

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 1474/Kol/2023
Assessment Year: 2020-21

Hoogly Dock & Port Engineers Ltd. C/o. Syama Prasad Mookerjee Port 15, Strand Road Kolkata - 700001 [PAN : AAACH7473B]	Vs	DCIT, Circle-1(1), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri K.M. Sundaram, C.A.
Revenue by :	Shri Rakesh Kumar Das, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 21/02/2024
घोषणा की तारीख /Date of Pronouncement: 17/04/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

This appeal at the instance of the assessee is directed against the order of the National Faceless Appeal Centre, Delhi (in short '1d. First Appellate Authority') dt. 20/11/2023 which is arising out of the assessment order u/s 143(3)/144B of the Income-tax Act, 1961 (hereinafter 'the Act'), dt. 06/09/2022 relevant to Assessment Year 2020-21 framed by Assessment Unit, Income Tax Department.

2. Facts in brief are that the assessee is a company fully owned by the Government of India and is a public sector undertaking carrying on the business of building and repair of ships and boats. For the year under consideration, e-return was furnished on 27/01/2021 which was subsequently revised on 01/02/2021 declaring income of Rs.1,53,68,81,820/-. After serving of valid notice u/s 143(2) & 142 (1)

of the Act, assessment proceedings were carried out and certain additions/disallowances were made which included addition with regard to grant received from Government of India at Rs. 8,34,82,032/- and addition of excess expenditure u/s 35DDA of the Act for grant of VRS at Rs.26,47,744/-. Income assessed at Rs. 173,27,73,200/-. Aggrieved the assessee preferred appeal before the Id. CIT(A) but partly succeeded.

3. Now, the assessee is in appeal before this Tribunal raising various grounds with respect to various additions confirmed by the Id. CIT(A) and for the sake of reference grounds of appeal raised by the assessee are reproduced below:-

"1. Ground No.1 - Addition of Rs.8,34,82,032 u/s 28(iv) is liable to be deleted for the following reasons :-

i. This grant is received "in cash" and hence does not fall within the description contained in section 28(iv). Therefore, not taxable u/s 28(iv);

ii. This grant is received for the specific purpose of paying income tax by the appellant, namely an expenditure explicitly disallowed u/s 40(a)(ii).

Therefore, the subject grant received for this purpose is not taxable;

This grant "has not arisen from business" since no business has ever been done by the appellant to the Govt. of India and therefore this grant is not taxable u/s 28(iv);

iv. On facts, this impugned addition is indeed a liability and undisputedly reflected as a current liability of the appellant as on 31.03.2020, being the last of the relevant previous year. All the assets and liabilities of the appellant has been taken over by its successor M/s. Syama Prasad Mookerjee Port Kolkata, PAN : AAAJK0361L as per the directions of the Govt of India dt. 13.03.2023.

v. Alternate to Ground No.1 : On facts, the grant received during the relevant previous year is Rs.53,86,00,000 and the income tax paid during the relevant previous year is Rs.48,05,72,880 and therefore, even if the surplus is considered as taxable, then the taxable amount in the subject AY should be restricted to the difference of Rs.5,80,27,120.

2. *Ground No.2 - Disallowance of Rs.26,47,744 u/s 35DDA is liable to be deleted since it is paid not as VRS compensation paid during the normal course of business. Rather, it is paid for retrenching the employees for closing the business, which has been achieved on 17.07.2023.*

3. *Appellant prays for the permission to furnish additional evidences and grounds during the course of this appellate proceedings."*

4. The Id. Counsel for the assessee with regard to the addition of Rs. 8,34,82,032/- submitted that the alleged sum was received from Govt. of India for paying the income tax liability. However, at the close of year, the alleged sum remained in hand which was to be utilised during the subsequent period. He submitted that the Government gives the grant of making the payment of income tax and, therefore, the same cannot be treated as income since the income-tax in itself is not allowable as an expenditure. As regards the disallowance u/s 35DDA of the Act is concerned, he submitted that as per the decision of the Government of India, business of the assessee company has to be closed by the year end and, therefore, there is no possibility to claim the remaining expenditure in subsequent period and, therefore, rather than allowing 1/5th of the total expenditure, assessee deserves to get benefit of claiming 100% deduction u/s 37(1) of the Act.

On the other hand, the Id. D/R vehemently argued supporting the orders of the lower authorities.

5. We have heard rival contention and perused the record placed before us. First issue for our consideration is regarding the addition of Rs. 8,34,82,032/- u/s 28(iv) of the Act. We observe that the assessee being a public sector undertaking fully owned by Government of India receives the grant for paying the income tax liability. For the Financial Year 2019-20 as on 01/04/2021, the opening balance of the grant received from Government of India was Rs.2,54,54,912/-. During the year, further grant of Rs.53,86,00,000/- was received and during the year, the assessee had paid Income-tax of Rs.48,05,72,880/- and the balance amount remaining in the ledger of the grant was Rs.8,34,82,032/-. We further notice that the assessee in order to comply to the Income-tax Computation and Disclosure Standard (ICDS-VII) which relates to Government grants, and for the purpose of matching concept has shown the income tax liability paid during the year on the expenditure side of the profit and loss account and an equal amount was shown on the credit side as income. Now, whether such type of grant received towards payment of income tax is to be treated as income is the question before us.

6. Out of the grant received during the year and the opening balance, only the sum paid during the year as income tax has been shown as income for the matching concept purposes. The balance sum of Rs.8,34,82,032/- i.e., closing balance, cannot be termed as an income

of the assessee because it is not arising from any business activity carried out by it. Income tax paid during the year is not allowable as an expenditure and for paying such liability, grant has been received. Such type of grant is purely an item of liability head and any balance remaining at the year-end has to be shown as liability.

7. Under these given facts and circumstances, we fail to find any merit in the finding of the Id. CIT(A) who has confirmed the finding of the Id. Assessing Officer of treating the opening balance and amount unspent during the year received as grant from Government of India for paying income tax liability during the year as income, completely ignoring the facts that the said sum was received from Government of India for the specific purpose of paying off the income tax liability and any sum remaining with the company to the assessee company has to be returned back to the Government of India. Thus, by no canon it can be treated as income of the assessee. Finding of the Id. CIT(A) is thus set aside and the addition of Rs.8,34,82,032/- made u/s 28(iv) of the Act is hereby deleted. Ground No. 1 raised by the assessee is allowed.

8. Apropos Ground No. 2, regarding disallowance u/s 35DDA of the Act at Rs. 26,47,744/-, we notice that during the year, assessee company paid VRS to its employees as per the approval given by the Government of India. Section 35DDA of the Act provides for the mechanism for amortization of expenditure incurred towards Voluntary Retirement Scheme (VRS). Sub-Section (1) of Section

35DDA of the Act provides for allowing only 1/5th of such expenditure during the year and remaining to be claimed in four equal instalments in the four immediately subsequent years. Now, in the case of assessee, Rs. 33,09,680/- has been paid to employees for voluntary retirement and claimed as an expenditure. However, Section 35DDA of the Act provides that such expenditure cannot exceed 1/5th of the total sum. Though the assessee has claimed that the company is going to close, but in absence of any specific provision about the treatment of such amount under the given circumstances, we fail to find any merit in the contention of the Id. Counsel for the assessee and are inclined to confirm the finding of the Id. CIT(A). Accordingly, the disallowance made u/s 35DDA of the Act at Rs.26,47,744/- is confirmed. Ground No. 2 raised by the assessee is dismissed.

9. Remaining grounds are general and consequential in nature.

10. In the result, appeal of the assessee is partly allowed.

Order pronounced in the Court on 17th April, 2024 at Kolkata.

Sd/-

**(SANJAY GARG)
JUDICIAL MEMBER**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 17/04/2024

**SC S.P.*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata