

आयकर अपीलिय अधिकरण , ' सी ' न्यायपीठ,चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI**

श्री धुव्वुरु आर. एल रेड्डी, न्यायिक सदस्य एवं, श्री एस जयरामन, लेखा सदस्य समक्

**BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No: 960/Chny/2018

निर्धारण वर्ष/Assessment Year : 2003-04

India Meters Ltd.,
(Now Known as Samrakhshana Electricals
Ltd.)
No. 22A, Ambattur Industrial Estate,
Ambattur,
Chennai – 600 058.

Vs. Assistant Commissioner of Income
Tax,
Company Circle II(3),
(Now ITO, Corporate Ward 2(1),
Chennai.

[PAN: AAACI 6509F]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by	:	Shri. T.N. Seetharaman, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Shri. Suresh Periasamy, JCIT
सुनवाईकीतारीख/Date of Hearing	:	14.06.2021
घोषणाकीतारीख/Date of Pronouncement	:	21.06.2021

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)- 13, Chennai in ITA No. 01/CIT(A)-13/AY 2003-04 dated 01.12.2017 for the assessment year 2003-04.

2. The assessee filed this appeal 9 days belatedly. The Ld. AR submitted that the director who was on official tour and hence there was delay in getting the appeal papers signed, therefore, the short delay being bonafide be condoned and the appeal be decided on merits.

3. We heard the rival contentions and condone the delay.

4. M/s. India Meter Ltd., the assessee, a manufacturer of energy meters and auto component parts, filed its return of income for assessment year 2003-04 admitting the business loss of Rs. 10,65,62,368/- and capital loss of Rs. 94,96,400/-. While making the assessment u/s. 143(3), the AO disallowed written off expenditure claimed at Rs. 78,54,918/- on the ground that such expenditure is related to earlier years and it did not pertain to the assessee. Further, the AO disallowed the capital loss claimed at Rs. 30,11,169/- on sale of shares stating that the assessee could not substantiate the claim and justify as to why the shares were sold at cost price. Similarly, another loss on sale of shares at Rs. 2 crores was also disallowed for want of details and relevant documents. Aggrieved, the assessee filed an appeal before the CIT(A). During the appeal proceedings, the assessee filed certain documents in support of its claim. The Ld. CIT(A) obtained remand report from the Assessing Officer and after considering the rebuttal furnished by the assessee on the remand report etc, the Ld. CIT(A) dismissed the appeal. Aggrieved against that order, the assessee filed this appeal with the following grounds of appeal:

"1. The order of the Commissioner of Income Tax (Appeals) is against the facts and circumstances of the case and is bad in law.

2. The Commissioner (Appeals) erred in not taking proper note of the Grounds of Appeal, "Brief Notes and Supporting Documents" dated 29.05.07 and the appellant's rejoinder (dated 27.11.2017) to the AC's remand report on the issues involved and dismissing the appeal.

3. The Commissioner (Appeals) erred in confirming the disallowance of Rs.78,54,918/- being expenditure towards salaries, travelling etc incurred on behalf of and apportioned to two other Group Companies and later absorbed by the appellant due to their refusal to respond the hereby recognised as expenditure of this year; the reasons stated by the Commissioner (Appeals) in this regard are incorrect and unsustainable.

4. The Commissioner (Appeals) erred in confirming the disallowance of Rs. 13,11,169/- representing Long Term Capital Loss arising on sale of shares of Bharat Technologies Auto Components Ltd at Indexed Cost.

5. The Commissioner (Appeals) erred in not noting that the shares were sold at Book Value and the loss arose only on account of indexation of the cost and is properly allowable.

6.

7.

Since, the ground nos. 6 & 7 are not pressed by the assessee by an affidavit dated 05.07.2019, they are not extracted.

8. The appellant craves leave to refer to all relevant material and argue the appeal at the time of hearing.

9. For these and other grounds that may be adduced at the time of hearing of the appeal the appellant prays that the Hon'ble Tribunal be pleased to allow the appeal and render justice."

5. The case was heard through video conferencing. The Ld. AR submitted that the assessee had Rs. 26,59,800/- equity shares with M/s. Bharat Technologies Auto Components at Rs. 10 per share, valuing Rs. 2,65,98,000/.

These investments were sold during this year at book value. The investments being a long term capital asset, based on the indexation of cost, the assessee claimed capital loss at Rs. 13,11,169/-. The AO held that the assessee company has not given justification for sale of investment at cost. The investee company was in the first year of operation and hence shares were sold at cost price. The Ld. AR submitted that the company's liquidity position was weak and in order to settle some of the pressing pending labour disputes and also to settle some of the loans taken by the company, the assessee had to undertake this transaction and hence the loss claimed is on account of commercial expediency and in accordance with law. The Ld. AR also invited our attention to the paper book, wherein the copies of relevant documents filed before the AO/CIT(A) were placed, pleaded that the loss claimed by the assessee be allowed. Per contra, the Ld. DR submitted that the assessee promoted the company M/s. Bharat Technologies (International) Pvt Ltd., to which the auto component division of the assessee company has already being sold. Subsequently, the assessee sold the shares of M/s. Bharat Technologies Auto Component to M/s. Bharat Technologies (International) Pvt. Ltd., at the cost price and claimed the capital loss at Rs. 13,11,169/-. The AO required the assessee substantiate the claim through resolution, minutes of board meeting etc. Since, the assessee has not furnished them, the AO disallowed the assessee's claim. The assessee has furnished certain material before the Ld. CIT(A) on which the Ld. CIT(A) sought remand report. In the remand report, the AO extracted the board resolution passed on 17.12.2002 and observed as under:

"Resolved that 26,59,800 equity share so Rs. 10/- each held by the company in the equity share capital of M/s. Bharat Technologies Auto Components Ltd., Chennai be disposed off at the best market price."

From the above resolution, it is clear that there is no mention about the sale of shares at cost. Therefore, in the absence of details for share transfer at cost, the LTCL arising out of the said transaction is not acceptable."

After considering the assessee's rebuttal on the remand report, the Ld. CIT(A) has held that just on mere contentions, the appellant is not able to establish commercial expediency to show that the shares were required to be sold at cost and hence the Ld. CIT(A) has correctly confirmed the disallowance made by the Assessing Officer. Though, the board authorised sale of equity shares be made at the best market price, the assessee has not able to lay any contemporaneous material neither before the lower authorities nor before the Hon'ble tribunal as to how and why it sold at cost price. Therefore, the Ld. DR pleaded that the orders of the lower authorities be upheld.

6. We heard the rival contentions and gone through the relevant material. It is clear from the above that the assessee company promoted to M/s. Bharat Technologies (International) Pvt. Ltd., to which the auto component division of the assessee company has been sold. Subsequently, the assessee sold its long term capital investment with M/s. Bharat Technologies Component Ltd. to M/s. Bharat Technologies (International) Pvt. Ltd., at cost price. Though, the Board resolution authorised the sale of shares at the best market price, the assessee company claims that it has sold at cost price and in view of that it incurred the

capital loss of Rs. 13,11,169/-. When the Assessing Officer called for the justification for selling the shares at cost price, the assessee could not furnish contemporaneous material for the price at which it sold its shares. In the facts and circumstances and considering the closeness of the companies, the loss claimed by the assessee was disallowed by the AO, which was sustained by the Ld. CIT(A). The assessee could not furnish any contemporaneous material in support of its contention and hence we do not find any merit in the corresponding grounds of the assessee. Therefore, these grounds fail.

7. The next issue is with respect to the disallowance at Rs. 78,54,918/- being the expenditure towards salary, travelling etc. The Ld. AR submitted that the assessee debited Rs. 44.85 lakhs towards Magnetic Meter Systems (India) Ltd and Rs. 23.86 lakhs towards Bharat Technologies International Pvt Ltd., respectively, totalling to Rs. 68.7 lakhs only, although, the Assessing Officer has quantified the amount wrongly at Rs. 78,54,918/-. The Ld. AR submitted that these claims represents salaries and travelling expenses incurred by the assessee company's employees debited to the account of the other two group companies. Since, these two group companies refused to accept the debits, the assessee company decided to absorb the expenditure during the current year. The Ld. AR submitted that these claims represents the expenditure of the assessee company and recognized them as an expenditure of this year and the write off made is in order and hence pleaded to allow the assessee's claim. Per contra, the Id. DR submitted that after considering the AO's remand report and the rebuttal on the

remand report furnished by the assessee, the Ld. CIT(A) held that the assessee has clearly stated that the sum of Rs. 78,54,918/- was already established (sic) by the assessee's company and the same is nothing but apportionment of travelling and salary expenditure incurred on behalf of Magnetic Meter Systems (India) Ltd and Bharat Technologies (International) Pvt. Ltd. Thus, the expenditure does not pertain to the assessee company and moreover the expenditure pertains to earlier years and the characteristics of the earlier year expenditure can never be termed as expenditure for current year. Therefore, the Ld. CIT(A) has held that the claim of written off expenditure is not in order and confirmed the disallowance made by the Assessing Officer. Therefore, the Ld. DR submitted that there is no merit in the assessee's claim and hence the orders of the lower authorities be upheld.

8. We heard the rival contentions and gone through the relevant material. The assessee has clearly admitted that the expenditure is Rs. 68.70 lakhs only instead of Rs. 78,54,918/-. The assessment order also clearly mentioned that disallowance of Rs. 44.85 lakhs was in respect of Magnetic Meter System India Ltd and Rs. 23.84 lakhs was towards Bharat Technologies International Pvt. Ltd. The assessee has clearly admitted that these amounts represent expenditure incurred by the assessee company in respect of two of its group companies in the earlier years. When the two group companies refused to accept the assessee's claim, the assessee company pleads that it decided to absorb the expenditure during the current year and hence the loss claimed by it should be

allowed. The assessee is following Mercantile system of accounting. It is clear that the impugned claim is not related to this assessment year. Further, it is also clear that the assessee has not furnished relevant material before the lower authorities as to how and why this claim is allowable against its current year income. Therefore, we do not find any reason to interfere with the order of the Ld. CIT(A) and hence, dismiss the corresponding grounds of the assessee.

9. In the result, the assessee's appeal is dismissed.

Order pronounced on 21st June, 2021 at Chennai.

Sd/-

(धुव्वुरु आर. एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/Judicial Member

Sd/-

(एस जयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 21st June , 2021

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent
4. आयकरआयुक्त/CIT 5. विभागीयप्रतिनिधि/DR

3. आयकरआयुक्त) अपील(/CIT(A)
6. गार्डफाईल/GF