आयकर अपीलीय 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. No.349/Chny/2022**
निर्धारण वर्ष/Assessment Year: 2011-12

M/s. The Ramco Cements Limited, Ramamandiram, Rajapalayam 626 117, Tamil Nadu.	Vs.	The Assistant Commissioner of Income Tax, Corporate Circle 2, Madurai.

[**PAN: AABCM8375L]**

(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri S. Muralidhar, F.C.A.
प्रत्यर्थी की ओर से/Respondent by	:	Shri M. Rajan, CIT
सुनवाई की तारीख/ Date of hearing	:	23.02.2023
घोषणा की तारीख /Date of Pronouncement	:	12.04.2023

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the ld. Principal Commissioner of Income Tax, Madurai-1, Madurai, dated 30.03.2022 relevant to the assessment year 2011-12.

2. Brief facts of the case are that the assessee filed the return of income for the assessment year 2011-12 on 27.09.2011 admitting total income of ₹. 211,89,91,960/-. Subsequently, the case was selected for scrutiny and assessment was completed under section 143(3) of the

Income Tax Act, 1961 ["Act" in short] on 28.03.2014 assessing the income at ₹.253,02,71,728/-, which is inclusive of (i) addition of ₹.2,54,48,456/- towards fly ash collection system, (ii) addition of ₹.22,11,32,031/- towards cost of railway sidings treated and (iii) addition of ₹.11,33,14,261/- towards incentives under West Bengal Industrial Promotion assistance scheme. All the above additions were made after treating the above expenses as capital expenditure which was claimed as revenue expenditure in the return filed. The assessee carried the matter in appeal before the ld. CIT(A). The ld. CIT(A) held the issue in favour of the assessee in the issues of fly ash collection system, cost of railway sidings treated as capital expenditure and incentives under West Bengal Industrial Promotion assistance scheme. Aggrieved, the Department preferred an appeal before the ITAT. Vide order in I.T.A. No. 2275/Mds/2015 dated 27.07.2017, the ITAT remitted the all the three issues back to the file of the Assessing Officer for fresh consideration. Following the directions of the ITAT, the assessment under section 143(3) r.w.s. 254 of the Act was completed on 14.12.2019 in which the Assessing Officer treated the cost of railway sidings and incentives under West Bengal Industrial Promotion assistance scheme as capital in nature and added both the expenditures to the total income of the assessee. However, the Assessing Officer treated the expenditures incurred for

installation of fly ash collection system as revenue expenditure and allowed the same.

3. Subsequently, while exercising the powers conferred under section 263 of the Act, the ld. PCIT has noted from the assessment order under section 143(3) r.w.s. 254 of the Act that the expenditure incurred for installation of fly ash collection system was allowed by the Assessing Officer has revenue expenditure following the decision of the Hon'ble Apex Court in the case of Madras Auto Services P. Ltd. [1998] 233 ITR 468. The case law relied upon by the Assessing Officer relates to the assessment year 1968-69 before the insertion of Explanation 1 to section 32(1) of the Act. However, in the decision of the Hon'ble High Court of Madras in the case of CIT v. Viswams 414 ITR 148, wherein, it was held that "after the insertion of Explanation 1 to section 32 of the Act, it is immaterial whether the expenditure has been incurred in a leased premises as Explanation specifically provides where such expenditure had been incurred, the Act deems that the said structure or building is owned by the assessee and therefore, what is material was the nature of expenditure and not the ownership of the premises". Since the Assessing Officer has failed to take cognizance of decision of the Hon'ble Madras High Court in the above case while passing assessment order under

section 143(3) r.w.s. 254 of the Act dated 14.12.2019, the assessment is erroneous in so far as prejudicial to the interests of the Revenue, the ld. PCIT issued show-cause notice to the assessee under section 263 of the Act dated 23.02.2022. The assessee filed detailed explanations before the ld. CIT(A). However, the ld. PCIT was not convinced with the explanations given by the assessee, the ld. PCIT has opined that the assessment order passed under section 143(3) r.w.s. 254 of the Act dated 14.12.2019 is erroneous in so far as it is prejudicial to the interest of the Revenue and accordingly, partly set aside the assessment order passed under section 143(3) r.w.s. 254 of the Act on the issue of fly ash collection system and directed the Assessing Officer to redo the assessment.

4. On being aggrieved, the assessee is in appeal before the Tribunal. By reiterating the submissions as made before the ld. PCIT, the ld. Counsel for the assessee has submitted that the issue of expenditure incurred towards fly ash collection system is revenue expenditure or not, the issue is squarely covered in favour of the assessee by the decision of the ITAT in assessee's own case for the assessment year 2004-05 and prayed for following the same.

5. On the other hand, the ld. DR strongly supported the order passed

by the ld. PCIT by relying upon the decision in the case of CIT v. Viswams (supra).

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In the year 2002, the assessee company entered into two identical Memorandum of Understanding (MoUs) with Tamil Nadu Electricity Board (TNEB) for collection/removal of fly ash from the North Chennai Thermal Power Station and Mettur Thermal Power Station of TNEB respectively. Under these agreements, the assessee company was permitted to collect fly ash from these thermal power stations on the condition that the assessee should, at its own cost, construct and install the fly ash collection system at the respective thermal power stations of TNEB and upon installation, the said fly ash system will become the property of the TNEB. In the financial year 2010-11 (relevant to AY 2011-12), the assessee spent a sum of ₹. 2,99,39,363/- by way of renovation and replacement of parts of the fly ash handling system which had earlier been installed in the year 2002 and which had become the property of TNEB, as per the terms of the MOU. The renovation/replacement was necessitated since the existing fly ash system installed in the year 2002 had become obsolete and was not efficient in pumping out the entire fly ash generated by the

thermal units leading to mixing of fly ash with water and thereby causing pollution. Therefore, there was a direction from TNEB to upgrade the fly ash system and reduce the pollution levels. Accordingly, to comply with the same, the assessee company incurred the sum of ₹.2,99,39,363/- in the financial year 2010-11 for renovating and upgrading the fly ash systems at both the thermal power stations put together.

7. In the first round of litigation, the ITAT vide its order dated 27.07.2017, remitted the matter back to the file of the Assessing Officer for fresh consideration. Accordingly, after perusal of the submissions of the assessee as well as copy of the agreement and by following the decision of the Hon'ble Supreme Court in the case of CIT v. Madras Auto Services P. Ltd. [1998] 233 ITR 468 (SC), the Assessing Officer has concluded that the expenditure incurred for installation of fly ash collection system by the assessee of ₹.2,99,39,360/- was revenue expenditure and allowed as deduction after allowing depreciation @ 15% on the ground that the assessee could not claim the right on the fly ash collection system installed at the premises of TNEB as per the agreement entered into.

8. However, the ld. PCIT has observed that the case law relied on by the Assessing Officer in the case of CIT v. Madras Auto Services P. Ltd.

(supra), relates to the assessment year 1968-89 before the insertion of Explanation 1 to section 32(1) of the Act. It was further observed that the right to collect 100% of fly ash is a commercial right and falls well within the ambit of sub clause (b) of explanation 3 to section 32(1) of the Act. The ld. PCIT has relied on the decision of the Hon'ble High Court of Madras in the case of CIT v. Viswams 414 ITR 148, wherein, it was held that "after the insertion of Explanation 1 to section 32 of the Act, it is immaterial whether the expenditure has been incurred in a leased premises as Explanation specifically provides where such expenditure had been incurred, the Act deems that the said structure or building is owned by the assessee and therefore, what is material was the nature of expenditure and not the ownership of the premises".

9. Per contra, the ld. Counsel for the assessee has submitted that much after the Explanation was inserted to section 32(1) of the Act as per Taxation Law (Amendment and Miscellaneous Provisions) Act, 1986 w.e.f. 01.04.1988, the jurisdictional ITAT, vide its order in I.T.A. No. 2363/Mds/2007 dated 05.12.2008 decided the issue in favour of the assessee.

10. After considering the entire issue and examining the copy of agreement, the Assessing Officer has observed that the installation of fly

ash collection system in the premises of TNEB at the cost of the assessee is a pre-condition and the agreement relates to procurement of fly ash from Thermal stations of TNEB at the rate fixed by TNEB. The assessee has to clear and transport the fly ash from the premises of TNEB. This is a raw material required by the assessee for manufacture of cement. Installation of fly ash collection system will become the property of TNEB. The agreement did not envisage any right on the use of any machinery or equipment by the assessee. Further, after examining the 'Matching Concept" as per the directions of the ITAT in the light of case law of Hon'ble Supreme Court in the case of CIT v. Madras Auto Services P. Ltd. (supra), the Assessing Officer has observed that the assessee's case is coincide with the case of M/s. Madras Auto Services P. Ltd.. It was also observed that though the amount was incurred by the assessee is of capital in nature and enduring benefits from the expenditure will be received by the assessee for year after year, the assessee could not claim the right on the fly ash collection system installed at the premises of TNEB which is very clear from the agreement. Accordingly, the Assessing Officer has concluded that the expenditure incurred for installation of fly ash collection system by the assessee is revenue expenditure and allowed as deduction. Moreover, the Coordinate Benches of the Tribunal, in assessee's own case for the assessment year 2004-05 decided in the

similar issue in favour of the assessee. Under these facts and circumstances, we are of the opinion that the assessment order passed under section 143(3) r.w.s. 254 of the Act cannot be said as erroneous order. To invoke the provisions of section 263 of the Act, two conditions has to be satisfied i.e., (i) the order passed by the Assessing Officer is erroneous and (ii) the order is prejudicial to the interest of Revenue. In this case, the Assessing Officer, after making a detailed enquiry and after examining all the details, completed the assessment order under section 143(3) r.w.s. 254 of the Act. In our view, it is not a fit case to invoke section 263 of the Act. Thus, the order passed by the ld. PCIT under section 263 of the Act is quashed and allowed the appeal of the assessee.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 12th April, 2023 at Chennai.

Sd/-	Sd/-
(G. MANJUNATHA)	(V. DURGA RAO)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, 12.04.2023

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.