

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH : KOLKATA

[Before Hon’ble Shri Aby. T. Varkey, JM & Shri M.Balaganesh, AM ]

I.T.A No. 1400/Kol/2015

Assessment Year : 2011-12

DCIT, Circle-Gangtok, Sikkim

-vs-

M/s J.K. Engineering (P) Ltd.

[PAN: AABCJ 9413 G]

(Appellant)

(Respondent)

For the Appellant : Shri David Z. Chowngthu, Addl. CIT (DR)

For the Respondent : Shri Subash Agarwal, Advocate

Date of Hearing : 27.09.2017

Date of Pronouncement : 01.11.2017

**ORDER**

**Per M.Balaganesh, AM**

1. This appeal by the Revenue arises out of the order of the Learned Commissioner of Income Tax (Appeals) –Siliguri [in short the ld CITA] in Appeal No. 66/CIT(A)/Slg/2014-15 dated 03.09.2015 against the order passed by the DCIT, Circle-Gangtok, Sikkim [ in short the ld AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 28.02.2014 for the Assessment Year 2011-12.

2. The only issue to be decided in this appeal is as to whether the ld CITA was justified in reducing the disallowance of expenses to Rs 10,00,000/- in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee filed its return of income for the Asst Year 2011-12 on 8.2.2013 disclosing total income of Rs 29,03,686/-. The assessee is a civil contractor in Sikkim and had executed contract works worth Rs 19,41,60,768/- and

also effected sale of materials to the tune of Rs 44,80,475/-. The net profit declared by the assessee works out to 1.46% of the total turnover of the assessee. The Id AO observed that the net profit declared by the assessee is abysmally low and sought to examine the various expenditures debited in the profit and loss account. The assessee vide its written submission dated 12.12.2013 stated the reason for low net profit margin was due to logistic difficulties like cost of transportation and labour in sikkim. The Id AO observed that the assessee had debited the following expenses which in the opinion of the Id AO was disproportionate :-

1. Conveyance allowance	:	Rs.	21,05,094/-
2. Fuel Expenses	:	Rs.	51,20,458/-
3. General Expenses	:	Rs.	13,46,368/-
4. Office Expenses	:	Rs.	13,96,526/-
5. Repair & Maintenance	:	Rs.	24,14,568/-
6. Sales promotion	:	Rs.	5,70,696/-
7. Travelling Expenses	:	Rs.	16,51,967/-
8. Telephone & Mobile	:	Rs.	6,48,157/-
9. Advertisement Expenses	:	Rs.	1,50,625/-
10. Electricity Expenses	:	Rs.	17,50,219/-
11. Internet charges	:	Rs.	2,15,690/-
12. Architect Fees	:	Rs.	8,25,149/-
13. Printing & Stationery	:	Rs.	6,45,789/-
14. Security Charges	:	Rs.	6,85,690/-
15. Staff welfare Expenses	:	Rs.	<u>3,85,936/-</u>
<u>Total</u>	:	Rs.	<u>199,12,928/-</u>

The Id AO observed that no bills and vouchers could be produced by the assessee for verification of the aforesaid expenditure. In view of very low net profit margin declared by the assessee, based on comparable cases (though not mentioned in the assessment order) the Id AO resorted to disallow 30% of aforesaid expenditure of Rs 1,99,12,928/- and arrived at the disallowance figure of Rs 59,73,880/- in the assessment. This worked out to net profit of 4.47% of turnover.

4. Before the Id CITA, the assessee argued that the books of accounts were not rejected by the Id AO and hence he ought not to have resorted to make any disallowance of expenditure on an adhoc basis. The assessee argued that the Id AO based on comparable cases had resorted to make adhoc disallowance in the assessment, but no such comparable cases were furnished in the assessment order. The Id CITA held that the expenditure shown by the assessee under the aforesaid heads are indeed high compared to the turnover and nature of its business. In the business of civil contract, site expenses are generally booked through self made debit vouchers and the assessee has not denied the same. He further held that it is not possible for the Id AO to examine all such expenses as the addresses of the recipients are not mentioned on those vouchers. Therefore, the possibility of inflation of such expenses cannot be ruled out. Accordingly on overall consideration of the facts and circumstances of the case, he restricted the disallowance figure to Rs 10,00,000/- and granted relief in the sum of Rs 49,73,880/-. Aggrieved, the revenue is in appeal before us on the following grounds:-

*1. That the learned CIT(Appeals), Siliguri has failed to appreciate that the primary onus of proof of establishing the actual rate of profit for the works contracts executed in Sikkim which lies on the assessee, was not discharged.*

*2. That on the facts and circumstances of the case, the learned CIT(Appeals), Siliguri has failed to appreciate the fact that the assessee was unable to produce bills/vouchers in support of the expenses it has claimed disproportionately to arrive at a very low net profit.*

*3. That therefore, the learned CIT(Appeals), Siliguri erred in law as well as facts of the case in directing the reduce the addition at Rs. 10,00,000/- made by the Assessing Officer –*

*(a) Reliance is placed on the ratio of following judgments:*

*(i) CIT vs. S.P. Nayak and Ramesh M (235 ITR 94), and*

*(ii) CIT vs. H.M. Esufali & H.M. Abu Ali [90 ITR 271 (SC)]*

*4. That the appellant craves leave to add, amend or alter the grounds of appeal, if any.*

5. We have heard the rival submissions. We find that no supporting evidences were submitted by the assessee with regard to the aforesaid 15 items of expenditure either before the Id AO / Id CITA or even before us. This fact is not in dispute before us. Hence there is no question of finding any defect in the evidences submitted thereon and thereafter resorting to rejection of books of accounts u/s 145(3) of the Act. Hence the argument advanced in this regard by the Id AR is summarily rejected. We find that the assessee had declared net profit at 1.47% of turnover. The Id AO increased the same to 4.47% which is on the higher side. After the restriction of disallowance of expenses to Rs 10,00,000/- by the Id CITA, the net profit works out to 1.97%. Hence we find that the net profit of 1.97% would meet the ends of justice in the instant case. Hence we do not find any infirmity in the order of the Id CITA. Accordingly, the grounds raised by the revenue are dismissed.

6. In the result, the appeal of the revenue is dismissed.

**Order pronounced in the Court on 01.11.2017**

Sd/-  
 [A.T. Varkey]  
 Judicial Member

Sd/-  
 [ M.Balaganesh ]  
 Accountant Member

Dated : 01.11.2017

SB, Sr. PS

Copy of the order forwarded to:

1. DCIT, Circle-Gangtok, Sikkim, Aayakar Bhawan, Income Tax Office, Bhanupath, Near White Memorial Hall, P.O.Raj Bhawan, Gangtok-737103.
2. M/s J.K. Engineering (P) Ltd., 32<sup>nd</sup> Mile, Middle Camp, Singtam, East Sikkim-737134.
- 3..C.I.T.(A)-Siliguri                      4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary  
 Head of Office/D.D.O., ITAT, Kolkata Benches

