

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.210/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2007-08)

M/s. Southern Petrochemical Industries Corporation Limited 88, Spic House, Mount Road, Guindy, Chennai-600 032.	बनम / Vs.	Income Tax Officer Corporate Ward-3(1) Chennai-600 034.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAACS-4668-K		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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

सुनवाईकी तारीख/ Date of Hearing	:	16-10-2023
घोषणाकी तारीख / Date of Pronouncement	:	10-01-2024

आदेश / O R D E R

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), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] on 10.01.2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 23.12.2009. The grounds raised by the assessee are as under: -

1. The order of National Faceless Appeal Centre (NFAC), Delhi is contrary to law, facts and in the circumstances of the case.
2. The CIT(A) / NFAC erred in restricting the disallowance of proportionate interest amounting to Rs.604.97 lakhs attributable to the amounts advanced to the group companies.
 - 2.1 The CIT(A) / NFAC ought to have appreciated that the appellant has enough reserve and surpluses to give advances to subsidiaries and group companies due to commercial exigency hence no disallowance on proportionate interest is called for.
 - 2.2 The Appellant relies on the decision of Hon'ble Supreme court in the case of CIT Vs Reliance Industries Ltd, reported in 307 CTR 121 (SC).
3. The CIT(A) / NFAC erred in confirming the disallowance of bad debts Written off amounting to Rs.71,56,03,302/-.
 - 3.1 The CIT(A) / NFAC ought to have appreciated that out of the total amount, a sum of Rs.35,79,61,690/- was due from the government of India towards reimbursement of handling charges not sanctioned by them and Rs.14,54,74,336/- represents the interest on fertilizer subsidy which was offered as income in the assessment year 2006-07. The government has not accepted the above claims and the same was written off in the books of account. Hence should be allowed u/s 36(1)(vii).
 - 3.2 Without prejudice to the above the Commissioner of Income tax (Appeals) ought to have appreciated that the balance amount represents non recoverable debts from the parties which has arisen during the normal course of business and have been written off in the books of account. Therefore should be allowed as business loss.
4. The CIT(A) / NFAC erred in confirming the disallowance of Rs.63,47,677/- being 50% expenditure towards RD facility.
 - 4.1 The CIT(A) / NFAC ought to have appreciated that the R&D facility of the appellant was already approved by the Competent Authority and the initial recognition was further extended till 31 march 2009 on 01.06.2006.
 - 4.2 The appellant relies on the following decisions:
 - CIT Vs Claris Lifesciences Ltd - -326 ITR 251 (Guj)
 - Wheels India Ltd - 336 ITR 513 (Mad)
 - Cadilia Healthcare Ltd Vs Addl.CIT - 2012-TIOL-366-ITAT-Ahm
5. The CIT(A) / NFAC erred in confirming the disallowance of contingent liability towards electricity tax of Rs.41,02,663/- and power generation tax of Rs.40,22,468/- under normal provisions and u/s 115JB.
 - 5.1 The CIT(A) / NFAC ought to have appreciated that this amount debited to P&L account represents the electricity tax imposed on the supply of TNEB poser 5% of power cost and 10 Paise per unit on captive power under the Taminadu tax on consumption or sale of electricity Act, 2003 and the validity of the Act was challenged before Hon'ble Madras High Court.
 - 5.2 The Commissioner of Income Tax (Appeals) ought to have appreciated that amount due to TNEB is only an ascertained liability and hence the same should not be disallowed.
6. The CIT(A) / NFAC erred in treating the interest expenditure not claimed by the appellant to an extent of Rs.5,07,16,600 as income arising from the business assessable u/s 28(iv) in the hand of appellant.
 - 6.1 The CIT(A) / NFAC ought to have appreciated that the observation of the appellant vide item 10(a) to Notes on Accounts annexed to the audited Annual Report (18 month period) for the assessment year 2006-07 and upheld that the said disclosure was made only for statistical purposes and to quantify the interest

expenditure not claimed by the appellants and such amounts cannot be subjected to tax, since the interest expenditure already accounted by the appellants was only at the reduced rate of interest . Hence the amount cannot form appellant's income u/s 28(iv).

7. The CIT(A) / NFAC erred in confirming the disallowance of business expenditure amounting to Rs.8,00,00,000/- in connection with hire charges payable by sical ships guaranteed by the assessee, paid as per the direction of Hon'ble Madras High Court in computing income under normal provisions as well while computing book profits u/s 115JB and treating the same as capital in nature.

8. The CIT(A) / NFAC erred in confirming the disallowance of overdue interest payable to its subsidiary company M/s. Indo Jordan Chemicals amounting to Rs.3,24,93,585/- on the purchase of raw materials as non-business expenditure in computing income under normal provision.

9. The CIT(A) / NFAC erred in confirming the disallowance of business loss arising out of investments made by the appellant in equity shares in a foreign company M/s. ICS, Senegal Rs.4,43,43,373/-.

As is evident, the additions / disallowance which forms the subject matter of this appeal are i.e., (i) Disallowance of proportionate interest expenditure; (ii) Disallowance of Bad debts written-off; (iii) Disallowance of 50% expenditure towards R&D facility; (iv) Disallowance of Electricity Tax u/s 43B as well as u/s 115JB; (v) Assessment of interest income; (vi) Disallowance of business expenditure in connection with hire charges; (vii) Disallowance of overdue interest payable to subsidiary company; (viii) Disallowance of business loss on equity investment.

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 proportionate Interest Expenditure

3.1 The assessee claimed interest expenditure of Rs.18967.46 Lacs against loan liabilities of Rs.227037.37 Lacs. However, it was noted by Ld. AO that the assessee advanced various sum to group entities which are tabulated in para 4.1 of the assessment order as under: -

No.	Name of the Party	Amount (In Lacs)
1.	SPIC Fertilizers & Chemicals Ltd. (SFCL, FZE), Dubai	1614.08
2.	Indo Jordan Chemicals Ltd. (IJCL)	3768.14
3.	Ind-ITAL Chemicals Ltd. (TPL)	6.01
4.	SPIC Petrochemicals Ltd. (SPC)	318.97
5.	SPEL semiconductor Ltd.	71.46
6.	National Aromatics and Petrochemicals Corp. Ltd. (NAPCL)	1460.38
7.	Tuticorin Alkali Chemicals and Fertilizers Ltd. (TAC)	628.76
8.	SPIC Jet Engg. Construction Ltd.	2.38
	Total	7870.18

The assessee, inter-alia, submitted that own funds were utilized to make those investments. The assessee also relied on the decision of Hon'ble Supreme Court in the case of **CIT V/s S.A. Builders (288 ITR 1)** to bolster its claim. However, rejecting the same, Ld. AO computed proportionate disallowance of Rs.657.50 Lacs.

3.2 During appellate proceedings, the assessee assailed the impugned disallowance on the ground that all these investments had business nexus and also raised plea of sufficiency of own funds to make these investments. However, rejecting the submissions of the assessee, Ld. CIT(A) confirmed the impugned disallowance except disallowance made against advances given to M/s Tuticorin Alkali Chemicals and Fertilizers Ltd. (TAC). The adjudication of Ld. CIT(A) reduced the impugned disallowance to Rs.604.97 Lacs against which the assessee is in further appeal before us.

3.3 We find that this issue has been decided by us in assessee's favor in ITA No. 204/Chny/2023 for AY 2004-05 as under: -

Our findings and Adjudication

11. From the facts, it emerges that impugned advances have been given by the assessee in the ordinary course of business to all these entities. The investments have been made in joint ventures entities though the projects may not have fructified for the assessee. It could be seen that SFCL, FZE is 100% subsidiary of SFCL Mauritius in which the assessee owns stake of 83.54%. The investment made by the assessee was for expansion of assessee's business. This business of this entity is stated to be having direct nexus with the assessee's main business of manufacturing of Urea and fertilizers etc. The assessee has undertaken to buy back the entire production of Urea from this entity. The ministry of chemicals and fertilizers, vide its letter dated 03.12.1998, informed the assessee that import of urea by assessee from this entity will be given preference. The aforesaid facts substantiate the arguments that investments made by the assessee had direct business nexus and therefore, the test of commercial expediency, in our opinion, was duly satisfied by the assessee. It could be said that the investments were made in furtherance of business interest and the ratio of decision of Hon'ble Supreme Court in the case of **CIT V/s S.A. Builders (288 ITR 1)** would favor the case of the assessee. In this decision, it was held by Hon'ble Court that once nexus was established between the expenditure and the purpose of the business, which need not necessarily be the business of the assessee itself, revenue could not disallow the claim assuming what was reasonable. In fact, Tribunal in ITA No.232/Chny/2022 order dated 23.09.2022 for AY 2017-18, in similar issue, quashed revisionary proceedings on the ground that the loss of investments so made by the assessee was a business loss and the same was one of the possible views. Considering the same, the view taken by Ld. AO in allowing the business loss was upheld. To allow the expenditure, it would not be necessary that the project should fructify. Considering all these facts, we would hold that impugned disallowance against this entity could not be sustained.

Similarly, the investments made in IJCL were made as a joint venture investment. This entity was to manufacture phosphoric acid and the entire production was to be sold to the assessee. The assessee made 60% contribution in this entity. The venture was to ensure supply of critical raw material for the assessee. Simply because the project could not fructify would not disentitle the claim of the assessee that it had business connection with this entity. The investment made by the assessee has RBI approval vide letter dated 22.09.1994 which is placed on page nos.100 & 101 of paper-book-1. This being so, disallowance of interest either u/s 37(1) or u/s 36(1)(iii) could not be said to be justified. We order so.

The advances given to SPEL have been given by the assessee as a promoter entity to meet its debt obligations and capital expenditure. The advances were given by the assessee to this entity only up-to financial year 2000-01. During impugned year, the advances made by the assessee have been converted into equity shares. In earlier years, when the advances were given, the assessee is having sufficient own interest free funds to make these investments. The working of the same has been given on page nos. 7 & 8 of the paper-book-1. Similar findings have been rendered by us in assessee's own case vide ITA No.170/Chny/2023 for AY 2003-04.

Therefore, the assessee's ground would succeed to that extent both on commercial expediency as well as on the ground of having sufficient own funds.

M/s NAPCL is a joint venture entity of the assessee to produce Benzene, orthoxylene, paraxylene and PTA. However, the project has failed to commence production which has led to impugned disallowance. Nevertheless, there is direct business nexus of making the investment. The reason for delay in execution of the project is the fact that there was delay in getting regulatory approvals which is beyond the control of the assessee. The assessee has entered into MOU with Chennai Petroleum Corporation Limited to establish a large petrochemical plant near Chennai. The plant was to produce raw material for the assessee. The same has resulted into formation of this entity. As per the terms of MOU, the expenses of the joint venture are to be shared equally by the joint venture entities. Considering the same, the assessee has advanced sum to this entity towards its share of the expenditure of the project. The investment would ultimately convert into equity shares. All these facts would establish the claim of the assessee that the investment had direct business nexus and therefore, no disallowance could have been made for this investment.

Regarding investment in SPC, upon perusal of page no. 182 of the paper-book, it could be noted that the assessee has, in fact, charged interest from this entity. The outstanding loan amount including interest has been converted into equity and bonds which is evident from assessee's financial statements. Therefore, there is no question of disallowing interest against this investment.

The Ld. AR has pointed out that there is no investment made by the assessee in SPIC Technologies Ltd. for Rs.2200.66 Lacs. In fact, the assessee has made investment of Rs.220.66 Lacs in another entity viz. M/s SPIC Bio technologies Ltd. The Ld. AR has stated that the assessee has surplus net owned funds in the year in which the advances were given. The position of net owned funds has been summarized on page nos. 34 to 37 of paper book-2 along with extract of Balance Sheet, Profit & Loss Account and status of reserves and Surplus. After going through the same, we concur with the submissions of Ld. AR that the assessee had surplus net funds and disallowance need not be made in terms of decision of Hon'ble Supreme Court in the case of **CIT V/s Reliance Industries Ltd. (307 CTR 121)** which held that it could be presumed that the investments were made out of interest free funds available with the assessee. The ratio of decision of Hon'ble Madras High Court in **CIT V/s Hotel Savera (239 ITR 795)** as well the decision of Hon'ble Bombay High Court in **CIT V/s Reliance Utilities (313 ITR 340)** also supports the case of the assessee.

The interest disallowance on inter-corporate deposits of Rs.675 Lacs has been deleted by us in assessee's own case vide ITA No.170/Chny/2023 for AY 2003-04 on the ground that in the year when these deposits were placed, the assessee had sufficient own funds to make the investments. Taking consistent view, no disallowance is called for against these ICDs.

Finally, considering the facts and circumstances of the case, the impugned disallowance of Rs.5519.30 Lacs as sustained in impugned order could not be sustained in law. We order so.

In the above order, detailed findings have been rendered by us with respect to each of the parties under consideration. We have concurred

with the plea of business nexus as well as sufficiency of own funds. The facts are quite similar in this year. Therefore, taking the same stand, the impugned disallowance stands deleted. The grounds raised in the appeal stand allowed accordingly.

4. Disallowance of bad-debts written-off.

4.1 The assessee wrote-off bad debts for Rs.7156.03 Lacs and furnished party-wise details. The same include claim of Rs.3579.61 Lacs. It transpired that the assessee was handling imported fertilizers in earlier years and Government of India was reimbursing the handling charges to the assessee (Agri India claims). Out of such claims made by the assessee, the Government of India did not sanction the impugned amount even after persistent efforts made by the assessee. Accordingly, the same were written-off and claimed as deduction. Another claim was interest on fertilizers subsidy for Rs.1454.74 Lacs. The interest was stated to be already offered to tax during AY 2006-07. Since the said claim was not accepted, it was written-off. The assessee extended advance against equity to SPEL semi-conductor Ltd. The interest income arising therefrom for Rs.498.79 Lacs was stated to be offered to tax in earlier years. However, the interest could not be recovered and accordingly, the same was written-off. The amount of Rs.1622.87 Lacs represents non-recoverable debts from parties which arose during the normal course of business.

4.2 However, Ld. AO held that Agri India claim and interest subsidy was receivable from Government of India and therefore, the same could not be considered as bad debts. The interest due from sister concern i.e., SPEL semiconductor Ltd. could have been recovered but the assessee chose to write-off the same. The same was capital in nature.

For the amount of Rs.1622.87 Lacs, the assessee did not produce supporting details. Therefore, entire bad debts claim of Rs.7156.03 Lacs was disallowed.

4.3 The Ld. CIT(A) confirmed disallowance of Agri India claim for Rs.3579.61 Lacs. Regarding write-off of interest on fertilizer subsidy, Ld. AO was directed to examine the fact that the income was offered in earlier years and also examine the ledger showing write-off along with rejection of claim by the Government. With respect to write-off of interest due against SPEL semiconductor Ltd., Ld. CIT(A) observed that the amount was written-off in FY 2005-06 and not in FY 2006-07. Therefore, the disallowance was upheld. For remaining bad debts of Rs.1622.87 Lacs, the assessee did not provide sufficient details and therefore, the disallowance was upheld. Aggrieved, the assessee is in further appeal before us.

4.4 After careful consideration of material facts, it could be noted that assessee was handling imported fertilizers in earlier years and Government of India was reimbursing the handling charges to the assessee. Out of such claims made by the assessee, the amount of Rs.3579.61 Lacs was not sanctioned even after persistent efforts made by the assessee. As per the submissions, this income was booked during the period from September, 1992 to 1993 and the same has been written-off after a considerable period of time in this year. Since considerable time has elapsed and the claim has not been received by the assessee till date, the write-off of the same has to be allowed as bad debts. We order so.

4.5 The directions given by Ld. CIT(A) with respect to interest on fertilizer subsidy is quite apt and no further directions are required in the matter.

4.6 Regarding equity advance, the undisputed fact that emerges is that the same has been offered to tax in earlier years. The Ld. AO denied the deduction of the same on the ground that it was capital in nature whereas Ld. CIT(A) confirmed the same on the ground that this was not written-off in this year. However, this being reversal of interest offered to tax in earlier years, the same could not be held to be capital in nature. The observation of Ld. CIT(A) that this amount was not written-off in this year is also not correct since upon perusal of page nos. 170 & 171 of paperbook-2, We find that this amount has been written-off in this year only. This being so, the impugned claim made by the assessee would be an allowable deduction. We order so.

4.7 The remaining debt of Rs.1622.87 Lacs pertain to pharma and Agri business divisions. The amounts due from various parties towards sale of goods during the course of income could not be recovered and the same has been written-off in the books of accounts. The Hon'ble Supreme Court in the case of **TRF Ltd. (323 ITR 397)** held that to make aforesaid claim, it was sufficient that the amount was written-off in the books of accounts. Since the assessee has written-off these amounts, applying the ratio of this decision, this claim would be allowable to the assessee. The corresponding grounds raised by the assessee stand allowed accordingly.

5. Disallowance of 50% expenditure towards R&D facility

5.1 The assessee claimed deduction for R&D expenses u/s 35(2AB) at the rate of 150% on amount of Rs.126.95 Lacs as spent by the

assessee. In support, the assessee filed letter dated 01.06.2006 for renewal of recognition of in-house R&D facility as granted by the Department of Scientific and Industrial Research (DSIR) recognizing the R&D facility up-to 31.03.2009. But the assessee did not furnish any evidence to show that it had entered into an agreement with DSIR for cooperation in R&D facility. Therefore, the additional claim of Rs.63.47 Lacs was denied. The Ld. CIT(A) upheld the same on the ground that though the assessee furnished Form 3CK, however, it failed to furnish approval in Form 3CM from prescribed authority. Unless the expenditure is approved by way of Form 3CM, the deduction could not be allowed to the assessee. Aggrieved, the assessee is in further appeal before us.

5.2 We find that this issue stood covered in assessee's favor by the decision of this Tribunal in **M/s Caplin Point Laboratories Ltd. (ITA No.1887/Chny/2018 dated 03.08.2022)** wherein it was held as under: -

Our finding and Adjudication

5. The undisputed fact that emerges are that the assessee has set-up in house R & D facility which has been approved by the prescribed authority and the assessee is eligible to claim deduction u/s 35(2AB). The point of dispute is only for quantum. The approving authority has granted approval for revenue expenditure only from 28.01.2014 whereas the assessee has claimed expenditure incurred throughout the financial year. We find that Ld. CIT(A) has sought distinction in the case law of Hon'ble Madras High Court in **CIT Vs Wheels India Limited (2011) 336 ITR 513**. However, after studying this case law, we find that the analogy of this case law would be applicable to the facts of the present case. The Hon'ble Court concurring with the decision of Hon'ble Gujarat High Court in **CIT V/s Claris Life sciences Ltd. (326 ITR 251)**, held as under: -

5. We are in full agreement with the reasoning which weighed with the Division Bench of the Gujarat High Court while holding that de hors any specific dates specified in the certificate of the prescribed authority, namely DSIR, once the prescribed authority approved the existence of research and development facility and the expenditure incurred on such scientific research, the assessee would be entitled for the expenditure incurred for the whole of the assessment year and cannot be granted in a truncated manner.

The facts in case law of Hon'ble Gujarat High Court in **CIT V/s Claris Life sciences Ltd. (supra)** were quite identical wherein it was noted that DSIR approval was only from 27.02.2001 to 31.03.2003 but the assessee claimed weighted deduction for

entire expenses as incurred during the year. The claim was allowed by Ld. AO w.e.f. 27.02.2001. However, Tribunal allowed the claim for the whole of the year. Affirming the decision of Tribunal, Hon'ble Court held as under: -

"The Tribunal has also considered rule 6(5A) and Form 3CM and come to the conclusion that a plain and harmonious reading of the rule and Form clearly suggests that once the facility is approved, the entire expenditure so incurred on development of the research and development facility has to be allowed for weighted deduction as provided by section 35AB(2). The Tribunal has also considered the legislative intention behind the above enactment and observed that to boost the research and development facility in India, the Legislature has provided this provision to encourage the development of the facility by providing deduction of weighted expenditure. Since what is stated to be promoted was development of facility, the intention of the Legislature by making the above amendment is very clear that the entire expenditure incurred by the assessee on development of facility, if approved, has to be allowed for the purpose of weighted deduction."

The cited decisions of Tribunal also favor the case of the assessee. Therefore, respectfully following the analogy of decision of Hon'ble Madras High Court in **CIT Vs Wheels India Limited (2011) 336 ITR 513**, we direct Ld. AO to grant full deduction to the assessee.

Taking the same view, we direct Ld. AO to allow impugned deduction to the assessee. The corresponding grounds stand disposed-off accordingly.

6. Disallowance of Electricity Tax u/s 43B as well as u/s 115JB

6.1 The assessee debited contingent liability of Rs.81.25 Lacs towards power generation and electricity tax. It transpired that Govt. of Tamil Nadu enacted Tamil Nadu Tax on consumption of sale of Electricity Act, 2003 which enabled the state government to impose electricity tax @5% of power cost on Tamil Nadu Electricity Board (TNEB) power supply and 10 paise per unit on self-generated power. The levy of the same was disputed by the assessee before Hon'ble High Court of Madras. The issue was decided favorably. However, to nullify the effect of the same, Govt. of Tamil Nadu brought a validation act called Tamilnadu Tax on consumption or sale of Electricity (Amendment) validation Act, 2007 which was again challenged by the assessee

before Hon'ble High Court of Madras, The Hon'ble Court vide order dated 27.11.2008 directed that authorities could raise the demand but could not disconnect the power supply on account of non-payment. In other words, there was stay on collection of the demand and therefore, this amount was not remitted by the assessee. In the said background the assessee submitted that this amount was not hit by the provisions of Sec.43B and therefore, full claim was to be allowed. The assessee also submitted that amount of Rs.37.69 Lacs was remitted during AY 2008-09 towards electricity tax and reversed the provision and credited to the profit & loss account. The assessee also pleaded that this being ascertained liability, it could not be adjusted u/s 115JB.

6.2 However, rejecting the same, the Ld. AO held that these were statutory dues and hit by the provisions of Sec.43B. Further, the final quantification of the electricity tax was contingent on the happening of future event. Therefore, the same was to be adjusted u/s 115JB also.

6.3 The Ld. CIT(A) upheld the disallowance on the ground that this deduction was claimed in FY 2013-14 and therefore, this becomes an invalid claim in this year. The adjustment thereof u/s 115JB was also confirmed on the ground that it was contingent liability. Aggrieved, the assessee is in further appeal before us.

6.4 We find that this issue has been decided by us against the assessee in assessee's appeal ITA No.204/Chny/2023 for AY 2004-05 as under: -

9.4 From the facts, it emerges that the constitutional validity of the state levy is sub-judice before Hon'ble High Court of Madras. The Hon'ble Court has stayed the recovery of demand subject to deposit of Rs.200 Lacs by the assessee. The same has been deposited by the assessee. The assessee has also computed additional liability of Rs.98.67 Lacs as per applicable computations. Both these items have been debited in the Profit & Loss Account. However, it remains a fact that this liability has not yet crystallized

and the same is merely in the nature of contingent and an unascertained liability only which may or may not arise. Undoubtedly, the same is covered under the provisions of Sec.43B. Therefore, the same has to be disallowed in normal computations as well as while computing Book Profits u/s 115JB also. Therefore, we confirm the stand of lower authorities and dismiss the grounds raised by the assessee in both the appeals.

Facts being the same, taking consistent view, we confirm the impugned order on this issue. The corresponding grounds stand dismissed.

7. Assessment of interest income

7.1 It transpired that the assessee underwent Corporate Debt Restructuring (CDR) and got relief of Rs.507.16 Lacs as reported by statutory auditor. The assessee submitted that they have accounted interest expenditure at the reduced rates instead of normal rates. Therefore, the question of adding the same would not arise. The disclosure was made by statutory auditor only for statistical purposes. However, as held in earlier years, Ld. AO brought the same to tax. Upon further appeal, Ld. CIT(A) directed Ld. AO as under: -

Evidently, the appellant has not provided the required documents with respect to what was the original rate of interest and the interest relief in the CDR package, in the appeal proceedings. Granting further time in this appeal pending for almost 13 years is not possible. Therefore, the AO is directed to determine, what was the interest payable in the year concerned at that point of time (before 31/03/2007) in view of the CDR package approved and whether the appellant debited that amount only, as claimed. If the applicant has claimed interest beyond the amount in the CDR package, the same to be brought to tax u/s 36(1)(iii).

Aggrieved, the assessee is in further appeal before us.

7.2 From the facts, it emerges that the assessee has accounted interest expenditure at reduced rates only and the separate reporting made by Auditor is part of statutory disclosure only. The Ld. CIT(A) has well appreciated the plea of the assessee and observed that the assessee did not provide the requisite documents and computations to

support its stand. Accordingly, Ld. AO has been directed to verify the claim of the assessee. Therefore, no further directions are required in the matter. The directions given in the impugned order are quite apt. The corresponding grounds stand dismissed.

8. Disallowance of business expenditure in connection with hire charges

8.1 It transpired that the assessee sold a 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 Pearl Shipping Ltd. (PSL) to provide said chemical tanker 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. In the event of default by PSL, 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. The Ld. AO rejected the same on the ground that the same was merely a deposit and therefore, could not be allowed as business expenditure. Accordingly, the same was added back while computing income under normal provisions as well as while computing book profits u/s 115JB.

8.2 The Ld. CIT(A) concurred that it was mere deposits in nature. The validity of amount payable to IL&FS was under dispute. Depending on the outcome of the court proceedings, the liability in that respect would be determined. It was not certain that the liability would actually be due or not. As per Accounting Standard-29, a liability is purely a contingent

if the existence of the same will only be confirmed on a certain future event such as court decision in the present case which is not in the control of the assessee. The final quantification of the amount would depend on future event. The deposit made by the assessee was not definitive. Aggrieved, the assessee is in further appeal before us.

8.3 Upon perusal of material facts, we concur with the adjudication of Ld. CIT(A) that the impugned amount was in the nature of deposit only. The said liability has neither crystalized not quantified in this year. The same is dependent on a future event and the same may not even accrue against the assessee. The same is merely in the nature of contingent and an unascertained liability only which may or may not arise. Undoubtedly, the same is covered under the provisions of Sec.43B. Therefore, the same has to be disallowed in normal computations as well as while computing Book Profits u/s 115JB. Therefore, we confirm the stand of lower authorities and dismiss the grounds raised by the assessee. The assessee is free to claim the deduction thereof in case the liability crystalizes in subsequent years.

9. Disallowance of overdue interest payable to subsidiary company

9.1 The assessee imported raw material from Indo Jordon Chemicals Ltd. (a subsidiary of the assessee). Due to financial hardships, the assessee did not pay the cost of raw material within stipulated time and accordingly, paid overdue interest of Rs.324.93 Lacs. The same was claimed as business expenditure which was disallowed by Ld. AO on the ground that no supporting documents were furnished by the assessee.

9.2 The Ld. CIT(A) appreciated the ledger extract of the said party and held that there was no nexus in respect of business operations of the

assessee. The only nexus was of investment. There was no supply of raw material as averred by the assessee and therefore, the disallowance was confirmed against which the assessee is in further appeal before us.

9.3 Upon perusal of page nos.102 to 152 of paper book-1, it could be seen that the assessee has purchased Phosphoric Acid from this entity during financial years 1999-2000 to 2001-02. The copies of invoices and bill of lading has also been placed on record. The same run contrary to the observations made by Ld. CIT(A) that there was no business transactions. Therefore, this issue is restored back to Ld. AO for verification and re-adjudication with a direction to the assessee to substantiate its claim. The ground, to that extent, stands allowed for statistical purposes.

10. Disallowance of business loss on equity investment.

10.1 The assessee held 147997 equity shares in another entity viz. M/s ICS, Senegal. However, that entity decided to reduce its authorized share capital to nil after writing-off accumulated losses. As a result of the same, the investment made by the assessee for Rs.443.43 Lacs was written-off in the books and the same was claimed as business loss. In the alternative, the assessee pleaded to allow long term capital loss. The Ld. AO held that it was not a business loss. The alternative claim was not allowed on the ground that it was not claimed in the return of income.

10.2 The Ld. CIT(A) confirmed the disallowance on the ground that business nexus was not established. The Ld. AO held that it was a long-term capital loss which was upheld. Aggrieved, the assessee is in further appeal before us.

10.3 Before us, the assessee has not established any business nexus with the impugned investment. Therefore, the investments so written-off could not be allowed as business loss. The Ld. CIT(A) has erred in noting that the said loss has been allowed as long-term capital loss by Ld. AO. In fact, no such computation has been made by Ld. AO in the assessment order. Therefore, the aforesaid claim would be assessable as capital loss and be allowed to be carried forward. The Ld. AO is directed to compute the same in accordance with law. The alternative claim made by the assessee stand allowed. The corresponding ground stand partly allowed.

Conclusion

11. 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