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

आयकर अपील सं./**I.T.A. No.2218/Chny/2015**
निर्धारण वर्ष/Assessment Year: 2009-10

M/s. Renault Nissan Automotive India Private Limited, Plot No. 1, SIPCOT Industrial Park, Sriperumbudur, Kanchipuram District, Tamil Nadu 602 105.	Vs.	The Assistant Commissioner of Income Tax, Company Circle V(3), Chennai 600 034.

[PAN:AADCR7965B]

(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri N. V. Balaji, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Shri P. Dhivahar, CIT
सुनवाई की तारीख/ Date of hearing	:	23.08.2023
घोषणा की तारीख /Date of Pronouncement	:	30.08.2023

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. Commissioner of Income Tax (Appeals) 3, Chennai, dated 02.09.2015 relevant to the assessment year 2009-10.

2. Brief facts of the case are that the assessee has filed its return of income on 23.09.2009 for the assessment year 2009-10 declaring taxable income of NIL. The case was selected for scrutiny by issue of

notice under section 143(2) of the Income Tax Act, 1961 ["Act" in short] as well as notice under section 142(1) of the Act calling for details. After considering the submissions of the assessee, the Assessing Officer has completed the assessment under section 143(3) of the Act dated 12.03.2013 by assessing total income of the assessee at ₹.4,36,31,331/- after making disallowance of interest income of ₹.4,36,31,331/- as well as non-consideration of supplier cancellation charges of ₹.26,18,43,148/- as capital work-in-progress. On appeal, after considering the submissions of the assessee, the ld. CIT(A) upheld the additions made in the assessment order and dismissed the appeal of the assessee.

3. On being aggrieved, the assessee is in appeal before the Tribunal. The ld. Counsel for the assessee has submitted that the amount deposited in the bank account was received from the Promoters for the purposes of business and there is proximity between the amount deposited and business of the assessee.

4. On the other hand, the ld. DR has submitted that the above submissions of the ld. Counsel was not proved neither before the Assessing Officer nor before the ld. CIT(A) and the matter may be

remitted back to the file of the Assessing Officer to examine and decide the issue afresh.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including paper book filed by the assessee. During the assessment year under consideration, the assessee was incorporated on 25.09.2007 and in the process of setting up its plant at Oragadam, Chennai. The objective of the company was to manufacture and supply power train and components thereof to its group companies Nissan Motor India (P) Ltd and Renault India Pvt. Ltd engaged in manufacture, assembly and sale of automobiles. The joint ventures to the project contributed equity share capital in a phased manner during the year. The funds were primarily required for setting up the business. The amount raised as share capital was temporarily placed in fixed deposits so that liquidity is ensured awaiting incurrence of expenditure towards the setup of the JV project. On account of the said equity infusion and temporary placement in fixed deposit, the appellant has received consequential interest of ₹.4,36,31,331/-. In the assessment proceedings, the Assessing Officer brought to tax the same as income from other sources relying on the decision of the Hon'ble Supreme Court in the case of Tuticorin Alkali &

Chemicals Fertilizers Ltd v. CIT, 227 ITR 172. In doing so, the Assessing Officer has rejected the plea of the assessee that the impugned interest was not taxable, being a capital receipt in terms of ratio relied upon by the appellant in CIT V. VGR Foundations (2007) 298 ITR 132 and Indian Oil Panipat Power Consortium Ltd v. ITO 315 ITR 255.

6. Before the ld. CIT(A), by reiterating the submissions made before the Assessing Officer the assessee has submitted that the decision relied on by the Assessing Officer in the case of Tuticorin Alkali Chemicals and Fertilizers v. CIT (supra) does not apply to the assessee's fact pattern as the decision has been rendered in the context of borrowed funds while the assessee has not made any borrowings but has only temporarily deployed the equity infusion in fixed deposits pending the project cost and claimed that the same is not taxable by placing reliance on the decisions of the Hon'ble Madras High Court in the case of CIT V. VGR Foundations (2007) 298 ITR 132 and Hon'ble Delhi High Court in the case of Indian Oil Panipat Power Consortium Ltd v. ITO (2009) 315 ITR 255. It was pleaded that these decisions have upheld that only interest earned out of deposits made from borrowed funds would be taxable as income from other sources and since share application money does not fall under the category of borrowed funds, interest earned from deposits made out of

share infusion would not be taxable as income from other sources. Therefore, the consequential interest received on the shareholder's funds temporarily deployed in fixed deposits to ensure liquidity is not subject to tax under income from other sources and is a capital receipt available for set off against preoperative expenses. After considering the above submissions of the assessee as well as relying upon the decision in the case of Tuticorin Alkali Chemicals and Fertilizers v. CIT (supra), the ld. CIT(A) dismissed the ground raised by the assessee.

7. Before the Tribunal, the ld. Counsel for the assessee has submitted that the shareholders of the assessee company had infused funds in the nature of share capital to facilitate the procurement of capital assets, which were to be utilized for carrying out the business of manufacture and supply power train and components thereof to its group companies Nissan Motor India (P) Ltd and Renault India Pvt. Ltd engaged in manufacture, assembly and sale of automobiles. Pending procurement of capital assets, the same was deployed temporarily in fixed deposits. It was further argued that the interest income is inextricably linked and has direct proximity with the setting up of business of the assessee and the same cannot be brought under the head “income from other sources” and can be taxed. However, on perusal of the assessment order and appellate order, we find that the assessee has not taken up the above plea or proved neither before the

Assessing Officer nor before the ld. CIT(A). To meet the ends of natural justice, we remit the matter back to the file of the Assessing Officer to examine and decide the issue afresh in accordance with law by affording an opportunity of being heard to the assessee to substantiate its claim with suitable explanation.

8. The next ground raised in the appeal of the assessee relates to treatment of cancellation charges and as to whether it qualifies to be added to capital work-in-progress. Before the ld. CIT(A), by raising a specific ground, the assessee has contended that the Assessing Officer has not given due consideration to the assessee's submission regarding capitalization of supplier cancellation charges. The relevant facts are stated in the appellate order are that in the month of February, 2008, the assessee had entered into a Memorandum of Understanding ('MoU') with the Government of Tamil Nadu to invest INR 4,500 crores within a period of seven years. Accordingly, both the Renault Group and the Nissan Group decided to make equal future investments to achieve the conditions laid out in the MoU. For commencing the operations, the assessee had placed purchase orders with various companies for setup of two manufacturing lines of the appellant e.g.: for power train, paint shop, trim and chassis and body shop of both the lines. As per the terms

of the purchase orders, the amount was payable in three instalments i.e. at the time of placing the order, on delivery at the port and balance on start of production. During the assessment year under consideration, there was an economic downturn/recession due to which there was inadequate funding for one of the lines. Consequently, the Purchase orders/commitments that were made by the appellant for that manufacturing line had to be cancelled. The line was, however, revived in the subsequent years. The assessee had made advances to the suppliers amounting to ₹. 22,53,61,942/- which had to be forfeited as per the terms of contract. Additionally, the assessee was liable under the contract to pay penalty for cancellation of the Purchase Orders amounting to ₹. 3,66,08,817/-. The assessee has submitted the details of suppliers and the amounts of and advances and penalty. In the books of accounts, the aforesaid advances made by the assessee to the suppliers were treated as part of Capital Work In Progress (CWIP). At the time of cancellation of the contract, the advances along with the penalty incurred on cancellation (together referred to as "Cancellation Charges") were debited to the Profit and Loss Account. Accordingly, the assessee prayed for treating the expenses as capital in nature towards plant cost and also requested that the same may be added as a part of the capital work-in-progress. After considering the submissions of the assessee, the ld. CIT(A) has obsrbed

that where the transactions in asset got aborted half way the same would result in loss of capital. It will not be out of context to mention that in claim of depreciation in respect of a capital asset would necessitate existence of two vital conditions viz., of ownership and usage for the purpose of business, both the conditions would be pronounced in their absence in case of aborted transaction. Accordingly, the ld. CIT(A) has held that the claim of the assessee that the cancellation charges would qualify to be added to capital work-in-progress cannot be entertained and dismissed the ground raised by the assessee.

8.1 We have heard the rival contentions. According to the assessee, the advances made to the suppliers got aborted half way, the same same care capital in nature towards plant cost and the same should be added as a part of the capital work-in-progress. However, the authorities below have not entertained the plea of the assessee. Before us, the ld. Counsel for the assessee has submitted that the assessee has carried out the business subsequently and therefore, it has to be treated as capital work-in-progress. On the other hand, the ld. DR has submitted that the above argument was not raised before the Assessing Officer or before the ld. CIT(A). It was further submission that as to whether the assessee has carried same business or not has to be examined. In view of the above

facts and circumstances, we remit the matter back to the file of the Assessing Officer to examine and decide the issue afresh in accordance with law by affording an opportunity of being heard to the assessee to substantiate its claim with suitable explanation.

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

Order pronounced on 30th August, 2023 at Chennai.

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

Chennai, Dated, 30.08.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2.प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.