

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "जी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
BEFORE SHRI C.N. PRASAD, JM AND SHRI RAJESH KUMAR, AM

ITA NO.2794/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2011-12)

Asstt. Commissioner of Income Tax 14(2)(2), 432,4 th floor, Aayakar Bhavan, M K Road, Mumbai-400020	<u>बनाम/</u> Vs.	M/s Petron Engineering Construction Ltd, 6 th floor, Swastik Chambers, Sion Trombay Road, P B No.7206, Chembur, Mumbai-400071
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स्थायी लेखा सं./PAN : AACCP8775G		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Revenue by	:	Ms.Anupama Singh
प्रत्यर्थी की ओर से/Respondent by	:	Shri Ayush J Rajani

सुनवाई की तारीख /Date of Hearing	:	4.1.2017
घोषणा की तारीख /Date of Pronouncement	:	18.1.2017

आदेश / ORDER

PER RAJESH KUMAR, A. M:

This is an appeal filed by the revenue challenging the order dated 9.2.2015 passed by the Id. CIT(A)-22, Mumbai for the assessment year 2011-12.

2. Brief facts of the case are that the assessee filed its return of income on 28.9.2011 declaring total income of Rs.47,48,54,523/- which was revised on 28.11.2011 at an income of Rs.47,48,54,523/- and the second revised

return of income was also filed on 28.3.2013 declaring a total income of Rs.47,39,49,478/-. The assessee has been doing the business of fabrication , erections, installations and commissioning of plant and machinery etc. The case of the assessee was selected and statutory notices under section 143(2) and 142(1) were issued and served upon the assessee. The assessment was completed by making the three additions consisting of addition on account of scrap value of Rs.12,49,313/-, prior period expenses Rs.29,63,241/- and excess depreciation on UPS and printer Rs.4,18,093/- vide assessment order dated 3.3.2014 passed under section 143(3) of the Act by assessing the total income at Rs.47,94,85,170/-. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA).

3. The issue raised by the revenue in the first ground of appeal is against the deletion of addition of Rs.12,49,313/- by the Id.CIT(A) as made by the AO by disregarding the fact that dismantled scrap material has some value even after dismantling the structure. The AO during the course of assessment proceedings found that the assessee had constructed temporary buildings on various sites for carrying out works at these locations and depreciation on these temporary sheds/buildings was claimed @100% . After completion of work, these structures/sheds were dismantled. The AO came to the conclusion that even after demolition of the structures which was made of wood, bricks mortar and mild steel would definitely have some scrap value

and accordingly estimated the same at the rate of 3% of the total cost sheds of Rs.4,16,43,779/- which worked out to Rs.12,49,313/-. After considering the submissions of the assessee in the appellate proceedings , the FAA partly allowed the appeal of the assessee by observing and holding as under:

"3.3 I have carefully considered the appellant's submissions. The AO had added Rs.12,49,313/- estimated the scrap value on notional basis at 3% of Rs.4,16,43,779/- being temporary building added during the previous year.

3.4 The Appellant's main contention is on demolishing of the temporary building, whole area has to be levelled at the ground level and scrap value received on, woods, bricks, sand, cement, plastic, etc. which does not have any realizable value. Further appellant stated that as claim for 100% of the depreciation was accepted by the AO, then only this amount has to be reduced from WDV of the & depreciation which was allowed to the appellant estimating it as notional income in -the assessment order. On considering the facts, it will be clear that it will be difficult to obtain any realizable value of the material in the demolition of the temporary structures. However, if AO assumed there is a certain realizable value, AO is directed to reduce this notional amount of Rs.12,49,313/- from the WDV of assets sold instead of making separate addition in the assessment. Hence ground of appeal is partly allowed"

4. Aggrieved by the order of the CIT(A), the revenue has challenged the order of the FAA before this Tribunal and vehemently submitted that the temporary structures which were made of wood, sand, bricks, cement, steel definitely has some scrap value and therefore the Id. CIT(A) was not justified in deleting the addition partly and directing the AO that if at all demolished material from the temporary sheds has realizable value then the same should be reduced from the WDV of the assets. The Id. DR prayed before us

that the order of the Id.CIT(A) is wrong and therefore deserved to be reversed on this issue by restoring the order of the AO.

5. On the other hand, the Id.AR while vehemently opposing the arguments of the Id.DR submitted that the assessee is a listed company and therefore it is essential in the business of the assessee to construct temporary structure/sheds for workers for carrying out the contractual assignments and demolish the same after project/work is completed and commissioned and also demolition. After demolition of structures, the resultant waste materials have hardly any realizable value. Moreover, the Id.AR submitted that the income from the demolished material cannot be assessed on the basis of surmises and conjecture and estimation by strongly relying on the decision of co-ordinate bench of the Tribunal in the case of ACIT V/s M/s Richa and Co. in ITA No.3502 and 3503/Del/2009 (AY-2004-05 and 2005-06) order dated 26.4.2010, wherein the Co-ordinate Bench of the Tribunal has held that no addition on account of scrap can be made on estimated basis. Similarly, the Id. AR also relied on the decision of the co-ordinate Bench of the Tribunal in the case of PNC Construction Co.Ltd V/s DCIT (2013) 37 taxmann.com 361 (Agra-Trib). Finally, the Id.AR requested the bench that in view of the adhoc nature of addition being based upon surmises, conjecture and presumptions was rightly deleted by the FAA and therefore the order of the FAA be upheld on this ground.

6. After considering the rival contentions of the parties and on perusal of the material placed before us including the decision of the lower authorities and case law relied upon by the parties, we find that the AO has made addition on adhoc basis at the rate of 3% of the cost of demolished structures for scrap resulting from demolition of temporary sheds/building definitely has realizable value and added the same to the total income of the assessee. The FAA came to the conclusion that the AO has already allowed 100% depreciation of the structure and if at all their realization value if the material resulting from demolition have some notional income that should be reduced from the WDV and should not added to the total income of the assessee. Now, considering the facts of the assessee in the light of various case law relied upon by the Id.AR, we find that the addition cannot be made on adhoc basis by making presumptions, surmises and conjecture. In the case of M/s Richa and Co. (supra) the co-ordinate Bench of the Tribunal has held as under (Para 7) :

".7. We have heard both the parties and we have examined material available on record. The Assessing Officer in the three years has not found any defect in the books of account. It has not worked out or made any basis to hold that generation of scrap and its sale is not correctly and properly reflected in the books of accounts. There is no finding that assessee suppressed production by showing excessive wastage or excessive generation of scrap. Manufacturing, production and trading accounts have been duly accepted. Even then ad hoc addition has been made in the three years without any legal basis. There is no rule that generation of scrap should be 0.2% of the turnover as learned CIT (Appeals) tried to make out in its order for assessment year 2006-07. On facts, we do not see any good ground to sustain addition made for sale of scrap. It has rightly been deleted by

the learned CIT (Appeals) in assessment year 2004-05 and 2005-06 and erroneously sustained in assessment year 2006-07. It is directed to be deleted in all the three years before us."

7. Similarly in the case of PNC Construction Co.Ltd(supra) vide para 35 and 36, has held as under :

"35. *The brief facts of ground no.3 are that during the assessment proceedings the A.O. noticed that the assessee claimed temporary building structure expenditure of Rs.1,02,11,975/-. The A.O. accepted the fact that the assessee has to incur such expenses in this line of business. The A.O. made adhoc addition of Rs.5,00,000/- to cover the possible loss of revenue on account of wrong claim of the assessee. The CIT(A) confirmed the said addition.*

36. *We have heard the Id. Representatives of the parties and records perused. The admitted facts of the case are that the expenditure incurred was wholly and exclusively for the purposes of business. This fact has not been disputed by the A.O. The A.O. made the disallowance without pointing out any specific expenditure which was incurred other than for the purposes of business. In the light of the detailed discussion made while deciding ground no.2 in paragraph nos.33 & 34 of this order, following the said discussion, we delete the adhoc addition of Rs.5,00,000/-."*

In view of the ratio laid down by the Agra Bench of the Tribunal, we are of the opinion that the addition on adhoc basis made on surmises, conjecture and presumptions cannot be sustained and was rightly deleted by the Id. CIT(A). Accordingly, ground raised by the revenue is dismissed.

8. The issue raised in the second ground of appeal is regarding deletion of disallowance of Rs.29,63,241/- by the Id.CIT(A) as made by the AO on account of prior period expenses by disregarding the fact that the assessee following mercantile system of accounting and the prior period expenses are not admissible.

9. Brief facts of the case are that the AO during the course of assessment proceedings, found from the perusal of the tax audit report that the assessee has debited an amount of Rs.29,63,241/- in the profit and loss account under the head prior period expenses and accordingly issued show cause notice to the assessee vide letter dated 10.2.2014 as to why the said expenses should not be disallowed. The assessee vide letter dated 13.2.2014 replied and responded the show cause by stating that the same could not be accounted for in the previous financial year as these were crystallized after close of the year. The AO did not accept the contention of the assessee and added the same to the total income of the assessee amounting to Rs.26,63,241/-. During the appeal proceedings, the FAA deleted the disallowance by holding as under :

"4.3 I have carefully considered: the appellant's submissions. The appellant in his submissions states that prior period expenses to the tune of Rs. 29,63,241/- which are mainly bills which are received from the vendor after 30th March. Hence these items are separately shown in the profit and loss account and also in the tax audit report in Annexure D which is required as per the Accounting Standard n. Even CBDT had notified the Accounting Standard on prior period expenses and stated that these are to be shown separately. It is clear from the submissions of the appellant that the bills which are presented belongs to the earlier year but bills are received in this year for payment. 'In such a case, Accounting Standards accepted the prior period expenses are mentioned separately and claimed separately. As appellant had borrowed the Accounting Standard which is approved by CBDT is in the nature ~f revenue expenditure though appellant is following mercantile system of accounting. Here it has been duly approved in this year as bills are only received after March 31st. This identical view is expressed by Hon,'ble !TAT, Delhi in the case of Goetze (India) Ltd.. Vs. Dy, Comriflssioner of Income-tax, New Delhi [ITA No.207/Del/2005) wherein it is held as under:

"Since the bills were received subsequent to the finalization of the appellant's preceding year's accounts, the said expenses have been booked under prior period expenses and that there was no justification for disallowing the claim of prior period expenses. In assessment year 1985-86 also the issue was decided in favour of the assessee. In the year under consideration also the assessee has clarified the position by pointing out that the bills were received after the close of the year i.e., after the close of the accounting year and, therefore, they were accounted for in the subsequent year. This explanation of the assessee, therefore, is fully acceptable. On going through the details furnished by the assessee in the tax audit report, statement of expenses and by following post orders in the case of the assessee, there is no justification for disallowing the previous year's expenses."

4.4 In view of the above judgment of the ITAT and the appellant's claim for prior period expenses is allowed and ground of the appeal is allowed"

10. On the other hand, the Id.DR took us through the assessment order wherein the AO stated that the expenses were for amortization by preparing financial statement and thus the claim of the assessee in subsequent year amounts to omission and was not allowable under the Act and so rightly disallowed by the AO. The Id. DR therefore, relied on the order of the AO and prayed the order of the Id.CIT(A) be reversed on this issue by allowing the appeal of the revenue.

11. The Id. AR vehemently submitted before us that the AO has wrongly mentioned in the assessment order that as a result of omission in the financial statement in the earlier years expenses could not be accounted for whereas all these so called prior period expenses were crystallized and

materialized during the year and was rightly claimed by the assessee. The Id FAA allowed the appeal of the assessee after going into the facts and legality of the case. The Id. AR in defense of his argument relied on the decision of Hon'ble Jurisdictional High Court in the case of CIT V/s Mahanagar Gas Ltd (2014) 42 taxmann.com 40 (Bom) and the decision in the case of Goetze (India) Ltd.. V/s Dy.Commissioner of Income-tax, New Delhi (2008) 115 ITD 119 (Del). Finally the Id.AR submitted before us that these expenses represented various types of administrative and other expenses for which the bills were received after close of the year when the statement of the assessee were already finalized and thus crystallized in the subsequent year and accordingly accounted and claimed in the profit and loss account as per law. Finally the Id AR prayed that the order of the Id.CIT(A) be upheld on this issue.

12. We have carefully considered the rival submissions and perused the material placed before us including impugned order and case law relied upon by the assessee. We find that the assessee has charged to the profit and loss account an amount of Rs.29,63,249/- under the head prior period expense comprising various types of expenses including administrative expenses bills of which were received after close the financial year when financial statements was already prepared and finalized. The assessee accounted for these expenses in the current year and the fact was mentioned in the tax

audit report in annexure as per the accounting standard-II. We find that the Id.CIT(A) also recorded the finding of facts that these bills pertaining to earlier year were received in the current year and therefore admissible as current year revenue expenses though the appellant was following the mercantile system of accounting. We find merit in the case of the assessee and also find that the finding of the Id.CIT(A) is correct and justified. In our opinion the bills received during the year notwithstanding relating to the earlier years were correctly accounted for and therefore pertained to current year as being materialized during the year. The case of the assessee also stands covered by para 22 of the decision in the case of Goetze (India) Ltd.(supra) which reads as under :

"22. *Although we have cancelled the reassessment by allowing ground Nos. 1 and 2 in favour of the assessee and by holding that the reassessment made in the case of the present assessee was null and void, however, we proceed to decide the issue relating to the sustenance of disallowance of Rs. 75,96,534 on merits also. We have already set out relevant details and submissions of the parties in this regard in earlier part of this order. We have pointed out that in assessment year 1988-89, a similar issue relating to disallowance of Rs. 12,79,584 in respect of previous year's expenses was allowed in favour of the assessee by the ITAT. The relevant observations of the ITAT has also been reproduced by us in para 9 of their order. In that case the Tribunal had examined the method of accounting followed by the assessee and held that since the bills were received subsequent to the finalization of the appellant's preceding year's accounts, the said expenses have been booked under prior period expenses and that there was no justification for disallowing the claim of prior period expenses. In assessment year 1985-86 also the issue was decided in favour of the assessee. In the year under consideration also the assessee has clarified the position by pointing out that the bills were received after the close of the year i.e., after the close of the accounting year and, therefore, they were accounted for in the*

subsequent year. This explanation of the assessee, therefore, is fully acceptable. On going through the details furnished by the assessee in the tax audit report, statement of expenses and by following post orders in the case of the assessee, there is no justification for disallowing the previous year's expenses. Hence, even on merits, we hold that the disallowance was not justified and consequently we delete the disallowance on merits also."

The facts of the assessee's case is materially same vis-a-vis as stated hereinabove we, therefore, respectfully following the ratio laid down in the above case are inclined to dismiss the appeal of the revenue on this ground.

13. Resultantly, the appeal of the revenue stands dismissed.

Order pronounced in the open court on 18th Jan, 2017.

Sd

sd

(C.N. Prasad)

(Rajesh Kumar)

न्यायिक सदस्य / Judicial Member

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated :18. 1.2017
SRL,Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

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उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai