

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.927/Chny/2024
निर्धारण वर्ष/Assessment Year: 2018-19

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|--|----|---|
| Foster Wheeler (G.B.) Ltd., 6 th Floor, Zenith Building, Ascendas IT Park, CSIR Road, Taramani, Chennai-600 113. | v. | The DCIT, International Taxation – Circle-1(1), Chennai. |
| [PAN: AABCF 3459 N] | | |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |
| अपीलार्थी की ओर से/ Appellant by | : | Mr.Ashik Shah, CA |
| प्रत्यर्थी की ओर से /Respondent by | : | Mr.Nathala Ravi Babu, CIT |
| सुनवाईकीतारीख/Date of Hearing | : | 18.09.2025 |
| घोषणाकीतारीख /Date of Pronouncement | : | 04.11.2025 |

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter referred to as "the Ld.CIT(A)"), Chennai-16, dated 05.02.2024 for the Assessment Year (hereinafter referred to as "AY") 2018-19.

2. The sole grievance of the assessee is against the order of the lower authorities denying the exclusion of the provision written back on account of reversal of liquidated damages of ₹38,26,09,477/-.



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3. The facts as noted by us are that, the assessee company M/s. Foster Wheeler G.B. Limited is a foreign company incorporated in the United Kingdom and part of the Amec Foster Wheeler Group. The assessee had entered into a contract dated 18-03-2009 with Indian Oil Corporation Limited (IOCL) for rendering engineering design and project management services for the IOCL Paradip Refinery Project for a value of ₹609,51,52,365/-. For rendering these services, the assessee has set up a project office in India and admitted the same as a Permanent Establishment (PE) in India. Likewise, the assessee had also obtained contract from M/s Reliance Industries Limited on 09-10-2012 for contract value of ₹109,60,00,000/-. Accordingly, the assessee maintains the books of accounts in respect of M/s. Foster Wheeler GB India Project Office and files return of income as a Project office offering the income earned in India to tax.

4. A survey operation u/s.133A and 133(2A) of the Income Tax Act, 1961 was conducted upon the assessee on 21-08-2017. The assessee company filed return of income for AY 2018-19 on 30-11-2018 declaring total income of ₹156,33,27,970/-. Consequent to the survey findings and re-opening of assessment proceedings for various other AYs, the assessee filed an application before Income Tax Settlement Commission (ITSC) dated 15.05.2019 for the AYs 2011-12 to 2018-19. However, vide the



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Finance Act, 2021, the ITSC ceased its operation with effect from February 1, 2021 and Interim Board of settlement ("IBS") was constituted for settlement of pending cases. And in this regard, Section 245M of the Act was inserted, providing an option to withdraw the pending applications before the ITSC within three months from the date of commencement of the Finance Act, 2021, which was extended till July 31, 2021 vide CBDT Circular No. 12/2021 dated June 25, 2021. In view of the above, the assessee is noted to have withdrawn its application before the ITSC by filing Form 34BB as required under section 245M of the Act read with Rule 44DA on July 30, 2021.

5. Consequent to the above, the AO completed the income-tax assessment for AY 2018-19 accepting the returned income of ₹1,56,33,27,970/- vide assessment order u/s.143(3) of the Act dated 27.07.2022. Thereafter, the assessee is noted to have filed an appeal before the Ld. CIT(A) wherein the assessee inter alia raised claim for exclusion of reversal of liquidated damages to the tune of ₹41,41,65,777/-, out of the total reversal of ₹59,50,60,777/-. The plea of the assessee was that, though the provision for liquidated damages when created/debited in the earlier year(s) had been claimed as deduction but the same had been partially disallowed by the Revenue in those years, and therefore as a corollary, the consequent reversal in the relevant year,



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which was credited in P&L A/c by the assessee, ought to be excluded in the relevant AY 2018-19, to the extent disallowed in the earlier year(s). It is seen that, the Ld. CIT(A) had rejected this plea of the assessee vide order dated 05-02-2024 treating it to be premature, as the assessee was contesting the disallowance in appeal(s) in those earlier years and the same had not yet attained finality. Being aggrieved by the order of the Ld. CIT(A), the assessee is now in appeal before us.

6. We have heard both the parties and perused the material placed before us. At the time of hearing, the Ld. AR for the assessee has filed before us the details of the provisions for liquidated damages created in AYs 2010-11 to 2013-14 and the amount(s) which was allowed as deduction by the Revenue and the quantum which was disallowed and was being contested in appeal by the assessee in those respective years. It is observed by us that, the provisions created in AYs 2010-11 to 2013-14 aggregated to ₹59,50,60,777/-, which was as under:-

| A.Y. | Amount of Provision (INR) |
|--|----------------------------------|
| 2010-11 | 11,15,83,000 |
| 2011-12 | 21,13,50,000 |
| 2012-13 | 8,33,44,704 |
| 2013-14 | 18,87,83,078 |
| Total provision created for liquidated damages | ₹59,50,60,777/- |

7. It was brought to our notice that the provision of ₹11,15,83,000/- created for AY 2010-11 on account of liquidated damages was allowed by the Authority for Advance Rulings vide their order dated 10-03-2016 in



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AAR No. 1003 of 2010. Further, out of the provision aggregating to ₹41,41,65,777/- disallowed by the AO in the draft assessment order(s) for AYs 2011-12 to 2013-14, the DRP had reduced the disallowance to ₹38,26,09,777/-. It is observed that, the assessee had preferred appeal against such disallowance made in the final assessment orders before this Tribunal. The details of the provision debited in AYs 2011-12 to 2013-14 and to the extent disallowed in the final assessment order are noted to be as under:-

| A.Y. | Amount of Provision disallowed in draft order | Amount deleted by DRP | Amount disallowed in final assessment order |
|--|--|------------------------------|--|
| 2011-12 | 21,13,50,000 | 0 | 21,13,50,000 |
| 2012-13 | 4,81,80,704 | 3,15,56,000 | 1,66,24,704 |
| 2013-14 | 15,46,35,073 | 0 | 15,46,35,073 |
| Total provision created for liquidated damages | ₹41,41,65,777 | ₹3,15,56,000 | ₹38,26,09,777 |

8. From the above, it is seen that, the assessee had debited provision for liquidated damages amounting to ₹41,41,65,777 in AYs 2011-12 to 2013-14. Later on, there was a settlement reached with IOCL and the assessee was able to realize the liquidated damages of ₹59,50,60,777/-. Consequently, the same was reported under the head 'Other Income' by way of 'Provision no longer required written back' in the relevant AY 2018-19. Since at the material time, when the return of income for AY 2018-19 was filed on 30-11-2018, the Revenue had not yet disallowed the provisions and the decision of AAR in their own case for AY 2010-11 was in their favour on the issue of allowability of provision for liquidated



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damages, the assessee is noted to have offered to tax the entire provision written back of ₹59,50,60,777/- [*which was created and claimed as deduction in AYS 2010-11 to 2013-14*] in the relevant AY 2018-19.

9. It is observed that, pursuant to the DRP directions in AYS 2011-12 to 2013-14, the final assessment order was passed by the AO only on 22-03-2023, wherein the provision for liquidated damages to the extent of ₹38,26,09,777/- was disallowed. The assessee is noted to have preferred appeal before this Tribunal in IT(TP) Nos. 45 & 46/Chny/2023 and ITA No. 623/Chny/2023. During the pendency of these appeals, the legislature had notified the VSV Scheme, 2024, which was opted for by the assessee for all the AYS 2011-12 to 2013-14 by filing Form 1 on 23-12-2024. It was brought to our notice that, the Competent Authority had issued Form 2, wherein the tax payable by the assessee was quantified inter alia including the quantum of provision for liquidated damages disallowed in the final assessment orders. It is observed that, the VSV filings were accepted by the Competent Authority, pursuant to which the assessee had withdrawn the appeals filed before this Tribunal, which is noted to have been dismissed as withdrawn vide orders dated 31-01-2025 and 21-02-2025. The assessee has also placed before us the copies of Form 4 issued by the Competent Authority for all the AYS 2011-12 to 2013-14 evidencing full and final settlement of the disputes inter alia including



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payment of tax on the provision for liquidated damages which was disallowed by the AO. Having considered the entire gamut of facts as narrated in the foregoing, we find that the assessee had created provision for liquidated damages aggregating to ₹59,50,60,777/- in AYs 2010-11 to 2013-14, out of which provision to the extent of ₹21,24,51,000/- was allowed as deduction by the AO in AYs 2010-11 and 2012-13 and the remaining provision aggregating to ₹38,26,09,777/- [59,50,60,777 - 21,24,51,000] was disallowed by the Revenue. It is seen that, the provision for liquidated damages disallowed by the AO to the extent of ₹38,26,09,777/- had attained finality in as much as the assessee had opted for the VSV Scheme 2024 and settled the dispute with the Department by paying the taxes thereon. According to us therefore, as the provision for liquidated damages to the extent of ₹38,26,09,777/- was not allowed as deduction in the earlier AYs 2011-12 to 2013-14, as a corollary, the reversal of such provision to the extent of ₹38,26,09,777/- out of the total reversal of ₹59,50,60,777/- in the relevant AY 2018-19 cannot be taxed as the same would otherwise amount to double taxation of the same sum.

10. The Ld. AR has rightly pointed out that, at the material time when the Ld. CIT(A) passed the impugned order refusing to entertain this plea for exclusion of the provision for liquidated damages disallowed by the



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AO, viz., appellate order dated 05-02-2024, the assessee was contesting the disallowance in the earlier years in appeal before us. As on date however, the disallowance made in the earlier years has attained finality as the dispute has been settled under the VSV Scheme and the requisite Form 4s dated 16-06-2025 & 19-06-2025 have also been issued by the Competent Authority for AYs 2011-12 to 2013-14. In our considered opinion therefore, when the provisions for liquidated damages to the extent of ₹38,26,09,777/- has not been allowed as deduction, the cessation/ reversal of such liability cannot be taxed, in terms of Section 41(1) of the Act.

11. The Ld. CIT, DR appearing for the Revenue objected to the admissibility of the impugned claim on the ground that, the same was not made in the return of income. We are in agreement with the Ld. AR that, this Tribunal has wide powers to entertain additional or fresh claim raised by the assessee which was not made in the return of income. In this regard, we gainfully refer to the decision of the Hon'ble Apex Court in the case of **NTPC v. CIT (229 ITR 383)** wherein it was held that, if a claim is available in law which had not been raise inadvertently or on account of erroneous plea of complex legal position, then such relief cannot be shut for all times to come and that the appellate authority are vested with the powers to entertain new or fresh claim made by the assessee, which was



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not made in the return of income. Our view is further supported by the decision of Hon'ble jurisdictional High Court in the case of **CIT v. Perlo Telecommunication and Electronic Components India Pvt Ltd (TC No. 413 of 2014) dated 20.09.2021** wherein one of the question of law before the Hon'ble High Court was as follows:-

"1. Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that assessing officer should have considered rectified computation of income submitted the assessee during the course of assessment proceedings and allowed the claim for deduction expenditure made through such revised computation and not through a revised return of income?

2. Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee did not claim additional deduction or exemption or made a fresh claim for deduction, by filing a revised computation and claiming deduction under section 37(1)?"

12. The Hon'ble High Court is noted to have answered the above question in favour of the assessee, by holding as under:-

"8. In fact, the Tribunal took note of these decisions and had placed reliance on the decision in Commissioner of Income Tax Vs. Pruthvi Brokers & Shareholders Pvt. Ltd., reported in [2012] 349 ITR 336 (Bombay) and noted that even if a claim is not made before the Assessing Officer, it can be made before the appellate authorities and the jurisdiction of the appellate authorities to entertain such a claim has not been negated by the Hon'ble Supreme Court in Goetze Goetz India Limited Vs. CIT and in fact, the Supreme Court made it clear that the issue in the said case was limited to the power of the assessing authority and that the judgment does not impinge on the power of the Tribunal under Section 254 of the Act.

9. Thus, us, the power of the Tribunal cannot be curtailed, based upon the dictum of the Hon'ble Supreme Court in Goetze India Limited Vs. CIT. After noting this legal position, the examination is as to whether the Tribunal has recorded a factual finding that claim made by the



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assessee, when the case was discussed by the Assessing Officer during the scrutiny assessment by filing a computation, which is not a fresh claim. Further, the Tribunal held that the assessee is only claiming expenditure, which was left out at the time of filing of original income tax return and in any event, the Assessing Officer has power to make upward or downward adjustments in the income returned filed by the assessee and when the assessee had not claimed certain expenditures clearly evident from the records and it comes to the knowledge of the Assessing Officer at the time of assessment proceedings, the Assessing Officer should grant relief to the assessee.

10. The Tribunal took note of the Circular issued by CBDT dated 11.04.1955, wherein the Board ordered that the officers of the Income Tax should not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist the taxpayers in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard, the officer should take the initiative in guiding a taxpayer, where proceedings or other particulars before them indicate that some refund or relief is due to him.

11. Further, the Circular states that department should freely advise the assessee, when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs. It may be true that the Circular is of the year 1955. Nevertheless, as per the recent notification issued by the Income Tax Department as to how the department has to approach the assessee, the Board has been consistent to state that the department should adopt an assessee friendly approach. In any event, on facts, the Tribunal was convinced that the claim made by the assessee towards expenditure was not a fresh claim. Therefore, the Tribunal had exercised its powers conferred under Section 254 of the Act, which cannot be found fault with."

13. For the above reasons therefore, and in the fitness of the matters, we set aside this issue to the file of the AO with the specific direction to verify the calculations furnished by the assessee with the past records and exclude / delete the reversal out of the provision for liquidated damages from the assessable income for the relevant AY 2018-19, to the extent such provision was disallowed by his predecessors in AYs 2011-12



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Foster Wheeler (GB) Ltd.

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to 2013-14, and which has been settled & taxed under the VSV Scheme in those years.

14. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on the 04th day of November, 2025, in Chennai.

Sd/-
(अमिताभ शुक्ला)
(AMITABH SHUKLA)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 04th November, 2025.
TLN

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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