

आयकर अपीलीय अधिकरण “ए” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, CHENNAI

माननीय श्री एबी टी. वर्की, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI ABY T. VARKEY, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.1284/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2016-17)

M/s. International Seaport Dredging Private Limited P.No. 2C, 1 st floor, Ocean Square South Phase, Thiru Vi Ka Industrial Estate, Ekkattuthangal Guindy Industrial Estate, Chennai-600 032.	बनाम/ Vs.	DCIT Corporate Circle-2(2), Chennai-34.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AABCI-2286-E		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Ashik Shah (CA)-Ld.AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Nilay Baran Som (CIT) -Ld. Sr. DR

सुनवाईकीतारीख/ Date of Hearing	:	20-08-2024
घोषणाकीतारीख / Date of Pronouncement	:	03-09-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2016-17 arises out of the order of learned Commissioner of Income Tax (Appeals), Chennai-16 [CIT(A)] dated 15-09-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 29-12-2019. The grounds taken by the assessee read as under: -

1. The lower authorities have erred in finalizing an order of assessment which suffers from legal defects such as being passed in violation of principles of natural justice and the

provisions of the Act and is devoid of merits and are contrary to facts on record and applicable law, and has been completed without adequate inquiries and as such is liable to be quashed.

Disallowance of provision for contract losses

2. The Ld. CIT(A) and the Ld. AO erred in concluding that the provision for anticipated loss is an unascertained liability not allowable as a deduction under section 37 of the Act without appreciating that such provision represents the excess of estimated contract expenditure over the estimated contract revenues.

3. The Ld. CIT(A) and the Ld. AO erred in concluding that future costs are not allowable as a deduction under the Act without appreciating that the accounting of such costs is as per the requirements of the Accounting Standard - 7, basis which, income subject to tax, has been recognized by the Appellant.

4. The Ld. CIT(A) and the Ld. AO erred in disallowing the provision for expected loss under section 115JB of the Act by treating it as a contingent liability without appreciating that the said provision has been recognised and measured in accordance with the provisions laid down in Accounting Standard 7 and thereby, satisfies the criteria of being 'estimated with reasonable certainty.

5. Without prejudice to the above, the lower authorities have, in facts and circumstances of the case and in law, erred in not considering that the provision was reversed and offered to tax in the subsequent assessment years.

6. Without prejudice to the above, the lower authorities have, in facts and circumstances of the case and in law, ought to have provided relief in the subsequent years where the reversal of provision was offered to tax by the Appellant

As is evident, the sole issue that arises for our consideration is assessee's claim of provision of losses.

2. The Ld. AR advanced arguments and placed on record financial statement for various years. It has been submitted that the losses have been created as per applicable Accounting Standards and the provision has been reversed in subsequent years. If the same is disallowed then it would amount to double taxation. The Ld. CIT-DR, on the other hand, supported the orders of lower authorities and submitted that no deduction could be allowed for mere provisions. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

3. The assessee being resident corporate assessee is stated to be engaged in providing dredging and marine engineering services. The

assessee claimed provision for expected losses on contract for Rs.1137.26 Lacs. However, the assessee did not furnish the basis for the same during the course of assessment proceedings and accordingly, the same were disallowed by Ld. AO while computing income under normal provisions as well as while computing Book Profits u/s 115JB.

Appellate Proceedings

4.1 During appellate proceedings, the assessee submitted that the losses have been claimed as per Accounting Standard-7 (AS-7) issued by The Institute of Chartered Accountants of India which provide that the contract revenue and contract costs are to be recognized by reference to stage of completion of the contract at the reporting date. The assessee has to recognize / provide for likely losses immediately that would arise from the contracts. The working of the same was furnished by the assessee. In this year the project was stated to be completed to the extent of 43.09% and accordingly, projected losses, to that extent, were computed and claimed in the books of accounts.

4.2 The Ld. CIT(A) observed that the provision was for a contingent liability only which could not be allowed as per the decision of Hon'ble High Court of Telangana in the case of **M/s. Healthware Pvt. Ltd. vs. ACIT (ITA No. 443 of 2005)** which considered the decision of Hon'ble Supreme Court in the case of **Bharat Earth Movers (245 ITR 428)**. In the decision of Bharat Earth Movers, it was held that if a business liability has arisen in the accounting year, then the deduction thereof should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should be capable of being estimated with reasonable certainty though the actual qualification may not be possible. If these requirements are

satisfied, the liability is not a contingent one. The liability would be *in praesenti* though it may have to be discharged at a future date.

4.3 The Ld. CIT(A) further held that in the present case, a provision was created for future losses which was unascertained and clearly a contingent liability. The very fact that this provision was offered to revenue in the subsequent years clearly evidences the fact that the provision made was not scientific and is not based on evidence. Thus, the provision made by the appellant was contingent and therefore, it would not partake the character of expenditure either u/s 28 or u/s 37 of the IT Act, 1961. The same also needs to be added to the book profits of the assessee for MAT purposes. Accordingly, the disallowance was confirmed against which the assessee is in further appeal before us.

Our findings and Adjudication

5. In the written submissions, Ld. AR has submitted that the assessee has secured a dredging contract from M/s Kamarajar Port Limited at Kamarajar Port. The estimated duration of the contract was around 2 to 3 years. This contract concluded in FY 2017-18. The total revenue earned from the project was Rs.312.75 Crores and total cost was Rs.398.03 Crores. Accordingly, the assessee ultimately suffered loss of Rs.85.28 Crores in the project. It has further been submitted that the assessee was contractually obligated to complete the said contract. The assessee recorded revenue and contract cost based on Percentage of Completion Method ("POCM") as mandated by AS-7 issued by ICAI. The standard mandates that in a scenario where it is probable that the total contract costs are expected to exceed the total contract revenue, the expected contract loss is to be immediately recorded as an expense. Following the same, the assessee has estimated the total contract cost

to be Rs.238.72 Crores as against contract revenue of Rs.218.74 crores which leads to an expected loss of Rs.19.98 crores. During this year, the assessee has incurred actual contract cost of Rs.102.86 crores and has also recorded contract revenue of Rs.94.25 crores (based on POCM) thereby booking an actual loss of Rs.8.61 crores. The Ld. AR submitted that though actual revenue billed during the year was Rs.47.26 Crores, considering the fact that the project was completed to the extent of 43.09% during this year, the assessee booked additional revenue of Rs.46.99 Crores during this year. Further, out of total expected loss of Rs.19.98 Crores, the assessee has already recorded actual loss Rs.8.61 Crores and made provision for the balance expected loss of Rs.11.37 Crores. Hence, the provision has been created as per mandate of AS-7 and the same could not be held to be unascertained / contingent liability for the assessee. It is the submission that both revenue and expenditure as recorded by the assessee has been recognized as per percentage of completion method. The Ld. AR further submitted that the income computation and disclosure standards (ICDS) as notified by the Central Government vide Section 145(2) are applicable only from AY 2017-18 onwards and accordingly, the same would not have an impact on AY 2016-17. Reliance has been placed on the decision of Hon'ble Delhi High Court in the case of **Triveni Engg & Industries Ltd [336 ITR 374]** and the ruling of Pune Bench of the Hon'ble Tribunal in the case of **Ashoka Buildcon Ltd. [170 TT J 19]** for the submissions that the provision for contract losses would be an allowable deduction. Lastly, it has been submitted that out of impugned provision of Rs.11.37 Crores, the assessee has reversed provision to the extent of Rs.10.56 Crores in the subsequent year and offered the same to tax. Disallowing

the provision in this year would amount to double taxation which is impermissible. The Ld. AR referred to the decision of Hon'ble Apex Court in the case of **Excel Industries Ltd [358 ITR 295]** to support these submissions. The Ld. CIT-DR, in its written submissions, supported the findings of Ld. CIT(A) and submitted that the provision made by the assessee was not an ascertained liability. The Ld. CIT-DR has referred to the ruling of the Hon'ble High Court of Madras in the case of **FLSmith v DCIT (456 ITR 300)**.

6. Upon careful consideration of material fact, it is quite clear that the assessee has undertaken a project which has lasted for more than 3 years. To recognize the revenue under the project, the assessee has followed percentage of completion method which is clear from following tabulation as furnished by Ld. AR in its written submissions: -

Particulars	Formula	Amt. (Rs.)
Total cost estimated to be incurred for the project	A	238,72,81,680
Total revenue estimated to be earned from the project	B	218,74,51,975
Total estimate loss from the project	C=A-B	19,98,29,705
Actual Cost incurred during the year	D	102,86,41,580
Percentage of project completed (based on cost)	E=D/A*100	43.09%
Percentage of project to be completed	F=100%-E	56.91%
Actual revenue booked during the year based on POCM	G=B*E	94,25,38,149
Actual revenue billed during the year	H	47,26,32,913
Revenue booked as per POCM	I=G-H	46,99,05,236
Loss already recognized during the current year	J=D-H	8,61,03,431
Balance loss to be recorded as provision	K=C-J	11,37,26,274

It could be seen that though the actual billed revenue is less, the assessee, following POCM, has offered additional revenue of Rs.46.99 Crores. The assessee has followed same methodology to recognize the costs. As mandated by AS-7, any probable losses arising out of such contracts are to be recognized immediately. The assessee has done exactly like that. The losses from the contract were estimated at Rs.19.98 Crores, out of which an amount of actual loss of Rs.8.61 Crores was already recognized. The balance loss of Rs.11.37 Crores was recognized as provision for losses. In subsequent year, the assessee has already reversed the provision to the extent of Rs.10.56 Crores as per estimate made in subsequent year. On these facts, the provision of this year would be nothing but an ascertained liability / probable loss for the assessee. It could not be said that the provision was not made on a scientific basis. In our considered opinion, both the lower authorities have erred in appreciating the fact that revenue from the contract has also been recognized on percentage of completion basis only. The case laws as cited by Ld. AR duly support our view. The case law of Hon'ble High Court of Madras in **FLSmith v DCIT (456 ITR 300)** is distinguishable on facts. Upon perusal of Para-28, it is clear that in that case the assessee could not explain as to how the total contract costs would exceed total contract revenue despite being specifically asked to explain. The assessee merely relied on AS-7. However, in the present case, the assessee has recognized the revenue as well as expenses on same methodology. The claim is supported by computations / workings. The provision has been reversed in subsequent years as per estimation made in subsequent year. Therefore, this case law would not render any assistance to the case of

the revenue. The case law of Hon'ble Delhi High Court in **Triveni Engg & Industries Ltd [336 ITR 374]** is on similar facts. The assessee recognized the income from the projects and also made provision for expenses to be incurred up-to the stage of completion. The Ld. AO termed the provision as contingent liability and accordingly, disallowed the same. However, Hon'ble Court confirmed the order of Tribunal allowing such deduction. Therefore, on the facts and circumstances of the case, we would hold that the impugned provision would be an allowable deduction. The question of adding the same to Book-Profit do not arise.

7. The appeal stand allowed.

Order pronounced on 3rd September, 2024

Sd/-
(ABY T. VARKEY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated :03-09-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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