

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "ए" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

BEFORE HON'BLE S/SHRI JOGINDER SINGH (JM), AND RAJESH KUMAR,(AM)

आयकर अपील सं./I.T.A. No.6753/Mum/2014

(निर्धारण वर्ष / Assessment Year :2010-11)

M/s Alumilite Architectural Pvt Ltd., 5 th floor, Dhiraj Chambers, Hazarimal Somani Marg, Fort, Mumbai-400001	बनाम/ Vs.	Dy.Commissioner of Income Tax 1(1), Room No.533, Aayakar Bhavan, M K Road, Mumbai-400020
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./PAN No. :AABCA0567C

अपीलार्थी ओर से / Appellant by:	Shri Biren Gabhawala
प्रत्यर्थी की ओर से/Respondent by	Shri Saurabh Deshpande

सुनवाई की तारीख / Date of Hearing : 28.8.2017

घोषणा की तारीख /Date of Pronouncement : 28. 9.2017

आदेश / O R D E R

Per RAJESH KUMAR, Accountant Member:

This is an appeal filed by the assessee and is directed against the order of the Ld. CIT(A)-1, Mumbai dated 1.09.2014 pertaining to A.Y.2010-11.

2. The issue raised in the grounds of appeal no.1 and 2 is against the upholding the disallowance Rs.30,09,259/- by the Id.CIT(A) as made by the AO on account of wages paid at various sites.

3. Facts in brief are that the assessee is rendering various contractual services to various parties. During the course of survey proceedings it was found that the assessee was making contract payments through two persons namely Shri Shri Dogdu Kadam and Shri Dinesh Ojha who were employed

with the sister concern of the assessee were not supported by documentary evidences. These payments were made through bearer cheques. During the year, an amount of Rs.7,36,129/- has been paid to Shri Dinesh Ojha and Rs.22,73,130/- was paid to Shri Dagdu Kadam . As per the assessee the actual payments through Shri Dagdu Kadam were to the tune of Rs. 16,07,870/- and not Rs. 22,73,130/-. It was stated during the course of statement recorded u/s 131 these were collected for the purpose of disbursement of the labour/wages and also produced sheet of signatures of the recipient of the labour payments. However, the AO issued show cause notice dated 13.2.2013 to the assessee to show cause as to why the payments to these two persons should not be treated as non-genuine, which was replied by the assessee on 19.2.2013 submitting therein that Mr.Dagdu Kadam is a supervisor who is responsible to visit and look after various sites and pay daily labour/salary on the sites also. However, the AO did not accept the contention of the assessee on the ground that Mr.Dinesh Ojha in his statement recorded on 25.4.2012 stated that he has not taken any cash and denied to have made any such payments, however, Shri Dinesh Ojha stated that he gave cash payments when requisition was received from the Supervisor. The AO also observed that the assessee has not supplied bills and vouchers of cash payments and finally added the same to the total income of the assessee.

4. In the appellate proceedings, the Id. CIT(A) dismissed the appeal of the assessee after considering the reply of the assessee vide para 5.3 of the appellate order:

"5.3 I have considered the facts and circumstances of the case, the submissions of the appellant and the assessment order. The arguments and submissions of the appellant do not address the finding of the AO that the amount stated to be business expenditure, made through Dinesh Ojha and Dagdu Kadam, were not duly accounted either by them or by the appellant. It has also been particularly noted by the AO that wage and labourers slips were signed by the same person on behalf of several persons. From the facts and circumstances-of the case, it is obvious that there is no proper accounting and evidence of expenditure having been actually incurred for the purposes of business in respect of labour and contract payments. The AO has given detailed and relevant finding in the assessment order, as also reproduced above, which shows that admittedly no record was maintained by Mr. Dagdu Kadam and no explanation is available in respect of payments made through Dinesh Ojha. Under such facts and circumstances as noted above, I do not find any material or evidence in support of appellant's contention to interfere with the finding of the AO on this issue. The essential requirements of proof of expenditure having been actually incurred for the purposes of business and that the expenditure was genuine, are not satisfied in respect of these payments of Rs. 30,09,259/- or Rs.16,01,807/- pertaining to the current year as the case may be. Contrarily there is evidence and material, as discussed above proving the fact that 'no record and accounting was maintained for the expenditure so made and there is also no proof establishing the genuineness of expenditure. It was held in the case of CIT Vs. 5.G. Exports (P&H) 336 ITR that 'Labour charges - Onus on assessee to identify parties along with evidence of payment'. The appellant has not discharged the onus in respect of these payments. In view of the above facts and circumstances of the case, Ground NO.1 of Appeal is dismissed.

As regards quantum of expenditure relating to current year. The AO is directed to verify the amount of Rs.16,01,807/- and /or Rs.30,09,259 from relevant records and disallow the amount relating to current year only."

5. We have carefully considered the rival contentions and perused the material placed before us including the orders of authorities below. We find that the assessee is a contractor and developing/working on various sites for which labourers were employed and supervised by Shri Dada Kadam and he used to disburse the salaries in cash at the sites by taking the same on the basis of requisition from Mr. Dinesh Ojha who was cashier of the assessee. During the course of hearing before us, the assessee produced the some sample receipts taken from the laborers which proved that the assessee has maintained books and other records of the payments to the laborers. It is customary in the business of construction to pay wages through the Supervisor/munshis and therefore, we are in agreement with the conclusion drawn by the Id.CIT(A) that all these payments were not genuine. However some reasonable disallowance should meet the ends of justice as the assessee has failed to furnish the necessary documentary evidences before the lower authorities. Accordingly we direct the AO to restrict disallowance on account various deficiencies and non vouched cash payments at Rs.20,00,000/-This ground is partly allowed.

6. The second ground of appeal is with regard to upholding of addition of Rs.63,80,442/- being estimated profit on work-in-progress as appeared in profit and loss account amounting to Rs.2,76,83,279/- by the Id.CIT(A).

7. Facts of the issue are that during the course of assessment proceedings, the AO noticed that the assessee has not billed the goods cleared with excise component despite physical delivery of goods to the

clients and therefore work-in-progress represented goods of unbilled sale during of the year. Accordingly, the AO proposed to bring to tax the said unbilled sale during the year which was shown as WIP of Rs.2,76,83,279/-. The AO issued show cause notice dated 13.2.2013 to explain as to why the GP on the unbilled sale should not be added to the income of the assessee which was replied by the assessee and incorporated at page 4 and 5 of the assessment order and reads as under:-

"A sum of Rs. 2,76,83,279/- has been shown as work-in-progress for which details are enclosed herewith. Kindly note that our client has various sites where they install Aluminum doors and window. The goods sent to various sites shown as work-in-progress for which work is not completed. The final windows are installed and satisfied by client then the final invoice will be issued. During the year the amount has been shown as work-in-progress which represents stock and profit which is appearing in P and Loss A/c. The copy of the Profit and Loss A/c and the details of work in progress are enclosed herewith for your kind consideration:"

4.2 In continuation with its earlier submission, the assessee made another submission dated 02.03.2013 which is reproduced below:

"the work-in-progress is situated at various site levels since for most of them invoices are not affected till work is completed.

Kindly note that the work-in-progress and the closing stock are shown in the Profit and Loss A/c has corresponding effect in the Gross Profit and Net Profit of the company. The detailed work in progress of the same is enclosed herewith as per Annexure "A", "B", and "C"."

However, the reply of the assessee did not find favour with the AO and he added a sum of Rs. 63,80,442/- by taking 28.81 % profit on the amount of WIP and allowing 20% towards cost to be incurred at the final stage of execution of the work. In the appellate proceedings, the Id.CIT(A) dismissed the appeal of the assessee after considering the reply and arguments of the

assessee as incorporated in para 6.1 of the appellate order by observing and holding as under :

"6.2 I have considered the facts and circumstances of the case, the submissions of the appellant and the assessment order. It is verified fact that billing of the goods physically delivered to the clients was not done and same were accounted in work-in-progress. It is strange to the Accounting Standards/norms that once goods are delivered to the clients, the same amounts to sale and there is no justification for retaining the amounts of such sale under work-in-progress. In fact, delivery of goods in case of movable articles amounts to completed sale and it is liable to be accounted as sales. Retaining such amounts in work in progress is complete negation of a transaction and amounts to its wrong accounting when it is included in work in progress. The AO has discussed in detail bringing on record that the delivered goods amount to sale and profit on such transactions is liable to be included in determining the income of the year; as per Mercantile System of Accounting.

6.2.1 The AO has also considered the submissions of the appellant before him, so as to treat such sales and related amounts as part of contract work and that is why the AO has taken 90% of the work done as discussed in para 4.3(d) of the assessment order, reproduced above. The ratio of Gross Profit are also taken after consideration of the facts and figures and worksheets furnished by the appellant during the hearing before the AO, noted in para 4.3(f) of the assessment order reproduced above.

6.2.2 Under such facts and circumstances as noted above, I do not find any material or evidence in support of appellant's contention to interfere with the finding of the AO on this issue. Therefore, Ground no.2 of appeal is dismissed."

Aggrieved by the order of Id.CIT(A) the assessee is before us.

8. The Id. AR vehemently submitted before us that it is a routine and customary in the business of assessee to have WIP as the assessee is engaged in the business of manufacturing of Aluminium doors and windows including glasswork and supplies materials at various sites to complete

installation work. The fabrication work of doors and windows were carried out at the sites of the customers as per the requisition and specifications of the customers. Therefore, at the year end, there was always some material on which some work has been carried out and some is pending. Therefore uncompleted work is treated as WIP at the year end and offered to tax the movement it is completed. Moreover the closing WIP is automatically carried forward to the next year and whatever profit is earned stands atomically adjusted and offered to tax in the system of accounting followed by the assessee. The Id. AR filed a chart showing the details of carried forward WIP pointing out that in the assessment years 2009-10, 2011-12 and 2012-13, the similar additions based on GP on WIP were deleted by the Id.CIT(A).

9. On the other hand, the Id.DR relied on the orders of authorities below by praying that the same should be confirmed.

10. We have heard the rival parties and perused the relevant materials placed before us. We find that the assessee has been regularly showing the WIP in its accounts which represents the unbilled work done on behalf of the various clients. The nature of business of the assessee is such that materials are normally delivered at the sites of the customers/ contractor's and necessary modifications and fittings are done at the site of the project. At the yearend incomplete work is shown as WIP. This is a regular feature in business of the assessee. The WIP is automatically accounted for in the next year and also billed accordingly

depending upon the completion of work and profit on the said amount is offered to tax accordingly. We find merit in the submissions of the Id.AR and has gone through the previous years in which the Id.CIT(A) has deleted the similar additions made by the department. The department has not further appealed before the higher forum. In view of these facts and circumstances we are of the considered view that the order of CIT(A) is not correct in upholding the additions and therefore we reverse the same and direct the direct the AO to delete the addition.

11. The issue raised in ground no.3 is against the confirmation of disallowance of Rs.15,70,393/- being 10% of the cash expenses incurred .

12. During the course of assessment proceedings, the AO observed that the assessee has incurred the expenses in cash to the tune of Rs.1,57,03,922/- of which the assessee could not furnish the complete books , bills and vouchers for verification. As a result the AO disallowed the 10% of the total expenses towards unproved and unsubstantiated cash expenses u/s 40(A)(3).

13 In the appellate proceedings, the Id.CIT(A) sustained the addition by observing and holding as under :

"7.2 I have considered the facts and circumstances of the case, the submissions of the appellant and the assessment order, It has been categorically noted by the AO that 'The assessee furnished the vouchers for the cash expenses. incurred. However, from the vouchers furnished it was found that the assessee did not furnish the complete vouchers for the total expenses incurred in cash, and many vouchers were signed by the same person'. The expenses so claimed are part of

general deduction to be considered u/s 37(1) of the I.T. Act, 1961 r.w. section 40A (3), It was held in the case of Attar Singh Gurmukh Singh Vs. ITO (1991) 55 Taxman 388 (All) that, 'Section 40A(3) is attracted to payments made for acquiring a stock-in-trade and other materials, purchase of goods or in respect of any expenditure, which is deductible under sections 30 to 37.' It is a case where the expenses so claimed by appellant, incurred in cash are not proved to the satisfaction of the AG. It was held the case of CIT Vs. Modi Stone Ltd. (Del) 203 Taxman 123 that, 'Mere production vouchers in support of the claim for deduction of the expenditure would not prove the claim made by the assessee. It is his duty to prove payment especially when the ITO doubts the genuineness thereof. Therefore, I find that the disallowance made by the AO is justified as per law and under the facts and circumstances of the case. The estimation of disallowance is also appropriate and reasonable at 10% of the total expenditure. Accordingly, Ground no.3 of appeal is dismissed for the reasons as above."

14. We have considered the contention of the parties and perused the facts of the case from the relevant records placed before us. After perusing the provisions of section 40A(3) of the Act, we are of the view that the disallowance has been made under the wrong provisions of the Act. For the sake of convenience and ready reference we reproduce the provisions of section 40A(3) of the Act as under:

"Expenses or payments not deductible in certain circumstances.

40A.....

(3) Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, [exceeds twenty thousand rupees,] no deduction shall be allowed in respect of such expenditure."

15. Thus it is clear from the above provision of section 40A(3) of the Act that the expenses exceeding Rs.20,000/- incurred in cash would be

disallowed u/s section 40A(3) of the Act. But in the instant case the AO has made estimation which has been confirmed by the Id.CIT(A). Therefore, we are inclined to set aside the order of the Id.CIT(A) on this issue for the reasons that no disallowance is possible u/s 40A(3) of the Act on estimation and adhoc basis and direct he AO to delete the addition.

16. In the result, the appeal of the assessee is allowed.

घोषणा खुले न्यायालय में दिनांक: 28th Sept. 2017 को की गई ।

Sd

sd

(JOGINDER SINGH)
Judicial Member

(RAJESH KUMAR)
Accountant Member

मुंबई Mumbai: 28.9.2017

व.नि.स./ 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)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

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आदेशानुसार/ BY ORDER,

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