In the High Court of Judicature at Madras

Dated : 19.12.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case Appeal No.956 of 2018

M/s.Tamil Nadu Industrial Development Corporation Limited, Egmore, Chennai-8. ... Appellant / Appellant

Vs

The Assistant Commissioner of Income Tax, Corporate Circle 3(1), Chennai-34. ... Respondent / Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 12.7.2017 in ITA No.692/Mds/2017 on the file of the Income Tax Appellate Tribunal Madras 'D' Bench for the assessment year 2012-13 against the order of the Commissioner of Income Tax (Appeals)-13, 121, Mahatma Gandhi Road, Chennai - 600 034 in ITA No.127/CIT(A)-13/2012-13 dated 28/02/2017, PAN No.AAACT3409P for the assessment year 2012-13 and against the order of the Assistant Commissioner of Income Tax, Corporate Circle -3(1), Chennai - 600 034 in GIR No.PAN:AAACT3409P dated 27/03/2015 for the assessment year 2012-13.

For Appellant : Mr.Vikram Vijayaraghavan for M/s.Subbarayaaiyar Padmanabhan

For Respondent : Ms.V.Pushpa, JSC

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal by the assessee under Section 260A of the Income Tax Act, 1961 (for short, the Act) is directed against the order dated 12.7.2017 passed by the Income Tax Appellate Tribunal, Chennai 'D' Bench (for brevity, the Tribunal) in ITA.No.692/Mds/2017 for the assessment year 2012-13.

2. The above appeal is filed by raising the following substantial questions of law :

> "i. Whether the Tribunal was right in law in not adjudicating the main grounds of appeal raised regarding deletion of addition made by the Assessing Officer of provision of outstanding of Rs.16,77,14,178/- ? And
>
> ii. Whether, on the facts and in the circumstances of the case, the Tribunal ought to have appreciated that the provision of Rs.16,77,14,176/- was merely outstanding balance of provision originally made as on 31.3.2009 carried forward in the balance sheet from year to year and as it was neither debited in profit and loss account during the assessment year 2012-13 nor claimed as a deduction and therefore ought to have directed the deletion of the said addition?"

3. The facts, which are necessary for the disposal of the appeal, are as hereunder :

The assessee is established as a wholly owned enterprise of the Government of Tamil Nadu for promoting and developing industries in the State of Tamil Nadu. During the assessment year 2009-10, an extent of 1,123.16 acres of patta land was acquired by the Government and handed over to the assessee and the land was, in turn, leased out to M/s.L&T Ship Building Project. Out of the said extent of land namely 1,123.16 acres, the assessee paid enhanced compensation to the tune of Rs.6,25,13,125/- for 220 acres as per the order of the Reference Court. The assessee provided for enhanced compensation by debiting the profit and loss account and crediting provision for enhanced compensation account (liability item in the balance sheet) in the books of accounts for the balance land of an extent of 903.16 acres at the rate as awarded by the Reference Court amounting to Rs.25,66,33,427/- for the assessment year 2009-10.

4. The Tribunal, by order dated 24.1.2018, allowed the provision towards enhanced compensation debited in the profit and loss account for the assessment year 2009-10 to the tune of Rs.25,66,33,427/- based on the fact that the enhanced compensation accrued and accordingly, the assessee provided for the same. The assessee effected payment of Rs.8,89,19,249/- from the financial year 2009 to 2012 out of the provision made for Rs.25,66,33,427/-. Thus, the provision got reduced to Rs.16,77,14,178/- as on 31.3.2012.

5. For the assessment year under consideration in this appeal namely 2012-13, the assessee filed the return of income on 27.9.2012 declaring loss of Rs.12,92,62,977/-. The assessment was completed under Section 143(3) of the Act on 27.3.2015 determining the total income at Rs.18,40,27,900/-. The Assessing Officer, while completing the assessment, made an addition of Rs.16,77,14,178/- being the balance sheet item, which was not claimed in the profit and loss account of the assessment year 2012-13 subsequent to disallowance of such provision of Rs.25.66 Crores in the assessment year 2009-10. During the course of the assessment, it appears that the Assessing Officer directed the assessee to produce details of enhanced compensation and reconcile the provisions made for actual payments. The assessee also furnished the details and pointed out that the provision of Rs.16.77 Crores is the balance remaining out of the original provision of Rs.25.66 Crores made in the assessment year 2009-10 and this amount was never claimed as deduction for the assessment year 2012-13. However, the Assessing Officer rejected the claim of the assessee, added the amount in the income of the assessee and taxed the same.

6. Aggrieved by that, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals)-13, Chennai [for short, the CIT(A)], who dismissed the appeal by order dated 28.2.2017. The assessee filed the further appeal to the Tribunal contending that the provision of Rs.16.77 Crores was only the balance provision out of the provision made in the assessment year 2009-10 and that this was never claimed as deduction. It was also submitted before the Tribunal that during the year 2011-12, the assessee paid additional compensation to the tune of Rs.3.52 Crores, which should be allowed as a deduction, as the original provision made was not allowed as a deduction. The Tribunal, by the impugned order, directed the Assessing Officer to allow the amount of additional compensation of Rs.3.52 Crores subject to the decision of the Tribunal on the issue of allowance of provision for enhanced compensation of Rs.25.66 Crores in the assessment year 2009-10 as the appeals before the Tribunal in ITA.Nos.1159 and 1160/Mds/2017 were pending at the relevant time and orders were passed thereon only on 24.1.2018, much after the order impugned before us.

7. In the said order passed by the Tribunal dated 24.1.2018, there was a direction to the Assessing Officer to allow the entire provisions towards the enhanced compensation debited in the profit and loss account for the assessment year 2009-10 to the tune of Rs.25.66 Crores based on the fact that the enhanced compensation accrued and accordingly, the assessee provided for the same. In the background of these facts, the assessee has preferred this appeal challenging the order dated 12.7.2017 passed by the Tribunal.

8. We have heard Mr.Vikram Vijayaraghavan, learned counsel for the assessee and Ms.V.Pushpa, learned Junior Standing Counsel accepting notice for the Revenue.

9. After elaborately hearing the learned counsel on either side, we find that the error, which has crept in the impugned order dated 12.7.2017, is on account of the fact that the Tribunal failed to take into consideration the specific ground raised by the assessee pertaining to the provision for the enhanced compensation of Rs.25.66 Crores. To be noted that at the relevant time, when the appeal was filed before the Tribunal against order passed by the CIT(A) dated 28.2.2017, the appeals filed before the Tribunal in respect of the assessment years 2009-10 and 2010-11 were pending.

10. Therefore, the assessee contended before the Tribunal that the CIT(A) ought to have appreciated that the assessee made provisions for the enhanced compensation of Rs.25.66 Crores during the financial year 2008-09, that the same has been disallowed by the Assessing Officer in an order under Section 143(3) of the Act dated 31.12.2011, that this provision, after being reduced by actual payment of Rs.8.89 Crores, was shown as a balance sheet item at Rs.16.77 Crores and that this amount was not claimed as deduction by the assessee shown in the balance sheet as short term provisions in the financial year and hence, could not be added back. Without prejudice to the aforesaid contention, the assessee further contended that the CIT(A) ought to have appreciated that as the entire provisions of Rs.25.66 Crores made during the financial year 2008-09 were disallowed, the amount actually paid during the year to the tune of Rs.3.52 Crores and adjusted against the provision should be allowed as a deduction.

11. The second contention raised before the Tribunal was an alternate submission and what was the substantive submission was that the balance sheet item of Rs.16.77 Crores was never claimed as a deduction by the assessee.

12. Unfortunately, the Tribunal, while passing the impugned order, though noted the said argument of the assessee in paragraph 9.2, failed to take into consideration the said amount. Therefore, in our considered view, the assessee is right in contending that if Rs.16.77 Crores was never claimed as a deduction, then obviously the said amount could not be treated as income by the assessee. On account of two orders passed by the Tribunal, the impugned order dated 12.7.2017 and the subsequent order dated 24.1.2018, which granted relief to the assessee by allowing the provision of Rs.25.66 Crores, it appears that a confusion has arisen, as a result of which, the

Assessing Officer, passed the order under Section 154 of the Act dated 03.4.2018, stating that the amount of Rs.16.77 Crores was wrongly deleted instead of Rs.3.52 Crores. In our considered view, the Assessing Officer cannot be blamed because the confusion has arisen on account of the impugned order passed by the Tribunal dated 12.7.2017, in which, this issue relating to Rs.16.77 Crores was, though raised by the assessee stating that this was never claimed as a deduction, not dealt with by the Tribunal. Hence, the matter has to be redone by the Assessing Officer.

13. For the above reasons, the appeal filed by the assessee is allowed and the order passed by the Tribunal dated 12.7.2017 is set aside. Consequently, the giving effect to order passed by the Assessing Officer under Section 154 of the Act dated 03.4.2018 is also set aside. The matter is remanded to the Assessing Officer to give effect to the order passed by the Tribunal dated 24.1.2018 and verify as to whether the amount of Rs.16.77 Crores was claimed as deduction and if it is found that it was not claimed as deduction, the same cannot be added to the income of the assessee. The substantial questions of law are left open. Considering the fact that the assessee is a wholly owned State Government enterprise, the Assessing Officer is directed to implement the direction at the earliest and not later than eight weeks from the date of receipt of a copy of this judgment subject to cooperation by the assessee. No costs.

Sd/-
Assistant Registrar

//True Copy//

RS
Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal, Madras 'D' Bench.

2.The Assistant Commissioner of Income Tax,
Corporate Circle 3(1), Chennai-34.

3.The Commissioner of Income Tax (Appeals)-13,
121, Mahatma Gandhi Road, Chennai - 600 034

+1 cc to M/s.Subbarayaaiyar Padmanabhan, Advocate, S.R.No.88707

+1 cc to Mr.M.Swamimathan, Advocate, S.R.No.88243

TCA.No.956 of 2018

AD(CO)
SSM(30/01/2019)