

Dy. Cit Vs. Assam Industrial Development Corpn. Ltd.

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Court : Guwahati

Decided On : Aug-30-2002

Appeal No. : ITA Nos. 37 & 57/Gau/1997 A.Y. 1990-91 & 1991-92 30 August 2002

Appellant : Dy. Cit

Respondent : Assam Industrial Development Corpn. Ltd.

Judgement :

N.S. Saini, A.M

These are three appeals and one CO filed against the two separate orders of the Commissioner (Appeals). The revenue has filed an appeal against the order of the Commissioner (Appeals) for the assessment year 1990-91 and the assessee has filed the CO against the same order of the Commissioner (Appeals). The cross-appeals have been filed against the order of the Commissioner (Appeals) for the assessment year 1991-92. As all the appeals and the CO relate to same assessee and were heard together, they are consolidated and disposed of by this single order for the sake of convenience.

2. Asst. yr. 1990-91 : In IT No. 37/Gau/1997 relating to assessment year 1990-91 the grounds of appeal agitated by the revenue are as under

(1) For that the Commissioner (Appeals) erred in law and in facts deleting the addition of Rs. 1,55,81,667 made under the head 'subsidy'.

(2) For that the Commissioner (Appeals) erred in law and in facts in restricting the addition of Rs. 2,48,408 made on account of liabilities for expenses to Rs. 5,193.

3. After hearing rival submissions and perusing the orders of both the lower authorities in respect of the ground of appeal, we find that the assessing officer has observed from the balance sheet of the assessee that the assessee has shown liability of Rs. 3,96,86,822 as undisbursed subsidy. The assessing officer further noted that the said amount consisted of capital subsidy of Rs. 2,41,05,155 and Rs. 1,55,46,667 on account of subsidies which were revenue in nature. The assessing officer rejected the explanation of the assessee that these amounts were received from the Government for distribution to the persons approved by the Government department. As the assessee has received the amount as an agent only, the same was not its income. According to the assessing officer, the assessee ought to have credited the amount of undisbursed revenue subsidy in its P&L a/c. Hence, he added Rs. 1,55,81,667 to the income of the assessee. The Commissioner (Appeals) found that the Government of Assam vide letter No. 149/69/Pv. 4 dated 8-2-1974, appointed the assessee as disbursing agent for subsidy under two schemes which are : (1) 10 per cent Central Subsidy Scheme and (2) Transport Subsidy Scheme. In addition the Government of Assam vide its industrial policies also appointed the assessee as the implementing agency of the State Government. In disbursing various state incentives schemes like subsidy on infrastructural facilities, allotment of factory sheds, equity participation in assisted sector, interest subsidy, power subsidy, feasibility study cost subsidy, etc. The amount of subsidy received by the assessee was not on its own account but was received for further disbursement to the approved persons and hence, the same could not be included by the assessee in the P&L a/c. Thus, the Commissioner (Appeals) deleted the above addition of Rs. 1,55,81,667. We find that no material was brought on record by the revenue to controvert the findings of the Commissioner (Appeals). No material was brought on record to show that the assessee was not liable to disburse the aforesaid amount of undisbursed subsidy at the end of the relevant previous year. Hence, there is no merit on this ground of appeal of the revenue and the same is hereby dismissed.

4. The next grievance of the revenue is against the direction of the Commissioner (Appeals) to restrict the addition on account of liabilities for expenses from Rs. 2,48,408 to Rs. 5,193. The assessee in its cross-objection has objected to the action of the Commissioner (Appeals) in sustaining the addition by Rs. 5,103 out of the total amount sustained addition of Rs. 5,193. As the appeal and the CO both relate to same issue, both are discussed here together. It is observed that the assessing officer made the addition of Rs. 2,48,408 without giving any reason in the assessment order. The Commissioner (Appeals) found that the aforesaid liability for expenses relates to expenses incurred by the assessee during the relevant previous year under various heads like salary, TA, medical expenses, audit fee etc. In his view the following amounts were inadmissible

Rs,

Entertainment

90

CTD

2,080

Fixed asset

3,023

Total

5,193

Hence, he directed the assessing officer to restrict the addition to Rs. 5,193 only in the place of addition made by the assessing officer of Rs. 2,48,408.

5. We find that the revenue could not bring any material on record to controvert the findings of the Commissioner (Appeals). On the other hand, the learned authorised representative of the assessee has filed full details of outstanding liability of Rs. 2,48,408. We find no merit in the appeal of the revenue. Further, we also find that the Commissioner (Appeals) has given no reason for his observation that the amount of liability on account of CTD Rs. 2,080 and amount payable on account of fixed assets (furniture) Rs. 3,023 both totalling to Rs. 5,103 are not allowable. We find that these amounts were not debited to P&L a/c and hence question of its allowability or otherwise does not arise. Further, no material was brought on record by the revenue to show that these were fictitious liabilities. Hence, in our considered opinion the Commissioner (Appeals) was not justified in sustaining the addition of Rs. 5,103. Thus, the appeal of the revenue in respect of this ground of appeal is dismissed and the CO of the assessee so far relating to this ground of appeal is allowed.

6. In the cross-objection No. 24/Gau/1997 the only other ground taken by the assessee is against the confirmation of disallowance of Rs. 4,000 by the Commissioner (Appeals) under the head 'donation and subscription'. The Commissioner (Appeals) has observed that Rs. 4,000 was incurred by the assessee on account of Viswakarma Puja and is not relatable to the business of the assessee. We find that no material is brought on record by the assessee to show that the above expenses were incurred out of commercial expediency. Hence, we would not like to interfere with order of the Commissioner (Appeals) on this issue.

7. In the result, the appeal of the revenue for the assessment year 1990-91 is dismissed and the CO filed by the assessee is partly allowed.

8. Assessment year 1991-92 : The grounds of appeal raised in the assessee's appeal are as under :

1. The Commissioner (Appeals) has erred in law and in fact in confirming the disallowance of Rs. 2,28,791 under the head 'Silver Jubilee expenses',

2. The Commissioner (Appeals) is not justified in confirming the disallowance of Rs. 1,79,722 under the head 'Udyog Sahayak' in view of the facts and circumstances of the case.

3. The Commissioner (Appeals) has erred in law and in fact in sustaining the addition of Rs. 3,55,262.50 as unexplained investment under section 69 of the Income Tax Act, 1961.

4. The Commissioner (Appeals) has erred in law and in fact in directing the learned assessing officer to add back a sum of Rs. 1, 55,354 under the head 'subsidy'.

9. The grounds of appeal taken by the revenue in its appeal are as under

1. The Commissioner (Appeals) erred in law and in facts in deleting the disallowance of Rs. 7,41,000 made under the head 'interest expenses',

2. The Commissioner (Appeals) erred in law and in facts in deleting the addition of Rs. 8,90,000 made under the head 'subsidy'.

3. The Commissioner (Appeals) erred in law and in facts in restricting the disallowance of interest expenses to Rs. 7,54,705 in place of Rs. 83,55,788.

4. The Commissioner (Appeals) erred in law and in facts in restricting the addition on account of unexplained investment to Rs. 3,55,262.50 in the place of Rs. 10,48,032.

10. We have heard the rival submissions at length and perused the orders of the lower authorities.

11. First we take up the revenue's appeal. In respect of the first ground of appeal of the revenue it is observed the amount of disallowance of interest made by the assessing officer was Rs. 7,14,000 and deletion or disallowance by the Commissioner (Appeals) was also Rs. 7,14,000. The revenue in its ground of appeal wrongly took the amount as Rs. 7,41,000 in the place of Rs. 7,14,000. Hence, this ground of revenue is treated as agitated against the above deletion of disallowance of Rs. 7,14,000 only. The relevant facts of the case are that the

assessing officer observed that the assessee had advanced loan to M/s Assam Tea Corporation which stood at Rs. 51 lakhs on which no interest was charged by the assessee. The explanation given by the assessee was that the money was advanced as per the direction of the State Government. The assessing officer also noticed that the assessee had to pay interest to the tune of Rs. 2.44 crores on the amounts borrowed by it and as the interest-free advance in question was not given for the purpose of business of the assessee, he disallowed interest thereon @ 14 per cent which worked out to Rs. 7,14,000. The Commissioner (Appeals) found that there was loss of income in this transaction to the assessee, but the transaction has not affected the interest expenses claimed by the assessee since the assessee has not diverted any interest-bearing loan funds for the purpose of advancing the loans to the said Assam Tea Corporation. He also observed from the balance sheet of the assessee that the total interest-bearing loans received by the assessee together with the accrued interest amounts to Rs. 49.79 lakhs and the income yielding loans and investments together with interest receivable was Rs. 66.70 lakhs. Thus, he found that the interest-bearing loans were not utilised for making interest-free advance to M/s ATC. He also observed that on the facts of the case, it may be contended that the assessee could have put such funds to more profitable use but this contention cannot be accepted since how the assessee runs its business is not for the assessing officer to decide. The scope of inquiry of the assessing officer is limited to the question as to whether the assessee has claimed excess deduction by debiting interest expenses on account of unproductive nonbusiness investment resulting in loss of revenue to the exchequer. In this view of the matter the Commissioner (Appeals) deleted the disallowance of interest of Rs. 7,14,000.

12. We find that the revenue could not bring any material on record to establish any nexus between the interest-bearing loans taken by the assessee and the interest-free advance taken by it in question. Further, from the balance sheet of the assessee, it is observed that the interest-free fund available with the assessee was more than Rs. 63 crores which is far exceeded the interest-free advance of Rs. 51 lakhs: in question. In view of the above facts, in our considered opinion, the assessing officer was not justified in disallowing the amount of Rs. 7,14,000 out of interest paid by the assessee.

Our above view also finds support from the decision of Gauhati High Court in the case of CIT v. India Carbon Ltd. and also from the decision of Chandigarh Bench of Tribunal in the case of Assistant Commissioner v. Shivalik Loha Mills (P) Ltd. (2002) 123 Taxman 276 (Chd) and also from the decision of this Bench of Tribunal in the case of Asstt. CIT v. East India Supply Centre (ITA No. 24/Gau/1999). Hence, we do not find any reason to interfere with the order of the Commissioner (Appeals) on this issue. Thus, this ground of the revenue is rejected.

13. The second ground of appeal of the revenue relates to deletion by the Commissioner (Appeals) of the addition of Rs. 8,90,000 made under the head 'undisbursed subsidy'. We find that the facts of the case are similar to the facts in the case of the assessee in ITA No. 37/Gau/1997 for the assessment year 1990-91 wherein for the reasons recorded in para 3 of this consolidated order, we decided the issue in favour of the assessee. Following our above decision, we do not find any merit in this ground of appeal of the revenue. Hence, the same is rejected.

14. The third ground of appeal of the revenue is that the Commissioner (Appeals) was not justified in restricting the disallowance of interest expenses to Rs. 7,54,705 in place of Rs. 83,55,788 made by the assessing officer. The relevant facts of the case are that the assessee has advanced a sum of Rs. 7,41,38,387 to M/s Prag Bosimi Synthetics Ltd. (PBSL in short). The above advance consisted of Rs. 4,34,67,869 advanced in earlier years by the assessee and Rs. 3,06,07,518 advanced during the previous year relevant to the assessment year under consideration. Further the assessee has in earlier years advanced Rs. 26 lakhs towards share capital in the said PBSL out of which as per PBSL shares of Rs. 700 only was issued and the balance of Rs. 25,99,300 was kept as advance. No interest was charged by the assessee on the above advances given by it to the said PBSL. Hence, the assessing officer disallowed interest of Rs. 76,01,083 relating to the advance of Rs. 4,34,67,869 and Rs. 25,99,300 advanced by the assessee in earlier years and Rs. 7,54,705 relating to the advance made by the assessee during the year under consideration. Thus, the total disallowance of Rs. 83,55,788 (Rs. 76,01,083 + Rs. 7,54,705) was made by the assessing officer. The Commissioner (Appeals) has observed that in his order for the assessment year

1990-91 he found that the source of advance by the assessee of Rs. 4,34,67,869 and Rs. 25,99,300 in the earlier years were out of non-interest-bearing fund of Rs. 4,61,00,000 made available to, the assessee by the Government of Assam and no interest on the above fund was charged by the Government of Assam with effect from, 30-9-1989. Hence, following his finding in the case of the assessee for the assessment year 1990-91 he deleted the disallowance of Rs. 76,01,083 pertaining to the amount of advance given by the assessee in earlier years. The balance amount of disallowance, i.e., Rs. 7,54,705 which relates to the advance given in the year under consideration was sustained by the Commissioner (Appeals). Being aggrieved by this order of the Commissioner (Appeals) the revenue is in appeal before us.

15. We find that in the case of the assessee for the assessment year 1990-91, the Commissioner (Appeals) in his order dated 10-7- 1996, passed in appeal No. Gau-212/1993-94 found that the advance of Rs. 4,34,67,869 and Rs. 26,00,000 was given to the assessee out of money totalling to Rs. 4,61,00,000 received by it from Government of Assam. He further found that this amount was converted to non-interest bearing equity participation of the State Government in the share capital of the assessee- company as per the approval of the State Government with effect from, 30-9-1989. In view of this finding, he directed the assessing officer to delete the disallowance of interest made by the assessing officer relating to the period after 30-9-1989, i.e., 1-10-1989 to 31-3-1990. We find that the above decision of the Commissioner (Appeals) was accepted by the revenue and though they have preferred an appeal against the order of the Commissioner (Appeals) for the assessment year 1990-91 in respect of other issues before us but in that appeal they have not challenged this finding of the Commissioner (Appeals). It is also observed that the revenue could not bring any material on record to establish that the assessee has paid any interest to the Government of, Assam relating to the said fund of Rs. 4.61 crores and claimed deduction in the year under consideration. In view of the facts stated above, in our considered opinion, the Commissioner (Appeals) was justified in deleting the disallowance of interest pertaining to the advances made out of non-interest-bearing fund of Rs. 4.61 crores received by it from the Government of Assam. Thus, we do not find any reason to interfere with the decision of the Commissioner (Appeals) in deleting the

disallowance of Rs. 76,01,083 out of the total disallowance of Rs. 83,55,788 made by the assessing officer. Hence, this ground of appeal of the revenue is dismissed.

16. The fourth ground of appeal of the revenue relates to direction of the Commissioner (Appeals) to restrict the addition made on account of unexplained investment of Rs. 3,65,262.50 in place of Rs. 10,48,032 made by the assessing officer. Assessee's third ground of appeal relates to a similar issue wherein the assessee has objected against the sustenance of the addition of Rs. 3,55,262.50, by the Commissioner (Appeals). Thus, both the grounds are taken up together for adjudication. The brief facts of the case are that the assessee has shown in its books of account Rs. 7,41,38,387.25 as advance to PBSL. The assessee has filed a copy of confirmation received from the said PBSL before the assessing officer. From the said confirmation, it transpired that the said PBSL in its books of account had shown Rs.7,77,86,419.27 as advance received from the assessee. Thus, there was a difference of Rs. 36,48,032. The assessee explained the above difference as under

Rs.

Rs.

(a)

Shown as investment in shares by the assessee but shown in the advance account by PBSL

26,00,000

(b)

Difference in pending balance to be reconciled :

Advance shown by PBSL as on 31.3.1990

4,67,60,638

Advance shown by the assessee as on 31.3.2000

4,34,67,868

6,92,770

(c)

difference during the year to be reconciled :

Advance received shown by PBSL

3,10,25,781

Advance made shown as per books of assessee

3,06,70,519

3,55,262

Total

36,48,032

The explanation for the difference of Rs. 26 lakhs was found correct by the assessing officer. As for the remaining difference of Rs. 10,48,032 for which no explanation could be given by the assessee, the assessing officer treated the same as unexplained investment made by the assessing officer and added the same to the income of the assessee under section 69 of the Act. The Commissioner (Appeals) observed that out of the difference of Rs. 10,48,032, Rs. 6,92,770 relates to the difference in earlier years and the same cannot be treated as income of the year under consideration. Hence, he restricted the addition to the difference during the year only, i.e., Rs. 3,55,262. Both the revenue and the assessee are aggrieved by this order and have filed appeals thereagainst.

17. We find that the assessee is a Government owned company. PBSL is a joint venture company of the Government of Assam. A plain reading of section 69 of the Act shows that the addition in that section can be made only when it is found that the assessee has during the financial year immediately proceeding to assessment year made investments which are not recorded in the books of account and the assessee offers no explanation about the nature and source of the investments or if the explanation offered by him is not satisfactory. Thus, before making an addition under section 69 it is sine qua non that the assessee must have been found to have made any investments during the relevant financial year which are not recorded in the books of account. On the facts of the case, in our considered opinion, merely because there is a difference between the investment as per the books of the assessee and as per the accounts of PBSL, it cannot be concluded that the same was on account of undisclosed investment made by the assessee during the year under consideration. There may be many

reasons for the said difference which can only be ascertained after reconciling the difference in accounts. If there is an entry which is not appearing in the books of the assessee and which is appearing in the books of PBSL, the nature of entry has to be ascertained by obtaining clarification from the PBSL. The analysis of items of difference thus found out will show that whether there is any undisclosed investment or not. In the instant case, the lower authorities have not obtained any clarification from the PBSL and no material was brought on record to show that the difference was only on account of investment made by the assessee during the year. Since material facts are not on record which contributed to the said difference, it will be just and fair to set aside the orders of the lower authorities and remand the issue back to the file of the assessing officer. The assessing officer is directed to decide the issue afresh in the light of observations made hereinbefore after allowing sufficient opportunity of hearing to the assessee.

Thus, these grounds of appeal of the revenue as well as of the assessee are allowed for statistical purposes.

18. Coming to the appeal of the assessee, the first ground of appeal relates to the disallowance of expenses of Rs. 2,28,791 under the head 'Silver Jubilee expenses'. The assessing officer disallowed the amount as details of the expenses incurred under this head were not filed before him so as to enable him to ascertain that the same were business expenses. The Commissioner (Appeals) confirmed the above disallowance. Before us it was submitted that the assessee during the year under consideration completed its 25 years of formation. On this occasion to educate the entrepreneurs of Assam about the achievement of the Corporation and also services and facilities provided by the Corporation for setting industries in Assam and also to motivate its employees and also to facilitate the outstanding entrepreneurs who had contributed in the industrial development of Assam and thereby the growth of the corporation, the Silver Jubilee function was organised. In this function, very high dignitaries such as Minister of Industries, Government of India, Minister of Steels & Mines, Government of India and Chairman & MD of IDBI were invited and they attended the function to encourage the entrepreneurs and the staff of the Corporation. He thus submitted that the expenses incurred cannot be treated as other than for the purpose of business of the assessee. He also

pointed out that a committee was formed for organising the above function which consisted of, apart from MD of the assessee- company, the General Manager of the IDBI, retired GM of UBI and Director, Regional Research Laboratory, Jorhat and to this committee Rs. 2,28,791 was paid by the assessee for the Silver Jubilee function. Such committee was not consisted only of the representative of the assessee-company but also consisted of outside persons of great repute. Hence, it could not be said that the said expenses were not verifiable. On the other hand, the learned departmental Representative supported the action of the Commissioner (Appeals).

19. We have considered the rival submissions and perused the orders of the lower authorities. In our considered opinion, the expenses under consideration were incurred by the assessee out of commercial expediency only and the same cannot be held to have been incurred not for the purpose of business of the assessee-company. Further, as the assessee has submitted that the amount is verifiable from the receipts issued by the committee consisted of persons of repute as mentioned above, it cannot be said that the amount of expenses is not verifiable. In the circumstances, in our considered opinion, it shall be just and fair to set aside the order of the lower authorities on this issue and remit back the matter to the file of the assessing officer who shall decide the issue afresh after verifying the amount of expenditure incurred by the assessee with reference to receipts said to have been issued by the said committee. Thus, this ground of appeal of the assessee is allowed for statistical purposes.

20. The second ground of appeal of the assessee is directed against the disallowance of Rs. 1,79,722 under the head 'Udyog Sahayak'. The assessee has acted as an agent of the Government in promoting the industrialization of the State of Assam. As per the Industrial policy of the Government of Assam, the assessee was appointed as an implementing agency. The assessee- company was to implement various programmes like disbursement of subsidy, training of entrepreneurs, etc. through a window called Udyog Sahayak. The expenditure incurred under this head is normally reimbursed by the Government of Assam to the assessee. But, during the year, the expenditure under this head exceeded the budget of the Government of Assam and the assessee could not get

reimbursement of the above expenditure to the tune of Rs. 1,79,722. The assessee by acting as an implementing agency received interest-free funds from the Government of Assam and before utilising the same in the intervening period, the Government allowed the assessee- company to earn interest on the same. Thus, in this way the assessee earned income by acting as an implementing agent. The assessing officer has disallowed the above expenditure as in his opinion the same cannot be treated as incurred for the purpose of business of the assessee. The Commissioner (Appeals) also in that view of the matter, confirmed the disallowance so made. In our considered opinion, the expenditure so incurred by the assessee was in the course of its business of carrying out the implementing agency of the Government of Assam. Hence, the same cannot be treated as non business expenditure. Further the genuineness of expenditure treated as non is not in dispute. Therefore, we set aside the orders of the lower authorities on this issue and direct the assessing officer to allow the expenses of Rs. 1,79,722 as business expenditure of the assessee. This ground of the assessee is thus allowed.

21. The last ground of appeal of the assessee is directed against the addition of Rs.1,55,364 under the head 'subsidy'. From the letter of the assessee, dated 14-12-1993, in which details of disbursement of undisbursed subsidy as on 31-3-1991, was given, it was noticed by the assessing officer that a sum of Rs. 1,55,354 remained unreconciled. The Commissioner (Appeals) observed that out of undisbursed subsidy shown on the liability side of the balance sheet of the assessee, the sum of Rs. 1,55,354 remained unreconciled and hence, the same represented fictitious liability. He, accordingly, directed the assessing officer to add back a sum of Rs. 1,55,354 to the income of the assessee. From the letter dated 14-12-1993, of the assessee, placed at page Nos. 1 to 5 of the paper book it is observed that in the said letter, the assessee has given details of the subsequent dates till 14-12-1993, when the undisbursed subsidy as on 31-3-1991, was actually disbursed by the assessee. From the same it transpires that out of total undisbursed subsidy of Rs. 44,83,247 the assessee has disbursed Rs. 43,27,894 before 14-12-1993, and Rs. 1,55,354 remained still undishursed with the assessee. This amount of Rs. 1,55,354 remained to be disbursed or adjusted against the claims. Thus, from the said letter, in our considered opinion, it cannot

be concluded that there was any unreconciled amount contained in the undisbursed subsidy shown in the liability side of the balance sheet of the assessee. As already noted in the preceding para of this order that the assessee has acted as an implementing agent of the Government of Assam and had received the amount of subsidy from the Government for onward distribution to eligible entrepreneurs. No material has been brought on record to show that the assessee has credited any amount under the head 'undisbursed subsidy' which it did not receive from the Government for the above purpose, Further, no material was also brought on record to show that the assessee was not liable to disburse the above sum of Rs. 1,55,354 to the eligible entrepreneurs as per the direction of the Government of Assam. In the absence of the same, in our considered opinion, the Commissioner (Appeals) was not justified in treating the above amount as fictitious liability of the assessee. Hence, we modify the order of the Commissioner (Appeals) on this issue and direct the assessing officer to delete the above addition of Rs. 1,55,354. Thus, this ground of the assessee is allowed.

22. In the result, the appeal of the revenue for the assessment year 1991-92 is partly allowed while the appeal of the assessee is allowed.

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