

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Sh. N. K. Saini, AM and Smt. Beena A. Pillai, JM

ITA No. 3975/Del/2014 : Asstt. Year : 2006-07

Assistant Commissioner of Income Tax, Circle-5(1), New Delhi-110047	Vs	M/s Modern Prefab Systems Pvt. Ltd., TMT Complex, Village Jonapur, Mehrauli, New Delhi-110047
(APPELLANT)		(RESPONDENT)
PAN No. AAACM9796Q		

**Assessee by : Sh. Sanjeev Chopra, CA &
Sh. Anup Mehta, CA
Revenue by : Sh. Rajesh Kumar, Sr. DR**

Date of Hearing : 23.05.2017	Date of Pronouncement : 30.05.2017
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ORDER

Per N. K. Saini, AM:

This is an appeal by the department against the order dated 30.04.2014 of Id. CIT(A)-VIII, New Delhi.

2. The only effective ground raised in this appeal reads as under:

“1. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the additions on account of cartage receipts of Rs.1,05,70,070/- ?”

3. Facts of the case in brief are that the assessee e-filed its return of income on 26.11.2006 declaring an income of Rs.89,64,813/- which was revised on 27.11.2006 though there was no difference in the returned income. Later on, the case was selected for scrutiny and

the assessment u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the Act) was framed at the returned income of Rs.89,64,813/- on 12.03.2008. Later on, the case was reopened u/s 147 of the Act and the AO issued the show cause notice to the assessee. The relevant portion of the said notice read as under:

“...Perusal of assessment record and details of contract and labour receipts revealed that the assessee company had total receipt amounting to Rs. 4,20,97,395/-. However, in profit and loss account the assessee has credited only Rs. 3,15,27,325/- (14695685/- work contract + 16831640/- erection receipts) and has not credited the income of Rs. 1,05,70,070/- on account of transport receipt to the profit & loss account. Therefore, the same should have been treated as income of the assessee. The mistake resulted in underassessment of income of Rs. 1,05,70,070/-.

In view of the above facts, you are requested to explain as to why an amount of Rs. 1,05,70,070/- should not be added to the total income of the assessee company...”

4. The assessee vide its reply dated 14.12.2012 submitted as under:

"That the assessee has shown net expenses of Rs. 3,00,730.80 under the head cartage outward(net) under the schedule 15 in March 2006 as against total expenses of Rs. 1,08,70,801/- and recovery against the cartage/transport expenses of Rs. 1,05,70,070.20 (copy of the ledger account of cartage/transport expenses and receipt for the year ended 31.03.2006) is enclosed herewith.

Had the assessee shown credit of Rs. 1,05,70,070/- and debit of Rs. 1,08,70,801/- separately, taxable income would have resulted the same.

From the above it is very clear that income of Rs. 1,05,70,070/- has not escaped assessment."

The AO however was not satisfied from the reply of the assessee and made the addition of Rs.1,05,70,070/-.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) and furnished the written submission dated 29.04.2014 which read as under:

"1) The assessee was assessed us 143(2) vide order dated 12/03/2008 at the returned income.

2) The assessee's case was reopened u/s147 on account of an audit query.

3) The said audit query related to escaping of an income of Rs. 1,05,70,070/- related to transport/cartage receipts.

4) During proceedings it was submitted before the assessing office as under:

1. That the assessee has shown net expenses of Rs.300730.80/-under the head cartage outward (net) under the schedule 15 in March 2006 as against Total Expenses of Rs. 10870801/- and recovery against the cartage/transport expenses of Rs. 10570070.20/-(Copy of the ledger account of cartage/transport expenses and receipt for the year ended 31.03.2006) is enclosed herewith.

Had assessee shown credit of Rs, 10570070/- and debit of Rs. 10870801/-separately, taxable income would have resulted the same.

From the above it is very clear that income of Rs. 10570070/- has not escaped assessment.

1. That the assessee incurred an expense of Rs. 10870801/- on Cartage/transport during the year. A copy of the ledger account of the same is already placed on your record.

2. During the same period, the assessee also earned an income of Rs 1,05,70,070/- towards cartage/transport by charging its customers towards material supplied to them. A copy of the ledger account of the same is already placed on your record.

3. The customers deducted tax at source of Rs.2927865/- on contract receipts including transport charges of Rs.10570070/-during the year in respect of cartage charged from them. The assessee claimed the same amount in the tax return for the AY 2006-2007.

4. The assessee had two options to depict the above two transactions i.e.,

First option

i) To claim the expenditure of Rs. 10870801/-separately in the profit and loss account on the expenditure side and show the income of Rs. 10570070/-separately on the income side of the Profit and loss account, which would have resulted in the net profit of Rs. 8920738/- for the year.

Second option

ii) To claim net expenditure in the profit and loss account by netting off the income of Rs.10570070/- by expenditure of Rs.10870801/- resulting into a net expenses on cartage/transport of Rs 300730/-. This would also have resulted into the same net profit of Rs. 8920738/- for the year.

5. The assessee chose the second option for the year under consideration (As shown by the assessee in schedule 15 of the Balance sheet and profit and loss account for the year ended 31.03.2006 and already placed on your record).

6. A specimen of profit and loss account if prepared as per the first option is enclosed herewith, just to demonstrate that the net profit for the year would have been the same in both the options.

From the above it is very clear that no income of Rs.1,05,70,070/-has escaped assessment.

5) The assessing officer being satisfied with our submissions and with the evidence produced before him presented assessee's case favorably by submitting to the audit department that there was no escapement of income. However on account of non response from the audit department, he had to make the said addition.

6) The Assessing officer has alleged in Para 5 of the assessment order dated 30/03/2013 that the assessee has failed to explain how the details given by us are helpful to establish that the amount of Rs. 1,05,70,070/- has not escaped the assessment and how the same has been offered for taxation. In this connection it is submitted

that the learned assessing officer totally disregarded the information placed before him viz, a) ledger account of transport receipts, b) ledger account of transport/cartage expenses and c) A sheet showing calculation of profit as per balance sheet and also as per AO's allegations .Nowhere during the proceedings, the assessee was called to produce vouchers for expenses incurred on transport/cartage. These expense vouchers are now being produced for your verification. A perusal of the same would reveal that all these expenses totaling Rs. 1,08,70,801/- were duly incurred and tax deducted at source wherever applicable was deducted by the assessee."

In view of the above it is prayed that the above addition of Rs. 1,05,70,070/- be deleted."

6. The ld. CIT(A) after considering the submissions of the assessee deleted the addition by observing as under:

"I have perused the assessment order, written submissions and discussed the matter with the ARs very carefully. The ARs of the appellant argued that to claim net expenditure in the profit and loss account by netting; off the income of Rs. 1.05.70,070/- by expenditure of Rs.1,08,70,801/- resulting into a net expenses on cartage/transport of Rs. 3,00,730/-. This would also have resulted into the same net profit of Rs.89,20,738/- for the year. Therefore, the addition of Rs.1,05,70,070/- made by the AO is not justified. Hence, it is hereby deleted."

7. Now the department is in appeal. The ld. DR although supported the order of the AO but could not controvert the findings given by the ld. CIT(A).

8. In his rival submissions the ld. Counsel for the assessee reiterated the submission made before the authorities below and strongly supported the impugned order.

9. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it appears that the assessee had shown the net income on account of cartage/transport after reducing the expenses from the gross receipt and if the assessee had shown gross receipt amounting to Rs.4,20,97,395/- in the credit side and debited the expenses of the transportation charges amounting to Rs.1,05,70,070/- separately then there was no impact on the profitability as the assessee had already shown the net income at Rs.3,15,27,325/- (Rs.4,20,97,395/- - Rs.1,05,70,070/-). It is also relevant to point out that the assessee had shown net expenses of Rs.3,00,730.80 on account of cartage outwards. The said figure was arrived at after reducing the above mentioned Rs.1,05,70,070/- which was the recovery made by the assessee against the total expenses of Rs.1,08,70,801/-. In our opinion, the assessee did not offer less income as alleged by the AO, therefore, the ld. CIT(A) was fully justified in deleting the addition made by the AO. We do not see any valid ground to interfere with the findings given by the ld. CIT(A).

10. In the result, the appeal of the department is dismissed.
(Order Pronounced in the Open Court on 30/05/2017)

Sd/-
(Beena A. Pillai)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 30/05/2017

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR