

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI O.P. KANT, ACCOUNTANT
MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.6658/Del/2015)
Assessment Year: 2010-11**

DCIT, Circle 7(1),
New Delhi Vs Delhi Transport Corporation,
Indraprastha Estate,
New Delhi.
PAN: AAACD3004G

Assessee by Shri Pradeep Dinodia, FCA
Shri R.K. Kapoor, FCA
Revenue by Sh. S.S. Rana, CIT DR

Date of Hearing 11.7.2019
Date of Pronouncement 16.7.2019

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the order dated 30.9.2015 passed by the ld. Commissioner of Income-tax (Appeals)-14, New Delhi. (“ld. CIT(A)”), revenue preferred this Appeal on the following two grounds:

“1. Whether on the facts and in the circumstances of the case and in law, ld. CIT(A) has erred in dropped the addition of Rs.3,83,57,247/- on account of free of cost basis for replacement of cylinder heads made by the AO

2. Whether on the facts and in the circumstance of the case and in law, ld. CIT(A) has erred in dropped the

addition of Rs.18,01,76,741/- on account of excess depreciation on buses made by the AO.”

2. In so far as the first ground is concerned, fact of the matter is that during the assessment proceedings ld. AO noticed that in the Financial Year 2009-10, the assessee received 1406 number of cylinder heads worth Rs.3,83,57,227/- from M/s Ashok Leyland Ltd. on “free of cost” basis but failed to disclose the same in the assessment. He, therefore, made the addition.

3. As a matter of fact, in appeal, ld. CIT(A) found that this transaction is nothing but the replacement of cylinder heads in the CNG Engine buses supplied earlier to the assessee because M/s Ashok Layland Ltd. was to replace the cylinder heads during the life span of 8 years from the date of supply. Ld. CIT(A) further noted that this transaction was necessitated by the directions given by the Environment Pollution (Prevention & Control) Authority for NCR on 2.2.2008. Ld. CIT(A) deleted this addition because the cylinder heads is a part of engine which the manufacturer was bound to replace during the life span of 8 years of the bus from the date of its supply.

4. On this ground nothing adverse is brought on record to suggest any error in the finding of the ld. CIT(A) or to compel us to take a different view. When the manufacturer of a bus was under obligation to replace a part of engine in the life span of 8 years from the date of its supply, the value of such replacement cannot be taken as income of the assessee. Facts do not support the addition and the ld. CIT(A) rightly deleted the same.

5. In respect of second ground, the assessee for purchase of buses placed order worth Rs.654,62,81,543/- with the condition that for delay in delivery, the supplier would be liable for penalty/liquidated damages and on that account the assessee received a sum of Rs.120,11,78,279/- from M/s Ashok Leyland ltd. According to the assessee, this amount has to be reduced from the purchase of the business to calculate the depreciation. On this premise, ld. AO held that the value of the bus was only Rs.534,51,03,270/- and the assessee is entitled for depreciation on this amount only and, therefore, disallowed the balance of depreciation to the tune of Rs.18,01,76,741/- and added it to the income of the assessee.

6. Ld. CIT(A) considered the case of the assessee in the light of the decision of the Hon'ble Gujarat High Court in the light of the decision of the Hon'ble Gujarat High Court in the case of Digvijay Cement Co. Ltd. vs CIT (1982) 138 ITR 45 (Guj) wherein it was held by the Hon'ble High Court that having regard to the nature of the business of the assessee in the light of the terms of contract in respect of the provision for compensation for a delay in delivery, the sum received through compensation was not made with the intention of reducing the cost of machinery but to compensate the loss of profits which the assessee would suffer on account of delay in delivery of the machinery.

7. Admittedly, the assessee in the case in hand is the transport corporation earning income by plying the buses. In case of delay in delivery the assessee would suffer loss on profits and that is the reason there was a stipulation in the agreement for purchase of buses to the effect that delay in delivery shall result in levy of penalty/liquidated

damages. On this account, assessee received a sum of Rs.120,11,78,279/- and having regard to the business of the assessee, we have no doubt in our mind that this compensation received is not to reduce the cost of the buses but to compensate the loss of income/profits the assessee would have earned had the buses been supplied in time. We, therefore, are of the considered opinion that the decision of the Gujarat High Court in the case of Digvijay Cement Co. Ltd. (supra) is applicable to the facts of this case on all fours and the ld. CIT(A) had rightly deleted the addition by following the binding precedent. We, therefore, decline to interfere with the impugned order.

8. In the result, appeal of the revenue is dismissed.

Order pronounced in the Open Court on 16th July, 2019.

Sd/-

sd/-

**(O.P. KANT)
ACCOUNTANT MEMBER**

**(K. NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: July, 2019/VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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