

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No. 1543/Del/2023
Assessment Year: 2017-18**

Ardom Towergen (P) Ltd.,
ED-93, F/F, Tagore Garden,
New Delhi

PAN: AAACQ2776J
(Appellant)

Versus DCIT, Circle 3(1),
Delhi

(Respondent)

Assessee by : Sh. Gautam Jain, Advocate
Revenue by : Sh. Kanav Bali, Sr. DR

Date of hearing : 03.01.2024
Date of pronouncement: 15.01.2024

ORDER

Captioned appeal by the assessee arises out of order dated 21.03.2023 passed by National Faceless Appeal Centre (NFAC), Delhi pertaining to assessment year 2017-18.

2. The core issue arising for consideration in the appeal is whether an amount of 7,67,07,293/- is allowable as business expenditure under section 37(1) of the Income-tax Act, 1961. Before we proceed to decide the issue, it is necessary to provide brief factual matrix leading to the present dispute.

3. The assessee, previously known as M/s. Quanta Towergen (P) Ltd., is a resident corporate entity. As stated, the assessee was earlier owned by Quanta Services (Netherlands) Ltd., which in turn was owned by Quanta Services Inc., an USA based company. The assessee is basically engaged in the business of owning and operating solar installations including batteries on telecom towers owned and operated by telecom companies. The basic object of the assessee is to provide uninterrupted power supply to telecom towers. The assessee had entered into an agreement, known as Master Service Agreement with M/s. Team Sustain Ltd., an Indian entity, managed by Mr. George Mathew and Mareena George. In terms of which, M/s. Team Sustain Ltd. was to execute solar installation projects, monitor the performance of solar power generators through a network operating centre by using variation software and maintain the solar assets on sites. Thus, in sum and substance, the assessee had outsourced its work of solar installation and batteries on telecom generators and maintenance to M/s. Team Sustain Ltd. Further, the assessee has entered into a framework agreement, in terms of which, the assessee advanced a sum of Rs.8,13,03,459/- carrying interest rate of 14.05%, which was disbursed to M/s. Team Sustain Ltd. during the financial years 2015-16

and 2016-17. The interest income earned by the assessee on such advance was offered to tax in assessment years 2016-17 and 2017-18.

4. Subsequently, due to severe financial crunch, M/s. Team Sustain Ltd. was unable to execute the work and sustained huge liabilities on account of service tax leading to arrest of a majority shareholder and CEO. This resulted in delay in payment to sub-vendors and employees' salaries. Noticing these facts and apprehending problems relating to service tax compliances as well as possible claims from aggrieved employees towards their responsibility as a principal employer, which could have led to complete collapse of assessee's own operations resulting in major loss of market, good will and business, the assessee agreed to extend further funds to M/s. Team Sustain Ltd. as loan for continuation of the business and business interest in terms of which, framework agreement was signed. Subsequently, in the later part of 2016, the then shareholders of the assessee company decided to cede control through a sale process and appointed a consultant for the same. Having become aware of the aforesaid fact, M/s. Team Sustain Ltd. staked a claim of Rs.26.21 crores on the assessee citing major violations of various understandings arrived at mutually during 2012 to 2016. To avoid any dispute leading to litigation, which could have

hampered the equity transaction, the assessee and Quanta Power Solutions (India) Private Ltd. entered into a settlement agreement with M/s. Team Sustain Ltd. on 14.02.2017, in terms of which, the assessee and Quanta Power Solutions (India) Pvt. Ltd paid certain amounts to M/s. Team Sustain Ltd. in addition to waiver of loans including interest granted to M/s. Team Sustain Ltd. as per framework agreement. In terms with the settlement agreement, an amount of Rs.5,58,45,000/- was paid as compensation to M/s. Team Sustain Ltd., out of which, assessee's share was Rs.81,70,000/- and that of Quanta Power Solutions (India) Pvt. Ltd. was Rs.4,76,75,000/-.

5. In course of assessment proceedings, the Assessing Officer examined assessee's claim of deduction qua write-off of Rs.8,02,05,204/- comprising of loan waiver and compensation paid. After examining assessee's claim in the context of facts and materials on record, the Assessing Officer concluded that the amounts written off on account of loans and advances is not allowable as deduction in terms of section 36(2)(i) of the Act. The assessee contested the aforesaid disallowance by filing an appeal before learned Commissioner (Appeals). While deciding the appeal, learned

Commissioner (Appeals) held that the deduction claimed being not in the nature of business expenditure, cannot be allowed.

6. Drawing our attention to the framework agreement and settlement agreement, learned counsel for the assessee submitted that the loan advanced to M/s. Team Sustain Ltd is for payment of service tax and other liabilities sustained by M/s. Team Sustain Ltd and not for acquiring any capital asset. Thus, it was submitted that since the loan was advanced for repayment of liabilities arising out of business operations, they are allowable as business expenditure.

7. Per contra, learned Departmental Representative, through written submission, has submitted as under :

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Sub: Written Submission in the above case- reg.

“The above case has come up for hearing today i.e., on 03/01/2024. The following submissions are made for favour of consideration of the Hon’ble Members

1. During the year, the appellant company was engaged in the business of operation and maintenance of telecom towers, to install, own and operate solar installation including batteries on telecom (owned and operated by telecom company) tower sites and provide energy to telecom companies to provide uninterrupted power supply to telecom equipments for mobile telephony. Laying and maintenance of optical fiber cable.

2. The appellant had entered with an arrangement with M/s Team Sustain limited (TSL) owned/managed by Mr. George Mathew and Mareena George. There was a Master Service Agreement dated 07th May 2013 between TSL and QPSI (QUANTA POWER SOLUTIONS (INDIA) PRIVATE LIMITED) , as amended by a supplemental

agreement dated 13th August 2014 executed between TSL, QPSI and QUANTA TOWERGEN PRIVATE LIMITED (being the earlier name of the assessee).

Refer Page 233 of the assessee PB. However copies of these agreements are not provided by the assessee.

3. In relation to the same or similar arrangement .There was a Teaming Agreement dated 24TM April 2012 (earlier to the agreement at 2 above) between TSL, George Mathew, QPSI and Quanta TowerGen as amended from time to time. Refer Page 234 of the assessee PB. However copies of these agreements are not provided by the assessee.

4. These agreements go to the core of the issue (being original agreements) as to what constituted the scope of services, deployment of the assets/tangibles, use / creation and assignment of IP , knowhow etc by TSL in such arrangements. This is so because Ld CIT (A) has held that loans and advances written off in favour of TSL subsequent to Settlement Agreement dated 14th February 2017 are Capital expense as having made to acquire assets, including intangible of enduring nature as against the claim of the assessee that such waiving/write off of loans given to TSL is a revenue expenditure incurred in the regular course of business. The examination of the issue and findings of Ld CIT(A) are at Para 7.7 to 7.15 of CIT (A) order.

In Page 235 of PB of the assessee, a reference has been made to Transaction Documents. However copies of these documents are not provided by the assessee.

5. It has been submitted by the appellant that TSL was to execute solar installation projects, monitor the performance of solar power generator through a network operating centre by using various software and maintain the solar assets on the sites. Refer Para 4 of the synopsis dated 02/01/2024 of the assessee. It has further been submitted by the assessee in Para 11 of the same synopsis that till financial year 2015-16 , the appellant was in the sole business of owning, installing and operating solar energy generating assets including batteries at telecom tower sites to provide solar energy and in turn, facilitating economic and uninterrupted power supply to the telecom companies.TSL was the prime service provider of the appellant company involved in project management, remote monitoring of sites through a Network Operating Centre(NOC) and Operations and Maintenance of solarized sites. It has been further submitted by the assessee that more than 75% of operational expenses were incurred through TSL and its associates It is therefore

vivid that revenue of the assessee were majorly reliant upon the TSL for its knowhow, domain knowledge, expertise and resources (both tangible and intangible).

6. That assessee entered a Framework Agreement dated 21/01/2016 (Refer page 229 to 276 of PB of the assessee). As per this , the appellant advanced a sum of Rs.8,13,03,459/- during F.Y 2015-16 and 2016-17 to TSL and subsequently under Settlement Agreement dated 14/02/2017 (Refer page 278 to 305 of the assessee PB) waived off the outstanding loan of Rs.7,24,73,639/-, interest of Rs.88,29,820/- was also waived and further remitted a sum of Rs.81,70,000/- which was shown under Site Maintenance Exp during AY 2017-18.The AO had disallowed the expenditure on account of such waiver/write off of debt / receivables after considering that such claim of the amount written off is on account of loans and advances and is not allowable as bad debt under section 36(1)(vii) in view of the express provisions of section 36(2). Before Id CIT (A) , the appellant advanced an alternate claim of allowability of the amount written off u/s 37(1) of the Act.It has already been discussed above that Ld CIT (A) has held that loans and advances written off subsequent to Settlement Agreement dated 14th February 2017, are Capital expense as having made to acquire assets, including intangible of enduring nature as against the claim of the assessee that such waiving/write off of loans given to TSL is a revenue expenditure incurred in the regular course of business. The examination of the issue and findings of Ld CIT(A) are at Para 7.7 to 7.15 of CIT (A) order.

The argument of the appellant that it is a revenue expense incurred for the purpose of its business has been explained by it in Para 11 to 14 of its synopsis dated 02/01/2024 and arguments made during the course of hearing.

7. In view of the above , following further submissions are made hereunder :-

- i) This transaction is not a trade debt or a sum receivable on account of sales or rendering of services.
- ii) Its repayment to the assessee would not have swelled the profits as it is on capital account.
- iii) When no enduring benefit is arising to the appellant (as claimed by appellant) on account of any assets, knowhow, right to use ,IP assignments etc then why loan and interest has been waived off remains unanswered. More so when after this write off /waiver of loan and interest TSL has stopped working as associate of the appellant

in subsequent years. Therefore this arrangement is in reality a compensation to TSL and is a Capital expense. Reference is also made to Page 270 of assessee PB which is SCHEDULE IX to Framework Agreement containing "SPECIFIED REPRESENTATIONS AND WARRANTIES and Clause 17 deals with warranties of Intellectual Property IP held by TSL.

8. In view of the above Ld CIT (A), after examining the nature of transaction has very rightly held it as Capital Expenditure. As the appellant has challenged order and findings of Id CIT appeal before Hon'ble ITAT and the main question whether this expenditure is revenue or capital is now before the Hon'ble Bench and this being also a question to be examined on facts, it is submitted that the following agreements and documents have a direct bearing on such determination and therefore, in all my humility, need to be examined. As of now, the appellant has relied on agreements that were arising out of these Master agreements but has not produced these agreements /documents. These are as under:-

i) Master Service Agreement dated 07th May 2013 between TSL and QPSI (QUANTA POWER SOLUTIONS (INDIA) PRIVATE LIMITED) , as amended by a supplemental agreement dated 13th August 2014 executed between TSL, QPSI and QUANTA TOWERGEN PRIVATE LIMITED (being the earlier name of the assessee).

ii) Teaming Agreement dated 24th April 2012 (earlier to the agreement at 2 above) between TSL, George Mathew, QPSI and Quanta TowerGen as amended from time to time. Refer Page 234 of the assessee PB.

iii) Transaction Documents. In Page 235 of PB of the assessee, a reference has been made to these."

8. We have considered rival submissions and perused materials on record. The core issue arising for consideration is whether the deduction claimed by the assessee is to be allowed as business expenditure or not. On going through the written submissions of learned Departmental Representative, as reproduced in the order, it is

observed that in sum and substance, learned Departmental Representative submits that for coming to a just conclusion on the nature of expenditure, various documentary evidences, such as the Master Service Agreement dated 07.05.2013 between M/s. Team Sustain Ltd and Quanta Power Solution (India) Pvt. Ltd. as amended by supplement agreement dated 13.08.2014 executed between M/s. Team Sustain Ltd., Quanta Power Solution (India) Pvt. Ltd. and Quanta Towergen Private Limited (earlier name of the assessee) were required to be examined. He has further submitted that Teaming agreement dated 24.04.2012 between M/s. Team Sustain Ltd., Quanta Power Solution (India) Pvt. Ltd. and Quanta Towergen Private Limited, has to be seen. He further submitted that the transaction documents as referred to in the Framework Agreement also require to be seen to find out the true nature and character of the loan- whether for acquiring capital asset or for repayment of liabilities. It is the further submission of learned Departmental Representative that since, the issue in dispute is a purely factual issue and has to be decided on examination of facts, these agreements, which have never been examined at any stage, need to be examined.

9. In response to the aforesaid submission of learned Departmental Representative, learned counsel appearing for the assessee has submitted that the departmental authorities have neither raised any query with regard to these documents nor called upon the assessee to furnish them for examination. Therefore, there was no occasion for the assessee to furnish them. He further submitted, if the departmental authorities so desire and want to examine the issue factually with reference to the documents referred to by learned Departmental Representative in his submissions, the assessee is willing to furnish them before the Assessing Officer. Thus, learned counsel for the assessee submitted for restoration of the issue to the Assessing Officer for de novo adjudication. Learned Departmental Representative also agreed for restoration of the issue, as according to him, various agreements/documents not examined earlier have to be examined for coming to a proper conclusion on facts.

10. Having considered rival submissions and perused materials on record, we find, as per submissions of learned Departmental Representative, it is the case of the Revenue that various agreements, which are not produced at earlier stages need to be examined for arriving at a proper conclusion on assessee's claim of business

expenditure. Since, the documents referred to by learned Departmental Representative were never called for and examined by the departmental authorities, in our view, in the interest of justice, the issue arising for consideration needs to be restored back to the Assessing Officer for de novo adjudication. The Assessing Officer, if so desires, may call upon the assessee to furnish the documents, which he requires to examine for ascertaining the true nature and character of the expenditure. On examination of such documents, the Assessing Officer may decide the issue after providing due and reasonable opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

11. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open court on 15/01/2024.

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Sd/-

**(SAKTIJIT DEY)
VICE-PRESIDENT**

Dated: 15.01.2024

*aks/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Assistant Registrar
ITAT New Delhi