



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th & 5th Floors, Singareni Bhavan, Red Hills, Hyderabad 500 004

I.A. No.140 of 2011

In

O.P. No.18 of 2009

Dated: 10-12-2012

Present

Sri A.Raghotham Rao, Chairman

Sri C.R.Sekhar Reddy, Member

Between

M/s Lanco Kondapalli Power Private Ltd.,
Plot No. 4, Softsol Building,
Software Units Layout, Hitec City Madhapur,
Hyderabad – 500 081.

.....Petitioner

And

1. Andhra Pradesh Power Co-ordination Committee
2. Transmission Corporation of Andhra Pradesh Limited
3. Central Power Distribution Company of Andhra Pradesh Limited
4. Southern Power Distribution Company of Andhra Pradesh Limited.
5. Northern Power Distribution Company of Andhra Pradesh Limited
6. Eastern Power Distribution Company of Andhra Pradesh Limited

.....Respondents

This petition coming up for hearing on 03.11.2012 in the presence of Sri C.Kodanda Ram and Sri C.Gunaranjan, Advocates for the Petitioners in I.A. and Sri P.Shiva Rao, Advocate for the Respondents in I.A. and having stood over for consideration to this day, the Commission delivered the following:

ORDER

The petitioner has filed a memo, narrating the following averments:

- (i) In I.A. No.140/2011 the Commission has directed the respondents herein to reimburse Minimum Alternate Tax (MAT) in respect of the financial years 2006-07 to 2008-09 as per the respective Assessment Orders together with interest as claimed by the petitioner herein.
- (ii) Aggrieved by the orders of this Commission in I.A. No.140/2011 dated 20.03.2012, the respondents herein have filed Appeal No.113 of 2012 before the Hon'ble ATE. The Hon'ble ATE vide judgment dated 20.07.2012 pleased to dismiss the said appeal.
- (iii) Aggrieved by the judgment of the Hon'ble ATE in Appeal No.113 of 2012, the respondents herein have filed Civil Appeal No.6138/2012 before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide its order dated 17.09.2012 was pleased to direct this Commission to assess the amounts due to the petitioner herein by the respondents towards reimbursement of MAT within one month from the date of the order. The Hon'ble Supreme Court further directed the respondents 3 to 6 to secure 50 percent of the amount due by way of Bank Guarantee and the remaining amount shall be paid directly to this petitioner within one month thereafter.
- (iv) The petitioner in pursuance of the directions of this Commission dated 20.03.2012 in I.A. No.140/2011 has furnished the copies of Assessment orders of the financial years 2006-07 to 2008-09 to the respondents on 21.03.2012. The assessment orders, bank challans in proof of payment of tax and the relevant portions of balance sheets of the petitioner company for the said financial years are collectively filed. The petitioner has paid the MAT of Rs.46,96,94,227/- in respect of the project income for the said three years.

- (v) The Commission vide order dated 20.03.2012 has directed the respondents herein to pay interest at the rate prescribed in the PPA. The petitioner is having working capital facility in SBI, CAG Branch, Hyderabad. The interest is calculated as per the interest rates applicable to the petitioner from time to time amounting to Rs.36,40,91,076/- as on the date of Memo.
- (vi) It is humbly prayed that this Commission may be pleased to assess the MAT of Rs.46,96,94,227/- in respect of the financial years 2006-07 to 2008-09 and interest of Rs.36,40,91,076/- on the said MAT total amounting to Rs.83,37,85,303/- as on the date of this Memo payable by the respondents to the petitioner and interest till the date of payment in the interest of justice.

2. The material objections filed by the respondents in reply to the memo of the petitioner are, in brief, as follows:

- (i) In the memo filed before the Commission that it had paid MAT of Rs.46,96,94,227/- to income tax department in respect of the project income for FY 2006-07 to 2008-09. The respondents deny the correctness of said claim. In fact the said claim of Rs.46,96,94,227/- is baseless, besides being incorrect.
- (ii) In the interlocutory application I.A. No. 140/2011 filed by the petitioner on 16.11.2011 in O.P. No.18/2009, the petitioner had prayed for directions for payment of a sum of Rs.33,12,26,000/- towards reimbursement of MAT for the same period 2006 to 2009. Out of the said amount, this Commission vide its order dated 20.03.2012 had disallowed the portion of claim made as the same is including the 4th quarter amount of FY 2005-06. Therefore, as per earlier statement made on oath the claim of petitioner ought to be limited to Rs.31,85,66,000/- only, but not otherwise.

- (iii) Further, as the reimbursement of MAT has not been quantified by this Commission till date, the interest liability on such amount shall accrue only after the date of quantification. Therefore, AP Discoms are not liable for such interest payment as claimed by the petitioner. Aside of the same, this exercise of quantification is undertaken in compliance of interim orders dated 17.09.2012 passed by Hon'ble Supreme Court. In the said orders, the Hon'ble Supreme Court directed this Commission only to quantify the actual amount of MAT as per the entitlement ordered by this Commission. In fact, since the appeal challenging the orders dated 20.03.2012 of this Commission, which is merged with orders dated 20.07.2012 passed in appeal no.113 of 2012, has been admitted, the correctness of orders dated 20.03.2012, is now in jeopardy. Therefore, the claim of interest should not be considered in this exercise of quantifying the actual reimbursement of MAT.
- (iv) Further, the income tax assessment orders indicate that the petitioner was having income from other sources such as capital gains, income from forward contract, insurance claim received, gain in foreign exchange, etc., the tax liability of which solely lies with the petitioner, but shall not pass through to AP Discoms. Also the income tax assessment orders considered the income accrued relating to reimbursement of taxes and added the same to business income. Whereas the subsisting PPA with the petitioner expressly stipulated at Article 3.8 that "Tax to be reimbursed will be calculated on the income from the project only.....and will not include tax reimbursement of the previous year." Therefore, the tax liability against such additional income relating to tax reimbursement of previous year, shall be to the account of the petitioner only, and shall not be pass through to the respondents.
- (v) The petitioner, in I.A. No.140/2011, submitted its claim as Rs.33,12,26,000/-, but in the present memo, it had submitted claim of

Rs.46,96,94,227/-, and in the letter dated 21.03.2012 submitted in pursuance of order dated 20.03.2012, it has claimed Rs.49,93,70,552/- As such the claims are imaginary, and not to actual figures.

- (vi) It is prayed that the Commission, considering the foregoing objections, may pass orders limiting quantum of reimbursement of MAT to Rs.31,85,66,000/- for the period 2006 to 2009.

3. The petitioners filed a reply to the objections of the respondents, making the following submissions:

- (i) The Commission in paragraph 41 of the orders dated 20.03.2012 in I.A. No.140/2011 in O.P. No.18 /2009 has directed the respondents as under:

“The first part of clause 3.8 cannot be invoked as the assessment orders have already been finalized. The respondents have to reimburse the MAT after verifying the said orders and the bank challans thoroughly and if at all if there is any ambiguity, they can get it clarified from the IT department and soon after the finalization of the scrutiny, they have to reimburse the said payments made by the petitioner together with interest as claimed. The petitioner is directed to submit the assessment orders and the payment particulars to the respondent within a week and the respondent shall finalise and pay the amounts within three weeks from the date of receipt of the same from the petitioner.”

The reading of the above order of this Commission, it is abundantly clear that the respondents have to pay the MAT paid by the petitioner to the income tax department as per the assessment orders. Further, the respondents are also liable to pay the interest.

- (ii) As stated supra, this Commission vide its order dated 20.03.2012 has directed the respondents to pay the MAT amount as per the

assessment orders. The petitioner vide its letter dated 21.03.2012 has asked the respondents to pay Rs.48,93,70,552/- which is the amount of MAT as per the assessment orders. However, as the petitioner is entitled for income from project only, the petitioner has submitted the claim of Rs.46,96,94,227/- by excluding the tax applicable on income other than project income.

- (iii) The Hon'ble Supreme Court directed this Commission to quantify the actual amount of MAT as per the entitlement ordered by this Commission. That being so, this Commission ought to make assessment basing on the order of this Commission dated 20.03.2012, wherein it is ordered to pay MAT as per the assessment orders along with interest as per the working capital interest rate applicable to the petitioner. The assertion of the respondents in respect of the payment of interest is untenable and contrary to the orders of this Commission.
- (iv) The present calculation submitted by the petitioner is based on the assessment orders duly excluding the income on other sources. In other words, the amount sought to be reimbursed is the amount of MAT in respect of project income (sale of electricity energy) only and interest thereon. The petitioner has furnished detailed calculations of MAT in respect of project income and interest thereon. The assertion of the respondents that they are not liable to pay interest is contrary to the order of this Commission dated 20.03.2012. The interest is calculated as per the interest rates made applicable by the working capital lender (SBI) from time to time.
- (v) Therefore, it is humbly prayed that the Commission may be pleased to assess the amount of MAT and interest thereon as submitted in the Memorandum in the interest of justice.

4. During the hearing, the learned advocate for the petitioner submitted the following arguments:

- (i) In O.P. No.18/2009, this Commission has passed an order on 13.06.2012 awarding reimbursement of MAT for the 3 years together with interest and when the respondents have not honoured the bills they filed the petition before the Hon'ble ATE for consequential order for implementing the order and the Hon'ble ATE directed the Commission to pass a consequential order.
- (ii) In I.A. No.140/2011, the Commission has directed the respondents to reimburse MAT in respect of financial years 2006-07, 2008-09 as per the respective assessment orders together with interest as claimed by the petitioner herein.
- (iii) When the appeal filed by the appellant herein before the Hon'ble ATE appeal No.113/2012 was dismissed on 20.07.2012, the respondents herein have filed CA No.6138/2012 before the Hon'ble Supreme Court and the Hon'ble Supreme Court passed its order on 17.09.2012 directing the Commission to assess amounts due to the petitioner herein by the respondents towards reimbursement of MAT within one month from the date of the order and also directed respondents 3 to 6 to secure 50% of the amount by way of Bank Guarantee and remaining amount to be paid directly to the petitioner.
- (iv) As per the amounts paid towards MAT to the income tax department, have come to a sum of Rs.46,96,94,227/- together with interest of Rs.36,40,91,076/- in total Rs.83,37,85,303/-.
- (v) The respondents cannot take any plea except to pay the amount as claimed by the petitioner.

5. In reply, the learned advocate for the respondents submitted the following arguments:

- (i) The petitioner has claimed a sum of Rs.33,12,26,000/- towards reimbursement of MAT in the very petition in OP No.18/2009 and they cannot take contrary plea to the plea already taken by them.
- (ii) The Commission has excluded the claim of 4th quarter of FY 2005-06 as barred by time and awarded MAT for the rest of the period which arrived to a sum of Rs.31,85,66,000/-.
- (iii) The petitioner is estopped from claiming more than the amount than claimed in the main petition itself.
- (iv) No explanation is submitted to this authority about the excess amount of Rs.15 Crs. shown in the present claim.
- (v) The Commission may have to act upon the directions of the Hon'ble Supreme Court by quantifying the actual amounts due towards MAT reimbursement.
- (vi) Nothing is ordered about the payment of interest in the above said order and therefore the petitioner is not entitled to any interest and the petition filed by them is to be restricted only to Rs.31,85,66,000/- for the period from 2006-09.

6. At the conclusion of arguments of both the parties, the Commission directed the petitioner to submit detailed justification for the MAT amount claimed by them and also directed the respondents to submit their version of the admissible amount of MAT for the FY's 2006-07 to 2008-09 after examining the copies of assessment orders passed by the competent authority and submit their version.

7. In response to the said direction, the respondents have submitted a memo / additional reply on 06.11.2012. The important statements made therein are as below:

- (i) This additional reply is filed, as per the orders of the Commission on 03.11.2012, while reserving the orders in the memo filed by the petitioner.
- (ii) The respondents had earlier filed reply on 09.10.2012 stating that the petitioner through their affidavit in I.A. No.140 of 2011 in O.P. No.18 of 2009, filed on 16.11.2011 claimed the MAT of Rs.33,12,26,000/- towards 4th quarter of financial year 2005-06 and also for "FY 2006-07 to FY 2008-09" and at that time the petitioner has submitted Annexure along with affidavit at page no. 49-53 of material book of I.A. No.140 of 2011. In the said annexure, the petitioner claimed that it has paid said amount of Rs.33,12,26,000/- towards advance tax vide several bill Nos. referred to therein, and that out of the said amount, the Hon'ble Commission in its order dated 20.03.2012 excluded the claim of 4th quarter of FY 2005-06 as barred by time. As per the orders dated 13.06.2011 passed earlier in O.P. No.18 of 2009, and that the net amount that was claimed was Rs.31,85,66,000/- and that since the same is admitted by petitioner on their volition, they are estopped from saying other wise than what they have claimed.
- (iii) Although the petitioner filed rejoinder to the earlier reply of the respondents, the petitioner has not submitted any explanation as to why there is about Rs.15 crores excess in the present claim made through the memo.
- (iv) Therefore, since there is no explanation about the said admission made in judicial proceedings, same is binding on the petitioner, and the Commission may have to act upon the same in quantifying the actual

amount due towards MAT reimbursement to the petitioner, as per the directions dated 17.09.2012 of Hon'ble Supreme Court.

- (v) Without prejudice the said contentions, the respondents as directed by the Commission on 03.11.2012 (during the hearing process) submit that they had examined copies of assessment orders passed by the competent authority and found as follows:

- a. For the FY 2006-07, the assessment order is dated 24.12.2009 and the book profits of the petitioners company as per the said order.

Particulars	Less Amount (Rs.)	Amount (in Rs.)
Book profits		114,24,86,801
Short term capital gains	1,50,99,223	
Income from other sources	34,98,24,227	
Sub total:	36,49,23,450	(-) 36,49,23,450
Adj.Book profit (taxable Income)		77,75,63,351
Tax Rate		11.22%
Tax on Project income		8,72,42,608

- b. For the FY 2007-08 the assessment order is dated 13.12.2010 and the book profits of the company as per the said order is:

Particulars	Less Amount (Rs.)	Amount (in Rs.)
Book profits		160,69,87,353
Short term capital gains	8,16,39,344	
Income from other sources	13,74,12,940	
Sub total:	21,90,52,284	(-) 21,90,52,284
Adj.Book profit (taxable Income)		138,79,35,069
Tax Rate		11.33%
Tax on Project income		15,72,53,043

- c. For the FY 2008-09 the assessment order is dated 23.12.2011 and the book profits of the company as per the said order is:

Particulars	Less Amount (Rs.)	Amount (in Rs.)
Book profits		155,52,31,314
Short term capital gains	4,52,66,335	
Income from other sources	20,81,10,109	
Sub total:	25,33,76,444	(-) 25,33,76,444
Adj.Book profit (taxable Income)		130,18,54,870
Tax Rate		11.33%
Tax on Project income		14,75,00,157

(vi) As such, the total income tax (MAT) paid during the three years FY 2006-07 to 2008-09 by the petitioner is Rs.39,19,95,808/-. As per the computation done by the respondents, there is a difference of about Rs.8.00 crores less than the claim made by the petitioner in the memo dated 21.09.2012.

(vii) The respondents submit that since there is a large difference of Rs.7,34,29,808/- between the claim made by the petitioner through I.A. No. 140 of 2011 and the amount of Rs.39,19,95,808/- arrived at by the respondents from the assessment orders filed now alongwith memo dated 21.09.2012, and since this is worked out for interim arrangement, in the absence of any explanation by the petitioner, earlier claimed amount of Rs.31,85,66,000/- may be ordered.

8. In response to the said direction and as a rejoinder to the additional reply of the respondents, the petitioner has submitted a memo on 08.11.2012. The important statements made therein are as below:

(i) The petitioner humbly submits that this rejoinder is without prejudice to its contentions submitted in its memo and the previous reply. It is submitted that this Hon'ble Commission vide order dated 20.03.2012 has categorically directed the respondents to reimburse MAT amount as per the Assessment orders along with interest. Therefore, the contention of the respondents that this petitioner has mentioned a different amount in the petition has no relevance.

(ii) It is submitted that the respondents in their additional reply have stated that the Income Tax (MAT) on project income as per Assessment Orders for financial years 2006-07, 2007-08 and 2008-09 is Rs.39,19,95,808/-. Even assuming without conceding that the said amount is correct, the respondents are liable to pay the said amount along with interest in pursuance of the order dated 20.03.2012 of this Commission. For the purpose of convenience of this Commission, the interest is calculated on the said amount of Rs.39,19,95,808/- and enclosed to this rejoinder. It is further clarified that the interest on the billed amount is calculated from the date of payment of tax in advance during each quarter of a financial year and whereas the interest on the difference amount between the billed amount and the amount arrived during the assessment is calculated from the date of assessment order.

(iii) Therefore, it is humbly prayed that the Commission may be pleased to assess the amount of MAT and interest thereon in the interest of justice.

9. Commission has examined the rival contentions of both the parties narrated supra. This order is being passed pursuant to the memo filed by the petitioner herein consequent upon the orders of Hon'ble Supreme Court dated 17-09-2012. The relevant portion of the order is extracted as hereunder:

"..... we are informed that apart from holding that the respondents concerned are entitled to the benefits of reimbursement of the Minimum Alternate Tax (MAT), the actual amounts are yet to be quantified. The Commission is directed to assess the amounts said to be due from the respondents Nos. 3 to 6..."

10. Accordingly, the quantification of MAT that is due for reimbursement is being done herein after hearing both the parties on the issue of the said quantification for the FY's 2006-07 to 2008-09.

11. In response to the Commission's direction mentioned at para 6 supra, the respondents through their additional reply dated 06-11-2012, have stated that the total income tax (MAT) paid by the petitioner during the three years FY 2006-07 to 2008-09 is Rs.39,19,95,808/- (Rupees thirty nine crores nineteen lakhs ninety five thousand eight hundred and eighty only).

12. The petitioner, in his memo dated 08-11-2012, has adopted the figure of Rs.39,19,95,808/- for the purpose of working out the interest payable on the MAT amount, albeit without prejudice to their earlier contentions regarding the quantum of MAT amount eligible for reimbursement.

13. In the light of the stands taken by the two parties as mentioned paras 11 and 12 above, the Commission considers that the figure of Rs. 39,19,95,808/- can be taken by the Commission as the mutually agreed figure for the purpose of computation of the amount of MAT eligible for reimbursement for the financial years 2006-07, 2007-08 and 2008-09 in accordance with the order of the Commission given in I.A.No.140 of 2011 in O.P.No.18 of 2009 dated 20-03-2012.

14. Further, in compliance with the direction of the Hon'ble Supreme Court, the Commission has also examined the quantification of the MAT amount made by the respondent as detailed in para 7(v) supra. The approach of the respondent for arriving at the amount of MAT that is reimbursable based on the assessment orders is that of segregating all non-project related income (short term capital gains and income from other sources) from the book profits assessed by the income tax department in the respective assessment orders. In Commission's view the above approach is in order. Accordingly, Commission hereby quantifies the MAT to be reimbursed by the respondent for the three financial years covered by the present case, respectively, as detailed hereunder:

Assessment Year	MAT reimbursable (in Rs.)
2006-07	8,72,42,608
2007-08	15,72,53,043
2008-09	14,75,00,157
Total	39,19,95,808

15. Accordingly, as directed by the Hon'ble Supreme Court, the Commission hereby quantifies the MAT amount, (excluding interest payable in terms of the PPA) as Rs.39,19,95,808/- for the three financial years 2006-07, 2007-08 and 2008-09.

16. The Commission has already passed an order to pay the MAT together with interest as prescribed in the PPA till realization of the said amount. Hence, the plea raised by the respondents that the payment of interest liability shall accrue only on the date of quantification is not tenable. The Hon'ble Supreme Court has directed to quantify the actual amounts payable to the petitioner. The quantification directed by the Hon'ble Supreme Court is in the context of the earlier order of the Commission regarding payment of MAT amount which was passed in pursuance of the order of Hon'ble ATE. Hence, the plea raised by the respondents that the Hon'ble Supreme Court has directed the Commission to quantify only the actual amount of MAT as per the entitlement ordered by the Commission but not the interest thereon as payable in terms of the PPA, is not correct.

17. However, since the DISCOMs have not filed material to enable the Commission to quantify the exact amount of interest payable as per the PPA on the admissible MAT amount and have merely stated that interest quantification does not arise till the date of quantification of MAT amount, the DISCOMs are directed to compute the interest payable on the above quantified MAT amount as per the provisions of the PPA and disburse the MAT amount together with such interest in accordance with the direction given by Hon'ble Supreme Court.

This order is signed on this 10th day of December, 2012

**Sd/-
(C.R.Sekhar Reddy)
MEMBER**

**Sd/-
(A.Raghotham Rao)
CHAIRMAN**