

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री जगदीश, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1636/Chny/2024
निर्धारण वर्ष /Assessment Year: 2014-15

M/s. FLsmidth Pvt. Ltd.,
No.34, Egatoor, Kelambakkam
Rajiv Gandhi Salai,
Chennai – 603 103.
[PAN: AAACF 4997N]

Vs. The Principal Commissioner of
Income Tax-1,
Chennai.

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri S.P. Chidambaram, Advocate
: Shri Nilay Baran Som, CIT

सुनवाई की तारीख/Date of Hearing

: 11.09.2024

घोषणा की तारीख /Date of Pronouncement

: 10.12.2024

आदेश / ORDER

PER JAGADISH, A.M :

Aforesaid appeal filed by the assessee for Assessment Year (AY) 2014-15 arises out of the order of Learned Principal Commissioner of Income Tax, Chennai-1 [hereinafter "PCIT"] dated 30.03.2024 passed u/s. 263 of the Income-tax Act, 1961 (hereinafter "the Act").

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2. The effective ground of appeal in this appeal of assessee is against the order of Ld. PCIT setting aside the order of A.O passed u/s. 147 of the Act and to pass fresh order with direction to examine the aspect discussed in the impugned order u/s. 263 of the Act.

3. The assessee-company has filed its return of income for A.Y 2014-15 on 30.11.2014 declaring total income of Rs. 35,34,10,370/- which was further revised by filing revised return on 31.03.2016 at Rs.57,25,24,130/-. The A.O has passed order u/s. 143(3) r.w.s 144C(4) of the Act on 28.02.2018 assessing total income of Rs.61,28,16,850/- by making addition on TP adjustment of Rs.3,71,56,870/- and disallowance u/s. 14A of the Act of Rs.31,35,846/-. Subsequently, the A.O has reopened the assessment u/s.147 of the Act, but accepted the return of income at Rs.57,25,24,130/- without making any addition. The A.O had reopened the assessment on the following grounds:

- i. The assessee has claimed capital gain on sale of land and building at Rs. 21,63,658/-. In the computation of capital gain, the assessee in the year 1987-88 has taken inflation index was taken at 150 i.e., for 1987-88 though this time duty was paid in 2011. Hence, there was escapement of income.

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- ii. The assessee has debited amount of Rs. 1,80,79,587/- as loss on exchange fluctuation which is allowable expenditure.
- iii. The assessee has claimed set off of brought forward loss and unabsorbed depreciation to the extent of Rs. 7,49,50,348/- though there were no loss to be carried forward for further orders.
- iv. The assessee has shown Rs.1,08,26,88,201/- as unearned revenue which have been taxed as income as the assessee followed approval methods.

4. The Ld. PCIT after examining the assessment order passed order u/s. 147 of the Act and the case record has observed that the A.O has not verified the following points which make the order erroneous and prejudicial to the interest of revenue:

“Observation 1:

3. It is seen that the case was reopened u/s. 147 of the Act for various reasons, including the issue that the difference between closing balance and opening of 'unearned revenue' to be treated as taxable income of the current year. With regard to the same it is seen that as per 'Sch. 9' forming part of the Balance sheet as on 31.03.2014, amount treated as "unearned revenue" during the year was Rs. 108,26,88,201/-, being difference between Rs. 184,53,19,919 (as on 31.03.2014) and Rs. 76,26,31,718 (as on 31.03.2013) and this being the amount reduced from the billed amount which the assessee had already charged its clients. Since the assessee follows mercantile system of accounting, income

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accrues the moment bill is raised by the assessee. When the bill raised by the assessee is served on the client, liability to pay arises to the client. Thus income accrues in the legal perspective. If the assessee is reducing a part of the bill amount from the receipts credited to the P & L a/c and shows sum in the liability side of the balance sheet for the purpose of better disclosure, it will not affect the income already accrued to the assessee, as the accounting entries cannot change the accrual of income which has already happened.

3.1 Further, it is seen that during the course of the reassessment proceedings, the Assessee submitted certain details and the Assessing officer has completed the reassessment without discussing the above issue and not making any addition with regard to the same. Thus, the AO has omitted to consider that the difference between closing balance and opening balance of 'unearned revenue to be treated as taxable income of the current year, despite the nature of treatment of the same by the Assessee in its Balance Sheet. However, it is found that the above aspect has been omitted to be considered in the said assessment order.

Observation 2:

4 Further, it is observed that, while allowing indexation benefit for registration and other charges, cost inflation was considered for the year 1987-88 (year of registration) as 150 as against the applicable inflation value for the year 2011 (the year in which registration charges were paid). This has resulted in short computation of long-term capital gain. The Registration and other charges calculated at Rs. 22,42,110 (16,97,700 x 939/711), the difference in value being Rs. 83,85,492/-, Further, the case was reopened u/s. 147 of the Act for various reasons including the above short computation of long-term capital gain, whereas it is seen that the above aspect has been omitted to be considered in the said assessment order.

Observation 3:

5. It is seen from the notes forming part of the Financial Statements vide Sl.NO.2.22 Derivative Contracts that it has been stated that all other derivative contracts are marked to market and losses and recognised in the Statement of Profit and Loss. Gains arising on the same are not recognised, until realised, on grounds of prudence. In this connection, it is observed that an amount of Rs. 1,80,79,587/- has been debited under Loss on Exchange Fluctuation vide Sl. No. 26 Other expenses. Since the loss on marked to market loss is not

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an allowable expenditure, the same is requires to be added in the income of the assessee company and brought to tax. And the case was reopened u/s. 147 of the Act for certain reasons including this issue. However, it is found that the above aspect has been omitted to be considered while framing assessment

Observation 4:

6 It is also noticed from the statement of income and tax for the above assessment year total income was arrived as Rs. 66,08,36,768/- and an amount of Rs. 7,49,50,348/- has been set off against the brought forward loss for the assessment year 2011-12 and 2012-13. However, it is verified from the assessment order for the year under consideration that there is no loss to be carried forward for the succeeding years, which has resulted in incorrect set off of brought forward loss and unabsorbed depreciation to the extent of Rs. 7,49,50,348/-. As discussed, the case was reopened u/s. 147 of the Act for verification of including this issue, however it is seen that the above aspect has been omitted to be considered in the said assessment order.

Observation 5:

7. Further it is seen that the assessee company during the year under consideration has deducted a sum of Rs. 17,03,553/- from the income towards provision for doubtful trade receivables. As the said provision is an unascertainable liability, it is not an allowable deduction under Section 37 of the Act. Hence, the same needs to be examined and considered for taxation accordingly.

Observation 6:

8. In addition to the above, it is also seen that the assessee company during the year has deducted in the memo of income an amount of Rs 11,60,696/- towards exempted income u/s. 10(34). However, in the 'Schedule 2', the assessee company stated that an amount of Rs 9,24,960/- is exempted under section 10 and the balance amount of Rs. 2,35,736/- represents divined received from foreign company and the same is taxable. In view of the above, an excess amount of Rs 2,35,736/- claimed under section 10 in the memo of income needs to be verified."

5. The Ld. Authorized Representative (A.R) of the assessee has argued that all the points raised by the Ld. PCIT has been examined by the A.O during the proceedings u/s. 143(3) and 147 of the Act, therefore the Ld. PCIT is not justified to revisit the same. The Ld. AR has submitted that the unearned revenue income which is proposed to be taxed has been examined by Ld CIT(A) in A.Y. 2011-12 and held that unearned revenue does not accrue as income . As regard to set off brought forward losses of Rs.7,49,50,348/-, the Ld. AR has submitted that the loss pertains to Ludowici Mining and Ludowici India Pvt. Ltd.,and submitted the income tax return for A.Y 2011-12 and A.Y 2012-13 in support of the claim. As regard to observation of foreign fluctuation gain, the Ld. AR has submitted that the issue was already decided by the Hon'ble Supreme Court in the case of Woodward Governor India (P.) Ltd. v. CIT [2009] 179 Taxman 326 (SC). As regard to the observation on indexation on stamp duty, the Ld. AR has submitted that land was purchased in May, 1987 and stamp duty payable accrued during Financial Year 1987-88 and the only payment was made in 2011. The Ld. AR has relied on the Explanation 3 to Section 48 of the Act and has contended that Hon'ble ITAT, Mumbai in the case of Charanbir Singh Jolly v. ITO [2006] 5 SOT 89 (Mumbai-Trib.) has held that as per Explanation 3 to Section 48 of the Act, cost

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of acquisition referenced only to cost of acquisition and not actual payment made by the assessee. As regard to reversal for revision for doubtful trade receivables, the Ld. AR has submitted that this issue has been examined during original assessment u/s. 143(3) of the Act. The assessee-company disallowed provision created for bad and doubtful receivables during the year of creation and in the case of reversal of such provision is claimed as deduction as the same has been already offered as income in the year of creation. As regard to observation 6, on dividend income received from foreign sources, the Ld. AR has submitted that only dividend income from domestic sources of Rs.9,24,960/- has been claimed exempt u/s. 10(34) of the Act and income from foreign companies of Rs. 2,35,736/- has been offered to tax under the head "income from other sources".

6. The Ld. Departmental Representative (DR), on the other hand, has relied on the orders of lower authorities.

7. We have heard the rival submissions, and perused the materials available on record. The Ld. PCIT has held the assessment order passed by the A.O u/s. 147 of the Act erroneous and prejudicial to the interest of revenue as the A.O has not made necessary verification.

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The A.O has reopened the assessment in respect of capital computation of long term capital gain on sale of land. The assessee has shown capital gain on sale of land and building of Rs.21,29,63,658/-. The assessee in the computation of Long term capital gain has reduced the indexed cost of acquisition of land by taking inflation index cost at 150 for acquisition of land as well as registration and other charges. However, it was found that registration charges have been paid only in 2011, rather than the purchase year in 1987-88. The assessment was reopened to examine for computation of indexed cost of acquisition on registration for the year 2011, rather than 1987-88 taken by the assessee. However, the A.O without verifying the purchase deed as to why the assessee has purchased the land and building without paying stamp duty became the owner of the property has accepted the computation. The Ld. PCIT has held that the A.O has not carried out necessary verification. As per Explanation 2 to Section 263 of the Act, order passed by the A.O is deemed to be erroneous in so far as it is prejudicial to the interest of revenue, if in the opinion of the Pr. Commissioner of Commissioner, the order if passed without making enquiry or verification which should have been made. In the present case, in the opinion of Ld. PCIT, the A.O has accepted the return without making the verification. The Ld.

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PCIT in his order has only directed the A.O to verify the claim made by the assessee and pass fresh order. We, therefore uphold the order of Ld. PCIT.

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on 10th December, 2024.

Sd/-
(एबी टी. वर्की)
(**ABY. T. Varkey**)

न्यायिक सदस्य / Judicial Member

Sd/-
(जगदीश)
(**Jagadish**)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 10th December, 2024.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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