accordance with law.

6.1 On careful consideration of the entire facts and circumstances of the case, we are of the opinion that it is a clear case of escapement of interest income from taxation and therefore, the Assessing Officer by issuing notice under section 148 of the Act reopened the assessment under section 147 of the Act on the ground that there is an escapement of income from taxation which is in accordance with law.

6.2 So far as arguments of the Id. Counsel for the assessee is that there is no failure on the part of the assessee to disclose the entire

income is concerned, we find that in the return of income, the assessee has not made full and true disclosure. It was only shown as under "other liabilities" and he has not filed Notes on account before the Assessing Officer. Therefore, the Assessing Officer was not able to assess correct income of the assessee while concluding the assessment under section 143(3) of the Act. Further, we find that the case law relied on by the assessee has no application to the facts of the present case as the facts are entirely different. In view of the above, the issue raised by the assessee in ground Nos. 2 & 3 are dismissed.

7. So far as merits of the case is concerned, in the assessment order, the Assessing Officer has noted that the assessee company M/s. ELCOT had entered into an agreement with Government of Tamil Nadu for allotment of land in favour of the assessee, in turn, the assessee agreed to lease out such allotted land to M/s. Elnet Technologies Ltd. for establishing Software Technology Parks. In this connection, the assessee has received an amount of ₹.50,01,000/- from M/s. Elnet Technologies Ltd. and M/s. Elnet Technologies Ltd. ha deducted TDS on this amount. The case of the assessee is that the interest amount received from M/s. Elnet Technologies Ltd. by the assessee as intermediary and the interest amount is not belonging to the assessee and it has to the Government of

Tamil Nadu. In this context, the Assessing Officer has asked the assessee to file the following details:

- i. Agreement entered into with M/s. Elnet Technologies Ltd. for lease of land and payment of lease deposit.
- ii. Copy of G.O. issued by the Government of Tamil Nadu as per which the assessee is bound to remit the amounts received from M/s. Elnet Technologies Ltd. to the Government of Tamil Nadu along with interest.
- iii. Proof for payment of amounts received from Elnet to Government of Tamil Nadu.

The assessee has not filed any of the details before the Assessing Officer. Accordingly, the Assessing Officer added the above amount received from M/s. Elnet Technologies Ltd. as income of the assessee. On appeal, since the assessee has not filed any of the details, the Id. CIT(A) confirmed the addition made by the Assessing Officer.

7.1 Before us, the Id. Counsel for the assessee has submitted that the assessee has received the amount from M/s. Elnet Technologies Ltd. as an intermediary and therefore, it is not correct to say that it is income of the assessee and thus, it cannot be taxed in the hands of the assessee.

7.2 On the other hand, the Id. DR has submitted that the assessee has received the interest amount of ₹.50,01,000/- from M/s. Elnet Technologies Ltd. and paid TDS. Thus, the amount received by the

assessee from M/s. Elnet Technologies Ltd. is income of the assessee. He further pointed out that the assessee has not been able to file payment receipt from the Government of Tamil Nadu and therefore, it has to be taxed in the hands of the assessee.

7.3 We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The assessee, M/s. ELCOT had entered into an agreement with Government of Tamil Nadu for allotment of land. According to the agreement, the Government of Tamil Nadu allotted some land to the assessee for development of STPs. Thereafter, the assessee also entered into a joint agreement with M/s. Elnet Technologies Ltd. for establishing STPs. These two agreements are different agreements. The assessee, in connection with the establishment of STPs received interest amount from M/s. Elnet Technologies Ltd. and M/s. Elnet Technologies Ltd. deducted TDS and paid ₹.50,01,000/- to the assessee. When the Assessing Officer has pointed out that the assessee has received the amount of ₹.50,01,000/- from M/s. Elnet Technologies Ltd. and it would be income of the assessee and called for explanation. The assessee has submitted that it is not income of the assessee and it is income of Government of Tamil Nadu. We find that if the amount received by the assessee from M/s. Elnet

Technologies Ltd. is not income of the assessee and if at all it had paid to the Government of Tamil Nadu, the assessee should be remitted through banking channels only. If at all the assessee paid this amount, it can show its bank account before the Assessing Officer or before the Id. CIT(A) or even before the ITAT. Admittedly, the assessee was not able to file any proof for the payment made to the Government of Tamil Nadu. Under these facts and circumstances of the case, we are of the opinion that the amount received from M/s. Elnet Technologies Ltd. by the assessee is income of the assessee and the Assessing Officer has correctly taxed. We also find that the Id. CIT(A) has rightly decided the issue and no interference is warranted. Accordingly, the issue raised by the assessee in ground Nos. 4 & 5 are dismissed.

8. Ground Nos. 6 & 7 are general in nature requires no adjudication.

I.T.A. No. 2430/Chny/2017, AY: 2003-04

9. The grounds raised by the assessee for the assessment year 2003-04 are reproduced as under:

“1. The order of The Commissioner of Income Tax (Appeals) 9, Chennai dated 23.06.2017 in I.T.A. No.26/CIT(A)-9/2010-11 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in confirming the re-assessment completed for the Assessment Year under consideration without assigning proper reasons and justification and ought to have appreciated that the order of

reassessment under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

3. *The CIT (Appeals) went wrong in recording the findings in this regard in para 8.1.2 of the impugned order without assigning proper reasons and justification.*

4. *The CIT (Appeals) erred in confirming the disallowance of depreciation on the property at Nandanam in the computation of taxable total income without assigning proper reasons and justification.*

5. *The CIT (Appeals) went wrong in recording the findings in this regard in para 8.2.2 of the impugned order without assigning proper reasons and justification.*

6. *The CIT (Appeals) erred in sustaining the taxation of monies received from M/s ELNET Technologies Limited in the hands of the appellant without assigning proper reasons and justification.*

7. *The CIT (Appeals) went wrong in recording the findings in this regard in para 8.3 of the impugned order without assigning proper reasons and justification.*

8. *The CIT (Appeals) failed to appreciate that the transaction involving the state government and the M/s ELNET Technologies Limited was fully captured in the notes on arguments dated 18.05.2017 and ought to have appreciated that the full facts were not taken into consideration, thereby vitiating the mechanical finding in para 8.3 of the impugned order.*

9. *The CIT (Appeals) erred in sustaining the addition of Rs.19,86,480/- representing interest on the presumption of accrual of such sum on the unsecured loans given to joint venture companies in the computation of taxable total income without assigning proper reasons and justification.*

10. *The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.*

11. *The Appellant Graves leave to file additional grounds/arguments at the time of hearing.”*

Ground Nos. 1, 10 & 11 are general in nature and requires no adjudication.

10. Ground Nos. 2 & 3 raised by the assessee relates to reopening of assessment under section 147 of the Act. During the course of scrutiny assessment proceedings in the assessment year 2006-07, the Assessing Officer has noticed that the assessee has claimed depreciation on a property wrongly and the same was withdrawn and therefore, similar depreciation was claimed by the assessee in the assessment year 2003-04 for which the assessee is not entitled to. Accordingly, the Assessing Officer has issued notice under section 148 of the Act dated 16.03.2010 for reopening of assessment under section 147 of the Act for the assessment year 2003-04, which was completed under section 143(3) of the Act dated 20.01.2006. After following due procedure, the assessment was completed under section 143(3) r.w.s. 147 of the Act dated 27.12.2010. In this case, the original assessment was completed under section 143(3) on 21.01.2006, wherein the assessee has claimed depreciation. The Assessing Officer has reopened the assessment based upon the information ascertained during the course of scrutiny assessment proceedings for the assessment year 2006-07. It was noticed in the assessment year 2006-07 that the assessee has claimed depreciation on a property at Nandanam, Chennai on a WDV which included undivided share of land. The depreciation claimed on the undivided share in the land was disallowed by taking into the guideline

value of the land as on 03.01.2006 which was ₹.811/- per sq. ft. The total undivided share of land is 3463 sq. ft. and accordingly by applying the rate of ₹.811/- per sq. ft., the value of the land was arrived at ₹.28,08,493/-. The depreciation claimed at the rate of 10%^ on the land worked out to ₹.2,80,849/- was withdrawn in the assessment year 2006-07. Since similar depreciation on undivided share of land is claimed by the assessee for the assessment year 2003-04, the Assessing Officer has reopened the assessment under section 147 of the Act. Against the notice issued by the Assessing Officer under section 148 of the Act, the assessee has not filed the return of income. However, the assessee made submissions by filing a letter dated 27.10.2010 before the Assessing Officer. After considering the submissions of the assessee, the Assessing Officer has completed the assessment under section 143(3) r.w.s. 147 of the Act dated 27.10.2010 by disallowing the depreciation claimed of ₹.2,80,850/- and brought to tax.

11. The assessee carried the matter in appeal before the Id. CIT(A) and submitted that the Assessing Officer reopened the assessment without assigning proper reasons and the assessment order was passed out of time and that the Assessing Officer failed to appreciate that there was no failure on the part of the assessee to disclose material facts. The Id.

CIT(A) has considered the submissions of the assessee and observed that the submissions of the assessee are exactly similar to the submissions made for the assessment year 2001-02. Since the submissions of the assessee have already been considered and decided against the assessee for the assessment year 2001-02, the Id. CIT(A) has rejected the similar submissions made for the assessment year 2003-04 and confirmed that the reopening of assessment under section 147 of the Act is valid.

12. Before us, the Id. Counsel for the assessee has relied on the grounds raised by the assessee. We find that it is a clear case of escapement of assessment for taxation and the Assessing Officer by considering the entire facts, issued the notice under section 148 of the Act on the ground that there is an escapement of income as per section 147 of the Act, which was confirmed by the Id. CIT(A). Thus, we also find that the reopening of assessment under section 147 of the Act is valid and accordingly, ground Nos. 2 & 3 raised by the assessee are dismissed.

13. So far as merits of the case is concerned in respect of ground Nos. 4 & 5, the Assessing Officer has ascertained that the property at MHU Complex was allotted to the assessee by Tamil Nadu Housing Board

during September, 1994 for a consideration of ₹.1,67 crores. The sale consideration was @ ₹.1,300/- per sq. ft. The property allotted consisted of 12,802 sq. ft. of built up area and 3,463 sq. ft. of undivided portion of land. The assessee incurred substantial expenditure towards construction of interiors and partitions. The assessee also paid subsequently towards garage and car parking area. From the details filed, it is noted that the total purchase consideration paid to TNHB for purchase of the property was ₹.1,81,18,712/-. Out of this figure, the land value of ₹.28,08,493/- adopted in the assessment order for the assessment year 2006-07 was found to be quite reasonable and no further modification was required. Accordingly, depreciation claimed on this land value @ 10% was disallowed and added to the total income of the assessee. On appeal, the Id. CIT(A) confirmed the order of the Assessing Officer.

14. We have gone through the assessment order and also appellate order and find that the Assessing Officer has perfectly decided the issue and the Id. CIT(A) has confirmed the same. We find no infirmity in the order passed by the Id. CIT(A). Accordingly, ground Nos. 4 & 5 raised by the assessee are dismissed.

15. Ground Nos. 6, 7 & 8 raised by the assessee relates to interest income received from M/s. Elnet Technologies Limited. Similar issue has

been raised by the assessee in the assessment year 2001-02 in I.T.A. No. 2429/Chny/2017 and adjudicated hereinabove from para 7 to 7.3 and our findings are mutatis mutandis applies to these grounds of appeal raised in the assessment year 2003-04 as well. Accordingly, the ground Nos. 6, 7 & 8 are dismissed.

16. Ground No. 9 raised by the assessee relates to confirmation of addition of ₹.19,86,480/-. In the assessment order, during the course of reassessment proceedings, the Assessing Officer has noted from the Accounts – significant Accounting Policies 3.01.L(ii) that ₹.19,86,480/- being the interest on term loan due from Joint Venture Companies for the current year have not been included in the Profit & Loss account. As judicially held by Supreme Court in the case of Moris Industries Ltd., reported in 82 ITR 835, income can be said to accrue when it is due and postponement of payment does not affect the accrual of income. Hence, the assessee was asked to show cause why this amount of ₹.19,86,480/- should not be treated as the income of the company for the assessment year 2003-04. In response, the assessee submitted that the interest on the loan given to the four joint venture companies as mentioned in the notes on accounts is only information to their Shareholders, i.e., Tamilnadu State Government. The same was not provided in the

accounts during the year as they were all foreclosed by the term loan lenders (Financial Institutions). The company further stated that their investments in the above JV's had also been written off during the earlier years as per the advice of AG and Statutory Auditors. After considering the submissions of the assessee and verification with reference to records, the Assessing Officer noticed that under Sch. 10 to Balance sheet - Loans and advances, an amount of ₹.86,72,000/- was shown as loans to joint venture companies, with a qualification, 'unsecured considered good'. This amount was not written off as submitted by the assessee. The same figure is continuing even in subsequent assessment years. Hence, the Assessing Officer has not accepted the submissions of the assessee that the investments were written off. Since the assessee itself has considered the unsecured loan as 'good', the interest due on the same i.e., ₹.19,86,480/- has been treated as income accrued to the assessee and added to the total income of the assessee.

17. Before the Id. CIT(A), the assessee has submitted that the financial institutions who lent term loans for the joint venture entities treated such loans as NPA which prompted the assessee also to consider the monies paid to such joint venture companies as unsecured loans as not recoverable which consequently forced the assessee in not reckoning the

interest income in relation thereto. After considering the submissions of the assessee, the Id. CIT(A) has observed that as long as monies advanced are subsisting in the books of account, the accrual of interest income is taxable in the hands of the assessee. If the sums are not recoverable, nothing prevented the assessee from writing off of such sums in the books of the assessee and it is only in those circumstances that the interest income is not taxable. It is not correct to hold that the monies advanced are not recoverable on the basis of how other financing institutions who also lent monies to those companies treated such loans in their books of account. Just because others treated such loans as NPA, the assessee also giving the same treatment without undertaking independent worthiness of the lendee will not support the contention that such monies advanced are not recoverable. Thus, by holding that as long as the loan is subsisting, the interest which is due on such loans on accrual basis must be brought to tax, the Id. CIT(A) has confirmed the addition made by the Assessing Officer.

18. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The arguments of the Id. Counsel for the assessee is that the interest income is not recoverable from the joint venture companies on the ground that the debt

is already bad. In the assessment order, the Assessing Officer has noted that the assessee has not written off the loans in its books of account and the same figure is continuing even in subsequent assessment years. Moreover, the assessee itself treated the loan amount as “unsecured considered good” and interest due on the same. In view of the above, it cannot be said that the unsecured loan became bad debt and even the assessee company has not written off in the books of account and therefore, it cannot be allowed as bad debt. Thus, the ground raised by the assessee is dismissed.

19. In the result, both the appeals filed by the assessee are dismissed.

Order pronounced on 28th February, 2023 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 28.02.2023

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.