

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAM LAL NEGI, JM

ITA No. 4458/Mum/2018
(Assessment Year: 2012-13)

Dy. CIT(LTU)-1, World Trade Centre, Centre No. 1, 29 th Floor, Cuffe Parade, Mumbai-400 005	Vs.	M/s. CMI FPE Ltd. Plot No. 64, Mehta House, Road No.13, MIDC, Andheri (E), Mumbai-400 093
PAN/GIR No. AAACF 0252 G		
(Appellant)	:	(Respondent)
Appellant by	:	Shri Uodal Raj Singh
Respondent by	:	Shri Niraj Sheth
Date of Hearing	:	20.10.2020
Date of Pronouncement	:	01.01.2021

ORDER

Per Shamim Yahya, A. M.:

This appeal by the Revenue is directed against the order of the learned Commissioner of Income Tax (Appeals)-3, Mumbai ('Id.CIT(A) for short) dated 26.03.2018 and pertains to the assessment year (A.Y.) 2012-13.

2. The grounds of appeal read as under:

1. On the facts and in the circumstances of the case and in law, the Id. Commissioner of Income Tax (Appeals) erred in directing the Assessing Officer to examine the records of assessee, whether whole or part of the provision of Rs.423.59 lakhs written back was disallowed in any of the A.Y. 2010-11 and 2011-12 and if so, to allow the provision to the extent it was disallowed in the assessment order for the relevant previous year?

3. Brief facts of the case are that the Assessing Officer observed that on perusal of the profit and loss account, and audit report of the assessee it is noticed that the assessee has credited an amount of Rs.423.59 lacs under the head provision for estimated loss on contracts. The assessee vide letter dated 23rd February 2015 has submitted as under:-

Loss on contract

"During year, the company has write back provision made in the earlier year from loss on contract amounting to Rs.423.59 lacs and the same has been offered as income in the Computation of Income for A. Y. 2012-13. However, without prejudice to the above, we would like to inform you that the Income tax department had disallowed the provision made on loss on contract from A. Y. 2009-10 to A.Y.2011-12. The details of which is as under

A.Y.	Amount in Rs.
2009-10	1,25,39,456
2010-11	63,95,102
2011-12	8,06,67,254

Further, we would like to inform you that we have preferred an appeal before the CIT Appeals against the above additions which are pending before ITAT & CIT (Appeals). Without prejudice to the above, based on the stand taken by the Income Tax Department during the course of assessment proceeding during the previous assessment years, the said reversal of provision would not be considered as income and liable to tax during the A.Y.2012-13 as the provision made during the prior assessment years was not allowed as a deduction during the course of previous assessment proceedings."

The Assessing Officer observed that the assessee's contention is not acceptable at this point since the assessee is before ITAT Mumbai /CIT Appeal against the addition made by the department in the previous year. That since the matter has not been decided on final stage, the relief asked by the assessee on the issue of on Contract" cannot be given at this stage. That the appropriate effect on this issue can be given if the matter reaches its finality.

4. Upon the assessee's appeal, the Id. CIT(A) noted the position as under:

4.4.1 The appellant claimed provision for loss for AYs 2009-10, 2010-11 & 2011-12 as under:

Assessment Year	Provision	Remarks
2009-10	Rs.1,25,39,456/-	Allowed by ITAT.
2010-11	Rs.63,95,102/-	Disallowed and confirmed by CIT(A)
2011-12	Rs.8,06,67,254/-	Disallowed and confirmed by CIT(A).

4.4.2 For A.Y. 2012-13, appellant reversed provision of Rs.423.59 laksh in its books. In the computation the appellant deducted the provision written off on the ground that the provision for the losses were disallowed in the assessment of the respective years.

5. Thereafter, he directed the A.O. to provide relief to the assessee by observing as under:

4.4.4 The appellant made provision for loss in its books of account AY 2008-09, 2009-10 and 2010-11. The provision made for AY 2008-09 had been allowed by ITAT. The provision for the AY 2009-10 and 2010-11 were disallowed and the appellant is before the ITAT on this issue.

4.4.5 During the previous year 2011-12, some of the projects were completed and the profits less loss relating to those projects were accounted for in the books. Accordingly, the provisions made in respect of those projects (Rs. 423.59 lakhs) were written back in appellant's books of accounts as they were no longer required. It is not clear whether whole or part of the provision of Rs. 423.59 lakhs written back in the books of the appellant included provision disallowed by the AO in the assessment order for AYs 2010-11 and 2011-12.

4.4.6 In the computation of total income for the AY 2012-13 the appellant has deducted the provision written back (Rs. 423.59 lakhs) on the ground that the provision claimed were disallowed in the assessment order for the respective assessment years. The AO is directed to examine from his records whether whole or part of the provision of Rs. 423.59 lakhs written back was disallowed in any of the AY 2010-11 and 2011-12. If so, the AO is directed to allow the provision to the extent it was disallowed in the assessment order for relevant previous year. In the result, the ground of appeal no. 1 is partly allowed.

6. Against the above order, the Revenue is in appeal before us.

7. Upon hearing both the counsel and perusing the record, we note that the disallowances in earlier year has not been accepted by the assessee. The assessee is very much contesting the disallowances. So no impact of those disallowances can be considered in this year. The assessee in this year has written back the provisions made in earlier years as the assessee is of the view that they are no longer required. Hence, once the assessee writes back certain provisions as no longer required and takes the same into income, it cannot deduct the same from computation of income, on the ground that in the earlier year these provisions were disallowed. As the assessee is contesting the disallowances and for 1 year it has even succeeded at ITAT. In this view of the matter, the assessee is claiming double deduction during the year. Hence, the order of learned CIT appeals to grant relief to the assessee is erroneous. The learned counsel of the assessee has fairly agreed to this. However, he has pleaded that direction may be given to the assessing officer that if the assessee loses in appeal for the matters in contest for earlier years the corresponding relief should be given to the assessee for this year.

8. Upon careful consideration we are of the opinion that this request of the learned counsel of the assessee is not tenable. What will be the final impact of these appeals is not something which is within our domain of anticipation and any direction to consider future possibility will render the order speculative. Moreover, it is trite law that tribunal should confine itself to the matters in dispute for the assessment year under consideration and the tribunal cannot give any direction in speculation of outcome of appellate proceedings of the years not under consideration. Hence, we decline to give any direction to the assessing officer in this regard.

9. Accordingly, we set aside the orders of learned CIT appeals and restore that of assessing officer.

10. In the result, the Revenue's appeal is allowed.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board on 01.01.2021

Sd/-

(Ram Lal Negi)
Judicial Member

Mumbai; Dated : 01.01.2021

Roshani, Sr. PS

Sd/-

(Shamim Yahya)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai