

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बाला कृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./ I.T.A. No.187/Viz/2022

(निर्धारणवर्ष/ Assessment Year : 2006-07)

Hindustan Shipyard Ltd,
Visakhapatnam.
PAN: AAACH 4275 P

(अपीलार्थी/ Appellant)

अपीलार्थीकीओरसे/ Appellant by

प्रत्यार्थीकीओरसे/ Respondent by

सुनवाईकीतारीख/ Date of Hearing

घोषणाकीतारीख/Date of
Pronouncement

Vs. The Deputy Commissioner of
Income Tax,
Circle-3(1),
Visakhapatnam.

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, AR

Dr. Satyasai Rath, CIT-DR

: 09/05/2024

: 31/05/2024

ORDER

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee is against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ["Ld. CIT(A)-NFAC"] in DIN & Order No. ITBA/NFAC/S/250/2022-23/1044557361(1), dated 8/8/2022

arising out of the order passed U/s. 115WE of the Income Tax Act, 1961 [“the Act”] for the AY 2006-07.

2. Briefly stated the facts of the case are that the assessee the assessee, a Public Sector Undertaking, engaged in the business of execution of works contracts for building ships and offshore platforms, filed its return of income for the AY 2006-07 on 28/11/2006 admitting NIL income. While filing the return of income the assessee has also enclosed the statement of Fringe Benefits admitting the total fringe benefits of Rs. 50,12,212/-. During the assessment proceedings, the Ld.AO on verification of the fringe benefit statement filed by the assessee along with the audit report in Form-3CD, it was noted that the assessee-company had debited an amount of Rs. 94,62,880/- under the head “Conveyance, Tour & Travel” and had admitted the fringe benefits @ 5% amounting to Rs. 4,73,144/-. On this issue, the Ld. AO observed that since the assessee’s business is ship building / construction and not construction business per se, therefore the assessee is required to compute its fringe benefits @ 20% instead of 5% as was done by the assessee. Further, the Ld. AO also observed that the assessee has made short admission of fringe benefits to the tune of Rs. 31,89,438/- for which details

were not in the record available before the Ld. AO. Therefore, the Ld. AO reopened the case and a notice U/s. 115WH was issued on 24/09/2012 considering that there was an element of fringe benefits having escaped assessment. In reply, the assessee submitted its response stating that the original return filed in respect of fringe benefits may be treated as a return in response to the reassessment proceedings U/s. 115WH of the Act. Accordingly, the Ld. AO issued a notice U/s. 115WE(2) of the Act and in reply the assessee's Representative appeared before the Ld. AO and furnished the information from time to time. Before the Ld. AO, it was the contention of the assessee that the assessee is engaged in the business of construction of ships which is nothing but a form of construction business. The assessee also referred to Q. No. 106 of the Board Circular wherein it was stated the term "business of construction" must be understood by giving the ordinary English language meaning to it and therefore it was contended that all the activities involving construction including ship building / construction would be covered within the scope of the term 'business of construction' referred to in section 115WC(2) of the Act. On examination and verification of the submissions made by the assessee's Representative as well as the material available before

him, the Ld. AO did not accept the contention of the assessee and concluded that the word 'construction' means the activity of process of making / building roads, culverts, bridges, dams residential and commercial complexes and other civil constructions and therefore, the assessee's taxable fringe benefits under the above head would be exigible @ 20% as against 5% admitted by the assessee. Accordingly, the Ld. AO completed the assessment U/s. 115WE(3) r.w.s 115WG of the Act and determined the value of fringe benefits at Rs.64,41,644/- which includes an addition of Rs. 14,29,432/- towards fringe benefits @ 20% on conveyance, tour & travel as against 5% admitted by the assessee. Thus, the Ld. AO passed the assessment order date 19/12/2013. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-NFAC.

3. On appeal, the Ld. CIT(A)-NFAC, after considering the submissions of the assessee, sustained the addition made by the Ld. AO and dismissed the appeal of the assessee by observing as under:

"6.2. The assessee's business is normally described as ship building and NOT shipping construction. In English meaning, when a sentence is formed it is also called as "construction of a sentence". Thus, the word 'construction' is used in so many places to convey that something is brought into existence. But,

in the contest of section 115WC(2) referred above, 'business of construction' refers only to construction of civil works. Thus, after careful consideration, the submissions of the assessee are rejected and the AO's stand as stated above is upheld. Accordingly, the fringe benefit value assessed by the AO @ 20% as against 5% admitted by the appellant company is hereby upheld. The ground raised are dismissed."

4. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- "1. The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*
- 2. The Ld. CIT(A) is not justified in sustaining the addition of Rs. 14,29,432/- made by the AO by estimating the taxable fringe benefit value @ 20% as against 5% admitted by the appellant in respect of conveyance, tour and travel.*
- 3. Any other grounds may be urged at the time of hearing."*

5. At the outset, the Ld. Authorized Representative [AR] submitted that the assessee is engaged in the business of construction of ships which is nothing but a form of construction business. The assessee also referred to the Board Circular No.8/2005, dated 29/08/2005 and drew our attention to Q. No. 106 of the Frequently asked questions at item No. 11 of the said Circular, wherein it was stated the term "business of construction" must be understood by giving the ordinary English language meaning to it and therefore it was argued that all the activities involving construction including ship building /

construction would be covered within the scope of the term 'business of construction' referred to in section 115WC(2) of the Act. Therefore, the Ld. AR pleaded that since the assessee-company is engaged in the business of construction of ships which falls under the category of construction business and hence the assessee is eligible for computation of fringe benefit tax value @ 5% as per the provisions of section 115WC of the Act. Therefore, the addition made by the Ld. AO and confirmed by the Ld. CIT(A)-NFAC may be deleted.

6. On the other hand, the Ld. Departmental Representative [DR] strongly relied on the orders of the Ld. Revenue Authorities and supported the view taken by them. The Ld. DR further submitted that the word 'construction' in ordinary English language denotes the activity of process of making / building roads, culverts, bridges, dams residential and commercial complexes and other civil constructions wherein a new item comes into existence. Ld. DR further submitted that in normal parlance, the word 'construction' cannot indicate to the activity of building / construction of ships and that cannot be equated with the civil construction activity. Therefore, the Ld. DR pleaded the view taken by the Ld. AO while making addition of Rs.

14,29,432/- @ 20% of fringe benefits on conveyance, tour and travel against 5% admitted by the assessee and confirmed by the Ld. CIT(A)-NFAC is in order and their order are required to be upheld.

7. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. The core issue before the Bench to be decided is whether the activity of building / construction of ships is covered under the word 'construction' or not and 'whether the assessee is right in admitting 5% of fringe benefits on conveyance, tour & travel as against 20% adopted by the Revenue?' In the present case there is no dispute that the assessee is engaged in the business of execution of works contracts for building / construction of ships and offshore platforms. While filing the fringe benefit statement along with the audit report in Form-3CD for the year under consideration the assessee had admitted the fringe benefits @ 5% under the head "Conveyance, Tour & Travel". The contention of the Revenue is that since the assessee's business is ship building / construction and not construction business per se, therefore the assessee is required to compute its fringe benefits @ 20% instead of 5% as was done

by the assessee. In this situation it is pertinent to refer the Circular No.8/2005, dated 29/08/2005 wherein vide answer to Q. No. 106 of the Frequently Asked Questions at Item No. 11 explained the term “business of construction” which reads as under:

“What is the meaning of the term business of construction – whether only civil construction or even other construction work like construction of plants, telecommunication, infrastructure, etc., are also covered?”

*“106. The term “business of construction” must be understood by giving the ordinary English Language meaning to the words. **Hence, all activities involving construction would be covered within the scope of the term ‘business of construction’ referred to in section 115WC of the Income Tax Act.**”*

8. In the above said Circular it was clarified that the term “business of construction” must be understood by giving the ordinary English language meaning to it. In the instant case, there is no dispute on the fact that the assessee is involved in ship building / construction and therefore it is within the definition of the term “business of construction”. Further, for understating purpose, the ordinary English language meaning of the words “construct” and “construction” is extracted from “Webster’s Comprehensive Dictionary of the English Language” which is as under:

“Construct: 1. To put together and set up; **build**; arrange; 2. To devise – 1. **Anything systematically constructed or composed**. 2. Psychol. A complex of mental images and impressions, deliberately synthesized in a form to aid the imagination in further speculation.”

“Construction: 1. **The act of constructing; also, that which is constructed**. 2. Style of building or composing. 3. **The act of constructing, or the interpretation thereby arrived at**. 4. Gram. a. The putting together of forms syntactically, as in sentences, or morphologically, as in words; also, an example of this. b. The syntactical relationship of words, clauses, and sentences to each other.”

9. From the plain reading of the above ordinary English language meaning of the word ‘construct’ or ‘construction’, one can safely conclude that the meaning includes “build”. In the present case, the assessee is engaged in the activity of construction including ‘ship building / construction’ and therefore in our considered view it is covered by the above definition. Further, section 115WC(2)(b) of the Income Tax Act, 1961 reads asunder:

“Sec. 115WC(2)...

.....

(b) in the case of an employer engaged in the business of construction, the value of fringe benefits for the purposes referred to in clause (F) of sub-section (2) of section-115WB shall be "five per cent" instead of "twenty per cent" referred to in clause (c) of sub-section (1);”

10. In the present case, the assessee-company is engaged in the business of construction of ships which falls under the category of ‘construction of business’ as discussed above. Therefore, as per the

provisions of section 115WC(2)(b) the assessee is eligible for computation of fringe benefit tax value at the rate of 5% instead of 20% computed by the Revenue. Therefore, considering the facts and circumstances of the case, we have no hesitation to delete the addition of Rs. 14,29,432/- made by the Ld. AO and confirmed by the Ld.CIT(A)-NFAC towards fringe benefits on conveyance, tours and travel. Thus, all the grounds raised by the assessee are allowed.

11. In the result, appeal filed by the assessee is allowed.

Pronounced in the open Court on 31st May, 2024.

Sd/- (एस बालाकृष्णन) (S. BALAKRISHNAN) लेखासदस्य/ACCOUNTANT MEMBER	Sd/- (दुव्वूरु आर.एल रेड्डी) (DUVVURU RL REDDY) न्यायिकसदस्य/JUDICIAL MEMBER
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Dated :31/05/2024

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–Hindustan Shipyard Ltd., D.No. 1-1, Gandhigram, Visakhapatnam, Andhra Pradesh – 530005.
2. राजस्व/The Revenue – Deputy Commissioner of Income Tax, Circle-3(1), O/o. Income Tax Office, Infinity Towers, Sankaramatam Road, Visakhapatnam, Andhra Pradesh – 530016.
3. The Principal Commissioner of Income Tax,
- 4.आयकरआयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),

5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT,
Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam