

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” 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.1481/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2015-16)

&

आयकर अपील सं. ITA No.1482/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2016-17)

&

आयकर अपील सं. ITA No.1483/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

M/s. Coastal Energen Private Limited No.5, Bhuhari Building, Moores Road, Egmore, Chennai-600 004.	बनाम / Vs.	ACIT Central Circle-1(1), Chennai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AADCC-0886-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri B. Ramakrishnan (CA)- Ld. AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri N. Balakrishnan (CIT)-Ld. DR

सुनवाईकी तारीख/Date of final Hearing	:	14-03-2024
घोषणाकी तारीख /Date of Pronouncement	:	22-03-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeals by assessee for Assessment Years (AY) 2015-16 to 2017-18 arise out of the common order of learned Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] dated 31-10-2023 in the matter of separate assessments framed by Ld. Assessing Officer [AO]

u/s.153A on 30-09-2021 for AY 2015-16 & 2016-17 and u/s. 143(3) for AY 2017-18 vide order dated 30-09-2021. Admittedly, the facts as well as issues are quite identical in all these years. Therefore, our adjudication in any one year shall be applicable to other years also.

1.2 The grounds raised by assessee in AY 2015-16 read as under:-

1. For that the Order of the Learned Commissioner of Income Tax (Appeal) is contrary to law, facts and circumstances of the case.
2. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the allegation of the Assessing Officer that assets to the tune of Rs.2,51,00,000/- were over invoiced without appreciating the fact that the Appellant had genuinely incurred the entire amount for acquisition of the capital assets which was offered to tax by the recipient and consequently erred in disallowing depreciation to the tune of Rs.37,65,000/- on the alleged over-invoicing of the Capital Asset without appreciating the facts of the case.
3. For that the Learned Commissioner of Income Tax (Appeals) and Assessing Officer failed to appreciate the fact that only the amount paid for acquisition of the capital assets through banking channels were capitalized in the books of accounts and the same can be supported by relevant documentary evidence.
4. For that the Learned Commissioner of Income Tax (Appeals) ought to have considered the provisions of section 43(6) of the Act which states that the no adjustments can be made to the block of assets other than by way of sale of the asset. Therefore, once depreciation is granted to the block of asset u/s 32 of the Act, no disallowance of depreciation can be made without first lawfully reducing the w.d.v. of the block of assets.

As is evident, the sole substantial issue that arises for our consideration is disallowance of depreciation.

1.3 The Ld. AR advanced arguments supporting the case of the assessee whereas Ld. CIT-DR supported the findings given by lower authorities. Having heard rival submissions, our adjudication would be as under.

Assessment Proceedings

2. The assessee group was subjected to search action u/s 132 on 04-01-2017 wherein certain incriminating material was found. A sworn statement was also recorded from the promoter-director Shri Ahmed Bukhari. The relevant portion of various statements has been extracted in the assessment order. Subsequently, notice u/s 153A was issued

wherein it was alleged that cash was generated out of over-invoicing of vendors of assessee-company which was utilized by the promoter director for making investments which ultimately found its way back into the assessee-company. It also transpired that total amount of Rs.380.26 Crores was generated out of over-invoicing the vendor contracts out of which an amount of Rs.2.51 Crores pertain to this year. The director of the assessee-company admitted sum of Rs.2.51 Crores as commission received from various asset vendors after finalization of tenders on 'lowest bidder' basis. This commission was earned by over-inflating contracts towards purchase and installation of Plant and Machinery for Thermal Power plants of the assessee-company. Accordingly, Ld. AO proceeded to disallow depreciation of 15% of over invoicing of Rs.2.51 Crores. Since no plausible reply was received, Ld. AO disallow depreciation of Rs.37.65 Lacs and added the same to the income of the assessee.

Appellate Proceedings

3.1 The assessee defended its stand on the ground that the contracts were awarded on 'lowest bid' basis. The entire payments were made through banking channels. During search, loose sheets were found and the director offered a sum of Rs.386.06 Crores as his undisclosed income for various years as the said sum related to commission received by him from various vendors for awarding them with the contract for supply and erection of Plant and Machinery for the assessee company. However, there was no undisclosed income attributable to the assessee company. Further, the director had entered into an independent arrangement with unrelated vendors and the assessee company was not even aware of the arrangement. Such income was independent of the

assessee's business operations. The assessee made full payments as per the invoices raised for purchase of fixed assets. The commission income earned by the director was independent transaction and the same could not be mapped with the value of fixed assets in the hands of the assessee company for the purposes of computing depreciation. The assessee did not receive any cash with respect to above transactions and it entered into contracts with genuine unrelated vendors based on the 'lowest bidder'. The attention was also drawn to the provisions of Sec. 43(6) for the submission that Written Down Value (WDV) do not encompass any reduction in the value of the existing assets in the block except when it was sold. There was no scope of making adjustment in WDV of block of assets on account of commission income earned by the director.

3.2 The Ld. CIT(A) noted the admission made by the director in reply to Q. No.3 which was as under: -

8.10 In answer to Q.No.3 of the sworn statement dated 07.01.2017, Shri Ahmed Buhari has stated as under:

"Loose sheet no from 68 to 98 refers to the quantum of cash generated date wise, through excess invoice of various asset vendors as referred in the above paragraph. In these loose sheets the entry quantity "qty" represents "Rupees in Crores." These statements were prepared by Shri N.K. Balaji, ex Vice president of Coastal Energen Private Limited.

The technical team consisting of myself, Shri. Zafrullah and Shri Murali Kumar (ex employee- site head) will finalize the vendor contract terms and conditions after this the quantum of excess invoice to be billed against each of the vendor parties and the corresponding line items are decided by myself and Shri N.K. Balaji. Based on this a budgeted value against each of the vendor parties is proposed. However finally an amount is agreed between the company and the parties which is :actually «billed" in excess of the actual value as "over invoice". Entire billed value is paid through banking channels to the 'Vendor parties, who in turn withdraw cash and give to us after deducting certain commission. Sometimes out of the entire billed amount only a part amount is received back in cash. In respect of these vendor parties referred above the total billed value of over invoice is Rs.392.56 crores. However, out of which we have received back a sum of R.380.26 Crores in cash."

Considering the same, Ld.CIT(A) noted that there was clear admission of over-pricing of the invoices with the vendors. The director has specifically stated that the vendors were asked to over-invoice the bills. Thus, it was beyond any doubt that the value of capital assets had been over-invoiced and the excess amount was not utilized for the purpose of business of the assessee. In the circumstances, to claim that Shri Ahmed Buhari has used its influence and expertise to make commission income would be futile.

3.3 Another contention of the assessee that Insolvency resolution Professional (IRP) appointed under the provisions of IBC Act accepted the valuation of fixed assets, Ld. CIT(A) observed that a statement recorded u/s 132(4) is a sworn statement and it is clearly an evidence admissible under law. The statement was not a standalone statement but directly based on evidences collected during the course of search. In fact, Shri Ahmed Buhari was controlling the assessee companies through M/s Mutana Energy Holdings and M/s Precious Energy Holdings Ltd which put together held 40.38% of the shares. Therefore, Shri Ahmed Buhari was fully aware of the true facts when he had given the sworn statement u/s 132(4) of the Act. No retraction has been made by him at any stage of proceedings either before the Income-tax authorities during the course of search proceedings or before the Hon'ble Income Tax Settlement Commission or later. When the person (Shri Ahmed Buhari) who was part of the decision making process in bids and fully aware of the true facts and had given a statement

u/s 132(4), without verification of facts or furnishing evidence in respect of his claim, IRP to claim that the statement of Shri Ahmed Buhari is erroneous, would not be acceptable at all.

3.4 The other contention of the assessee was that once the assets are included in the block of assets, no change of WDV can be made. However, Ld. CIT(A) held that it was very clear from the statement of Shri Ahmed Buhari and also as per the report filed by Ld. Pr. CIT before the Hon'ble Income Tax Settlement Commission that the amounts of depreciation disallowed are related to the additions made during the financial year(s) relevant to the assessment years. Thus, it is not a case of WDV of block of assets but additions made during the years to the block of assets. When it has been confirmed by the promoter director of the assessee through sworn statement evidenced by the documents found during the course of search, the over-invoiced bills to the extent of the excess invoiced amount cannot form part of the value of assets added during the year. If such fraud is allowed to perpetuate by taking the stand that bills were paid through banking channels, it will be nothing but travesty of justice.

3.5 Proceeding further, Ld. CIT(A) in para 8.14, observed that as per Sec.43(1), actual cost means the actual cost of the asset to the assessee, as reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority. Further, as per Sec. 43(6) written down value means, in the case or assets acquired in the previous year, the actual cost to the assessee. Accordingly, when the assets are purchased during the relevant AY, the written down value is taken as the actual cost to the assessee and not from the opening WDV as claimed by the assessee. The actual cost of

the assets purchased during the year is only after reducing the amount received back by the Promoter-Director and therefore, the AO has correctly disallowed the depreciation claimed by the assessee.

3.6 The case law of Pune Tribunal in **M/s. Shapers India Private Limited [2021] 130 taxmann.com 409** as cited by the assessee was held to be non applicable. That case was related to waiver of loan related to the asset acquired in the earlier year and hence, it was held that it had no effect u/s 43(1) or u/s 43(6) and section 2(24)(xviii) also would not apply for the relevant year as it was effective from 1.4.2016 only. Thus, the said case was related to waiver of loan in respect of an asset whereas in the present case, it is a case of over-invoicing of the asset and is also related to the relevant assessment year.

3.7 Lastly, as per Section 32(1) of the Income-tax Act, 1961, depreciation is allowed in respect of assets owned, wholly or partly, by the assessee and used for the purposes of the business or profession. In this case, it was admitted fact of the assessee that it did not utilized the over-invoiced portion of the value of asset for its business.

3.8 Considering all these facts, the disallowance was upheld for all the three years. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

4. From the facts as enumerated by us, the undisputed position that emerges is that the assessee has acquired certain fixed assets during this year and claimed depreciation on the same. However, search findings and sworn statement of promoter-director clearly established that there was over-invoicing of the vendor bills against commission. The same led the promoter-director to make admission of certain amounts which has ultimately been subject

matter of proceedings before Hon'ble Income Tax Settlement Commission. In the sworn statement, the director has specifically stated that the vendors were asked to over-invoice the bills. Thus, it is beyond any doubt that the value of capital assets had been over-invoiced and the excess amount was not utilized for the purpose of business of the assessee. The findings rendered by Ld. CIT(A) and as enumerated by us in para 3.3 is also undisputed before us. The contention that once the assets are included in the block of assets, no change of WDV can be made, has rightly been dealt with by Ld. CIT(A). It is not a case of WDV of block of assets but additions made during the years to the block of assets. The over-invoicing portion of fixed assets could not become part of WDV of the assessee. Moreover, as per Sec.43(1), actual cost means the actual cost of the asset to the assessee, as reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority. Further, as per Sec. 43(6) written down value means, in the case or assets acquired in the previous year, the actual cost to the assessee. Accordingly, when the assets are purchased during the relevant AY, the written down value is taken as the actual cost to the assessee and not from the opening WDV as claimed by the assessee. The actual cost of the assets purchased during the year would obviously have to be after reducing the amount received back by the Promoter-Director. In our considered opinion, the well reasoned order of Ld. CIT(A) require no interference on our part. In the result, the appeal stand dismissed.

5. Since the fact as well as issue in AYs 2016-17 and 2017-18 are *pari-materia* the same, our adjudication as above shall *mutatis mutandis* apply to these two years also.

6. In the result, all the appeals stand dismissed.

Order pronounced on 22nd March, 2024

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

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

चेन्नई Chennai; दिनांक Dated : 22-03-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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