

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

1. आयकरअपील सं./ ITA No.2794/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2016-17)

&

2. आयकरअपील सं./ ITA No.2040/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2016-17)

M/s Tamilnadu Transmission Corp. Ltd. #144, NPKRR Maligai, Anna Salai, Chennai-600 002.	बनाम / Vs.	ACIT Corporate Circle-3(1), Chennai.
स्थायी लेखासं./जीआइआरसं./PAN/TAN No. AADCT-4780-A		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri R. Vijayaraghavan (Advocate) – Ld.AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Nilay Baran Som (CIT) -Ld. DR

सुनवाईकीतारीख/ Date of Hearing	:	31-12-2024
घोषणाकीतारीख / Date of Pronouncement	:	15-01-2025

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 The assessee has filed captioned appeals for Assessment Year (AY) 2016-17. First, we take up appeal ITA No.2794/Chny/2019 which arises out of the order of learned Commissioner of Income Tax (Appeals)-11, Chennai [CIT(A)] dated 11-07-2019 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act

on 30-12-2018. The assessee has filed revised Form No.36 wherein the grounds taken by the assessee read as under: -

1. The order of The Commissioner of Income tax (Appeals) is contrary to law, facts and circumstances of the case.
2. The Commissioner of Income tax (Appeals) erred in confirming payment of guarantee commission of Rs.11,48,19,190/- to the State of Tamilnadu in respect of loan guaranteed by the State.
3. The Commissioner of Income tax (Appeals) ought to have appreciated that financial institution insisted on the loan granted to Appellant should be guaranteed by the State Government and the State Government charged commission for providing guarantee. Hence the liability to pay commission had accrued and as it is for the purpose of business of the appellant, the same is an allowable deduction.
4. The Commissioner of Income tax (Appeals) ought to have appreciated that under the Mercantile System of Accounting, liability is allowable deduction on accrual and need not await the actual payment before being allowed.
5. The Commissioner of Income tax (Appeals) erred in confirming the disallowance of Rs.13,24,68,767/- being the liability towards contribution to recognized provident fund for the employees as per the contributory pension scheme laid down by the Government.
6. The Commissioner of Income tax (Appeals) ought to have appreciated that the actual payment of this amount awaited guideline to be issued by the Government of Tamilnadu regarding the manner of investment by the fund. /However, as the liability to the contribution to the fund has accrued and arisen under the Mercantile system of accounting, the same ought to have been allowed.
7. The Commissioner of Income tax (Appeals) erred in disallowing the provision of insurance reserve of Rs.404,98,92,373/- which was made as per clause 4 of Electricity Supply Annual Accounts Rules 1985.
8. The Commissioner of Income tax (Appeals) ought to have appreciated that it was the provision made to meet the future losses arising to the Company on account of flood, fire cyclone. etc and hence provision for future liability made in accordance with the statutory rules is an allowable deduction.
9. The Commissioner of Income tax (Appeals) erred in disallowing excess transmission charges of Rs.75,74,50,757 /- excessively charged and offered to tax in the assessment year 2015-16 now reversed and claimed as a deduction.
10. The Commissioner of Income tax (Appeals) ought to have appreciated that excess amount charged was reversed by way of a credit note raised in January, 2016 and hence this will amount to write off of receivables as not recoverable and hence the same should have been allowed as a deduction.
11. The Commissioner of Income tax (Appeals) erred in confirming the disallowance of excess billing of Rs.6,70,51,233/- offered for tax in the assessment year 2014-15 and 2015-16 now reversed and claimed as a deduction.
12. The Commissioner of Income tax (Appeals) ought to have appreciated that this represented the write off as irrecoverable of an amount earlier offered for tax and hence should have been allowed as a deduction.
13. The Commissioner of Income tax (Appeals) erred in confirming the disallowance of excessive operation and maintenance charges of Rs.10,90,54,311/- relating to assessment year 2014-15 and 2015-16 now reversed.

14 The Commissioner of Income tax (Appeals) ought to have appreciated this excessive amount offered for tax earlier is now written off as unrealizable and hence is an allowable as bad debts.

15 The Commissioner of Income tax (Appeals) erred in disallowing a sum of Rs.2,06,34,974/- being portion of interest expenditure capitalized during the earlier assessment identified and rectified during the assessment year.

16 The Commissioner of Income tax (Appeals) ought to have appreciated that as per the correct method of accounting under the Accounting Standard, the amount of excess interest capitalized in the earlier years have been reduced from the cost of assets and has been correctly claimed as revenue expenditure of this year.

17 The Commissioner of Income tax (Appeals) erred in confirming the employee and other costs of Rs.7,85,32,416/- relating to the previous year but accounted during the year is an allowable deduction.

1.2 The Ld. AR placed on record ground-wise chart and advanced arguments. The Ld. AR has referred to the earlier decision of Tribunal in assessee's own case, the copies of which has been placed on record. The Ld. CIT-DR also advanced arguments supporting the orders of lower authorities. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

1.3 As is evident, the issues that fall for our consideration are: - (i) Disallowance of Guarantee Commission of Rs.11.48 Crores as paid to State government of Tamilnadu; (ii) Disallowance of liability towards contribution to recognized provident fund for employees for Rs.13.24 Crores; (iii) Provisions for Insurance Reserves for Rs.404.98 Crores; (iv) Excess Transmission Charges for Rs.75.74 Crores; (v) Excess Billing for Rs.6.70 Crores; (vi) Excess Operation and Maintenance Charges for Rs.10.90 Crores; (vii) Disallowance of interest expenditure for Rs.2.06 Crores; (viii) Disallowance of employees and other costs for Rs.7.85 Crores.

1.4 The assessee is engaged in transmission of power. It was formed with restructuring of erstwhile Tamilnadu Electricity Board. It is subsidiary of TNEB Ltd. which is a state government company. TANGEDCO is

another subsidiary of TNEB Ltd. which generates electricity. The impugned issues that fall for our consideration are adjudicated as under.

2. Disallowance of Guarantee Commission of Rs.11.48 Crores as paid to State government of Tamilnadu

2.1 The assessee paid commission for the guarantee given by the state government on portion of loans raised by the assessee for resource mobilization. The Ld. AO disallowed the same on the ground that this payment was never seriously intended to be paid. The Ld. CIT(A) confirmed the same against which the assessee is in further appeal before us.

2.2 This issue has been decided in assessee's favor by Tribunal in ITA Nos.1045 & 1046/Chny/2019 for AYs 2014-15 & 2015-16 order dated 28-10-2021. The bench, in para-10, directed Ld. AO to allow the same as business expenditure. Respectfully following the same, we would hold that this expenditure would be allowable to the assessee. The corresponding grounds as raised by the assessee stand allowed.

3. Disallowance of liability towards contribution to recognized provident fund for employees for Rs.13.24 Crores

3.1 The assessee debited employee cost of Rs.13.24 Crores. The same represent amount collected from employees and an equal contribution of the assessee towards provident fund. However, this amount was not paid to recognized provident fund on the ground that approval from state government was yet to be received. Since the same was not paid, Ld. AO disallowed the same. The Ld. CIT(A) confirmed the same and held that the same could be claimed on payment basis. Aggrieved, the assessee is in further appeal before us.

3.2 The main thrust of argument of Ld. AR is that employees who are recruited after 01-04-2003 come under New Pension Scheme called as Contributory Pension Scheme (CPS). As per the Scheme, an amount equal to 10% of basis pay and DA has to be recovered from the employees and an equal sum has to be contributed by the assessee. The subscription and contribution of each employee for each month has to be deposited with PFRDA which in turn would be investing the same in various schemes through pension funds manager. Though PFRDA was formed by Government of India to act as a regulator for the pension sector, the Government of Tamilnadu have not stipulated the guideline for managing and investment of CPS funds with pension managers. Consequently, the aforesaid amount could not be deposited with PFRDA. When the orders are received from Government of Tamilnadu, the same would be deposited with PFRDA along with applicable interest. To support the same, Ld. AO has referred to various documents viz. GO No.259 of Finance (Pension) Department dated 06-08-2003, Guideline order issued regarding CPS dated 31-01-2005, GO No.59 dated 22-02-2016, order per (FB) Tangedco, proceeding No.3 dated 16-09-2016 in support of the same. The Ld. AR stated that whenever appropriate directions are received in this regard, this contribution would be deposited by the assessee. Nevertheless, the deduction thereof should be allowed to the assessee.

3.3 Considering the arguments of Ld. AR, we deem it fit to restore this matter back to the file of Ld. AO for fresh adjudication in the light of aforesaid documents as referred to by Ld. AR. The assessee is directed to substantiate its case. The ground thus raised by the assessee stand allowed for statistical purposes.

4. Prior Period Adjustments

4.1 The assessee claimed net prior period expenses of Rs.1853.75 Crores. The prior period income was netted off against the same and net amount of Rs.1458.29 Crores was claimed as prior period expenditure. Since the expenditure did not relate to this year, the Ld. AO disallowed entire expenditure of Rs.1853.75 Crores. The Ld. CIT(A) partly allowed the same against which the assessee is in further appeal before us.

4.2 The first item is provision for Insurance Reserves for Rs.404.98 Crores. This reserve was created for creating a self-insurance. This amount was kept aside for meeting any loss of assets on account of fire, flood and cyclone. However this amount was never utilized and accordingly, not allowed by Ld. CIT(A). The findings of lower authorities remain undisturbed before us also. Nothing has been shown that this reserve has been created on a scientific basis. Therefore, the same has rightly been disallowed. We order so.

4.3 The next item is excess Transmission Charges for Rs.75.74 Crores. The same represent transmission charges excessively billed in earlier years and offered to tax in AY 2015-16. The credit note was stated to be issued to TANGEDCO during January, 2016 and accordingly, the revenue was reversed in this year. It was pointed out that the TANGEDCO also offered the same to tax in this year. However, Ld. CIT(A) denied the same on the ground that any omissions or mistake on the part of the assessee could not be condoned in subsequent years. We are of the considered opinion, that this item represents excess billing done by the assessee in earlier years which has been reversed in this year by issuance of credit note. The crystallization has happened in this year and the benefitting party has also offered the same to tax in this

year. The said amount has been offered to tax by the assessee in earlier years. Therefore, the same would be allowable to the assessee subject to verification by Ld. AO that this revenue was offered to tax in earlier years.

4.4 Similar is the issue of excess billing of Rs.6.70 Crores which is stated to be offered to tax in FYs 2013-14 and 2014-15. Facts being *pari-materia* the same, we would hold that the same would be allowable to the assessee subject to verification by Ld. AO that this revenue was offered to tax in earlier years.

4.5 Similar is the issue of is excess Operation and Maintenance Charges for Rs.10.90 Crores which has been accounted in excess from TANTRANSCO. The same is stated to be offered to tax in FYs 2013-14 and 2014-15. Facts being *pari-materia* the same, we would hold that the same would be allowable to the assessee subject to verification by Ld. AO that this revenue was offered to tax in earlier years.

4.6 The next item is disallowance of interest expenditure for Rs.2.06 Crores and disallowance of employees and other costs for Rs.7.85 Crores. The Ld. CIT(A) denied the deduction of the same on the ground that these were prior period expenditure and represent omissions and mistake on the part of the assessee. The Ld. AR has stated that interest expenditure was revenue in nature but the same was capitalized in earlier year. The same has been reversed in this year and the cost of the asset has been reduced and lower depreciation has been claimed by the assessee. The Ld. AO is directed to verify the same and if found correct, allow the same to the assessee.

The Ld. AR has stated that the employee cost of Rs.7.85 Crores has already been disallowed by the assessee in the computation of income

and disallowing the same would amount to double taxation. The Ld. AO is directed to verify the same and disallow the expenditure only once.

4.7 All these grounds stand allowed for statistical purposes. The appeal stand partly allowed in terms of our above order.

ITA No.2040/Chny/2024

5. This appeal has been filed against an assessment framed u/s 143(3) r.w.s. 263. Pursuant to revisionary directions by appropriate authority, Ld. AO framed another assessment on 29-03-2022. In the revision order, it was noted that assessee's own contribution as well as contribution received from the employee was not deposited into PFRDA Account. In the regular assessment, Ld. AO only disallowed employers' contribution but failed to disallow employee's contribution. The same would constitute income of the assessee in terms of Sec. 36(1)(va) r.w.s. 2(24)(x). Accordingly, Ld. AO revised the assessment. The assessee stated that though PFRDA was formed by Government of India to act as a regulator for the pension sector, the Government of Tamilnadu did not stipulate the guideline for managing and investment of CPS funds with pension managers. Consequently, the aforesaid amount could not be deposited with PFRDA. When the orders are received from Government of Tamilnadu, the same would be deposited with PFRDA along with applicable interest. However, rejecting the same, Ld. AO added unpaid amount of Rs.20.15 Crores to the income of the assessee. The Ld. CIT(A) confirmed the same for want of response from the assessee. Aggrieved, the assessee is in further appeal before us.

6. Since similar ground of employers' contribution has been restored back by us in regular appeal to the file of Ld. AO for fresh adjudication,

this appeal is also restored back to the file of Ld. AO on similar lines. The appeal stand allowed for statistical purposes.

Conclusion

7. ITA No. 2794/Chny/2019 stand partly allowed. ITA No. 2040/Chny/2024 stand allowed for statistical purposes.

Order pronounced on 15th January, 2025.

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

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

चेन्नई Chennai; दिनांक Dated : 15-01-2025
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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