

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' 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.1835/Chny/2024
निर्धारण वर्ष /Assessment Year: 2016-17

The Asst. Commissioner of
Income Tax,
Circle-1,
Chennai.

Vs. Chennai Petroleum Corporation
Ltd.,
536, Anna Salai, Teynampet,
Chennai – 600 018.
[PAN: AAACM 4392C]

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Assessee by

: Shri Vikram Vijayaraghavan,
Advocate

प्रत्यर्थी की ओर से /Revenue by

: Shri R. Clement Ramesh Kumar, CIT

सुनवाई की तारीख/Date of Hearing

: 07.01.2025

घोषणा की तारीख /Date of Pronouncement

: 02.04.2025

आदेश / ORDER

PER JAGADISH, A.M :

Aforesaid appeal filed by the Revenue for Assessment Year (AY) 2016-17 arises out of the order of Learned Commissioner of Income Tax (NFAC), Delhi [hereinafter "CIT(A)"] dated 31.11.2023 in the matter of assessment framed by the Assessing Officer [AO] u/s. 147

r.w.s 144 r.w.s 144B of the Income-tax Act,1961 (hereinafter "the Act") on 31.03.2022.

2. There is a delay of 154 days in filing the appeal by the Revenue. The Revenue has filed condonation petition/affidavit stating the reasons for delay in filing the appeal. We have considered the petition/affidavit of delay in filing the appeal and satisfied that there was sufficient cause for not filing the appeal within the prescribed time limit. Hence, the delay is hereby condoned.

3. The A.O in the order passed u/s. 147 of the Act has disallowed the provision for capital work in progress (CWIP) of Rs.10,70,13,755/- towards study relating to cost savings on crude freight through single point mooring on the ground that it is unascertained liability and the assessee itself while computing the book profit u/s. 115JB of the Act has considered this amount for disallowance being unascertained liability. The assessee has explained that the expenditure has been incurred towards getting a study done for optimizing freight expenditure on crude procurements and due to various reasons it was decided to drop the project and the same was written off. The assessee has explained that during the course of making the

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expenditure, the assessee-company added it to CWIP and once the project was decided not to be pursued, this expenditure was written off in P&L by claiming it under other expenditure under the nomenclature provision for capital work in progress and correspondingly contra entry was that the CWIP was reduced the same amount through an entry called provision for capital loss. The assessee also explained that this amount was added back in the computation under the book profit u/s.115JB of the Act as a diminution in value of investments, which was required to be added back and disallowed Explanation u/s. 115JB of the Act. The A.O has held that since this amount was added back in the computation u/s 115JB of the Act for book profit, the same should be added in calculating the normal provision as it was unascertained liability. The Ld. CIT(A) deleted the addition holding that these expenses were not provisions but actually incurred in normal course of business and hence, should be allowed under normal computation . The Ld CIT(A) has relied on the decision of Hon'ble Jurisdictional High Court in the case of *Tamil Nadu Magnesite Ltd. vs. ACIT [2018] 407 ITR 543 (Mad.)* and Hon'ble Calcutta High Court in the case of *Binani Cements Ltd* . The Department is in appeal against the deletion of above addition.

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4. The Ld. Departmental Representative (DR) has argued that assessee has claimed these expenditures as provisions, therefore being contingent cannot be allowed as deduction. The Ld DR further argued that the assessee itself has disallowed this expenditure as unascertained liability while computing the book profit u/s. 115JB of the Act. The Ld. DR as an alternative claim has submitted that even if this expenditure was actually incurred to conduct studies, this has resulted in creation of valuable data and is in the form of capital asset and therefore, expenditure is required to be capitalized and cannot be allowed as revenue expenditure.

5. The Ld. Authorized Representative (A.R) of the assessee has supported the order of Ld. CIT(A) and submitted that the assessee has incurred the expenditure towards getting a study done for optimizing freight expenditure on crude procurement and after it was decided to drop the project the same as written off and is therefore, liable as revenue expenditure. The assessee has relied on various case laws, which are as under:

- a. *Tamil Nadu Magnesite Ltd 407 ITR 543 Mad.*
- b. *Chemplast Sanmar Ltd TCA no 859 of 2008 dt 7.8.2019*
- c. *Binani Cement vs. CIT (ITA 265 of 2009 dated 23.3.2015, Kol HC)*
- d. *CIT v Crompton Engineering Co Ltd 242 ITR 317 Mad.*

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- e. Indo Rama Synthetics (1) Ltd 3*
- f. 33 ITR 18 Del.*
- g. Priya Village RoadshowsLtd 332 ITR 594 Del.*
- h. Graphite India Ltd. 221 ITR 420 Cal.*
- i. Adadyn Technologies P Ltd 162 Taxmann.com 666 Kar.*
- j. (SLP dismissed 300 Taxman. 112 SC)*

6. The Ld. AR has further submitted that mere use of word 'provision' will not make an entry into an unascertained liability and the expenditure which has already been incurred and amounts paid can never be an unascertained liability nor a provision made for an unascertained liability. The Ld. AR has submitted that the entry in the books of accounts cannot determine the allowability of an amount which is otherwise allowable under the income tax act as settled by Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. v. CIT [1997] 227 ITR 172 (SC). The Ld. AR has further clarified that the assessee-company did not add the amounts back in computing the book profits because it was an unascertained liability but because they treated it as a diminution in value of investments u/s. 115JB of the Act. The Ld. AR further submitted that there is no intangible asset created, this is merely expenses towards a study which led to ascertainment of failure.

7. We have heard the rival submissions, and perused the materials available on record. The A.O has made the disallowance of expenditure incurred of Rs.10,70,13,775/- towards getting a study done for optimizing freight expenditure on crud procurement which was accounted as provisions for capital work in progress in earlier years and after the project was decided to be abandoned, was written off in profit and loss account by claiming it under the head 'other expenditure'. The A.O has made the disallowances for the reasons that the expenditure was named as provision for capital work in progress and the assessee itself has added the same in the computation of book profit u/s. 115JB of the Act. The Ld. CIT(A) relying on the decision of Hon'ble Calcutta High Court in the case of *Binani Cement vs. CIT in ITA No.265 of 2009 dated 23.03.2015 (Kol.)* and the decision of Hon'ble Jurisdictional High Court in the case of *Tamil Nadu Magnesite Ltd. vs. ACIT*, supra, has held that expenditure incurred towards study relating to optimization of freight expenditure on crude procurement by way of putting up a single point mooring in the earlier years, but written off during the previous year since the proposed project was abandoned is neither capital expenditure nor unascertained liability. The Ld. AR has clarified that company has added back this amount in computation of book profit u/s. 115JB of the

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Act as a diminution in value of investments as per explanation (i) to Section 115JB of the Act and not for the reason that it is an unascertained liability. We do not find any infirmity in the order of Ld. CIT(A), therefore we uphold the same.

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

Order pronounced on 02nd April, 2025.

Sd/-
(एबी टी. वर्की)
(ABY. T. Varkey)

न्यायिक सदस्य / Judicial Member

चेन्नई/Chennai, दिनांक/Dated: 02nd April, 2025.

EDN/-

Sd/-
(जगदीश)
(Jagadish)

लेखा सदस्य / Accountant Member

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