

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "B": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.1105/Del./2013
Assessment Year 2009-2010

M/s. DSIDC Ltd., N-36, Bombay Life Building, Connaught Circus, New Delhi PAN AAACD1257F	vs.,	The DCIT, Circle-10(1), C.R. Building, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri R.S. Singhvi, C.A.
For Revenue :	Ms. Rachna Singh, CIT-DR

Date of Hearing :	09.10.2017
Date of Pronouncement :	17.10.2017

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the order of the Ld. CIT(A)-XIII, New Delhi, dated 10th January, 2013, for the A.Y. 2009-2010, challenging the addition of Rs.47,55,50,000 on account of business loss.

2. The A.O. disallowed the claim of business loss amounting to Rs.47,55,50,000 by holding loss as notional loss, which is not

trading liability and it has not been written off. The assessee challenged the addition before Ld. CIT(A). The written submissions of the assessee are reproduced in the appellate order in which the assessee explained that assessee claimed actual expenses incurred and not a case of provision for anticipating or contingent liability. It was submitted that Common Effluent Treatment Plant Scheme (in short "CETPS") are being constructed under the orders and directions of Hon'ble Supreme Court made during hearing of PIL instituted by Shri M.C. Mehta. In total, 15 CETPS are to be constructed in Delhi. Originally, the cost of construction was estimated at Rs.90 crore by NEERI. Since the ownership of the entire CETPS lies with the CETP Societies, 50% of the cost of construction was to be borne by CETP Societies, 25% was to be given as grant-in-aid by the Government of India and remaining 25% was to be funded by grant-in-aid by the Government of NCT, Delhi. Such payment was on the basis of original estimate and additional cost was incurred and borne-out by the assessee. The claim of Rs.47,55,50,000 is in respect of additional liability for execution of the project. It was submitted that during the course of construction, estimated cost of the construction was

revised from the first estimate of Rs.90 crores to Rs.235 crores. The revision of cost was primarily due to incomplete estimate made by NEERI. Several items which are essential for construction and proper operation of CETP were not included by NEERI in its original estimate. The increase in estimated cost for which the commitment of the stake holders is not available, has been treated as loss, which has been recognized while preparing the P & L A/c for assessment year under appeal. The assessee relied upon the decision of Delhi High Court in the case of CIT vs. DTTDC Ltd., (2013) 350 ITR 1 (Del.) in which it was held that the expenditure incurred by assessee on construction of flyovers etc., was to be treated as revenue expenditure under section 37 of the I.T. Act. It was, therefore, submitted that since as per directions of the Hon'ble Supreme Court, CETP are being constructed and as such, the claim of assessee is entirely covered by this decision. The Ld. CIT(A), however, confirmed the addition. His findings in para 7.2 of the appellate order are reproduced as under :

“I have considered the submission of the appellant and observation of the Assessing Officer. It is seen that appellant has claimed a loss of Rs.47,55,50,000/-in respect of the 15 common

effluent treatment plant (CETPs) constructed by the appellant in Delhi. These CETPs are constructed under the orders and directions of Hon'ble Supreme Court made during the course of hearing of Public Interest Litigation. The original cost of these CETPs was estimated at Rs.90,00,00,000/-by NEERI. The ownership of these CETPs lies with the CETP Societies, therefore, 50% of the cost was to be homed by CETP Societies, 25% was to be given as grant -in -aid by the Govt, of India and remaining 25% was to be funded by grant-in-aid by Delhi Govt. On construction of these CETPs appellant has incurred additional cost of Rs.47,55,50,000/-, which has been claimed by it as loss. Ongoing through the annual report and balance sheet of the appellant it is seen that appellant has not waived off its claim and the same is shown as recoverable in the schedule 'F' of the balance sheet. It is also seen that appellant has not shown these contract receipts as its income, therefore, the corresponding loss cannot be allowed. The appellant in the balance sheet is not claiming the loss as bad debt because it is not a trading liability and secondly it has not written off its claim. The appellant has

simply relying on the Accounting Standard-7 that it has not received payments, therefore, loss on the same may be allowed. The appellant has lodged its claim before the Delhi Govt, and Societies for claiming the excess amount spent on CETPs. It is not become final that Delhi Govt, and societies will not contribute towards the excess expenditure incurred on construction of CETPs. The matter is pending with the Delhi Govt, and societies and the appellant's claim is intact. The appellant has also taken this issue with the Supreme Court for realizing its claim of the excess amount spent by it. The appellant was simply an executing authority for the project and contract was not taken on turnkey basis, In this contract, the appellant is entitled to receive the actual cost incurred for executing the project.

In view of these it cannot be said that the appellant has incurred loss or loss has been crystallized. There is a simply delay in the payment from Delhi Govt, and Societies, there is no denial from Delhi Govt, as well as societies for the claim lodged by the appellant of the payment. Therefore, disallowance of

provision of loss was justified and the decision of the Assessing Officer is upheld.”

3. The Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that the genuineness of the expenses incurred by assessee have not been disputed. The assessee maintained its accounts on mercantile system. The surplus is expenses. The amount in question have been received later on in the year 2015-2016 and relied upon the decision of the Hon’ble Delhi High Court in the case of DTTDC Ltd., (supra).

3.1. In the alternate contention, he has submitted that in case, addition is confirmed, direction may be given to the A.O. to give appropriate relief to the assessee in the year of receipt of the amount in question.

4. On the other hand, Ld. D.R. relied upon the orders of the authorities below and submitted that accounting standard AS-7 in para 13.1 provides as under :

“Provision for Foreseeable Losses :

13.1. When current estimates of total contract costs and revenues indicate a loss provision is made for the entire loss on the contract irrespective of the amount of work done and the method of accounting followed. In some circumstances, the foreseeable losses may exceed the costs of work done to date. Provision is nevertheless made for the entire loss on the contract.”

5. The Ld. D.R. submitted that the assessee claimed loss because no amount have been received from the concerned authorities. The assessee did not waive-off or written-off amount in question in the books of accounts. The loss is not crystalized during the assessment year under appeal. The assessee was entitled to recover the amount in question which was ultimately recovered in subsequent year. There is no indication of loss as per accounting standard-7. Therefore, accounting standard-7 would not apply to the facts of the assessee. Why assessee claimed loss when the amount is shown in the books of account and realised later on. The Ld. D.R. also submitted that assessee has not shown these contract receipts

as income. Therefore, corresponding loss cannot be allowed and relied upon the decision of the Hon'ble Bombay High Court in the case of Taparia Tools Ltd., vs. JCIT (2003) 260 ITR 102 (Bom.) in which it was held that *"Matching concept of revenue and income should be considered."*

6. We have considered the rival contentions. It is not in dispute that CETPS are constructed under the directions of the Hon'ble Supreme Court. The original cost of these CETPS were lesser which have revised later on. The assessee pleaded that since higher amount has been spent on the project as against the total cost of expenditure, therefore, assessee has received short payment of the amount in question. The assessee claimed that since Delhi Government and the Societies have not paid the remaining payments, therefore, it was claimed as loss in assessment year under appeal. Learned Counsel for the Assessee submitted that later on in the year 2015-2016, assessee received the amount in question. It is, therefore, evident that assessee has not claimed the loss as bad debts because firstly, it is not a trading liability and secondly, it has not been written-off. The assessee has also not explained as to how the

claim of such loss has been ascertained in assessment year under appeal. It was not crystalized in assessment year under appeal that the Delhi Government and the Societies will not contribute the balance amount towards the project. The matter was pending for raising the claim against these parties. Therefore, assessee has not written-off the amount in its books of accounts. The assessee thus, failed to prove that liability/loss has been crystalized during assessment year under appeal and what is the basis thereof for making the claim of loss. It is very well clear under the Income Tax Act, deduction is not admissible on the basis of the mere provision or on the basis of event which has not crystalized on the date of its claim. There is no indication of loss in facts of case, so AS-7 will not apply. The Ld. CIT(A) on examination of the facts found that assessee has not shown these contract receipts as its income, therefore, corresponding loss cannot be allowed. The finding of fact recorded by the Ld. CIT(A) have not been rebutted through any evidence or material on record. In view of these facts, it cannot be said that the assessee has incurred loss or loss has been crystalized in assessment year under appeal. It is simply a case of delayed payment received

from Delhi Government and Societies. There is also no denial by the Delhi Government as well as Societies for the claim of excess payment/ loss by the assessee which is also paid in subsequent year as per contention of the assessee. Therefore, disallowance of provision of loss was justified and as such, the findings recorded by the authorities below are liable to be confirmed. The decision of the Delhi High Court in the case of DTTDC Ltd., (supra), would not support the case of the assessee. Considering the above discussion, we confirm the findings of the authorities below and dismiss the appeal of assessee. However, assessee is at liberty to make appropriate prayer before A.O. in subsequent year i.e., 2015-2016 or other year for claiming appropriate relief, if so advised, in accordance with law.

7. In the result, appeal of assessee is dismissed.

Order pronounced in the open Court.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER
Delhi, Dated 17th October, 2017
VBP/-

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "B" Bench
6.	Guard File

//By Order//

ASST. REGISTRAR : ITAT :
DELHI BENCHES : DELHI.