

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.854/Ahd/2016
Assessment Year : 2006-07

The DCIT, Cir.1(1)(1) Vadodara.	Vs	Gujarat State Electricity Co. Ltd. Sardar Patel Vidyut Bhavan Race Course Circle Baroda 390 007. PAN : AAACG 6864 F
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(Applicant)	(Responent)
Assessee by :	Shri Manish J Shah, and Shri Jimi Patel, AR
Revenue by:	Shri Kamlesh Makwana CIT-DR

सुनवाई की तारीख/Date of Hearing : 20/06/2024
घोषणा की तारीख /Date of Pronouncement: 06/09/2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

This is Revenue's appeal against the order of the ld.Commissioner of Income Tax(A)-1, Vadodara dated 19.01.2016 passed under section 250 of the Income Tax Act, 1961 ("the Act" for short) for the assessment year 2006-07.

2. The solitary ground raised in the appeal of the Revenue reads as under:

"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in by deleting the addition made by the AO of Rs.5874.34 lakhs on unpaid-leave encashment liability outstanding as on 31/3/2006 without appreciating the fact on record i.e. Tax audit report in Form No. 3CD Col. No. 20 and the provisions of the section 43B of Income tax Act,1961."

3. The sole issue raised by the Revenue relates to the provision of leave encashment amounting to Rs.67,41,08,000/- disallowed by the AO in an order passed under section 147 of the Act, finding the same to be unpaid and invoking the provisions of section 43B of the Act, which in turn was allowed by the Id.CIT(A).

4. The order passed by the AO, making the impugned disallowance reveals that he had noted the assessee-company's provision for leave and encashment liability outstanding as at the end of the impugned year i.e. as on 31.3.2006 to be Rs.6746.46 lakhs, whereas the liability for the same as at the beginning of the year i.e. 31.3.2005 was noted to be only Rs.5.38 lakhs. Deriving from this data that the provisions made during the year was the difference of the opening and closing balance being Rs.6741.08 lakhs and noting the same to be unpaid, he proposed the disallowance/ addition of the same to the income of the assessee. The assessee offered explanation contending that the impugned disallowance was not warranted since it had not debited any amount on account of provision for leave encashment to the profit & loss account. It was explained that the liability had been acquired by the assessee-company on account of restructuring of GEB and pertained to employees onboarded by the assessee company as a consequence and pertained to earlier years. The Id.AO however, disregarded the explanation of the assessee, and went on to add the impugned amount of leave and encashment liability remaining outstanding as at the end of the year amounting to Rs.6741.08 lakhs to the income of the assessee.

5. The order of the Id.CIT(A) reveals that he considered the explanation of the assessee that this liability arose in the books of the assessee on account of restructuring of GEB, as a result of which,

huge number of employees had come into the fold of the assessee-company and whose leave encashment liability of the preceding years also had fallen upon the assessee-company and that this leave encashment liability, in any case, had not been adjusted through the profit & loss account of the assessee for the impugned year, but had been adjusted against the reserves and surplus of the assessee-company. The Id.CIT(A) verified all these facts from the books of the assessee, noted the same in his findings, and accordingly, he restricted the disallowance to only Rs.866.74 lakhs, which he found to be the provision created by the assessee for leave encashment in the impugned year and which remained unpaid at the end of the year. His finding in this regard are contained in para 6.00 and 6.1 of his order as under:

“I have considered the facts of the case, submission of the and the AO's observations. The appellant has explained that during Oils year it had acquired large work force on account of restructuring of erstwhile GEB and the liabilities relating to such employees were also taken over by it. Naturally, the provision for leave encashment shown in the balance sheet includes the provision for leave encashment of new employees taken over by the appellant which stood at Rs.5874.34 lakhs and it had been adjusted against the opening P & L Account as an extra ordinary item. Thus, this amount has no where effected computation of the total income of the appellant of the current year and hence, the same cannot be added back to its total income.

6.1 I have also examined the audited accounts of the appellant company in the light of the submissions made by the appellant and the observations made by the AO. On such examination it is seen that in the P & L Account as in 31.03.2006, the appellant had debited an amount of Rs.17915.54 lakhs as payment to and provision for employees. The amount of leave encashment included in this amount has not been provided separately in Schedule 15 of the P & L Account. But, at the same time it is seen that the amount of Rs. 8890.87 Lakhs has been shown as provisions/write offs relating to transfer balance under the head extra ordinary items and the same has not been debited to the P & L account, but, has been adjusted out of opening balance of P & L Account. The details of this amount are given in Schedule 20 of P & L Account. A perusal of schedule 20 shows that this amount of Rs.8890.87 Lakhs includes the provision of leave

encashment of Rs.5874.34. Besides, in the P & L account the amount I have considered the facts of the case, submission of the and the AO's observations. The appellant has explained that during Oils year it had acquired large work force on account of restructuring of erstwhile GEB and the liabilities relating to such employees were also taken over by it. Naturally, the provision for leave encashment shown in the balance sheet includes the provision for leave encashment of new employees taken over by the appellant which stood at Rs.5874.34 lakhs and it had been adjusted against the opening P & L Account as an extra-ordinary item. Thus, this amount has no where effected computation of the total income of the appellant of the current year and hence, the same cannot be added back to its total income.

6.1 I have also examined the audited accounts of the appellant company in the light of the submissions made by the appellant and the observations made by the AO. On such examination it is seen that in the P & L Account as in 31.03.2006, the appellant had debited an amount of Rs.17915.54 lakhs as payment to and provision for employees. The amount of leave encashment included in this amount has not been provided separately in Schedule 15 of the P & L Account. But, at the same time it is seen that the amount of Rs.8890.87 Lakhs has been shown as provisions/write offs relating to transfer balance under the head extra ordinary items and the same has not been debited to the P & L account, but, has been adjusted out of opening balance of P & L Account. The details of this amount are given in Schedule 20 of P & L Account. A perusal of schedule 20 shows that this amount of Rs.8890.87 Lakhs includes the provision of leave encashment of Rs.5874.34. Besides, in the P & L account the amount for provision for leave encashment liability has been shown at Rs.6746.46.

Thus, out of this provision for leave encashment liability, an amount of Rs.6746.46 - Rs.5874.34 = Rs.872.12 lakhs represents the provision for leave encashment of the appellant which had been debited to the Profit and loss account till 31.03.2005. This includes an amount of Rs.5.38 lakhs which was the provision for leave encashment as on 31.3.2007. Hence, an amount of Rs.872.12 - Rs.5.38 = Rs.866.74 denotes the provision for leave cashment made by the appellant for its employees for the FY 2005-06, and also the amount which has been actually debited in the P & L Account for the FY 2005-06. Hence, only this amount of Rs.866.74 lakhs is disallowable as the deduction in the computation of total income of the appellant company.

6. Before us the ld.DR was unable to controvert the factual finding of the ld.CIT(A) that the provision for leave encashment amounting to Rs.5874.34 lakhs which was deleted by the ld.CIT(A) was not routed

through the profit & loss account but was adjusted against the reserves and surplus as also the facts submitted by the assessee as contained in the appellate order.

7. On the contrary, we find that the despite the assessee pleading this fact before the AO also, he completely disregarded the same; that he did not even consider it fit to verify the said facts, but just went ahead, in total disregard to the explanation of the assessee, to make disallowance/addition of provision for leave encashment.

8. In the light of the above, we see no reason to interfere in the order of the Id.CIT(A), who we have noted, has deleted the disallowance/addition made by the AO of provision for leave encashment amounting to Rs.5874.34 lakhs, after verifying all the facts that this provision was not debited to the profit & loss account of the assessee, and that, it did not pertain to the impugned year also, but was inherited by the assessee on account of restructuring exercise of the GEB, by virtue of which, huge number of employees had been onboarded by the assessee-company, and whose leave encashment liability, accordingly, was inherited by it of preceding year. Which facts have remained uncontroverted before us.

In view of the same, we do not find any merit in the ground raised by the Revenue and dismiss the same.

9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the Court on 6th September, 2024 at Ahmedabad.

Sd/-

**(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

Ahmedabad, dated 06/09/2024

Sd/-

**(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

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आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad**