

आयकर अपीलिय अधिकरण,'डी' न्यायपीठ, चेन्नई।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष  
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND  
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.147/Chny/2018, Assessment Years: 2009-10  
आयकर अपील सं./ITA No.1182/Chny/2018, Assessment Years: 2012-13

The Asst. Commissioner of Income  
Tax,  
Central Circle-3(2),  
Chennai.

M/s.VA Tech Wabag Pvt. Ltd.,  
WABAG House No.17,  
200 Feet, Thoraipakkam,  
Pallavaram Main Road,  
Sunnambu Kolathur,  
Chennai-600 117.  
[PAN: AABCV0225G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: Mrs.Pushya Sitaraman, Sr.Advocate for  
Mr.T.Ramesh Kutty & B.Sivaraman,  
Advocates

प्रत्यर्थी की ओर से /Revenue by

: Shri A.Sasikumar, CIT

सुनवाई की तारीख/Date of Hearing

: 12.02.2025

घोषणा की तारीख /Date of Pronouncement

: 19.02.2025

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

These appeals are filed by the Revenue against the order bearing  
ITA No.1/16-17 dated 25.10.2017 and ITA No.137/16-17 dated  
08.01.2018 of the Learned Commissioner of Income Tax [herein after  
"CIT(A), for the assessment years 2009-10 & 2012-13. Through the  
aforesaid appeals the Revenue has challenged order u/s 143(3) dated  
29.02.2016 & 17.05.2016 passed by Ld.AO Chennai. Both the appeals

having common issues are adjudicated together by this common order for the purposes of convenience.

**ITA No.1182/Chny/2018, Assessment Years: 2012-13**

2.0 The first issue raised by the Revenue through its grounds of appeal are regarding the addition of Transfer Pricing. At the outset, the Ld. Counsel for the assessee submitted that the matter pertains to Corporate performance guarantee provided on account of acquiring purchase of shares of VA Tech Wabag Austria and which is a covered matter in terms of decision of Hon'ble Coordinate Bench of this Tribunal in IT(TP)A No.7,8,9 & 326/Chny/2021 dated 16.10.2024 in assessee's own case. The Ld.DR from the Revenue conceded but would still like to place reliance upon the order of Ld. AO.

3.0 We have heard rival submissions in the light of material available on records. We have noted the decision of Hon'ble Coordinate Bench of this Tribunal in IT(TP)A No.7,8,9 & 326/Chny/2021 dated 16.10.2024 in assessee's own case. Thus, para 18 to 20 of the impugned order reads as under:-

*".....18.0The next issue that has been raised by the revenue for AY-2013-14 is in respect of action of the Ld. CIT(A) in deleting the disallowance made by the Ld. AO in respect of transfer pricing adjustments u/s 92CA(3). From the perusal of Ld. AO's order we find that the Ld. TPO had recommended an adjustment of 1% of the value of services provided, in this case being value of the corporate guaranty to its overseas AEs. As per the factual matrix the assessee had acquired shares of VA Tech*

*Wabag GmbH Austria from Siemens and the purchase consideration for the acquisition of the shares of the company namely VA Tech Wabag GmbH Austria is by taking over the contingent liability which included performance bank guaranty given by Austrian subsidiary to various customers amounting to some 70 Million Euros. Originally these customers of VA Tech Austria AE were guaranteed by the bank of Austria and backed by corporate performance guaranty given by Siemens. Upon acquisition of shares from Siemens the assessee entered into (Siemens) shoes qua corporate performance guaranty. The Ld. Counsel for the assessee informed that the assessee had extended corporate guaranty for its overseas associated enterprises and that there was no cost imbedded therein. It was argued that consequently there cannot be any case for disturbance to its ALP. The Ld. CIT(A) held that the extension of a corporate guaranty is a cost neutral activity and therefore cannot be part of any ALP adjustments. While deleting the addition made by the Ld. AO he relied upon the decision of the Coordinate Bench of this tribunal in ITA No.458 / MDS / 201 in the case of TVS Logistics Services Limited. Before us, in support of its contentions, the Ld. Counsel also placed reliance upon the decision of the Coordinate Bench of this tribunal in assessee's own case for AY-2010-11 and 2011-12 vide ITA Nos.953 / Chny / 2015 and 807/Chny/2016 respectively holding that only part adjustment of corporate guaranty can be done. The Ld. DR fairly conceded that the issue stands partly decided in favour of the assessee by the above decisions.*

*19.0 We have heard rival submissions in the light of material available on records. We have noted that decision of the Coordinate Bench of this tribunal in assessee's own case for AY-2010-11 and 2011-12 vide ITA Nos.953 / Chny / 2015 and 807/Chny/2016 on this issue a corporate guaranty, pronouncing as under:*

*"...8. Before us, the Ld. CIT-DR relied on the decision of Hon'ble High Court of Madras in the case of Redington (India) Ltd. vs. Addl. CIT [2022] 242 ITR 450 (Mad.).*

*9. On the other hand, the Ld. counsel for the assessee only requested that in view of the decision of Hon'ble Bombay High Court in the case of Everest Kanto Cylinder Ltd. 52 taxmann.com 395 (Bom.), wherein it is held that the corporate guarantee upward adjustment in ALP can be done by taking 0.5%, but it is held to be international transaction. The Ld. counsel for the assessee only requested that the upward adjustment of ALP can be done at 0.5%.*

*10. After hearing both the parties and going through the facts and circumstances of the case, we concur with the TPO's order that this is an international transaction, but upward adjustment is now covered in*

*favour of the assessee partly by the decision of Hon'ble Bombay High Court in the case of Everest Kanto Cylinder Ltd, supra, wherein it is directed that the adjustment should be made @0.5%. Hence, we direct the A.O accordingly.*

*11. Coming to ITA No.807/CHNY/2016 for the assessment year 2011-12 of assessee's appeal, the issue is regarding corporate guarantee charged by AO and affirmed by DRP at the rate of 1.5%. Since we have adjudicated this issue while dealing with Revenue's Appeal in ITA No.953/CHNY/2015 for assessment year 2010-11 and the facts are identical, taking a consistent view, we direct the AO to adopt the rate @ 0.5%. This issue of the assessee's appeal is partly-allowed..."*

*20.0 In respectful compliance to the decision of the Coordinate Bench of this tribunal supra as also in consideration of the principles of consistency we therefore set aside the orders of lower authorities and direct the Ld. AO to recalculate the disallowance by adopting the rate of 0.5% for his addition. Accordingly, the ground of appeal raised by the revenue is partly allowed..."*

4.0 We have noted that the facts of the present appeal are identical to those adjudicated vide our order dated 16.10.2024 and no changes have been pointed by the Revenue. Accordingly, in respectful compliance to the decision cited above as also in consideration of the principles of consistency, we therefore set aside the order of lower authorities and direct the Ld.AO to recalculate the disallowance by adopting the rate of 0.5% for his addition. Accordingly, all the grounds of appeal raised by the Revenue are partly allowed.

5.0 The next issue raised by the Revenue through its grounds of appeal is regarding the addition on account of provision for warranty. At the outset, the Ld. Counsel for the assessee submitted that the matter pertains to provision for warranty and which is a covered matter in terms

of decision of Hon'ble Coordinate Bench of this Tribunal in IT(TP)A No.7,8,9 & 326/Chny/2021 dated 16.10.2024 in assessee's own case . The Ld. DR from the Revenue conceded but would still like to place reliance upon the order of Ld. AO.

6.0 We have heard rival submissions in the light of material available on records. We have noted the decision of Hon'ble Coordinate Bench of this Tribunal in IT(TP)A No.7,8,9 & 326/Chny/2021 dated 16.10.2024 in assessee's own case. Thus, para 5.0 to 8.0 of the impugned order reads as under:-

*"...5.0 The first issue that has been challenged by the revenue for AY-2013-14, 2015-16 and 2016-17 is in respect of action of the Ld. CIT(A) in deleting the disallowance made by the Ld. AO in respect of provision for warranty. While adjudicating the matter AY-2013-14 is taken as lead year and the figures for that year are considered accordingly.*

6.0 *The Ld. Counsel for the assessee submitted that the assessee had made a claim for provision of warranty amounting to Rs.33.24 Crs. The net increase for provision in warranty during the previous years was noted at Rs.17.54 Lakhs. Before the Ld. AO the assessee had submitted that in its line of business of water treatment and sewerage plants on a turnkey basis it is required to give a warranty as per specific contracts executed with clients varying from 2 – 3 years in which it maintains the plant and attends to any repairs free of cost. Warranty commitments were integral part of the sale price. It was submitted that the warranty provisions need to be recognized because the appellant had present obligations as a result of past events. The Ld. AO relied upon Hon'ble Apex Court's decision in the case of Rotork India Pvt Ltd 314 ITR 62 mandating that provision of warranty is a permitted expenditure only if based upon a scientific working. The Ld. AO did not concur with the assessee's submissions and made addition of Rs.17,53,70,580/- . The Ld. Counsel further submitted that the Ld. First Appellate Authority deleted the addition after comprehensively examining the commercial viability for warranty expenses as well as relying upon a catena of decisions*

*including one in the case of 314 ITR 62 Supra. Before us the Ld. Counsel for the assessee reiterated the submissions made before the Ld. CIT(A) viz vide ITA No.137 in assessee's own case for AY-2012-13 the Ld. First Appellate Authority and also submitted that the DRP Chennai for AY-2010-11 had held that provisions for warranty are allowable business expenditure. Additionally, the Ld. Counsel for the assessee invited our attention to the decision of Coordinate Bench of this tribunal in ITA No.953 / Chny / 2015 in assessee's own case holding that the provision for royalty are an allowable business expenditure. The Ld. DR would like to make us believe in the merits of the addition made by the Ld. AO and submitted and that the decision of the CIT(A) is unwarranted.*

*7.0 We have heard rival submissions in the light of material available on records. We subscribe to the view that warranty is an integral part of a sale transaction. It primarily entails a quality assurance from a seller to the prospective buyer with a promise that in the event of any repair or after sales intervention the promised warranty obligations would step in. As regards creation of provisions for warranty the same are created because of inherent difficulty in objectively and precisely estimating as to how much warranty commitments would be invoked by buyers. Here comes the role of adopting a scientific and verified method for creating provisions as has been postulated in the decision of Hon'ble Apex Court in 314 ITR 62 Supra. Thus commercial expediency of allowing warranty including its scientifically calculated provisions is well recognized. We have also taken note of the decision of the Coordinate Bench of this Tribunal in ITA No.953 / Chny / 2015 in assessee's own case holding as under:-*

*"..... We have heard the rival contentions, perused the materials available on record. We noted the fact that the assessee is engaged in the business of design, develop, manufacture, sale, erection and commissioning of water treatment and sewerage plant. After completion of each and every project there will be a warranty period as per contract executed by the assessee with the client which may vary from two to three years. During this warranty period the assessee needs to maintain the plant and needs to replace the defective component at free of cost. The warranty became an integral part of the sale price and in other words the warranty stood attached to the sale price of the product. The Warranty provision had to be recognized because the assessee had a present obligation as a result of past events resulting in an outflow of resources and a reliable estimate could be made of the amount of the obligation. The assessee is being in the business of design, develop, execute, sale, erection and commissioning of water treatment and sewerage plant made a provision of warranty based scientific methods of accounting adopted by the assessee. This also depends upon historical trend and other related facts. The*

*assessee has a contractual obligation to maintain the plant for a minimum period of two to three years depending upon the agreement and during this period the assessee has to freely replace the components if they became defective. This issue is settled by Hon'ble Supreme Court in the case of Rotok India Put. Ltd. (Supra), wherein it was held that warranty became an integral part of sale price, in other words, the warrant stood attached to the sale price of the product. Warranty provision had to be recognized because, the assessee had a present obligation as a result of past events resulting in an outflow of resources and a reliable estimate could be made of the amount of obligation. The value of contingent liability like warranty expenses, if properly ascertained and discounted on accrual basis, can be an item of deduction U/s.37 of the Act. Since the assessee estimated the warranty and made a provision on a scientific basis the assessee is eligible to claim as revenue expenditure. Furthermore, the assessee reverses any excess provision made in the earlier year(s) and hence, it is clear from this that there is no excess claim by the assessee with regard to warranty. Hence we find no infirmity in the claim of assessee and the same has rightly been allowed by DRP. We uphold the same.*

*20. Similar issue for provision for warranty is raised by assessee in its appeal in ITA No.807/CHNY/2016 for assessment year 2011-12 and the facts are exactly identical in this year also what was in assessment year 2010-11 in ITA No.953/CHNY/2015, taking a consistent view, we allow the provision for warranty in this year also. This issue of assessee's appeal is allowed....”*

**8.0** We have noted that the facts of the present case are identical to those in the above referred decision and no distinction has been made by the revenue. Therefore, in respectful compliance to the decision of Coordinate Bench of this Tribunal Supra, we hereby hold that the provisions for royalty are allowable business expenditure. Accordingly, we confirm the order of the Ld. CIT(A) in respect of deletion of addition of Rs.17,53,70,580/- on account of provision of warranty and dismiss the grounds of appeal raised by the revenue for AY-2013-14....”

**7.0** We have noted that the facts of the present appeal are identical to those adjudicated vide our order dated 16.10.2024 and no changes have been pointed by the Revenue. Accordingly, in respectful compliance to the decision cited above as also in consideration of the principles of consistency, we confirm the order of the Ld. CIT(A) in respect of deletion of addition of Rs.7,12,82,076/- on account of

provision of warranty and dismiss the grounds of appeal raised by the revenue. **Accordingly, all the grounds of appeal raised by the**

**Revenue are dismissed.**

8.0 The next issue raised by the Revenue through its grounds of appeal is regarding the disallowance of consulting / marketing fees to overseas consultant parties namely Jafferji, TFS Company Limited Korea etc. At the outset, the Ld. Counsel for the assessee submitted that the disallowance of impugned expenses matter pertains to disallowance of payments made to overseas parties for services rendered by them and which did not have any PE in India and which is a covered matter in terms of decision of Hon'ble Coordinate Bench of this Tribunal in IT(TP)A No.7,8,9 & 326/Chny/2021 dated 16.10.2024 in assessee's own case . The Ld. DR from the Revenue conceded but would still like to place reliance upon the order of Ld. AO.

9.0 We have heard rival submissions in the light of material available on records. We have noted the decision of Hon'ble Coordinate Bench of this Tribunal in IT(TP)A No.7,8,9 & 326/Chny/2021 dated 16.10.2024 in assessee's own case. Thus, para 10 to 13 of the impugned order reads as under:-

*".....10.0 The next issue that has been raised by the revenue for AY-2013-14, 2014-15, 2015-16 and 2016-17 is in respect of action of the Ld. CIT(A) in deleting the disallowance made by the Ld. AO in respect of consultant marketing fees(Overseas) made u/s 40(a)(ia). The facts of all*

the four years have been reported to be identical and hence for the purpose of this adjudication we take AY-13-14 as the lead year. Conveying brief facts of the case, the Ld. Counsel for the assessee informed that there was a survey u/s 133A on 27.07.2014 upon the assessee. It transpired therefrom that the assessee had paid consultancy fees to non-resident parties without TDS deduction u/s 40(a)(ia). Before the Ld. AO, the assessee pleaded that the impugned expenses did not warrant TDS deduction u/s 40(a)(ia) as the services were rendered outside India for assessee's overseas projects and the parties are all stationed outside India with no local office etc. The assessee also gave details of services reportedly given by the said non-resident parties. The Ld. AO however rejected the contentions by relying upon explanation-2 to section 9(1)(vii) and treated the same as fee for technical services which mandated prior deduction of TDS. The Ld. AO particularly invoked the amendment of section -9 of the income tax act made by Finance "Act -2010 which postulated that whether or not the non-resident is in India will be immaterial if the fees are paid for technical services, inter-alia, comprising managerial, technical or consultancy services. Ld. Counsel for the assessee informed that consequently the Ld. AO proceed to make an addition of Rs.7,98,23,850/-. He submitted that the Ld. First Appellate Authority has rightly deleted the addition on the premise that Ld. AO could not establish rendering of services in India as well as rejecting hypothesis of application of section-9(1) to the assessee's case. Consequently the Ld.CIT(A) applying the ratio of this tribunal in ITA 2169, ITA 6148 as well as decision of DRP in assessee's own case for AY-2010-11 deleted the addition. During the course of present proceeding, the Ld. AR invited our attention to the decision of the Coordinate Bench of this Tribunal in ITA No.953 / Chny / 2015 in assessee's own case for AY-2010-11 whereby the issue has been restored back to the file of Ld. AO for readjudication of the matter after proper verification of facts of the case. The Ld. DR held the view that the addition made by the Ld. AO is based upon correct understanding of law.

11.0 We have heard rival submissions in the light of material available on records. The decision of the coordinate bench of this tribunal in assessee's own case for AY-2010-11 vide ITA No.953 / Chny / 2015 has been found to be having a direct bearing on the impugned controversy and hence is being considered. In the said case Hon'ble coordinate bench has observed as under:-

"....46. Before us also, the Ld. counsel for the assessee relied on the decision of Hon'ble Madras High Court in the case of CIT v. Faizan Shoes (P.) Ltd. [2014] 48 taxmann.com 48 (Mad.), wherein the Hon'ble

High Court has considered that the services rendered by non-resident agent for completion of export commitment would not fall under the definition for fee for technical services. The Hon'ble Jurisdictional High Court observed in para 12 as under:

"12. In the light of the above said decisions and the finding rendered by us on the earlier issue that the services rendered by the non-resident agent can at best be called as a service for completion of the export commitment and would not fall within the definition of "fees for technical services", we are the firm view that Section 9 of the Act is not applicable to the case on hand and consequently, Section 195 of the Act does not come into play. In view of the above finding, the decision of the Supreme Court in Transmission Corpn. Of A.P Ltd's. case (supra), relied upon by the learned Standing Counsel for the Revenue is not applicable to the facts of the present case. We find no infirmity in the order of the Tribunal in confirming the order of the Commissioner of Income Tax (Appeals)."

47. We noted that none of the authorities below have discussed the nature of marketing fee whether these are paid fee for technical services this needs to be examined. In case, these are not fee for technical services, the A.O cannot make disallowance. Hence, to examine this issue, the matter restore back to the file of A.O. This issue of assessee's appeal is allowed for statistical purposes...."

12.0 We have noted that the facts of the present case are identical to those in the above referred decision and no distinction has been made by the revenue. We have noted that no discussion has been made by the lower authorities as to whether the impugned marketing fees is in the nature of fee for technical services or not. Now, in the event these are not for technical services then the disallowance cannot be made by the Ld. AO. Therefore, in respectful compliance to the decision of Coordinate Bench of this Tribunal Supra, we direct the Ld. AO to re-examine the matter afresh as to whether the management fees is in the nature of fee for technical services or not and to thereafter conclude as per law. To the extent the order of lower authorities is set aside. Accordingly, the ground of appeal of revenue is allowed for statistical purposes.

13.0 As regards ITA No. IT(TP)-8 / Chny/2021 for AY-2014-15, ITA No. IT(TP)-9 / Chny/2021 for AY-2015-16, ITA No. IT(TP)-326 / Chny/2021 for AY-2016-17 it is seen that identical grounds of appeal have been raised by the revenue. No changes, save variations in figures, in facts of the case have been reported. Accordingly the decision in AY-

2013-14 Supra shall apply mutatis mutandis. In the result ground of appeal of revenue for these assessment years are also allowed for statistical purposes....”

10.0 We have noted that the facts of the present appeal are identical to those adjudicated vide our order dated 16.10.2024 and no changes have been pointed by the Revenue. Accordingly, in respectful compliance to the decision cited above as also in consideration of the principles of consistency, we direct the Ld. AO to re-examine as to whether the impugned marketing fees is in the nature of fee for technical services or not. Now, in the event these are not for technical services then the disallowance cannot be made by the Ld. AO. Therefore, in respectful compliance to the decision of Coordinate Bench of this Tribunal Supra, we direct the Ld. AO to re-examine the matter afresh as to whether the management fees is in the nature of fee for technical services or not and to thereafter conclude as per law. To the extent the order of lower authorities is set aside. Accordingly, the ground of appeal of revenue is allowed for statistical purposes.

11.0 The next issue raised by the Revenue through its grounds of appeal is regarding the addition on account of bad debts of Rs.6,57,549/-. At the outset, the Ld. Counsel for the assessee submitted that the disallowance of impugned bad debts is a covered matter in terms of decision of Hon'ble Coordinate Bench of this Tribunal in IT(TP)A No.7,8,9

& 326/Chny/2021 dated 16.10.2024 in assessee's own case . The Ld. DR from the Revenue conceded but would still like to place reliance upon the order of Ld. AO.

12.0 We have heard rival submissions in the light of material available on records. We have noted the decision of Hon'ble Coordinate Bench of this Tribunal in IT(TP)A No.7,8,9 & 326/Chny/2021 dated 16.10.2024 in assessee's own case. Thus, para 14 to 17 of the impugned order reads as under:-

*"....14.0 The next issue that has been raised by the revenue for AY-2014-15, 2015-16 and 2016-17 is in respect of action of the Ld. CIT(A) in deleting the disallowance made by the Ld. AO in respect of bad debts. The facts of all the three years have been reported to be identical, except for the fact that the government agencies are different, and hence for the purpose of this adjudication we take AY-2014-15 as the lead year. Conveying brief facts of the case, the Ld. Counsel for the assessee informed that during AY-2014-15 the assessee had claimed an amount of Rs. 25,84,686/- as deduction u/s 36(1)(vii) on account of bad debts. The impugned amount was in respect of write off of an amount due from M/s. IOC Limited (Panipat Refinery) a government body. The Ld. AO relying upon the decision of Hon'ble Jurisdictional High Court in the case of South India Surgical Company Limited, 287 ITR 62 and of Hon'ble Gujarat High Court in the case of Dhall Enterprises and Engineers 295 ITR 481 held that dues from government bodies cannot be allowed as bad debts.*

*15.0 The Ld. Counsel for the assessee submitted that the controversy surrounding claim of bad debts is settled by the ratio laid down by Hon'ble Apex Court in the case of M/s. TRF Limited and of Southern Technologies and that the impugned judgements are fully applicable in its case. The Ld. DR submitted that the decision taken by the Ld. AO placing reliance upon cited judgements in the assessment order is the correct interpretation in law.*

*16.0 We have heard rival submissions in the light of material available on records. The Ld. AO has made the impugned disallowance on the singular premise that the assessee has written off bad debts in respect of*

*government agencies and because a government can never be deemed to become insolvent, claim of bad debts cannot be allowed. Before the Ld. First Appellate Authority, the assessee had also taken a stand that in AY-2009-10 his predecessor had allowed the claim of bad debts. The Ld. Counsel for the assessee also argued that the amounts claimed as bad debts were actually those which were deducted by the government agencies on account of performance based evaluation and therefore the decision of Hon'ble Madras High Court and Gujarat High Court Supra is distinguished. We find force in the argument of the Ld. First Appellate Authority that it is not upto the Ld. AO to verify as to whether or not the debts have actually become bad. The law of bad debts prescribed u/s 36(1)(vii) clearly postulates that an amount which has been offered by a taxpayer as income in any preceding year and which has been claimed as bad debts in any succeeding years after passing of necessary entries into party's account is to be allowed as bad debt in the year of its claim. Hon'ble Apex Court has also settled the controversy in the case of TRF Limited, wherein Hon'ble Apex Court has held that showing as income in earlier years and claiming as bad debts by passing appropriate entries in financial statements would suffice for allowance of claim. It has also been held that there is no need to establish recoverability of an amount for its allowance u/s 36(1)(vii). We also find that the Ld. CIT(A) has comprehensively analyzed the issue before adjudicating in favour of the assessee. Therefore, we feel that there is no case for any interference in his order at this stage. Accordingly, the order of the Ld. First Appellate Authority for AY-2014-15 is sustained and the ground of appeal raised by the revenue challenging the issue of bad debts is dismissed.*

17.0 As regards ITA No. IT(TP)-9 / Chny/2021 for AY-2015-16, ITA No. IT(TP)-326 / Chny/2021 for AY-2016-17 it is seen that identical grounds of appeal have been raised by the revenue. No changes, save variations in figures and names of government agencies, in facts of the case have been reported. Accordingly the decision in AY-2014-15 Supra shall apply *mutatis mutandis*. In the result ground of appeal of revenue for these assessment years are also dismissed...."

13.0 We have noted that the facts of the present appeal are identical to those adjudicated vide our order dated 16.10.2024 and no changes have been pointed by the Revenue. Accordingly, in respectful compliance to the decision cited above as also in consideration of the

principles of consistency, we are of the view that there is no case for any interference to the order of Ld. CIT(A) at this stage. **The same is therefore sustained and the appeal of the Revenue stands dismissed.**

14.0 The next issue raised by the Revenue through its grounds of appeal is regarding the addition of Rs.37,53,02,144/- made by the Ld. AO on account of provision created for differential interest paid to the Exim Bank. The Ld. AO had noted in his order that the provisions made by the assessee each year was not matching with the amounts paid out of the provisions made and also that the provisions were not made correctly. The Ld. AO observed that assessee's claim of provisions, having relation with differential interest being an item of business exigency, was not supported by any documentary evidence. The Ld. CIT(A) has vividly discussed the issue in detail in his order in para 21 to 25 on page 34 to 43 of his order. The Ld. Counsel for the assessee informed that the controversy in short is that the assessee was awarded a contract by Srilankan Government on turnkey basis for setting up of water treatment plant. As per terms of agreement the project was to be funded by Exim Bank of India. One of the conditions of the contract was that Srilankan Government demanded loans at an interest rate lesser than that of Exim Bank. The assessee in the interest of its business accepted the project

while agreeing to pay the differential interest as a direct project cost. The Ld. Counsel argued that it is trite law that substance prevails over the form and therefore the impugned arrangement was in the nature of a project cost.

14.1 The Ld.Counsel for the assessee submitted that the Ld.CIT(A) after comprehensively analysing the facts of the case and appreciating evidence on record concluded vide para 25 on page 42 of his order that the addition made by the Ld. AO was unwarranted and deleted the same. It was held by him that the Ld. AO has accepted the provision created for AY-2013-14 and 2014-15, thus allowing the issue to rest. He also observed that the present provision are supported by scientific calculation and legal justification. The Ld. DR vehemently argued that the order of Ld.AO is based on correct understanding the facts of case and assailed the order of the Ld. First Appellate Authority.

15.0 We have heard rival submissions in the light of material available on records. We have noted that the Ld. AO while making the impugned addition on page 22 of his order has primarily premised that the assessee has not been able to produce sufficient evidences to allude the tripartite arrangement between the assessee, the Government of Srilanka and Exim Bank. We have however noted that the averments raised by the

Ld. AO are primarily falling in the realm of conjectures. It is an undisputed fact of the case that the differential interest amount has been paid by the assessee to the Exim Bank. It is also evident from records that the assessee had taken over the impugned costs apparently to remain in business with Srilankan Government. The said costs thus assume the character of a project costs which deserves to be allowed. Accordingly, we are of the view that there is no need for causing any disturbance to the order of the Ld.CIT(A) in deleting with impugned addition of Rs.37,53,02,144/-. Accordingly, the order of the Ld.CIT(A) is sustained and the all the grounds appeal raised by the Revenue are dismissed.

16.0 In the result the appeal of the Revenue vide **ITA No.1182/Chny/2018, Assessment Years: 2012-13** is partly allowed.

**ITA No.147/Chny/2018, Assessment Years: 2009-10**

17.0 The first issue raised by the Revenue through the impugned appeal is regarding allowance of bad debts of Rs. 8,05,50,267/- by the Ld. CIT(A) on account of bad debts. The Ld. Counsel for the assessee informed that the matter is covered by the order of this tribunal in IT(TP)A No.7,8,9 & 326/Chny/2021 dated 16.10.2024. The Ld. DR conceded yet placing reliance upon the order of Ld.AO.

18.0 We have noted that the matter is covered by our decision in appeal of the Revenue vide **ITA No.1182/Chny/2018, Assessment Years: 2012-13** supra. As no distinguishment in the facts of the case have been pointed by the Revenue, the decision taken **ITA No.1182/Chny/2018, Assessment Years: 2012-13** supra applies mutatis mutandis. **Accordingly, all the grounds of appeal raised by the Revenue on the issue of bad debts are dismissed.**

19.0 The next issue raised by the assessee regarding the addition made by the Ld.AO of Rs. 1,84,97,489/- on account of notional profit from Foreign Exchange fluctuations. The Ld. DR submitted that the Ld. AO had noted that the assessee had deducted the impugned amount from the computation of its total income. The Ld. DR submitted that the Ld. AO in para 4.1 of his order has noted that in view of accounting standards-11 and decision of Hon'ble Apex Court in the case of Woodward Governor of India 179 ITR 326, profit loss and foreign exchange is required to be taken into account while computing the profit. It was argued that the relief accorded by the Ld. CIT(A) is therefore is incorrect. The Ld. Counsel for the assessee submitted that the relief accorded by the Ld. CIT(A) is correct as he has rightly appreciated that the appellant had consistently followed the method of accounting of eliminating notional gain or loss on restatement of foreign currency, being

contingent in nature. The Ld. Counsel argued that the decision relied upon by the Revenue of Hon'ble Apex Court in the case of Woodward Governor of India supra, is in its favour as it has consistently followed the method of accounting of eliminating notional gain or loss on restatement of foreign currency.

20.0 We have heard rival submissions in the light of material available on records. The method of accounting on restatement of foreign currency, followed by the assessee is not in dispute. It is accepted that the assessee has consistently followed the method of accounting of eliminating notional gain or loss on restatement of foreign currency. The decision of Hon'ble Apex Court in the case of Woodward Governor of India supra thus does not come to Revenue's rescue. Consequently we do not find any deficiency in the decision of the Ld. CIT(A). We also find sufficient force in the arguments of Ld.AR that the impugned addition is unwarranted since the Revenue has accepted its method of accounting in all other assessment years and had made the disturbance only in AY-2009-10. Accordingly, we confirm the decision of the Ld. CIT(A) in deleting the action of the Ld.AO in bringing to tax Rs.1,84,97,489/- on account of notional profit from Foreign Exchange fluctuations. **The grounds of appeal raised by the Revenue are therefore dismissed.**

21.0 The next issue raised by the Revenue is regarding an addition of Rs.2,93,88,105/- made by the Ld.AO on account of provisions for liquidated damages and which has been deleted by the Ld. CIT(A). The Ld. DR informed that the Ld.AO has discussed the issue in para 7 of his order. It was argued that the Ld. AO had noted a double claim of provisions for liquidated damages and disallowance was made. The Ld. Council for the assessee submitted that the Ld.CIT(A) has rightly concluded that the Ld.AO had mistakenly brought the opening balance of provision for liquidated damages(LD) for taxation.

22.0 We have heard the rival submissions in the light of material available on records. We have noted that the provision for LD on 31.03.2009 was Rs.20,13,00,250/- and on 31.03.2008 was Rs.2,93,88,105/-. Thus the provision made during the years was Rs.17,19,12,145/-. In the above background , we have noted that the Ld.CIT(A) is correct in concluding that the Ld. AO has mistakenly taken wrong figures for addition. Accordingly, we confirm the decision of the Ld. CIT(A) in deleting the action of the Ld.AO in bringing to tax Rs.2,93,88,105/- on account of liquidated damage. **The grounds of appeal raised by the Revenue are therefore dismissed.**

23.0 In the result, the appeal of Revenue vide ITA No.147/Chny/2018 is Dismissed.

ITA Nos	Assessment Year	Result
ITA No.147/Chny/2018	2009-10	Dismissed.
ITA No.1182/Chny/2018	2012-13	Partly allowed

Order pronounced on 19<sup>th</sup> , February-2025 at Chennai.

Sd/-

( एबी टी. वर्की )

(ABY T VARKEY)

न्यायिक सदस्य / Judicial Member

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 19<sup>th</sup> , February-2025.

KB/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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