

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1836/Del./2016  
(ASSESSMENT YEAR : 2002-03)**

M/s. Bharat Heavy Electricals Ltd., vs. DCIT, Co.Circle 2(1),  
Corporate Finance, BHEL House, New Delhi.  
Siri Fort, New Delhi-110 049.

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri K. Sampath, Advocate and  
Shri V. Raj Kumar, Advocate  
REVENUE BY : Smt. Aparna Karan, CIT DR

Date of Hearing : 16.10.2018

Date of Order : 15.01.2019

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

The appellant, M/s. Bharat Heavy Electricals Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 27.01.2006 passed by Ld. CIT (Appeals)-V, New Delhi on the grounds inter alia that :-

*“1(a) That the learned CIT (A) has erred in law and on facts of the case in upholding the disallowance of the claim of provisions amounting to Rs.322.83 (RS.327.22 – 4.39) crores as per Schedule 18, treating the same as not ascertained liabilities.*

*1(b) That without prejudice to the above, the learned CIT (A) has erred in law and on facts of the case in upholding the disallowance of the claim of provisions for liquidated damages amounting to RS.42.12 crores as per Schedule 18, treating the same as not ascertained liabilities*

*(Refer to Para No.3 Page No.1&2 of DCIT Order dated 25.02.2005)*

*(Refer to Para No.2 Page No.2 of CIT (A) Order dated 27.01.2006)*

*2. The learned CIT (A) has erred in law and on facts of the case in upholding the disallowance of interest paid on income tax amounting to Rs.1,81,17,628.*

*(Refer to Para No.3 Page No.3 of CIT(A) Order dated 27.01.2006)*

*3.a That the learned CIT (A) has erred in law and on facts of the case in confirming the deduction u/s 80-O to Rs.1,29,16,182 instead of Rs.1,57,50,000.*

*3.b That the learned CIT(A) erred in law and on facts of the case in upholding the deduction of estimated amount of Rs.94,46,058 on account of expenses incurred to earn the income from the amount eligible for deduction u/s 80-O.*

*3.c That the learned CIT(A) erred in law and on facts of the case in not considering the full amount of foreign exchange realized in respect of fees for technical services eligible for deduction u/s 80-O.*

*(Refer to Para No.4 Page No.2 &3 of DCIT Order dated 25.02.2005)*

*(Refer to Para No.5 Page No.3 of CIT(A) Order dated 27.01.2006)*

*4(a) That the learned CIT(A) has erred in law and on facts of the case in not allowing deduction of Rs.48,19,71,436 under section 80HHC but restricting the same to Rs.36,80,68,813.*

*4(b) That the learned CIT( A) has erred in law and on facts of the case in upholding the addition to total turnover items which*

*are not part of turnover for the purpose of computing claims u/s 80HHC.*

*4(c) That the learned CIT(A) has erred in law and on facts of the case in upholding the reduction of the profit of the company by 90% lease rental, other operational income, other receipts and interest income, which form part of business in India and as eligible for benefit u/s 80HHC.*

*4(d) The learned CIT( A ) erred in law and on facts of the case in upholding the deduction of the carried forward business loss from the profit of the business for the purpose of computing deduction u/s 80HHC.*

*(Refer to Para No.5 Page No.3 to 6 of DCIT Order dated 25.02.2005)*

*(Refer to Para No.6 Page No.4 of CIT(A) Order dated 27.01.2006)*

*5(a) That he learned CIT( A ) erred in law and on facts of the case in confirming the deduction of Rs.8,21,59,986 against the claim of the company for Rs.9,82,63,507/- u/s 80IA.*

*5(b) That the learned CIT( A ) erred in law and on facts of the case in upholding the deduction of the brought forward loss from claim of the company u/s 80IA.*

*5(c) That the learned CIT( A ) erred in law and on facts of the case in not allowing claim pertaining to AY 2001-02 in respect of those projects for which profit was computed for the purpose of deduction u/s 80IA in AY 2001-02.*

*(Refer to Para 6 Page No.6-8 of DCIT Order dated 25.02.2005)*

*(Refer to Para No.7 Page No.5-6 of CIT(A) Order dated 27.01.2006)*

*6. That the learned CIT(A) has erred in law and on facts of the case in. and on facts of the case in confirming the disallowance of the amount of Rs.14,32,000 on account of depreciation included in prior period expenditure.*

*(Refer to Para No.7 Page No.8 of DCIT Order dated 25.02.2005)*

*(Refer to Para No.8 Page No.6-7 of CIT(A) Order dated 27.01.2006)*

**7. That the learned CIT( A ) erred in law and on facts of the case in confirming the disallowance of an expenditure of Rs.12,52,000 on account of village development and social welfare expenses under 20 Point Programme.**

**(Refer to Para No.8 Page No.8 of DCIT Order dated 25.02.2005)**

**(Refer to Para No.9 Page No.8 of CIT(A) Order dated 27.01.2006)**

**8. That the learned CIT (A) has erred in law and on facts of the case in not allowing deduction on account of the additions made in AY 1997-98 to 1999-2000 in respect of interest on line of credit extended to APSEB which was not received.**

**(Refer to Para No.10 Page No.8 of CIT(A) Order dated 27.01.2006)**

**9. That the learned CIT(A) has erred in law and on facts of the case not allowing the amount paid to the following :-**

**i/ Nethrajothi – Rs.2500**

**ii/ Visually Impaired Women Association - Rs.5000**

**(Refer to Para No.11 Page No.8-9 of CIT(A) Order dated 27.01.2006)**

**10. That the learned DCIT has erred in law and on facts of the case in initiating penalty proceedings u/s 271(1)(c) of Income Tax Act.**

**(Refer to Page No.9 of DCIT Order dated 25.02.2005)**

**(Refer to Para No. 13 Page No.9 of CIT(A) Order dated 27.01.2006).”**

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee is a public sector undertaking engaged in the manufacturing of power generation equipment and other heavy industrial elements. Assessing Officer rejected the claim of the assessee for deduction of entire amount of provision of

Rs.327,22,64,000/- by following Assessment Year 2000-01 on the ground that there is no evidence to show that these provisions are in the nature of ascertained liabilities. AO also made disallowance of claim of provision of liquidated damages made by the assessee amounting to Rs.42.12 crores as per Schedule 18 on the same ground that the provision is not an ascertained liability. AO allowed the deduction claimed by the assessee u/s 80-O of the Income-tax Act, 1961 (for short 'the Act') to the tune of 30% of the net receipt on the ground that the assessee has not maintained separate books of account to ascertain the components of direct / indirect expenses to earn receipts covered u/s 80-O of the Act nor any such details have been furnished.

3. AO also disallowed the deduction claimed by the assessee on account of expenses incurred to earn the income from the amount eligible for deduction u/s 80-O of the Act and estimated the amount to the tune of Rs.94,46,058/-. Assessee's claim for deduction u/s 80HHC of Rs.48,19,71,436/- has been restricted by the AO to the tune of Rs.36,80,68,813/- by computing the profits of the business after adjusting carry forward business losses. AO also reduced the profit of the company by 90% of lease rental, other operational income, other receipts and interest income which formed part of the business in India and is eligible for benefit u/s 80HHC of the

Act. AO also computed carry forward business losses from the profit of the business to compute the deduction u/s 80HHC. Assessee's claim for deduction u/s 80IA to the tune of Rs.9,82,63,507/- has been allowed to the extent of Rs.8,21,59,986/- by calculating the own profit after setting of brought forward losses and deduction was allowed @ 30% of the resulting profit. AO also disallowed the amount of Rs.14,32,000/- claimed by the assessee on account of depreciation included in prior period expenditure on the ground that the assessee is following mercantile method of accounting and to prove this fact that assessee has not placed any material to show that such expenses have crystallized during the year under assessment.

4. AO also made disallowance of Rs.12,52,000/- claimed by the assessee on account of village development and social welfare expenses under 20 point programme vide Schedule 16 of the profit & loss account as the assessee has failed to prove the business purpose of such expenditure. AO has disallowed deduction claimed by the assessee on account of addition made in AYs 1997-98 to 1999-00 in respect of interest on line of credit extended to APSEB which was not received. AO has also not allowed the amount paid by the assessee to Netrajothi and Visually Impaired

Women Association to the tune of Rs.2,500/- & Rs.5,000/- respectively.

5. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has partly allowed the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

**GROUND NO.1(a) & 1(b)**

7. Undisputedly, the assessee company has claimed deduction of Rs.3,27,22,64,000/- which includes for provision for non-moving stock amounting to Rs.4,38,91,000/- and provision for liquidated damages to the tune of Rs.42,11,93,000/- being the provisions debited to P&L account as per Schedule 11 and claimed the same to be deducted while computing the taxable income of the assessee by claiming the same as ascertained liability. However, AO as well as CIT (A) have disallowed the same on the ground that these provisions are not in the nature of ascertained liability by following AY 2000-01.

8. Undisputedly, assessee company is maintaining its account in mercantile system. It is also not in dispute that the assessee company is a Government of India undertaking and its accounts are audited by statutory auditor and Controller & Auditor General (C&AG). It is also not in dispute that assessee has claimed that the liability which has accrued though to be discharged at a future date has to be deducted while working out the profit and gains of the business being ascertained liability.

9. Hon'ble Supreme Court in the case of ***Bharat Earth Movers vs. CIT – (2000) 245 ITR 428*** relied upon by the assessee company dealt with the issue in controversy by holding that when a business liability has definitely arising in the accounting year, the deduction should be allowed although the liability made have to be quantified and have to be discharged in a future date. Operative part of the ratio of the judgment is extracted for ready perusal as under :-

***“ The law is settled: if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied, the liability is not a contingent one. The liability is in praesenti though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain.***



*Applying the principles laid down in Metal Box Co. of India Ltd. v. Their Workmen [1969] 73 ITR 53 (SC) and Calcutta Co. Ltd. v. CIT [1959] 137 ITR 1(SC), it must be held that the provision made by the assessee-company for meeting the liability incurred by it under the leave encashment scheme proportionate with the entitlement earned by employees of the company, inclusive of the officers and the staff, subject to the ceiling on accumulation as applicable on the relevant date, would be allowable as deduction out of the gross receipts for the accounting year during which the provision was made for the liability. The liability was not a contingent liability. The High Court was not right in taking a view to the contrary.”*

10. When the business liability of the assessee company for making provisions of Rs.327,22,64,000/- is not disputed and account of the assessee company are audited by statutory auditor and C&AG, the deduction cannot be disallowed merely on the ground that the liability has to be quantified and discharged at a future date. So, in view of the matter, this issue is required to be set aside to the AO to decide afresh in the light of the decision rendered by the Hon'ble Supreme Court in Bharat Earth Movers (supra). So, grounds no.1(a) & 1 (b) are determined in favour of the assessee company for statistical purposes.

## **GROUND NO.2**

11. Ground No.2 is dismissed having not been pressed during the course of arguments.

**GROUND NO.3.a, 3.b & 3.c**

12. Assessee has claimed deduction of Rs.1,57,50,000/- computed @ 30% of the gross receipt of Rs.5.25 crores eligible for deduction u/s 80-O of the Act, which has been reduced to Rs.1,29,16,182/- on the ground that the assessee has not furnished detail of direct and indirect expenses to earn such receipts. However, it is the case of the assessee that its claim has been duly certified by statutory auditors attached with the return of income for perusal of the AO. Assessee also claimed that even during assessment proceedings, the details of the claim have been given to the AO and even then the AO has allowed deduction for estimated expenses on pro-rata basis.

13. We are of the considered view that when the claim of the assessee u/s 80-O is duly certified by statutory auditor and has been perused by the AO, the AO has erred in estimating the expenditure so as to compute the deduction u/s 80-O of the Act. In these circumstances, this issue is also set aside to the AO to decide afresh after providing an opportunity of being heard to the assessee by identifying the expenditure on actual basis for deduction against the gross receipts for the purpose of section 80-O of the Act. Assessee is also directed to furnish relatable details to the AO to

decide the issue in controversy. So, grounds no.3.a, 3.b & 3.c are determined in favour of the assessee for statistical purposes.

**GROUND NO.4(a), 4(b), 4(c) & 4(d)**

14. The claim of the assessee for deduction of Rs.48,19,71,436/- u/s 80HHC has been restricted to Rs.36,80,68,813/-. AO also noticed that the assessee has not included scrap sales receipts from sale of surplus stock in the total turnover. AO also reduced 90% of the receipts by way of lease rental and other operation income including other receipts and interest income to compute the deduction u/s 80HHC of the Act and AO has also set off carry forward business losses for the computation of business profit for the purpose of deduction u/s 80HHC of the Act. AO also declined the deduction for deemed export on the ground that no foreign exchange has been earned out of those transactions.

15. So far as question of including the sale of scrap, surplus stores and sales-tax from total turnover is concerned, this issue has already been settled in favour of the assessee by the *coordinate Bench of the Tribunal in ITA No.2753/Del/1998 & Ors. in AY 1991-92* onwards in assessee's own case, wherein the coordinate Bench of the Tribunal directed the AO to recompute the deduction excluding the sale of scrap, surplus stores and sales-tax from total turnover. So, in view of the matter, sale of scrap, surplus stores

and sales-tax are ordered to be excluded from the total turnover and AO to recompute the deduction accordingly.

16. So far as question of deduction of profit of 90% on account of lease rental, other operational income, other receipts and interest income by AO/CIT(A) is concerned, it is undisputed fact that partial relief in this regard has been given to the assessee on same items by Id. CIT (A) in AY 2004-05, copy of order is available at pages 229 to 238 of the paper book. So, we are of the considered view that when there is no change in the facts and circumstances of the case, the AO is directed to decide this issue afresh by following the decision rendered by the Id. CIT (A) in AY 2004-05 by following the rule of consistency by providing an opportunity of being heard to the assessee. Consequently, grounds no.4(a), 4(b), 4(c) & 4(d) are determined in favour of the assessee for statistical purposes.

**GROUND NO.5(a), 5(b) & 5(c)**

17. AO allowed the deduction claimed by the assessee u/s 80IA to the tune of Rs.8,21,59,986/- as against claimed deduction of Rs.9,82,63,507/- calculating the profit after setting off brought forward losses and allowed the deduction @ 30% of the resulting profits. AO estimated the deduction of carry forward losses to reduce the claim on assumptive basis.

18. Undisputedly, profits of the assessee company from the eligible projects from the previous years have not been considered. No doubt, there was overall business losses in the assessee company but eligible projects u/s 80IA gained the profits from the projects. It is also not in dispute that in AY 2001-02, assessee company was entitled for deduction u/s 80IA which was not given as there was loss under the head 'business' or 'profession'. It appears that AO has only considered the loss of AY 2001-02 but has not considered the profit of the project computed u/s 80IA in respect of AY 2001-02. So, we are of the considered view that AO is to recompute the claim of the assessee u/s 80IA keeping in view the actual figures as per audited accounts of the assessee. So, Grounds No.(a), (b) & (c) are determined in favour of the assessee for statistical purposes.

#### **GROUND NO.6**

19. Ground No.6 is dismissed having not been pressed during the course of arguments.

#### **GROUND NO.7**

20. AO has disallowed the claim of the assessee on account of village development and other social welfare expenses on the ground that these expenses are beyond its objectives. Undisputedly, these expenses were incurred by the assessee in

order to execute the 20 point programme pursued by the Government of India through funds donated by the Government companies as a part of social responsibility. When the Corporate Social Responsibility (CSR) is recognised activities of the companies, all these expenses are allowable expenses. Prior to Finance (No.2) Act of 2014 from 01.04.2015, all these expenses incurred on CSR were allowable for deduction irrespective of the qualification contained for allowability of the business expenditure in section 37(1) of the Act. Moreover, such expenses have been allowed by the CIT (A) itself in assessee's own case for AYs 2004-05 and 2005-06 by relying upon the order passed by the *coordinate Bench of the Tribunal in Hindustan Petroleum Corporation Ltd. vs. DCIT – 98 taxman 33*. So, the AO is directed to allow these expenses as deduction by following the rule of consistency as similar expenses have already been allowed by the Revenue itself in AYs 2004-05 and 2005-06. So, ground no.7 is determined in favour of the assessee.

#### **GROUND NO.8**

21. It is the claim of the assessee that it has extended a line of credit to APSEB in respect of supply made to Vijayawada TPS on which simple interest was paid and was treated as income although the Memorandum of Understanding (MoU) provided for charging

of compound interest. Assessee claimed to have explained all these facts in Schedule 19 of the annual accounts attached with the income-tax return but AO/CIT(A) have not allowed the deduction on account of addition made in AYs 1997-97 & 1999-00 qua the interest on line of credit extended to APSEB which was not received. Ld. AR for the assessee contended that this issue has been decided in favour of the assessee in AYs 1997-98 & 1998-99 in ITA Nos.1833 & 1834/Del/2006 order dated 11.03.2011, copy available at pages 185 to 193 of the paper book, and AY 1999-00 in ITA No.1835/Del2006 order dated 26.10.2017, copy available at pages 194 to 207 of the paper book.

22. However, ld. CIT (A) has also not dealt with the issue and disposed of the ground by stating that this ground is academic in nature. So, in these circumstances, we are of the considered view that this issue is required to be set aside to AO to decide afresh in the light of the decision taken by the Revenue in earlier years. So, ground no.8 is determined in favour of the assessee for statistical purposes

### **GROUND NO.9**

23. AO/CIT (A) have disallowed the claim of the assessee u/s 80G of the Act. Now, it is contended by the ld. AR for the assessee that this claim is allowable in entirety u/s 37(1) of the Act

in view of the decision rendered by the coordinate Bench of the Tribunal in case cited as HPCL vs. DCIT (supra). When incurrence of expenditure made by the assessee by way of donation to carry out the welfare activities for Nethrajothi and Visually Impaired Women Association is not in dispute, the same are allowable expenses u/s 37(1) of the Act. Identical issue has also been decided by the coordinate Bench of the Tribunal in HPCL vs. DCIT (supra) in favour of the assessee. So, we order to allow the amount of Rs.2,500/- and Rs.5,000/- incurred by the assessee company on Nethrajothi and Visually Impaired Women Association respectively. So, this ground is determined in favour of the assessee.

**GROUND NO.10**

24. Ground No.10 being premature needs no specific findings.

25. Resultantly, the appeal filed by the assessee is partly allowed for statistical purposes.

**Order pronounced in open court on this 15<sup>th</sup> day of January, 2019.**

**Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 15<sup>th</sup> day of January, 2019  
TS**



Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-V, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.