

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 102/Del/2018
(Assessment Year: 2011-12)

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| ACIT, Circle-17(2), New Delhi | Vs. | National Projects constructions Corporation Ltd, 30-31, Raja House, Nehru Place, New Delhi PAN: AAACR6117Q |
| (Appellant) | | (Respondent) |

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| Revenue by : | Shri Pramita M. Bishwas, CIT DR |
| Assessee by: | Dr. Rakesh Gupta, Adv |
| Date of Hearing | 05/04/2021 |
| Date of pronouncement | 21/06/2021 |

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the revenue/ ACIT, Circle-17(2), New Delhi against the order of the Id CIT(A)-6, Delhi dated 13.10.2017 for the Assessment Year 2011-12.
2. The revenue has raised the following grounds of appeal:-
 1. *Whether on facts and in circumstances of the case, the Ld.CIT(A) is legally justified in deleting disallowance of Rs. 2,72,49,141/- on account of bad - debts written-off even when the assessee had failed to prove that amount was actually trading liability and (In- corresponding amount was actually offered as income in earlier years and without considering" the provisions of Section 36(I)(vii) and Section 36(2) of the Act?*
 2. *Whether on facts and in circumstances of the case, the Ld.CIT(A) is legally justified in /deleting the addition of Rs. 2,72,49.141/- u/s 36(1) (vii) of the Act by ignoring the procedure prescribed by Hon'ble Apex Court for write off an amount as irrecoverable in the case of I K! Ltd. vs. CIT (2010) 190 Taxman 391 (SC)?*
 3. *Whether on facts and in circumstances of the case, the Ld.CIT(A) is legally justified in deleting disallowance of Rs. 113,50,15,591/- made by the Assessing Officer u/s 37 (1) of the Act by ignoring the fact that the assessee could not discharge its initial onus under section 37 (I) of die Act by not justifying that expenses incurred on 'land acquisition' was of revenue nature?*
 4. *Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting disallowance of Rs. 12,20,71,176/- on account of "provision written back' during the year even when the assessee had failed to*

furnish calculation of excess provision written back in previous years during assessment proceedings and appellate proceedings?

5. *Whether on facts and in circumstances of the case, the Ld.CIT(A) is legally justified in deleting disallowances made in books profit u/s 115JB of the Income Tax Act, 1961 by accepting and admitting additional evidence adduced by the assessee during appellate proceedings even after, specific denial of the Assessing Officer in his remand report?"*
3. Brief facts of the case shows that the assessee is a company engaged in the business of civil construction of dams, bridges, tunnels, power houses, flyovers, buildings, canals and other infrastructure projects. It filed its return of income on 29.09.2011 declaring income of Rs. Nil . It was further revised on 22.03.2013 at an income of Rs. Nil. The case was picked up for scrutiny and assessment u/s 143(3) of the Act was made at an income of Rs. Nil as per normal provision of the Income Tax computation and book profit u/s 115JB of the Act was determined at Rs. 74,59,83,101/-.
4. The Id AO made the addition to the normal income:-
 - a. Disallowance of bad debts written off of Rs. 2,72,49,141/-
 - b. PMC expenditure of Rs. 113,50,15,591/- was treated as capital expenditure
 - c. Disallowances of Rs. 12,20,71,176/- by the provisions of expenditure.
5. In computation of book profit he made an adjustment of Rs. 5,34,20,831/- on account of provisions. He further made an addition of Rs. 37,16,24,554/- on account of disallowance of the claim of the assessee of brought forward losses or unabsorbed depreciation, whichever is less. Accordingly, assessment order u/s 143(3) of the Act was made on 27.03.2014.
6. The assessee preferred an appeal before the Id CIT(A) who partly allowed the appeal of the assessee and therefore, on disallowance deleted and relief granted to the assessee, the Id AO is in appeal before us.
7. We have heard the rival parties, perused the orders of the lower authorities, and after careful consideration, adjudicate the grounds of appeal hereinafter.
8. Ground No. 1 and 2 of the appeal is with respect to deletion of the disallowance of Rs. 2,72,49,141/- on account of bad debts written off. Before the Id AO the assessee submitted unit wise details of such write off along with supporting evidences. The claim of the assessee is that debt is written off, it is taken into computation of income on earlier years, these amounts are 10 to 15 years old and amount was written off in the books of account and therefore, the claim is proper. The Id AO disallowed the above claim that the assessee has not produced the relevant details of old outstanding debts, therefore, he disallowed the same. The Id CIT(A) allowed the

claim of the assessee following the decision of the Supreme Court in TRF Ltd Vs. CIT 323 ITR 397 holding that when the assessee has written off the above sum, debts are already taken into income in earlier years, it is allowable. Nothing new was argued by the Id DR and the Id AR also reiterated the arguments before the Id CIT(A). We find that when the assessee has written off a debt in its books of account, which was taken into computation of income in earlier years, it satisfied all the characteristic of allowable bad debt u/s 36(2) of the Act. In view of this we do not find any infirmity in the order of the Id CIT(A) in allowing the claim of bad debt written off of Rs. 2,72,49,141/- and dismiss the ground No. 1 and 2 of the appeal.

9. Ground No. 3 of appeal is with respect to the disallowances of Rs. 113,50,15,51/- deleted by the Id CIT(A) that was held to be capital expenditure by the Id AO. During the course of assessment proceedings the Id AO noted that the assessee has debited Rs. 113.50 crores as miscellaneous expenditure on working of NEZ PMC. These expenditures were incurred in connection with land acquisition and service connection charges paid to Tripura State Electricity Board for Indo Bangladesh Border fencing project. The Id AO held that it created an asset and therefore it is capital expenditure. Claim of the assessee is that corresponding income against the above project awarded to the assessee by the Ministry of Home Affairs has already been taxed as revenue contract income. As the work was awarded by Ministry of Home Affairs and assessee is merely a contractor there is no capital expenditure in the hands of the assessee, that there is no asset creation in the hands of the assessee. The Id CIT(A) noted that the assessee is public sector undertaking, it executed border outpost work for the Ministry of Home Affairs and has incurred the expenditure on land acquisition compensation, service connection charges and miscellaneous expenditure amounting to Rs. 113.50 crores. This work was carried out on behalf of the Ministry of Home Affairs. As per work order (MOU) the assessee was required to acquire the land for the project and execute the contract. All the expenditures have been incurred by the assessee on the project and corresponding income of that project has already been offered for taxation. In view of this, the Id CIT(A) held that the above expenditure of the assessee is of revenue in nature and hence deleted the disallowances. We find that the assessee is a contractor, who according to terms of the contract was to acquire the land, create electricity infrastructure thereon and then handover the project after execution to Ministry of Home Affairs with respect to Indo Bangladesh border. The corresponding revenue received for execution of this work was already credited to the project income

amount and taxed. The acquisition of land and payment of electricity charges were on account of above project and it did not create any asset in the hands of the assessee but assessee was merely a contract for construction of border outpost on behalf of Ministry of Home Affairs. We find that Id CIT(A) has correctly held that in the hands of the contractor, assessee the above expenditure was merely project expenditure and has not created any capital assets, hence, not a capital expenditure. Therefore, ground No. 3 of the appeal is dismissed, holding that expenditure of Rs. 113.50 crores incurred by the assessee on the project is revenue expenditure in the hands of the assessee.

10. Ground no. 4 is with respect to deletion of disallowances of Rs. 12,20,71,176/- on account of provision of written back. The Id AO made the addition holding that assessee has failed to give the information. Claim of the assessee is that above provision which is written back during the year cannot be charged to tax for the reason that the year in which the provision was created, it was already disallowed and in that year the assessee did not claim the above provision as allowable expenditure. Thus, according to the assessee when the original provision was created it was not claimed as deduction but was disallowed in the computation of income itself. Therefore, when the above provision is written back in this year it cannot be once again charged to tax. The Id AO disallowed the above provision. Before the Id CIT(A) the above claim was contested and the computation of income for last three years was shown wherein, the above provision was disallowed. The Id CIT(A) also examined the details of the provision written back. The complete details as well as the justification is reproduced at para 3.3.2 of his order which clearly shows that the provision made by the assessee in earlier years was never claimed/allowed to the assessee. The Id CIT(A) also verified the same with respect to the computation of the total income of the assessee for earlier years. Before us the Id DR could not show that these provisions have already been allowed to the assessee in earlier years and therefore, they are required to be taxed in this year u/s 41(1) of the Act. In view of this we do not find any infirmity in the order of the Id CIT(A) in deleting the addition of Rs. 12,20,71,176/- on account of provision of written back. Ground No. 4 is dismissed.
11. Ground No. 5 is with respect to deletion of disallowance with respect to the book profit u/s 115JB of the Act. The first adjustment is with respect to addition of Rs. 4,34,20,831/-. The Id AO made the addition stating that this is merely a provision and it is for unascertained liability. The assessee stated that this provision made for

ascertain liability. It was stated that Rs. 47,16,570/- is provision for bad and doubtful debts, Rs. 1,20,02,093/- is the provision for gratuity of workers, of Rs. 3,53,12,805/- is losses of CPF and further other provision of Rs. 13,89,363/-. The assessee submitted four different annexure to show that these provisions are for liability incurred by the assessee and are ascertained, accrued provision. The Id CIT(A) examined the list of account along with supporting documents and held that these are not contingent or provision made on ad hoc basis or to cover any uncertain liabilities. He held that the provisions are defined, ascertain, and incurred during the year. The LD DR could not controvert the finding of the LD CIT (A). In view of this ground No. 5 of the appeal of the AO is dismissed and addition of Rs. 5,34,00,000/- to the book profit of the assessee is directed to be deleted.

12. Ground No. 6 is general in nature and therefore, it is dismissed.

13. In the result appeal of the Id AO is dismissed.

Order pronounced in the open court on 21/06/2021.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 21/06/2021
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

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| Date of dictation | 21.06.2021 |
| Date on which the typed draft is placed before the dictating member | 21.06.2021 |
| Date on which the typed draft is placed before the other member | 21.06.2021 |
| Date on which the approved draft comes to the Sr. PS/ PS | 21.06.2021 |
| Date on which the fair order is placed before the dictating member for pronouncement | 21.06.2021 |
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| date on which the file goes to the Bench Clerk | 21.06.2021 |
| Date on which the file goes to the Head Clerk | |
| The date on which the file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the order | |