

आयकर अपीलिय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE
SHRI LALIET KUMAR, JUDICIAL MEMBER
&
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

आ.अपी.सं / ITA No.395/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2011-12)

Deputy Commissioner of
Income Tax
Circle-5(1)
Hyderabad

M/s Lanco Amarkantak Power
Vs. Limited, Hyderabad
[PAN :AACCK0633Q]

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: None

राजस्व द्वारा/Revenue by: Shri P.V.Pradeep Kumar,CIT-DR

सुनवाई की तारीख/Date of hearing: 12/11/2024

घोषणा की तारीख/Pronouncement on: 14/11/2024

आदेश / ORDER

PER MADHUSUDAN SAWDIA, A.M.:

This appeal is filed by the Revenue feeling aggrieved with the order ("impugned order") passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["Ld.CIT(A)"] dated 22/05/2023 for the A.Y. 2011-12 on the following ground :

- 1. The Ld.CIT(A) erred in ignoring an order passed u/s 143(3) r.w.s.147 dt.28.11.2017 which was passed during the pendency of the appellate proceedings against the order already passed u/s 143(3) dt.28.3.2014 which fact was omitted*

to be brought on record by the assessee before the Ld.CIT(A). While passing the order u/s 143(3) r.w.s. 147 dt.28.11.2017, the total income was determined at Rs.107.53 cr. before set off of brought forward losses and as such the order passed u/s 143(3) dt.28.3.2014 gets merged with the order passed u/s 143(3) r.w.s. 147 dt.28.11.2017. The directions of the Ld.CIT(A) to adopt the total income as determined as per order u/s 143(3) dt.28.3.2014 of Rs.51.12 cr. before set off of losses (which was already considered / merged while passing order u/s 143(3) r.w.s. 147 on 28.11.2017), which is erroneous and prejudicial to the interests of revenue.

2. None appeared on behalf of the assessee, therefore, we are taking the matter as heard after hearing the argument of the Ld.DR.

3. Brief facts of the case are that, the learned Assessing Officer ("Ld.AO") had passed order u/s 143(3) of the Income tax Act, 1961 ("the Act") on 28/03/2014 (first order of Ld. AO), determining the total income of the assessee at Rs.51,12,33,274/- before setting off of brought forward losses under normal provisions of the Act.

3.1. Aggrieved with the first order of Ld.AO, the assessee had preferred appeal before the Ld.CIT(A) and the Ld.CIT(A) vide order dated 28/09/2018 [first order of Ld.CIT(A)] had deleted addition of Rs.2,34,365/- u/s 36(i)(va) of the Act and addition on account of depreciation of Rs.88,31,552/-.

3.2. Before passing of first order of Ld.CIT(A), the Ld.AO had passed another assessment order u/s 147 r.w.s. 143(3) of the Act for the same assessment year on 28/11/2017 ("second order of Ld.AO"), thereby determining the total income of the assessee at Rs.107,53,59,507/- before setting off of brought forward losses under normal provisions of the Act.

3.3. After passing of first order of the Ld.CIT(A), the Ld.AO passed the order on 05/11/2018 ("consequential order") giving effect to the direction of the Ld.CIT(A) and deleted the addition of Rs.2,34,365/- u/s 36(i)(va) of

the Act and addition on account of depreciation of Rs.88,31,552/-. However, the Ld.AO while giving effect to the direction of the Ld.CIT(A), taken into account the total income assessed by the Ld.AO as per second order of Ld.AO.

4. Aggrieved with the consequential order of Ld.AO, the assessee preferred appeal before the Ld.CIT(A) and the Ld.CIT(A) allowed the appeal of the assessee by issuing the direction as under :

"I have carefully considered the Assessment order and the submissions made by the appellant. In view of the submissions filed by the appellant, the Assessing Officer is directed to verify and allow accordingly.

Subsequently, the AO has passed a consequential order dt: 05-11-2018 giving effect to the order of the CIT (A). In the above consequential order, the A.O has rightly allowed relief in respect of the additions directed to be deleted in the order of the CIT(A). However, it is seen that the A.O has remained silent in respect of the addition of Rs. 19,19,659 towards disallowance of appellants claim of expenses towards Corporate Social Responsibility.

The appellant also claims that while computing total income, the A.O has adopted total income before set off of brought losses at Rs. 107,53,59,507 instead of Rs. 51,12,33,274.

I have gone through the facts of the case. There appears to have been an oversight on the part of the AO in not deleting the addition of Rs. 19,19,659 towards disallowance of appellants claim of expenses towards Corporate Social Responsibility.

I-direct the AO to delete the addition, following the earlier order of the CIT(A), to which effect has been given, but this point not discussed.

This ground is hence allowed.

As far as the ground raised by the appellant that while computing total income, the A.O has adopted total income before set off of brought losses at Rs. 107,53,59,507 instead of Rs. 51,12,33,274, the AO to directed to adopt the figure he had taken while passing the order u/s

143(3), on which the CIT(A) had passed her order. •

This ground is partly allowed."

5. Aggrieved with the impugned order of the Ld.CIT(A), the Revenue is in appeal before us. The Ld.DR submitted that the assessee had filed appeal before the Ld.CIT(A) against the first order of Ld.AO only. As such, assessee did not challenge the second order of Ld.AO and the same attained finality. Therefore, the Ld.AO was right in giving effect to the first order of the Ld.CIT(A) by considering the total income computed as per second order of Ld.AO. The Ld.DR further submitted that the direction of the Ld.CIT(A) as per impugned order with regard to considering the total income as per the first order of Ld.AO, instead of total income as per second order of Ld.AO is required to be set aside.

6. None appeared on behalf of the assessee and therefore as mentioned above, we are taking the matter heard on the basis of the submissions made by Ld.DR.

7. We have heard the Ld.DR and perused the material on record. As it is clear from the first order of the Ld.AO total income was assessed by the Ld.AO at Rs.51,12,33,274/- before brought forward losses. The total income assessed as per the second order of the Ld. AO before brought forward losses was determined at Rs.107,53,59,507/-.

7.1. Second order of the Ld.AO was not challenged before the Ld.CIT(A) and was not brought to the notice of the Ld.CIT(A) before passing the first order of the Ld.CIT(A). Ld.CIT(A) deleted two additions out of the three additions mentioned herein above as pointed out by the Ld.DR. Hence, remaining addition which was made by the Ld.AO in second order remained unchallenged. Therefore, in our view, the Ld.AO was right in taking into account the total income assessed in the second order of the Ld.AO while giving effect to the first order of the Ld.CIT(A) by deleting the addition of Rs.2,34,365/- u/s 36(i)(va) of the Act and addition on account of depreciation of Rs.88,31,552/-. In our considered opinion, the impugned order passed by the Ld.CIT(A) directing the Ld.AO to adopt the income of Rs. 51,12,33,274/- instead of Rs.107,53,59,507/- is not in accordance with

law and is contrary. The direction of Ld.CIT(A), directing to adopt total income before set off of brought forward losses at Rs.107,53,59,507/- instead of Rs.51,12,33,274/- is null & void. The consequential order dated 05/11/2018 is restored to that effect. Accordingly, the ground raised by the Revenue is allowed.

8. In the result, appeal of the Revenue is allowed.

Order pronounced in the open court on this the 14th November, 2024.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Sd/-
(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Hyderabad, Dated: 14/11/2024

L.Rama, SPS

Copy forwarded to:

1. The Deputy Commissioner of Income Tax, Circle-5(1), Hyderabad
2. M/s Lanco Amarkantak Power Limited, Plot No.4, Lanco House, Software Units Layout, Hitech City, Madhapur, Hyderabad
3. The Pr.CIT, Hyderabad
4. The DR, Hyderabad
5. Guard File

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