

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI
BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No.1417/Del/2023, A.Y. 2018-19

M/s. Fertilizer Corporation of India Ltd. A-14, PDIL, 5 th Floor Sector-1, Noida-201301 Gautam Budh Nagar (UP), PAN : AAACF1661P	Vs.	National e- Assessment Centre D.C.I.T. Circle-25(1) Delhi
(Appellant)		(Respondent)

Appellant by	Sh. K. Sampath and Sh. V. Rajakumar, Adv's
Respondent by	Sh. Vivek Kumar Upadhyay, Sr. DR

Date of Hearing	20/12/2023
Date of Pronouncement	21/02/2024

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], dated 30/03/2023 for Assessment Year 2018-19.

2. Grounds taken in this appeal are as under:

"1. On the facts and in the circumstances of the case and in law the Ld. CIT(Appeals) erred in confirming the following additions :-

- a. *in framing assessment u/s 143(3) of the Act without serving notices at the registered e-mail address resulting into a failure to provide reasonable and adequate opportunity of hearing;*
- b. *in making disallowances of Rs. 144,49,29,000/- in respect of exceptional items claimed in the profit and loss account;*
- c. *charging interest u/s 234A and 234B of the Act.*

The above actions are being arbitrary, fallacious, unwarranted and illegal must be quashed with directions for appropriate relief.”

3. Brief facts of the case are that the assessee filed return u/s 139(1) of the Income Tax Act ('Act' for short) declaring total income of Rs. 1,38,39,050/-. The return of assessee was selected for scrutiny under CASS the assessment order came to be passed on 24/05/2021 u/s 143(3) read with Section 144B of the Income Tax Act ('Act' for short), wherein the A.O. disallowed an amount of Rs. 57,85,488/- u/s 14A of the Act and further disallowed the expenses claimed by the assessee in the form of exceptional item of Rs. 144.49 crore and added back to the income of the assessee.

4. Aggrieved by the assessment order dated 24/05/2021, the assessee preferred an Appeal before the CIT(A), the Ld. CIT(A) vide order dated 30/03/2023, deleted the disallowance u/s 14A of the Act and upheld the disallowance of Rs.144.49 crores made by the A.O. and added back to the income of the assessee. As against the order of the Ld. CIT(A) dated 30/03/2023, the assessee preferred the present appeal on the grounds mentioned above.

5. In Ground No. 1(a), the assessee contended that the CIT(A) committed error in framing assessment u/s 143(3) of the Act without serving notices at the registered e-mail address which resulted into a failure to provide reasonable and adequate opportunity of hearing, thus sought for setting aside the order impugned.

6. Per contra, the Ld. Departmental Representative relied on the findings of the Ld. CIT(A).

7. We have heard both the parties and perused the material available on record. It is found that the assessee had partially complied to notice issued u/s 143(2) of the Act dated 23/09/2019 and the notice u/s 142 (1) of the Act dated 01/02/2020, which proves that the assessee was accessing to his registered e-mail address till 1st February, 2020. It is the claim of the assessee before the A.O. that the assessee had changed the e-mail id subsequently, therefore, the notice has not been served on the Assessee. It is seen that the said changing of the e-mail id has not been brought to the notice of the Revenue Authorities, in such events, the A.O. cannot be found fault of not serving the notices. Thus, we find no merit in Ground No. 1(a) of the assessee, accordingly, Ground No. 1(a) of the assessee is dismissed.

8. In Ground No. 1(b), the assessee contended that the Ld. CIT(A) erred in making disallowance of Rs. 144,49,29,000/- in respect of exceptional items claimed in the profit and loss account. The Ld. Counsel made following submissions in support of Ground No 1(b) are as under:-

“6.1. The first submission on behalf of FCIL is that the accounting entries made by it in the accounts and considered by the auditor and others are not in accordance with accounting principles and commercial practise. That is for the reason that the shares as issued to FCIL by RFCL in tranches lay in the capital field vis.a.vis FCIL. They were not intended to be the income of FCIL by the Government. So much of capital support was aimed to be provided to FCIL through the arrangement as worked out by the Cabinet Committee of Economic Affairs of the Government of India for the revival of FCIL. The proper entry therefore, was to have credited capital reserve account with a debit to current investments. It would, therefore, be erroneous to construe income based on those wrong entries.

6.2 It is now well established through multiple decisions of various Courts that accounting entries are not decisive of the nature of income. Had only FC been credited with the Profit and Loss Statement by crediting income in the name of Exceptional (item (Page 97 of the printed accounts), this controversy would not have arisen. To sum up, the shares of RFCL issued in phases to FCIL lay entirely in the capital field. Those shares were not endowed with any stream of revenue income.

6.3 The only income that accrued to FCIL from the arrangement as proposed by the Government was the lease rent for 99 year period @ Re. 1/- per annum. On that point there could be no controversy.

6.4 The lease, as such, was for a period of 99 years. The capital as accruing to FCIL by way of Investment in the shares of RFCL would, therefore, have to be amortised over a period of 99 years. It is during that period of 99 years that any taxable event in the capital field would have arisen. That would be prorata per year. The Auditors note on Page 141 of the printed accounts are relevant in the context.

6.5 The sole benefit that would accrue to FCIL would be the dividend on the shares of RFCL as and when dividends were declared by the latter. No such declaration was made during the subject year. Nay even the commercial production by RFCL had not commenced and so no income could be attributed to FCIL on that account.

6.6 The shares as issued by RFCL to FCIL were at face value. The intrinsic value as per the applicable principles of valuation of shares was virtually nil because RFCL did not own any valuable asset. The only tangible fixed asset was land which belonged to FCIL as devised by the 99 years lease agreement with the shares of RFCL having no significant value no income could be presumed favouring FCIL. The presumption of the Assessing Authority that income accrued to FCIL because of this arrangement signified by the entry of Exceptional Items is per se erroneous and untenable.

6.7 The exceptional income depicted at the gross figure of Rs. 144.49 crores in the accounts is wrong, That is because this figure of Rs. 144.49 crores includes a sum of Rs 51.98 crores which represented shares to be issued to FCI by RFCL in the succeeding year i.e. AY 2019-20. That figure could not have been brought to tax in AY 2018-19.

6.8. In the published accounts for the subject year the sum of Rs. 51.98 crores though taken into account as income, was accounted for in the Balance Sheet by FCIL as receivable (page 112 of the printed accounts). That as stated supra was incorrect. The C&AG in its audit report has specifically pointed out this error in the accounts. The observation of the C&AG is contained in page 93 of the printed accounts.

6.9 Reverting to the balance amount of Rs. 92.51,00,000/- which is attributable to the subject year the condition which is stipulated in the JV Agreement in clause 2.2.1 (page 64 of the Paper Book) is that the income would accrue after the commencement of commercial production by RFCL, RFCL had not commenced commercial production during the subject year. As per the JV Agreement commercial production was projected to be commenced by 31.03.2019 (pages 16 & 17 of the Paper Book). With that condition in operation and with no commercial production having commenced during the year and till much later upto 2022, no income in any case could accrue or arise to FCIL during the subject year.

6.10 As to the accrual of income general principle is that the subject sum should be decreed as income to an assessee by the other party to the deal. RFCL has not depicted the sum amount of Rs. 92,51,00,000/- as expenditure incurred by it Admittedly RFCL was engaged in construction of its project during the current period. It was expenditure during the construction period which was required to be capitalised as per accounting principles in commercial practise which RFCL, did,

6.11 What is taxable is real income and not hypothetical income. FCIL had not received any real income from RFCL at any point of time during the year. There is Therefore no question of any income accruing to FCIL during the year on any imaginary or hypothetical basis,

6.12 In sum therefore, the said amount depicted as an exceptional item under the head of Income in the Profit & Loss Account below the line could not have been brought to tax during the subject year for no income accrued or arose to it during the year, that the amount as considered by the Revenue Authorities at Rs. 144,49 crores was wrong for it was only Rs. 92.51 crores which had been taken by RFCL as disbursal of capital to FCIL that even the C&AG had clarified its audit report while specifically mentioning the Rs. 51.98 crores out of the gross sum of Rs. 144.49 crores was relatable to the succeeding year and not the current year: that the amount in question was purely capital

in nature and had no intrinsic value; that by its very nature, the mistaken depiction in the accounts of the said sum as an exceptional item on the credit side of the Profit & Loss account was fundamentally erroneous for the amount never lay in the Revenue field but was purely capital in nature and with otherwise had no intrinsic value. On these and other grounds as taken in the foregoing paras the plea as canvassed by FCIL merits to be accepted with the sum of Rs. 144.49 crores as added by the Revenue Authorities being deleted.”

9. Per contra, the Ld. Departmental Representative submitted that the assessee had right to receive total share of Rs. 144.49 crores as per the concession agreement with Ramagundam Fertilizers and Chemicals Ltd. without paying any amount to Ramagundam Fertilizer & Chemical Limited. In normal circumstances any other 3rd party would be required to pay Rs. 144.49 crores to acquire the said shares. The shares were acquired in lieu of right to use to the Assessee's capital asset by Ramagundam Fertilizer & Chemical Limited ('RFCL' for short), the exploitation of capital asset results into income which is to be treated as income on account of Revenue (not capital). Thus, the said income can be taxed on the basis of agreement as and when the same is quantified. The Ld. Departmental Representative relying on the findings and the conclusions of the Lower Authorities, sought for dismissal of Ground No. 1(b).

10. We have heard both the parties and perused the material available on record. As per the audited Profit and Loss Account of the Assessee, the Assessee claimed expenditure in form of exceptional item at Rs. 144.49 crore. During the assessment proceedings, it was found from the audit report, that the auditor has mentioned that the Assessee has entered into concession agreement with Ramagundam Fertilizer & Chemical Limited

(RFCL) on 23/03/2016 towards grant of right and concessional to RFCL with regard to facility area. Further, it was mentioned by the Auditor that the compliance of the conditions and execution of the concession agreement have been completed and executed during the current Financial Year and accordingly lease rent have been recognized during the year under consideration. The A.O. observed that from the remarks given by the auditor also the issue remains unexplained as there is no evidence on record to quantify and justify the claim made by the assessee in the audited profit and loss account, therefore, the expenses claimed by the assessee in form of exceptional items at Rs. 144.49 was found to be not admissible and disallowed the same and added back to the income declared by the assessee.

11. The Ld. CIT(A) has confirmed the above said disallowance made by the A.O. in following manners:-

“5.4.1. Before me, the appellant has submitted that the appellant has entered into an agreement with Ramagundam Fertilizer & Chemical Limited (RFCL) for a period years towards grant of right and concession to RFCL. In lieu of this, RFCL has to issue equity shares equal to 11% of the total capital expenditure of the project.

5.4.2 During the year, RFCL issued equity shares of 92.51 crores and shares of 51.98 crores were to be issued during the F.Y. 2018-19 (totalling to 144.49 crores).

5.4.3 The appellant has right to receive total shares of Rs. 144.49 crores as per the concession agreement with RFCL without paying any amount to RFCL.

5.4.4 In normal circumstance, any other third party would be required to pay Rs. 144 49 crores to acquire these shares. These shares were acquired in lieu of right to use the appellant's capital assets by RFCL. Exploitation of capital asset results into income which is to be treated as income on account of revenue (not capital). This income can be taxed on the basis of agreement as

and when the same is quantified. In this case, the quantum of shares to be issued to the appellant has been quantified and part of the shares were also issued during the year.

5.4.5 It is worth mentioning that the land was given to RFCL on lease and the shares were allotted to RFCL on lease and the shares were allotted in lieu of this concession. This shows that the shares were issued for right to use the land given on concession. For this reason also, it has to be assessed as revenue receipt and not capital receipt.

5.4.6 In view of the above, it is held that in lieu of the rights, the sum of Rs. 144.49 crores became due to the appellant and the same was paid / payable in the form of equity shares of RFCL.

5.4.7 In view of the above, the disallowance of Rs. 144.49 crores is upheld. This ground is dismissed.”

12. It is an admitted fact that the assessee has given right of lease of 99 years of the property of the Assessee to RFCL vide concession agreement dated 23/03/2016. In view of the said lease, RFCL has issued 11% of the total capital expenditure of the said property as equity shares to the Assessee valuing at Rs. 144.49 crores. The assessee charged the said amount to P & L account claiming as exceptional item, thus, the Assessee claimed as Revenue expenditure while computing the income of the Assessee. The said claim of the assessee was not based on any prudent accounting principles. In other words, the same is an income earned by the Assessee on giving the right to use the land at a concession rate. In any normal circumstances, if any third party would be required to pay Rs. 144.49 crore to acquire those shares. The shares were acquired in lieu of right to use the Assessee's capital assets by RFCL. Thus, we find no merit in the grounds of Appeal of the Assessee.

13. The Ld. AR made an oral submission that the Assessee had indeed offer to tax this sum in AY 2020-21. As we have already held herein above that income had indeed accrued to the Assessee during the year under consideration sum of Rs. 144.49 crores, which has been received by the Assessee in the form of shares in the Joint Venture Company to the tune of Rs. 92.51 crores, remaining sum of Rs. 51.98 crores has been shown as receivable in the balance sheet of the Assessee, in case if the said sum has been again offered to tax by the Assessee in subsequent years, the same should be deleted in the Assessment Year, in order to avoid double taxation. In our considered opinion, this direction is given to the Ld. A.O. to avoid double taxation and to meet the ends of justice.

14. In view of the aforesaid observations and directions given hereinabove, the Grounds raised by the Assessee are disposed off. Consequently, Appeal filed by the assessee is dismissed.

Order pronounced in open Court on 21st February, 2024

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Dated: 21/02/2024

B.R./R.N, Sr. Ps.

Copy forwarded to:

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

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI

