

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **1105/Chny/2022**

निर्धारण वर्ष / Assessment Year: 2018-19

M/s. Tamilnadu Industrial
Investment Corporation
Limited,
No. 692, MHU Complex,
Anna Salai, Nandanam,
Chennai – 600 035.

The Deputy Commissioner of
v. Income tax,
Corporate Circle -3(1),
Chennai – 600 034.

[PAN: AABCT-7737-M]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. R. Vijayaraghavan, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 15.06.2023

घोषणा की तारीख/Date of Pronouncement

: 28.06.2023

आदेश / O R D E R

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), New Delhi, dated 26.10.2022 and pertains to assessment year 2018-19.

2. The assessee has raised the following grounds of appeal:
"1. *The order of Commissioner of Income Tax (Appeals) /National Faceless Appeal Centre (NFAC) is contrary to law, facts and in the circumstances of the case.*

2. The Commissioner of Income Tax (Appeals) /National Faceless Appeal Centre (NFAC) erred in confirming the disallowance of the deduction of Rs.1,26,73,897/- made by the Appellant representing the provision for leave encashment / unearned leave reversed as the same has not been allowed as a deduction in the earlier years.

3. The Commissioner of Income Tax (Appeals) /National Faceless Appeal Centre (NFAC) ought to have appreciated that claim for Rs.1,26,73,897/- was not in the nature of expenditure for earned leave but actually the excess provision (which was not allowed in the earlier years) reversed and reduced from the expenditure incurred and hence has to be excluded as it did not constitute the income.

4. The Commissioner of Income Tax (Appeals) /National Faceless Appeal Centre (NFAC) ought to have appreciated that the excess provision for leave encashment of Rs.1,26, 73,897/- was reversed and reduced from the actual expenditure incurred by the Appellant in connection with payment made towards leave encashment / encashment of unearned leave reducing the gross expenditure which is allowable in the hands of the Appellant.

5 The Commissioner of Income Tax (Appeals) /National Faceless Appeal Centre (NFAC) ought to have appreciated that the actual amount paid in respect of Unearned leave encashment and encashment of privilege leave amounted to Rs.5,91,05,573/- (Unearned leave encashment of Rs.1,19,23,146/- and encashment of privilege leave of Rs. 4, 71,82,427/-) whereas the actual amount debited to the profit and loss account and claimed under this head is only Rs.4,64,31,676/(Unearned leave encashment of Rs.84,16,030/- and encashment of privilege leave of Rs. 3,80,15,646/-) as per Schedule-P of the printed account. This reduction was due to the excess provision no longer required being reduced from the expenditure.

6. The Commissioner of Income Tax (Appeals) /National Faceless Appeal Centre (NFAC) ought to have appreciated that reduction in claim of expenditure of Rs.1,26, 73,897/- represented the withdrawal of provision no longer required which was credited to the expenditure whereby reducing the expenditure claimed. As this is reduction in the claim of expenditure on account of reversal of provisions is not in the nature of taxable income as provision was not allowed in the

earlier years, the claim of the Appellant should have been accepted.

7 The Appellant reduced this amount of Rs.1,26, 73,897/- in the memo of income in view of the fact that this amount has effectively reduced the expenditure claimed and as this amount did not represent the income, the same required to be reduced from taxable income.

8 The Appellant craves leave to file additional grounds at the time of hearing.”

3. The brief facts of the case are that, the assessee M/s. Tamilnadu Industrial Investment Corporation Ltd., has filed its return of income for the assessment year 2018-19 on 29.10.2018, declaring total income of Rs. 24,34,77,100/-. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that the assessee has claimed deduction for provision for leave encashment at Rs. 1,26,73,897/- and thus, by considering submissions of the assessee disallowed provision for leave encashment at Rs. 1,26,73,897/- and determined total income of Rs. 25,61,50,998/-. The assessee carried the matter in appeal before the first appellate authority, but could not succeed. The Id. CIT(A), for the reason stated in their appellate order dated 26.10.2022, rejected arguments of the assessee and sustained additions made by the Assessing

Officer towards disallowance of provision for leave encashment amounting to Rs. 1,26,73,897/-. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

4. The Ld. Counsel for the assessee, submits that the Id. CIT(A) erred in confirming the disallowance of deduction of Rs. 1,26,73,897/- towards provision for leave encashment without appreciating fact that deduction claimed by the assessee is not a provision, but actual payment. However, the assessee has wrongly credited reversal of excess provision for leave encashment to actual payment account instead of provision for leave encashment account. Therefore, the issue may be set aside to the file of the Assessing Officer to verify the facts with regard to the claim of the assessee and to decide the issue in accordance with law.

5. The Id. DR, supporting the order of the CIT(A) submits that deduction claimed by the assessee is for provision for leave encashment, but not for actual payment and this fact has been brought out by the Assessing Officer and the Id. CIT(A). Therefore, there is no reason to set aside the appeal to the file of the Assessing Officer.

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The appellant provides for liability towards leave encashment by debiting to profit and loss account and crediting to provision for leave encashment account. In the memo of computation of taxable income the provision is added back and actual payment of leave encashment is claimed as deduction u/s. 43B(f) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). From the current year, there was a reduction in LIC computation of provision to be made towards leave encashment to the extent of Rs. 1,26,73,897/-. It was the claim of the appellant that the reduction in the provision for leave encashment to the extent of Rs. 1,26,73,897/- has been withdrawn from liability from the provision for leave encashment shown in the balance sheet, but instead of crediting it to the liability account, the amount has been reduced (credited) to the actual amount of leave encashment paid to the employees during the year. Since, the provision for leave encashment has been added back in the computation of taxable income, the amount withdrawn towards excess provision is not taxable as the provision was not allowed as a deduction earlier. As a result, in the profit and loss account,

the corporation has claimed deduction u/s. 43B(f) of the Act towards actual payment, however, the Assessing Officer has disallowed actual payment towards leave encashment of Rs. 1,26,73,897/-, on the ground that it has credited to provision for leave encashment. The assessee has filed a detailed note explaining the actual payment of leave encashment and amount withdrawn from provision for leave encashment. We find that the arguments of the assessee appears to be correct, going by method of accounting followed by the assessee for claim of deduction towards payment for leave encashment and provision for leave encashment in the books of accounts. But fact remains that, facts needs to be verified from the Assessing Officer. Therefore, we set aside the issue to the file of the Assessing Officer and direct the Assessing Officer to re-examine the claim of the assessee in light of arguments that the assessee is making provision for leave encashment in the books of accounts and adding back the same in the memo of computation of taxable income and further claiming deduction towards payment for leave encashment u/s. 43B(f) of the Act. The Assessing Officer is directed to verify the claim of the assessee and decide the issue in accordance with law.

7. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the court on 28th June, 2023 at Chennai.

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)
न्यायिकसदस्य/**Judicial Member**

Sd/-
(मंजुनाथ. जी)
(MANJUNATHA. G)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 28th June, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF