

आयकर अपीलीय अधीकरण, न्यायपीठ – “A”, कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH- A, KOLKATA

[समक्ष श्री एस. वी. मेहरोत्रा, लेखा सदस्य एवं श्री एन विजयकुमारन, न्यायीक सदस्य]
Before Sri S.V.Mehrotra, Accountant Member & Sri N.Vijayakumar, Judicial Member

आयकर अपील संख्या / ITA No. 1192 (Kol) of 2011

निर्धारण वर्ष / Assessment Year 2007-08

Dy.Commissioner of Income-tax Circle-1, Kolkata.	-वनाम- -Versus-	Hooghly Dock & Port Engineers Ltd., (PAN-AAACH7473B)
(अपीलार्थी/APELLANT)		(प्रत्यर्थी/RESPONDENT)

अपीलार्थी की ओर से/ For the Appellant: श्री/Sri L.K.S.Dhiya (CIT-DR)

प्रत्यर्थी की ओर से/For the Respondent: श्री/Sri G.Shosal, Head (Corporate Finance)

सुनवाई की तारीख/Date of Hearing : 01/02/2012

घोषणा की तारीख/Date of Pronouncement : 01/02/2012

आदेश/ORDER

(एन विजयकुमारन), न्यायीक सदस्य (N. Vijayakumar), Judicial Member :

This appeal by the department is directed against the order of Ld. C.I.T.(A)-I, Kolkata dated 20/06/2011. The assessment year involved is 2007-08.

2. The assessee is under the Ministry of Shipping, Govt. of India. Assessee's business is in ship building, ship repairing and general engineering. The Id. A.O. made an addition of Rs. 2 crores, which was stated as received from Government for upkeep of plant & machinery. The Id. A.O. was of the view that this is the revenue expenditure and the amount was received, as per the Id. A.O., on revenue account. He, therefore, treated it as income of the assessee during the previous year relevant to the assessment year under appeal.

3. On appeal to the Id. C.I.T.(A), the Id. C.I.T.(A) had found that this addition of Rs. 2 crores was made by the Id. A.O. taking the receipt as revenue in nature. However, it was explained before the Id. C.I.T.(A) by the assessee that this receipt from Government under the plan head is in the form of equity capital in the Govt. of India and it is a capital receipt and not revenue receipt. The assessee also filed a copy of the

utilization certificate submitted to the Govt. of India. Considering the above, the Id. C.I.T.(A) accepted the claim of the assessee.

4. Before us, the Id. Departmental Representative relied on the order of Id. A.O. On the other hand, the learned counsel for the assessee supported the order of Id. C.I.T.(A) on this issue and further relied on the letter No. SY-12013/2/2005-HDPE dated 7th March, 2007 issued by the Under Secretary to the Govt. of India, Ministry of Shipping, Road Transport & Highways, New Delhi, a copy of which is also filed before us. For the purpose of appreciation, we are reproducing the relevant portion of the said letter as under :-

"Subject:- Release of Rs.2,00,00,000/- (Rupees Two crores only) to Hooghly Dock & Port Engineers Limited (HDPEL), Kolkata as "EQUITY" to meet the expenditure on renewal and replacement of Plant and Machineries at Salkia Works and Nazirgunge Works.

Sir,

I am directed to refer to letter NHDPE/CMD/014-02 dated 23rd November,2006 received from Hooghly Dock & Port Engineers Limited (HDPEL), Kolkata and to convey the sanction of the President to the payment of a sum of Rs.2,00,00,000/. (Rupees Two crores only) as "EQUITY" to HDPEL a wholly Government of India owned Company for financing the scheme of renewal and replacement of Plant and Machineries at Salkia Works and Nazirgunge Works of HDPEL, Kolkata. The HDPEL will issue Equity Share for the amount of Rs.2,00,00,000/- (Rupees Two crores only) in favour of the President of India. There will be 20,000 Share of face value of Rs1,000/- (Rupes One Thousand only) for each share.

2. A bill for the amount of Rs.2,00,00,000/- (Rupees Two crores only) mentioned above will be presented to you during the current financial year for arranging payment by "T.T." drawn in favour of HDPEL

3. The expenditure is debitible to Grant No.84 - Department of Shipping, Major Head "4858" - Capital Outlay on Engineering Industries, 02 - Other Industrial Machinery Industries, 02.190 Investment in Public Sector and Other Undertakings, 01 - Hooghly Dock & Port Engineers Limited, 01.00.54 - Investment for the year 2006-2007.

4. The sanction is subject to the following conditions to be followed:

1. The procurement etc. would be made at most competitive rates by following the laid down procedure in GFRs,2005.

2. That HDPEL would ensure that technological obsolescence aspect of the crane is taken care of after its revamping and also that revenue is earned with the help of this crane for the next 8 to 10 years.

5. HDPEL would follow the laid down procedure i.e. open bids for the procurement of the Machinery, and furnish the Utilization Certificate within prescribed time limit as per rules from the release of funds.

6. This issues with the concurrence of the Finance Wing vide their U.O.No. 670-TF.I/2007 dated 28.02.2007.

Sd/- (DEBASIS PAL)

Under Secretary to the Government of India"

5. On perusal of the above, we are of the considered view that this letter clearly speaks about the nature of the receipt and it is capital receipt only, based on which the Id. C.I.T.(A), whose power is coterminous with that of Id. A.O., appreciated the same and directed the Id. A.O. to delete the addition. Under the above facts and circumstances, we agree with the findings of the Id. C.I.T.(A) which require no interference.

6. In the result, revenue's appeal is dismissed.

Order pronounced in the open Court.

Sd/-

(एस. वी. मेहरोत्रा) लेखा सदस्य

(S.V.Mehrotra), Accountant Member

Sd/-

(एन विजयकुमारन) न्यायीक सदस्य

(N.Vijayakumaran) Judicial Member

(तारीख) Date: 01-02-2012

आदेश की प्रतिलिपि अग्रेषित:-

Copy of the order forwarded to:

1. अपीलार्थी / The Appellant : D.C.I.T., Circle-1, Kolkata.
2. प्रत्यर्थी / The Respondent : Hooghly Dock Y Port Engineers Ltd., 1, R.N. Mukherjee Road, Kolkata-700 001.
3. आयकर कमिशनर (अपील) : The CIT(A)-I, Kolkata.
4. आयकर कमिशनर/The C.I.T., Kol -
5. वभागिय प्रतिनीधी / DR, ITAT, Kolkata Benches, Kolkata
6. Guard file.

सत्यापित प्रति/True Copy,

आदेशानुसार/ By order,

(dkp)

Asstt. Registrar.