

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'A' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member
and Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 763/KOL/ 2013
Assessment Year : 2009-2010**

Gouranga Modak,.....Appellant
BA-15/10B, Deshbandhunagar,
Baguiati,
Kolkata-700 059
[PAN : AEYPM 4957 N]

-Vs.-

Assistant Commissioner of Income Tax,.....Respondent
Circle-49, Kolkata,
Aayakar Bhawan,
Bamboo Villa,
169, A.J.C. Bose Road,
Kolkata-700 014

Appearances by:

Shri Subash Agarwal, Advocate, for the assessee
Shri Sallong Yaden, Addl. CIT, for the assessee

Date of concluding the hearing : April 21, 2016
Date of pronouncing the order : April 27, 2016

O R D E R

Per Shri P.M. Jagtap:-

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-XXXII, Kolkata dated 15.03.2013 for the assessment year 2009-10, whereby he confirmed the additions of Rs.23,60,918/- and Rs.1,10,377/- made by the Assessing Officer on account of difference in respect of balance of M/s. Bengal Peerless Housing Development Corporation Limited and security deposit with M/s. Bengal Peerless Housing Development Corporation Limited (in short 'BPHDCL') respectively.

2. The assessee in the present case is an individual, who is engaged in the business of Real Estate and Civil Construction under the name and style of his proprietary concern M/s. R.K. Enterprise. The return of

income for the year under consideration was filed by him on 30.12.2009 declaring total income of Rs.1,37,16,660/-. During the course of assessment proceedings, a notice under section 133(6) was issued by the Assessing Officer to M/s. BPHDCL in order to cross verify the balances appearing in the books of account of the assessee in the name of the said concern. In response to the said notice, a copy of ledger account of the assessee in the books of M/s. BPHDCL was received by the Assessing Officer and the same was handed over by him to the assessee seeking reconciliation of difference appearing in the balance. In reply, following submission was filed by the assessee:-

"We do business with BPHD in two area. We have constructed so many building' as a contractor apart from working as land dealer for them. The ledger a/c with BPHD in connection with land and contract work are attached herewith. .

Debit amount receivable in contact workRs. 25,32,750/-

Amount payable on account of advance on land.....Rs.2,98,79,888/-

Total payable.....Rs.2,73,47,138/-

It is usual practice in the construction business that the principal make some deduction from the Bill due to various reasons like measurement of area, delay in execution, quality issues etc. In each bill some amount has been deducted. But we have taken our sales as bill amount raised by us without considering deduction made by BPHD. This figure have been accumulated over a period of time and have resulted into present difference of Rs.23,60,918.71. We should have deducted this difference amount from our sale a/c. and resulting lower income and tax. We have wrongly taken full amount as our sale value thereby showing more income than accrued. However this difference can be rectified if the account of earlier years tallied with BPHO. The difference of Rs.23,60,918.71 is related to our contract work.

Since we have shown excess debtor to the extent of Rs.23,60,918/-, in our contract work a/c with BPHD, it is obvious that the same has been routed through the sales a/c and thus income has been declared on the said amount as well as tax has been paid".

The assessee thus claimed that the principal reasons for the difference in the balance as on 31.03.2009 were the deductions made by M/s. BPHDCL against bills submitted by the assessee which the assessee had not accounted for in his books of account. In the absence of any documentary evidence to support and substantiate this claim, the Assessing Officer did not accept the same and added the entire un-reconciled difference in the

balance and Deposit Account with M/s. BPHDCL amounting to Rs.24,71,295/- to the total income of the assessee.

3. The addition of Rs.24,71,295/- made by the Assessing Officer on account of the difference in the balance and Deposit Account with M/s. BPHDCL was challenged by the assessee in the appeal filed before the Id. CIT(Appeals) and the following submission was made by the assessee in writing before the Id. CIT(Appeals) along with the additional evidence:-

"This ground relates to the addition of Rs.23,60,918/- on account of alleged difference in account with M/s. Bengal Peerless Housing Development Corporation Limited (BPHDCL). During the course of assessment proceedings, the Ld. A.O. asked the assessee to reconcile the closing balance of M/s. Bengal Peerless Housing Development Corporation Limited (BPHDCL) since there was discrepancy between balance as per the assessee's book and the said party's books.

In response, the assessee submitted that -

"We do business with BDHD (actually BPHDCL) in two area. We have constructed so many building as a contractor apart from working as land dealer for them. The ledger a/c. with BPHD (sic, actually BPHDCL) in connection with land and contract work are attached herewith.

*Debit amount receivable in contract workRs. 25,32,750/-
Amount Payable on account of advance on landRs.2,98,79,888/-*

*-----
Total Payable.....Rs.2,73,47,138/-*

It is usual practice in the construction business that the principal make some deduction from the Bill due to various reasons like measurement of area, delay in execution, quality issues etc. in each bill some amount has been deducted. But we have taken our sales as bill amount raised by us without considering deductions made by BPHD (sic, actually BPHDCL). This figure have been accumulated over a period of time and have resulted into present difference of Rs.2360,918.71. We should have deducted this difference amount form our sale a/c. and resulting lower income and tax. We have wrongly taken full amount as our sale value thereby showing more income than accrued However this difference can be rectified if the account of earlier years tallied with BPHD (sic, actually BPHDCL). The difference of2360918171 is related to our contract work.

Since we have shown excess debtor to the extent of Rs.2360918/- in our Contract work a/c. with BPHD (sic, actually BPHDCL), it is obvious that the same has been routed through the sales A/c. and thus income has been declared on the said amount as well as tax has been paid.

But the Ld. A.O. made an addition of Rs.23,60,918/- to the total income of the assessee observing that "Having said the above, the assessee had failed to file any supporting details/evidence with regard to the Bills M-Numbers and amounts against which deductions have been made by M/s. BPHDCL. Further, no confirmation from M/s. BPHDCL could be filed by the assessee in this regard. Therefore the assessee's explanation is neither backed up with documentary evidences nor could any details of the bills and amounts purported deducted by M/s. BPHDCL be filed.

Copy of the computation of discrepancy of Rs.23,06,918/- between the closing ledger balances as submitted before the A.O. is annexed at page 144 and the forwarding letter of the assessee's A/R at page 142.

Now, the detailed reconciliation sheet with cross-referencing of the two ledger accounts (i.e. assessee's and the said party's) is annexed in the paper-book and marked".

4. When the above written submission filed by the assessee along with the additional evidence was forwarded by the Id. CIT(Appeals) to the Assessing Officer, a remand report was submitted by the Assessing Officer offering his comments thereon as under:-

"The addition of Rs..23,60,918/- was made on account of difference in assessee's account with Bengal Peerless Housing Development Corporation Ltd.(BPHDCL). As evident from the order (Para 2 page 4 of the order), the AIR vide written explanation dated 28/12/2011 submitted reconciliation while admitting that the final difference of Rs.23,60,918/- could not be readily reconciled since accounts were not tallied with BPHDCL for a long time. The letter and the reconciliation statement submitted before the A.O. wa,s enclosed vide Page 142 to 144 of the Paper book. Thus as per assessee's own admission the accounts required to be tallied with BPHDCL only then the difference may be reconciled However, in the paper book the reconciliation statements of the assessee do not have any support of relevant bills and confirmation from BPHDCL. The entire submission of the assessee is based on his own account which was already submitted before the A.O. for examination at the time of assessment proceedings. As already stated before hand, the reconciliation statement has not been confirmed by the BPHDCL and hence the same cannot be considered as new evidence and liable to be rejected".

5. When the remand report submitted by the Assessing Officer was confronted by the Id. CIT(Appeals) to the assessee, following counter comments were offered by the assessee thereon:-

"This ground relates to addition of Rs.23,60,918/-.

The major contention of the Ld. A.O. in regard to the addition of this amount is that the assessee has not filed confirmations from M/s. BPHDCL.

In this regard, it is submitted that the Ld. A.O. had obtained the statement of accounts directly from the party.

*Now, the assessee has obtained certified copies of the statement of accounts submitted by M/s. BPHDCL to the A.O from the assessment records, the same along with the covering letter of the said party dated 08.11.2011 are annexed hereto and are collectively marked as Annexure: 'X',
Ref. Ground No. 3*

This ground relates to the addition of Rs.1,10,377/- made by the Ld. A.O. on account of the alleged un-reconciled difference in respect of security deposits deducted from the bills raised by the assessee on M/s. BPHDCL.

Earlier the submissions could not be made by the assessee since a copy of the ledger account of the assessee in the books of the said party was not available with the assessee. Now a certified copy has been obtained from the ld. A.O.

The same is marked as Annexure- 'Y'

The reconciliation is being made as under:-

<i>Closing balance as per R.K. Enterprise as on 31.03.2009.....</i>	<i>Rs.57,14,215/-(Dr.)</i>
<i>Closing balance as per R.K. Enterprise as on 31.3.2009</i>	
<i>Less: difference amount in opening balance as on 1.4.2008</i>	
<i>Opening balance as per the books of BPHDCL.....</i>	<i>Rs.39,53,096)Cr.)</i>
<i>Less: Opening balance as per the books of RKE...Rs.40,63,473/-(Dr)</i>	
	<i>-----Rs.1,10,377/-</i>
<i>Closing balance as per M/s. BPHDCL as on 31.03.2009</i>	<i>Rs.56,03,838/-(Cr.)</i>

It is submitted that since the entire difference of Rs.1,10,377/- is in the opening balance figure, no addition is warranted in the year in question".

6. After taking into consideration the reconciliation filed by the assessee, the remand report submitted by the Assessing Officer and the counter comments offered by the assessee, the ld. CIT(Appeals) found no merit in the stand of the assessee taken on this issue and proceeded to confirm the addition made by the assessee for the following reasons given in his impugned order:-

"The appellant shown difference due to M/s. Bengal Peerless Housing Development Corporation Limited (BPHDCL) has made deductions against bill submitted by the appellant. The appellant did not file any supporting evidence. From this it proves that the

deductions have been made by M/s. Bengal Peerless Housing Development Corporation Limited (BPHDCL) and the appellant did not file any confirmation to M/s. Bengal Peerless Housing Development Corporation Limited (BPHDCL).

The appellant filed the reconciliation statement during the appellate proceeding. The A/R could not file any supporting evidences like relevant bills and confirmation from M/s. Bengal Peerless Housing Development Corporation Limited (BPHDCL). The entire submission based on his books of accounts. The appellant failed to file substantial material to reconcile the difference. Considering the totality of the case I am of the view that the action of the Assessing Officer is as per law by adding Rs.23,60,918/- as Income. Therefore, I confirm the addition of Rs.23,60,918/-.

This ground is related to the addition made by the Assessing Officer amounting to Rs.1,10,377/- in respect of Security Deposit with M/s. Bengal Peerless Housing Development Corporation Limited (BPHDCL). The appellant did not file any explanation at the time of assessment as well as appellate proceedings. The AIR of the appellant only filed submission stating that this difference is not belonging to this year and the appellant also not filed any supporting evidence regarding this difference. Therefore, I confirm the addition made by the Assessing Officer of Rs.1,10,377/-.

Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

7. We have heard the arguments of both the sides and also perused the relevant material available on record. The Id. counsel for the assessee has invited our attention to the reconciliation statement furnished at page nos. 15 & 16 of his paper book and submitted that the entire difference in the balance and deposit account with M/s. BPHDCL as pointed out by the Assessing Officer was duly explained by the assessee before the Id. CIT(Appeals). He reiterated that the said difference was mainly on account of difference in opening balance in the account of M/s. BPHDCL, which was accumulated over the years and the same, therefore, could not be added to the total income of the assessee. We are unable to accept this contention of the Id. counsel for the assessee. As pointed out by the Assessing Officer, there was a difference in the balance and Deposit Account with M/s. BPHDCL as on 31.03.2009, inasmuch as the credit balance shown by the assessee in the name of the said party was more

than the debit balance appearing in the name of the assessee as per the books of account of the said party. The onus, therefore, was on the assessee to explain the said difference to the satisfaction of the Assessing Officer and although the reconciliation statement was prepared and furnished by the assessee explaining the said difference before the Id. CIT(Appeals), there was no documentary evidence filed by the assessee to support and substantiate the difference. When this aspect was brought to the notice of the Id. counsel for the assessee and it was made clear to him that the onus is on the assessee to explain fully the difference in the balance and deposit account with M/s. BPHDCL as on 31.03.2009 and unless and until the same is satisfactorily discharged by the assessee, it cannot be ascertained as to what extent the difference pertains to the year under consideration and the difference pertains to the earlier years in order to compute the exact addition, if any, to be made on account of such difference, he has urged that one more opportunity may be given to the assessee to do this exercise. Since the Id. D.R. has not raised any objection in this regard, we set aside the impugned order of the Id. CIT(Appeals) on this issue and restore the matter to the Assessing Officer with a direction to decide the same afresh after giving the assessee one more opportunity of reconciling the difference.

8. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on April 27, 2016.

Sd/-

(S.S. Viswanethra Ravi)
Judicial Member

Sd/-

(P.M. Jagtap)
Accountant Member

Kolkata, the 27th day of April, 2016

Copies to : (1) ***Shri Gouranga Modak,***
BA-15/10B, Deshbandhunagar,
Baguiati,
Kolkata-700 059

**(2) Assistant Commissioner of Income Tax,
Circle-49, Kolkata,
Aayakar Bhawan,
Bamboo Villa,
169, A.J.C. Bose Road,
Kolkata-700 014**

- (3) *Commissioner of Income-tax (Appeals)-XXXII, Kolkata*
(4) *Commissioner of Income Tax, Kolkata*
(5) *The Departmental Representative*
(6) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.