

आयकर अपीलीय अधिकरण “ए” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.2635/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2016-17)

M/s. Southern Petrochemical Industries Corporation Limited 88, Spic House, Mount Road, Guindy, Chennai-600 032.	बनम / Vs.	ACIT Corporate Circle -6(2) Chennai-600 034.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAACS-4668-K		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri R. Vijayaraghavan & Shri Saroj Kumar Parida (Advocates)-Ld. ARs
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Nilay Baran Som (CIT) & Shri AR V Sreenivasan (Addl. CIT)-Ld. DRs

सुनवाईकीतारीख/ Date of Hearing	:	16-10-2023
घोषणाकीतारीख / Date of Pronouncement	:	10-01-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee was heard along with other appeals for various assessment years having common issues. This appeal arises out of an order passed by learned Commissioner of Income Tax (Appeals)-15, Chennai [CIT(A)] on 28.06.2019 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 27.12.2018. The grounds raised by the assessee are as under: -

1. The Order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case.

2. The Commissioner of Income Tax (Appeals) erred in confirming the disallowance of the claim for Bad Debts written off - Rs.1,53,74,533/-

2.1 The Commissioner of Income tax (Appeals) ought to have appreciated that a sum of Rs.1,09,42,393/- represented the net amount of advance receivable from M/s.Sical Ltd after setting off the amount of freight charges payable. As the amount had become irrecoverable, the Appellant had written off the same. As this was incurred in the course of Assessee's business, the write off is allowable either as a bad debts or a business loss.

2.2. The Commissioner of Income tax (Appeals) ought to have appreciated that Rs.37,66,113/- represents amount receivable as reimbursement expenses incurred on behalf of M/s. Spic Fertilizers and Chemicals Ltd, Dubai, which has been written off as irrecoverable and hence the amount written off is allowable as bad debts.

2.3 The Commissioner of Income tax having held that Rs.6,66,027/- represents expenditure incurred in the course of business and hence allowable as revenue expenditure. Alternatively, CIT(Appeals) having held that it is a capital loss, ought to have allowed it be carried forward.

3. The Commissioner of Income Tax (Appeals) erred in confirming the disallowance of the expenditure for settlement of ILFS Claims and payment made as per Memorandum of Compromise entered into with IL & FS.

3.1 The Commissioner of Income tax (Appeals) ought to have appreciated that the Appellant had given guarantee to IL & FS to secure and assure the availability of ships of M/s. Pearl Ships Limited for transportation for Assessee. As M/s. Pearl Ships Limited defaulted IL&FS invoked the guarantee given by the Appellant. This amount was written off as it was not recoverable from M/s. Pearl Ships Ltd as it had gone into liquidation. The write off is allowable as a business loss.

3.2 The Commissioner of Income Tax (Appeals) ought to have appreciated that the Guarantee was given in the course of business of the assessee to ensure the availability of shipping services for the business of the Assessee, it was in the course of and for the purpose of assessee's business and amount is allowable as business loss.

3.3 The Appellant had agreed as per Memorandum to pay IL&FS a sum of Rs.15,50,00,000/- in settlement of their case before Madras High Court and the entire amount is allowable as expenditure.

3.4 The Appellant had deposited Rs.8 crores as per Court order during Assessment year 2007-08 and claimed it as a deduction. The same was disallowed. The Appellant had debited the balance amount during the current year. As the entire liability reached finality during the current year, the entire amount of Rs.15.50 crores is allowable this year.

3. 5 The Appellant submits that the payment made under guarantee for the purpose of business amounted to business expenditure and write off of the same amounted to business loss and is an allowable as deduction in the assessment for 2016-17.

3.6 The Appellant relies on the Decision of the Supreme Court in CIT vs Amalgamation Pvt. Ltd. 140 CTR 313/ 226 ITR 188 (SC) and the decisions in

(a) ACIT vs M/s Peirce Leslie India Ltd I.T.A. No. 1244/Mds/2011

(b) W.S. Industries (India) Limited 128 ITD 98

As is evident, the additions / disallowance which forms the subject matter of this appeal are i.e., (i) Disallowance of bad debts written-off; (ii) Disallowance of settlement expenditure.

2. The Ld. AR advanced arguments on impugned issues citing various judicial decisions and also filed written submissions to support the case of the assessee. The revenue also advanced arguments and filed written submissions in support of impugned order. Having heard rival submissions and upon perusal of case records, our adjudication would be as given in succeeding paragraphs. The assessee being resident corporate assessee is stated to be engaged in manufacturing and marketing of fertilizers, pharma, biotech products and providing engineering services.

3. Disallowance of bad-debts written-off.

3.1 The assessee claimed write-off of bad debts for Rs.153.74 Lacs. The Ld. AO disallowed the same on the ground that these parties were not debtors and the conditions of Sec. 36(2) were not fulfilled.

3.2 During appellate proceedings, the assessee explained each of the items. With respect to advance given to an employee in connection with expenditure incurred for purchase of land at Ramanathauram for laying Gas pipeline for Rs.6.62 Lacs, it was submitted that the amount was given to employee for expenses relating to land purchase and therefore, the same would be allowable as business expenditure. The Ld. CIT(A) held that the same would be capital loss which could not be allowed u/s 37(1).

Another write-off was for an amount of Rs.109.42 Lacs which was receivable from another entity viz., SICAL. This entity was providing transport facility to the assessee for movement of fertilizers. However,

there was stoppage of production and net amount of Rs.109.42 Lacs was due from this entity. After reconciliation and confirmation, SICAL confirmed that no amount was payable to the assessee and accordingly, the same was written-off and claimed as business expenditure. The same being incurred in the ordinary course of business would be an allowable deduction. However, Ld. CIT(A) confirmed the disallowance on the ground that the assessee did not furnish the details of freight charges and the assessee could not demonstrate fulfilment of conditions of Sec.36(2).

Another amount written-off by the assessee was for Rs.37.66 Lacs (net) which was due from SPIC maintenance organization (SMO). This division was hived-off to another entity. SMO had receivable of Rs.41.92 Lacs against SFCL, Dubai. However, SFCL, Dubai refused to make payments of the expenses. The purchaser of SMO division also did not accept the advances being doubtful recovery. Accordingly, the same was claimed after netting-off the credit balance on the ground that the same was incurred in ordinary course of business activity and hence an allowable expenditure. However, Ld. AO disallowed the same. The Ld. CIT(A) confirmed the same on the ground that the assessee could not demonstrate fulfilment of conditions of Sec.36(2). Aggrieved, the assessee is in further appeal before us.

3.3 Regarding claim of Rs.6.62 Lacs, we find that the said expenditure was in connection with land purchase and therefore, capital in nature. The loss of the same would be capital loss as rightly held by Ld. CIT(A). Therefore, the same could not be held to be deductible expenditure. So far as the amount of Rs.109.42 Lacs is concerned, the same represent write-off of amount due against SICAL. This entity was providing

transport facility to the assessee for movement of fertilizers. However, there was stoppage of production and net amount of Rs.109.42 Lacs was due from this entity. After reconciliation and confirmation, SICAL confirmed that no amount was payable to the assessee and accordingly, the same was written-off and claimed as business expenditure. We are of the opinion that this loss arises in the ordinary course of business and the same would otherwise be allowable as business loss. The remaining balance represent amount due to SMO division by SFCL, Dubai. However, that entity has refused payment of the same and accordingly, the same was debited under the head project. In this year, this amount has been written-off and claimed as business expenditure. It is undisputed fact that the deduction of the same has not been claimed in any other year. This write-off represents business loss for the assessee and accordingly, the same would otherwise be allowed as business loss. The corresponding grounds stands partly allowed.

4. Disallowance of Settlement Expenditure

4.1 The assessee claimed amount of Rs.750 Lacs towards claim of M/s IL&FS. It transpired that the assessee sold three ships (MT SPIC Emerald-Chemical Tanker) to M/s IL&FS on 30.03.1999 for consideration of Rs.60 Crores and offered the same to tax. M/s IL&FS entered into bareboat charter agreement with M/s Pearl Ships Ltd. (PSL) to provide these ships on lease finance. The assessee entered into tripartite agreement with IL&FS and PSL for using the said vessel and extended guarantee to IL&FS on behalf of PSL. The assessee had joint venture with Indo-Jordon Company LLC for import of phosphoric acid on a continuous and exclusive basis for uninterrupted production

of Di-Ammonia phosphate chemical fertilizer for agriculture. The said ships could not be used for any other purposes other than importing of phosphoric acid. To avoid stoppage of production, the assessee provided guarantee for lease finance to IL&FS and entered into tripartite agreement with IL&FS and PSL to provide a deposit in the nature of guarantee to IL&FS to the tune of Rs.10 crores which carried interest of 13.25% p.a. on quarterly basis for use of the said vehicle. It was thus the submission of the assessee that the guarantee was given in the regular course of business.

4.2 Subsequently, PSL made default in remittance of finance lease rent which resulted into invoking of the guarantee by IL&FS. M/s IL&FS invoked bank guarantee against assessee and preferred civil suit which was decided in favor of IL&FS. The assessee preferred appeal before Hon'ble High Court of Madras. The Hon'ble Court, vide interim order dated 24.04.2006, directed the assessee to deposit Rs.800 Lacs immediately. The same was paid and claimed as deduction during AY 2007-08. The deduction was denied in that year on the ground that it was mere deposits and not an ascertained liability.

4.3 In this year, the assessee entered into Memorandum of Compromise (MOC) under the directions of Hon'ble High Court of Madras in February, 2016 and the assessee was directed to make additional payment of Rs.750 Lacs. The same was paid by the assessee. Since the dispute reached finality and the payment was also made before 31.03.2016, the entire amount was claimed as revenue expenditure during this year. The amount so paid was written off and claimed as deduction. The assessee submitted that this payment was in the nature of discharge of a liability on behalf of another entity of the

group viz. as a guarantor of the loans borrowed by PSL. The claim represents corporate guarantee obligation incurred by the assessee which sprang out of normal business transactions during the course of and incidental to the business of the assessee. Therefore, the same was an allowable deduction in terms of decision of Hon'ble Supreme Court in the case of **CIT vs. Amalgamation Pvt. Ltd. (226 ITR 188)**.

4.4 However, Ld. AO observed that this liability pertained to M/s Pearl Ships Ltd. only and the assessee merely repaid the liability of PSL. The assessee failed to prove that PSL offered this liability u/s 41(1). Further, the liability was on account of loan taken by PSL for acquiring chemical tanker which was a capital asset. Therefore, the loss so suffered by the assessee would be capital loss only. The assessee's business does not include furnishing of bank guarantee to debts borrowed by other companies. Accordingly, the claim made by the assessee in its entirety was disallowed.

4.5 During appellate proceedings, it was reiterated that the assessee required basic raw material on regular basis throughout the year for running the continuous process plant for production of Di-ammonia phosphate fertilizer. The corporate guarantee was given for facilitating working capital loan for PSL and this was done as a measure of commercial expediency only.

4.6 The Ld. CIT(A) held that aforesaid claim was capital expenditure only. The similar claim made in AY 2007-08 was pending before appellate authorities. Therefore, the action of Ld. AO was upheld against with the assessee is in further appeal before us.

4.7 From the facts, it emerges that the assessee has sold three ships to another entity M/s IL&FS during on 30.03.1999 which was offered to

tax. M/s IL&FS entered into bareboat charter agreement with M/s Pearl Ships Ltd. (PSL) to provide these ships on lease finance. These ships had specific usage and were to be used to import raw material on behalf of the assessee. Accordingly, the assessee hired these ships and entered into a tripartite agreement with IL&FS and PSL for using the said vessel. As per the contractual terms, the assessee extended guarantee to IL&FS on behalf of PSL. To avoid stoppage of production, the assessee provided this guarantee for lease finance to IL&FS. It could be seen that the act of guarantee was intrinsically linked with the business operations of the assessee and had a business nexus. It was not an isolated transaction. Upon default by PSL, the guarantee was invoked and the matter went into legal dispute. The dispute has reached finality in this year when the assessee has entered into Memorandum of Compromise (MOC) under the directions of Hon'ble High Court of Madras in February, 2016. As per the compromise agreement, the assessee was required to pay an amount of Rs.1550 Lacs. Out of this, an amount of Rs.800 Lacs was paid during AY 2007-08 and the remaining amount has been paid in this year. The amounts have been written-off and claimed as deduction in respective years. In AY 2007-08, Ld. AO disallowed the same on the ground that the same was mere deposits in nature. The disallowance was confirmed by first appellate authority and the same, in turn, has been confirmed by us in assessee's appeal ITA No. 210/Chny/2023 for AY 2007-08. Thus, the deduction has been denied in AY 2007-08. However, in this year, the liability has crystallized as well as attained finality. This payment could not be termed as capital expenditure since it is not towards acquisition of any capital asset but towards smooth running of assessee's business

operations. The claim represents corporate guarantee obligation incurred by the assessee which sprang out of normal business transactions during the course of and incidental to the business of the assessee. The decision of Chennai Tribunal in the case of **ACIT vs. W.S. Industries (India) Ltd. (8 Taxmann.com 280)** clearly supports the case of the assessee. In this decision it was held that wherein the subsidiary company of the assessee was supplying materials which were important for the assessee's business, the action of the assessee in giving corporate guarantee as well as advances were incidental to the business of the company. When the transaction had been entered into in a commercially expedient manner, the resultant expense / loss would be allowable. Therefore, providing corporate guarantee was in the interest of the assessee-company and, hence, the commercially expedient decision. This decision also considers the decision of Hon'ble Supreme Court in the case of **CIT vs. Amalgamation Pvt. Ltd. (226 ITR 188)**. Considering the ratio of the same, we would hold that the assessee would be entitled for full deduction of Rs.1550 Lacs in this year. We order so.

5. The appeal stands partly allowed in terms of our above order.

Order pronounced on 10th January, 2024

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated :10-01-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. भागीयप्रतिनिधि/DR
5. गार्डफाईल/GF