

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री एस एस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI S.S. VISWANETHRA RAVI, HON'BLE JUDICIAL MEMBER
AND SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **846/Chny/2024**
निर्धारण वर्ष / Assessment Year: 2018-19

M/s. CeeDeeYes IT Parks Private
Limited,
42, Second Main Road, Gandhi
Nagar, Adyar, Chennai – 600 020.

Income Tax Officer,
v. Corporate Ward -1(3),
Chennai.

[PAN: AACCC-3267-A]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकी ओरसे/Appellant by

: Shri. P. Hari Babu, CA

प्रत्यर्थीकी ओरसे/Respondent by

: Ms. Gouthami Manivasagam, JCIT

सुनवाईकी तारीख/Date of Hearing

: 27.08.2024

घोषणाकी तारीख/Date of Pronouncement

: 09.10.2024

आदेश / ORDER

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 06.03.2023 and pertains to assessment year 2018-19.

2. At the outset, we find that there is a delay of 323 days in appeal filed by the assessee, for which petition for condonation

of delay along with reasons for delay has been filed. After considering the petition filed by the assessee and also hearing both the parties, we find that there is a reasonable cause for the assessee in not filing appeal on or before the due date prescribed under the law and thus, in the interests of justice, we condone delay in filing of appeal and admit appeal filed by the assessee for adjudication.

3. The assessee has raised the following grounds of appeal:

1. *Your petitioner submits that the Assessing Officer erred in disallowing 20% of Electricity Charges amounting to Rs.46,70,218/- and the Commissioner of Income Tax (Appeals) also erred in confirming the disallowance.*
2. *Your petitioner submits that your petitioner has incurred electricity charges amounting to Rs.2,33,51,094/- during the year under review and have made the payments to electricity departments and obtained receipts as well.*
3. *Your petitioner submits that your petitioner has actually spent the above said expenditure.*
4. *Your petitioner submits that the particulars of payments made to electricity department are enclosed for your immediate reference.*
5. *Your petitioner submits that your petitioner's business activity is leasing of premises for IT companies with complete infrastructure facilities.*
6. *Your petitioner further submits that the IT companies have obtained EB connection for commercial use in their name based on the leasing arrangements with your petitioner and hence electricity charges receipts are in the name of the tenants.*
7. *Your petitioner submits that the above said expenditure cannot be disallowed under section 37(1) of the Income Tax*

Act, 1961 as it is not of capital nature and it is not for any personal use. The amounts are actually expended during the year under review and the same is wholly and exclusively for the purpose of business.

8. *Your petitioner submits that in view of the above, the question of disallowance of expenditure under section 37(1) of the Income Tax Act, 1961 does not arise.*
9. *Your petitioner submits that in view of the above facts and circumstances, the disallowance made amounting to Rs.46,70,218/- under electricity charges paid be deleted and justice rendered.*
10. *Your petitioner submits that additional grounds may be raised at the time of hearing.*

4. The brief facts of the case are that the assessee is a company, engaged in the business of flat promotion, construction and leasing of premises to Information Technology Companies. The assessee filed its return of income for the A.Y.2018-19 on 04.10.2018 with a loss of Rs, 3,97,54,277/-. The case was selected for scrutiny with the following reasons:

- i. *Low income (including Exempt income and agricultural income) in comparison to high loans/advances/investments in shares appearing in balance sheet.*
- ii. *Large business loss set off against other heads of income*

5. During the assessment proceedings, the assessee did not file any information called for and the AO left with no

option but to complete the assessment with the available details on record. The assessment was completed by disallowing 20% of the expenses claimed by the appellant under the head following heads by passing an order U/s.143(3) of the Act on 09.04.2021.

Head of Expense	Amount claimed	20%
<i>Electricity charges</i>	<i>2,33,51,094</i>	<i>46,70,218</i>
<i>Brokerage</i>	<i>80,65,000</i>	<i>16,13,000</i>
<i>Building maintenance and repair</i>	<i>1,31,37,741</i>	<i>26,27,548</i>
Total	4,45,53,835	89,10,766

6. Aggrieved by the order of the AO, the assessee challenged the additions before the CIT(A) - NFAC. The Ld.CIT(A) has by his order dated 06.03.2023 (Para 5.3 &5.4 of Page 4) has deleted the disallowances made under the head Brokerage and Building maintenance and repair with the remarks that the same has already been disallowed by the assessee in the computation statement of income, sustaining the disallowance of Rs.46,70,218/- claimed under the head Electricity Charges with an observation that the electricity

payment receipts (issued by the Tamil Nadu Generation and Distribution Corporation) are in the name of CTS (M/s.Cognigent Technology Solutions Pvt Ltd). Aggrieved by the order of the Ld.CIT(A)-NFAC, the assessee is before us.

7. The Ld.AR of the assessee contended the Ld.CIT(A) has erred in confirming the addition of expenditure spent by the assessee stating that the receipts of electricity bill payment made to Tamilnadu Generation and distribution Corporation Ltd., were in the name of CTS(Tenant) and not in the name of the assessee. M/s.CTS has taken the premises belonged to your assessee as per the arrangement vide Lease Deed dated 16 February, 2009. The assessee has transferred the EB connection in the name of M/s. Cognizant Technology Solutions India Private Limited to enable the said company to avail the incentives on tariff extended to IT companies. Hence, electricity charges receipts have been given in the name of the company since HT power connection has been obtained in the name of M/s.Cognizant Technology Solutions India Private

Limited. The Ld.AR drew our attention to Lease deed dated 16/02/2009 entered between the assessee and lessee (CTS) to the page no.4, clause 3 which reads as under:

"3. LESSEE's other covenants

The LESSEE covenants with the LESSOR as follows:

- a. To regularly pay to the LESSOR monthly rent at the time and in the manner aforesaid;*
- b. To pay all charges for the electricity and water consumed by the LESSEE in accordance with the units of electricity/water actually consumed by the LESSEE as recorded in the meter/s reading, on the demand raised by electricity authorities."*

8. Further, the Ld.AR shown the ledger account of the electricity charges for having spent the amount on monthly basis along with all the receipts for the relevant assessment year 2018-19, which were issued in the name of the CTS(Lessee). The Ld.AR shown the Profit and loss account as on 31.03.2018 showing the amount of Rs.2,33,51,094/- debited as electricity charges. In support of the same of the Ld.AR also took through the bank statement showing the payment details of the transactions towards electricity charges and prayed for

deleting the impugned disallowance of 20% of the electricity charges confirmed by the Ld.CIT(A).

9. Per contra the Ld.Sr.DR stated that the assessee's grounds are not acceptable as the assessee has not produced any details before the AO, in order to prove an expense has been incurred or not, it is the burden of the assessee to prove that with the basis evidence and details.

10. Further the electricity payment receipts submitted before the CIT(A) are in the name of CTS (M/s.Cognigent Technology Solutions Pvt Ltd) and not in the name of the assessee. Nothing prohibited him to produce at least his bank statement proving incurring of the expenditure. Further, the Ld.Sr.DR stated that in fact, the AO has been quite liberal in not disallowing the entire expenditure rather made disallowance only to the extent of 20%. Before the appellant can become entitled to an allowance u/s 37(1) he must satisfy the department with documentary evidence / proof and the burden of proving the necessary facts in that connection

is on the appellant. The Ld.Sr.DR prayed for dismissing the appeal of the assessee.

11. We have heard the rival contentions and perused the material on records along with the orders of the lower authorities. It is admitted fact the assessee is into business of real estate and has provided the premises on rental basis to M/s.CTS as per the Lease deed dated 16.02.2009. It is noted that the assessee has claimed electricity expenses of the assessee as an expenditure by debiting the same to the Profit & Loss account as on 31.03.2018 to the tune of Rs.2,33,51,094/-. As per the clause 3(b) of Lease deed dated 16.02.2009, the electricity expenses has to be borne by the Lessee i.e. CTS as per their consumption. However, the expenses have been debited by the assessee to the profit and loss account towards electricity expenses, without offering the reimbursement of Electricity charges from the Lessee (CTS) as other income. Therefore, the ground of the assessee devoid of merits and we are not inclined to interfere in the order of the Ld.CIT(A). Thus, all the grounds of the appeal are dismissed.

12. In result the appeal of the assessee is dismissed

Order pronounced in the court on 09th October, 2024 at Chennai.

Sd/-

(एस एस विश्वनेत्र रवि)

(S.S. VISWANETHRA RAVI)

न्यायिक सदस्य/**Judicial Member**

Sd/-

(एस. आर.रघुनाथा)

(S. R. RAGHUNATHA)

लेखा सदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 09th October, 2024

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT - Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF