

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No. 3490/DEL/2019
Assessment Year: 2013-14**

Toshiba Water Solutions Pvt. Ltd., (Formerly M/s UEM India Pvt. Ltd.), D-19, Kalka Ji, New Delhi-110019.	<u>Vs</u>	ACIT, Circle 27(1), New Delhi.
PAN- AAACU 0043 Q		
APPELLANT		RESPONDENT
Assessee represented by	Shri Satish Khosla, Adv.; Shri Manish Malik, Adv.;& Shri Pankaj Jain AR	
Department represented by	Shri T. Jamesh Singson, CIT(DR)	
Date of hearing	09.07.2024	
Date of pronouncement	18.07.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-9, New Delhi, dated 11.03.2019,

pertaining to the assessment year 2013-14. The assessee has raised following grounds of appeal:

“1. That the Ld. Commissioner of Income-tax (Appeals) erred in confirming the disallowance of Rs. 15,27,53,852/- claimed by the appellant on account of provision for contract loss.

2. The Ld. Commissioner of Income-tax (Appeals) failed to appreciate that the above provision for loss was claimed on the basis of AS-7 followed by the assessee as in the earlier years; and was based on scientific and reasonable basis.

3. The Ld. Commissioner of Income-tax (Appeals) failed to appreciate that principle of judicial consistency is applicable to Income Tax proceedings and since this loss has been allowed in earlier years, the same merits allowance in this year.”

2. Facts, in brief, are that in this case return of income was filed through electronic mode on 27.11.2013 declaring total loss of Rs. 77,97,55,363/-. The case was taken up for scrutiny assessment and the assessment was framed vide order dated 29.12.2016. While framing the assessment the Assessing Officer made addition by invoking the provisions of Section 14A amounting to Rs. 84,779/-; further addition was made on account of disallowance of static creditors amounting to Rs. 49,88,060/-; disallowance on account of provision for contract loss amounting to Rs. 15,27,53,852/-; and disallowance of expenses on account of penalty on VAT amounting to Rs. 16,000/-. Aggrieved against this assessee preferred appeal before learned CIT(Appeals), who partly allowed the appeal of

the assessee. Therefore, the learned CIT(Appeals) deleted the disallowance made u/s 14A. In respect of static creditors the learned CIT(A) remitted the issue to the file of Assessing Officer for verification whether such amount was offered to tax during assessment year 2014-15. In respect of addition of Rs. 15,27,53,852/- on account of provision for contract loss learned CIT(Appeals) affirmed the action of Assessing Officer. In respect of addition made on account of expenses of Rs. 16,000/- on account of penalty on VAT also the learned CIT(A) affirmed the action of AO. Aggrieved against the order of learned CIT(Appeals) the assessee is in appeal before us.

3. The assessee on 3.4.2024 filed an application seeking admission of additional evidence. Learned counsel for the assessee submitted that the evidence sought to be admitted goes to the root of the case. It is stated that the sole basis for disallowance of contract loss was that the assessee company failed to demonstrate the manner of computing for contract loss. He submitted that the working made by the assessee in the evidence goes to the root of the case and in the interest of justice, this additional evidence may be admitted. He contended that the assessee would suffer irreparable loss and gross miscarriage of justice if the evidences so filed are not admitted. He contended that the evidences are mere facts and figures derived from the books of accounts that were placed before learned CIT(Appeals). He submitted that such loss has been allowed in earlier years as well.

4. Learned CIT(DR) opposed the submissions and submitted that the lower authorities have given sufficient opportunity and now at this stage the assessee should not be allowed to be given second inning.

5. We have heard learned authorized representatives of the parties and perused the material available on record. We find that on the issue of contract loss learned CIT(Appeals) has observed as under:

“6.6 Under lying principle is that the assessee has to demonstrate and substantiate the facts and figures recorded in the books of account. In case the assessee could have explained the nature of provision and the method of computation of the same, the stated provisions would have been allowed as deduction as per the provisions of law. In the present case the assessee company has failed to demonstrate the method of computation of provision of loss and thus, the same is not allowable as deduction to it.

In view of the above stated facts of the case the disallowance of provision of loss is upheld and this ground of appeal is rejected. Appellant fails in this ground of appeal.”

6. From the above it is clear that the learned CIT(Appeals) rejected the claim of the assessee on the basis that company failed to demonstrate the method of computation of loss. It is stated by the learned counsel that the evidence so enclosed would clearly demonstrate the method of computing loss. Therefore, considering the totality of facts, we admit the additional evidence filed by the assessee and set aside the issue of contract loss to the file of Assessing Officer for verification of the evidence and in case the Assessing Officer finds that the claim

of the assessee is in accordance with law, he would allow the claim. Grounds are allowed for statistical purposes.

7. Appeal is allowed for statistical purposes.

Order pronounced in open court on 18th July, 2024.

Sd/-
(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI