

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

[Before Hon’ble Sri N.V.Vasudevan, JM & Shri Waseem Ahmed, AM]

I.T.A No. 1578/Kol/2011
Assessment Year : 2003-04

D.C.I.T., Circle-2,
Kolkata

(Appellant)

-vs- M/s. Vai Engineering & Automation
Pvt. Ltd., Kolkata
[PAN : AAACV 1014 E]

(Respondent)

C.O.No.72/Kol/2011
(A/o ITA No.1578/Kol/2011)
Assessment Year : 2003-04

M/s. Vai Engineering & Automation
Pvt. Ltd., Kolkata
[PAN : AAACV 1014E]
(Cross Objector)

-vs- D.C.I.T., Circle-2,
Kolkata

(Respondent)

For the Department : Shri David Z.Chawngthu, Addl.CIT(Sr.DR)
For the Assessee : Shri Saurbh Kedia, AR

Date of Hearing : 26.07.2017
Date of Pronouncement : 31.07.2017.

ORDER

Per N.V.Vasudevan, JM

I.T.No.1578/Kol/2011 is an appeal by the Revenue against the order dated 02.08.2011 of CIT(A)-I, Kolkata, relating to AY 2003-04. The Assessee has filed Cross Objection No.72/Kol/2011 against the very same order of CIT(A).

2. Grounds of appeal raised by the revenue in its appeal read as follows :-

“1. That on the facts & circumstances of the case Ld. CIT(A) erred both on the facts & in law in deleting the addition of Rs.4,99,36,753/- made on account of unaccounted sale proceeds.

2. *That on the facts & circumstances of the case Ld. CIT(A) erred in relying only on the Remand report of the AO, where the AO could not understand how the difference was worked out.*

3. *That on the facts & circumstances of the case, the Ld. CIT(A) has erred in not deciding the issue on the facts of the case, particularly that the assessee did not account for the bills to be raised for the year although it was following mercantile system of accounting*

4. *The appellant craves leave to amend, modify and alter any grounds of appeal during course of hearing of the case.*

3. Grounds of appeal raised by the assessee in the Cross Objection read as follows :-

“1.That on the facts and in the circumstances of the case, the Ld.CIT(A) erred in confirming that the order passed by the Assessing Officer u/s 147/143 (3) of the Act was not barred by limitation, although it was served on the appellant on 15th May 2009 much after the due date of completion of assessment (i.e 31 st December 2008) which is against the principles laid down by various courts regarding completion of assessment proceedings.

2.That on the facts and in the circumstances of the case, the Ld.CIT(A) erred in not adjudicating on the issue that the reassessment proceedings was not valid which was initiated without having any "reasons to belief" since no explanations were offered by the Assessing Officer neither during the re-assessment proceedings nor in the order u/s 147/143(3) as to how the income escaping assessment amounting to Rs.4, 99,36,753/- have been arrived at.

3.That on the facts and in the circumstances of the case, the Ld.CIT(A) erred in not adjudicating on the issue that the re-assessment proceedings u/s 147 of the Act was not valid on a point which had been examined by the assessing officer at the time of scrutiny assessment proceedings u/s.143(3) of the Act, in view of principle laid down by the Apex Court in the case of CIT vs Kelvinator of India Ltd reported in 320 ITR 561 that re-assessment proceedings cannot be initiated on the basis of a mere change in opinion.

4.That the appellant craves leave to add to and/or alter, amend, modify or rescind the grounds hereinabove before or at the time of hearing of this appeal.”

4. The Assessee is a company engaged in the business of acting as consulting engineers doing designing and construction and also automation. The assessee filed its return of income for A.Y.2003-04 on 28.11.2003 disclosing loss of Rs.1,78,44,440/-. An order of assessment dated 30.03.2006 was passed u/s 143(3) of the Income Tax ITA No.1578/Kol/2011 and CO No.72/Kol/2011 M/s. Vai Engineering Automation P.Ltd A.Y.2003-04 2

Act, 1961 (Act) determining the total loss of the assessee at Rs.59,76,533/-. Subsequently the on the alleged ground that that income of the assessee chargeable to tax for A.Y.2003-04 had escaped assessment, the AO initiated reassessment proceedings u/s.147 of the Act. Accordingly the AO, after recording reasons for initiating proceedings u/s 147 of the Act, issued a notice u/s 148 of the Act dated 18.02.2008. The reasons recorded by the AO for initiating proceedings u/s 147 of the Act was as follows :-

“Assessee submitted its ROI AY 2003-04 on 28/11/03 disclosed loss of Rs.1,78,44,440/-. The case was duly processed on 30.3.2005 u/s 143(1) and subsequently u/s 143(3) on 30.3.2006. On scrutiny of Form 3CEB it is revealed that total sales during the yr was Rs.20,66,10,752/- instead of Rs.15,66,73,999/-. Thus the resulting Escapement of Income by Rs.4,99,36,753/- involving potential tax effect of Rs.,2,16,72,238/- including interest u/s 58,81,886/- totaling to Rs.2,38,68,613/-.

Scrutiny further revealed that during the F.Y. the assessee had reimbursed Rs.31.10 lakh by its associated enterprises for providing services at their premises. But the above reimbursement had not but taken into account as income in amount. Non consideration had resulted in over assessment of loss of Rs.31.16 lakh involving potential tax effect of 11.45 lakh.

So, there is enough reason to believe that the case is a fit case reopening u/s 147 of I.T.Act 1961. Issue of notice u/s 148 for A.Y. 2003-04.

5. In the re-assessment proceedings, the AO after making a reference to the audit objection based on which reasons for initiating proceedings u/s 147 of the Act were recorded by the AO, concluded that the assessee had suppressed the income to the extent of Rs.4,99,36,753/-. The following were the audit objections in this regard :-

“(i) Scrutiny of records revealed that total sales of Rs.15,66,73,999/- was credited to P&L A/cs for the year 2002-03 which included Rs. 5,40,30,570/- received/receivable from three associates enterprises as service charges. From the details of sales, it was seen that total sales included sales to 12 domestic companies and sale of spare parts and service charges from 3 foreign companies (associates enterprises in Austria and U.K.). Further scrutiny of the details of sales revealed that sales to some of the domestic companies were arrived at as follows:-

Amount against invoice raised for the period 02-03

Add:- Amount against invoice raised as per last year (01-02)

Less:- Amount against invoice to be raised for the year 02-03

Total Amount of sales for the year 2002-03 (as shown)

As the assessee followed mercantile method of accounts, the amount of sales for the year 2002-03 was required to be calculated as follows:-

Amount against invoice raised for the period 02-03

Less: - Amount against invoice raised for the last year (01-02)

Add:- Amount against invoice to be raised for the year 02-03

Total Amount of sales for the year 2002-03

From annexure 'B' to form 3CEB it was revealed that total amount of services rendered to 3 associate enterprises during the year was Rs. 5,47,38,201 instead of Rs. 5,40,30,570.

Thus, by adopting the mercantile system of accounting as calculated above, the total sales for the year 2002-03 would work out to be Rs. 20,66,10,752/- instead of Rs. 15,66,73,99 this resulted in under assessment of income of Rs. 4,99,36,753/-.”

6. The stand of the assessee on the above objections was that the difference between the assessee's declaration of quantum of revenue from execution of contracts and the department's quantum of revenue from contracts is because the assessee was following Accounting Standard-7 (AS-7) of the Institute of Chartered Accountants of India (ICAI) for revenue recognition purpose, that is Percentage Completion Method of revenue recognition whereas the department has proceeded on a different basis ignoring the regular method of accounting employed by the assessee and accepted by the revenue in assessee's own case in the past assessment. This objection was rejected by the AO for the following reasons :-

“Overall it is stated by the A/R and in written submission that the difference between the assessee's consideration of the quantum of revenue and the Department's conclusion about that is mainly based on the fact that proper reconciliation has not been made by the Department. It is also stated that the company is consistently following Accounting Standard-7 for its Revenue Recognition purpose. AS-7 is adopted by the company and as per that standard the company is following Percentage Completion Method for Revenue Recognition. It has been emphasized at the time of hearing that by following this method, contract costs are usually recognized as an expense in the statement of profit and loss in the accounting periods in which the work to which they relate is performed. The total revenue is determined on Percentage Completion Method which is arrived by the following formula.-

$$\text{P.O.C. Revenue} = \frac{\text{Total Actual Cost} \times \text{Total Revenue}}{\text{Total Estimated Cost}}$$

Though the assessee company had tried to establish their reasoning by citing several examples but they failed to reconcile the actual figure of sale during the year and the discrepancies mentioned above amounting Rs. 4,99,36,753/-, which ultimately remained as it is. In view of this, the total sale of the company is to be taken as Rs. 20,66,10,752/- instead of Rs. 15,66,73,999/- as claimed by the assessee and thereby a sum of Rs. 4,99,36,753/- to be added back to the total income of the assessee. Since the assessee has not furnished accurate particulars of his income and sales remain suppressed to the tune of Rs.4.99 crores.,”

7. No other addition was made in the order of assessment passed u/s 147 of the Act dated 31.12.2008.

8. Aggrieved by the order of AO, the assessee preferred appeal before CIT(A). Before CIT(A) the assessee raised contention that the initiation of re-assessment proceedings by the AO was barred by limitation and there was no valid reason to believe based on which the AO could have initiated reassessment proceedings against the assessee and that the initiation of re-assessment proceedings was purely based on change of opinion and that re-assessment proceedings cannot be initiated merely based on change of opinion. Besides the above, the assessee also pointed out that the method of accounting regularly employed in recognizing revenue from contracts and submitted that it had properly recognised revenue from contracts as per AS-7 of ICAI.

9. The CIT(A) called for a remand report from AO. The AO, after going through all the details filed by the assessee, gave a remand report dated 16.03.2011 to CIT(A) in which he accepted that the assessee has duly recognised income from execution of various contracts. The following were the relevant observations by the AO in his remand report :-

“Each of the project-wise revenue workings were gone through. Similar invoices and party-wise details were also submitted during the regular scrutiny assessment and the total revenue as shown in Schedule-8 of the Accounts tallied with the details furnished during the hearing, except for an amount of Rs.6,002/- (i.e. Rs.15,66,73,999 – 15,66,67,997). However, this difference does not impact the Revenue as higher figure is considered in the books of account as well as total income of the assessee.

That apart, it was again not understood as how the difference of sales value was arrived at by the AO aggregating to Rs.4.99 crore and presumably a gap exists in his findings which could not be reconciled.”

10. It is also pertinent to mention that in the remand report the AO has observed that the initiation of reassessment proceedings were based on the audit objection which refers to Annexure-1 to the audit objection wherein computation of the manner of arriving at the suppression of revenue by the assessee has been set out. In the remand report the AO has observed that the manner of working of suppressed revenue was worked out as per Annexure-1 but Annexure-1 was not annexed with the memo of objection (audit objection).

11. The CIT(A) on consideration of the remand report held that there was no basis for the addition made by the AO and he accordingly deleted the addition made by the AO. The following were the observations of CIT(A) :-

“The A.O. had made the addition of RS.4,99,36,753/- on account of unaccounted sales. In this regard, remand report called from the A.O. and it was submitted by the A.O. as reproduced below:

“Each of the project-wise revenue workings were gone through. Similar invoices and party-wise details were also submitted during the regular scrutiny assessment and the total revenue as shown in Schedule-8 of the Accounts tallied with the details furnished during the hearing, except for an amount of Rs. 6,002/- (i. e. Rs. 15,66,73,999 - 15,66,67,997). However, this difference does not impact the Revenue as higher figure is considered in the books of account as well as total income of the assessee.

That apart, it was again not understood as how the difference of sales value was arrived at by the AO aggregating to RS.4.99 crare and presumably a gap exists in his findings which could not be reconciled. ”

Thus, the A.O. has admitted that it was not understood how the addition was made aggregating Rs.4.99 crores. He has further submitted presumably a gap exists in the findings which could not be reconciled. The appellant has given reply to the remand report and it was stated that the entire addition was made on sheer surmise and without any material on record.

In view of the foregoing discussion, the A.O. is directed to delete the addition. The appellant gets relief on this issue.”

12. As far as the validity of initiating of reassessment proceedings is concerned the CIT(A) did not go into the merits of the validity of initiation of reassessment proceeding because he was of the view that since the assessee has succeeded on merits the relevant grounds need not be adjudicated.

13. Aggrieved by the order of CIT(A) deleting the addition made by the AO the revenue has preferred appeal before the tribunal. Aggrieved by the order of CIT(A) in not adjudicating the grounds with regard to the validity of initiating of reassessment proceedings, the assessee has filed cross objection before the Tribunal.

14. We have heard the rival submissions. The Id. DR could not point out before us as to how the conclusions arrived at by CIT(A) are not correct. His prayer was that the issue should be remanded to the AO to verify all the details and then come to a conclusion that there was no suppression of revenue from contracts. The Id. Counsel for the assessee placed reliance on the order of CIT(A) and also brought to our notice that even in the original assessment proceedings the assessee has given complete break-up of the revenue from contracts and the manner in which the revenue has recognised by the assessee in his books of accounts. The Id. Counsel for the assessee also submitted that there was no basis for the AO or the revenue audit to come to a conclusion that there was suppression of receipts from contracts to the extent of Rs.4,99,36,753/-. He highlighted the fact that no basis for working was given even in the audit objection or by the AO in the order of re-assessment. It was his submission that the initiation of reassessment proceedings was also invalid for the reason that the material before the AO was not sufficient to form belief regarding escapement of income.

15. We have given a very careful consideration to the rival submissions and are of the view that order of CIT(A) does not call for any interference. The assessee for the relevant assessment year had booked sales worth Rs.15,66,67,997/-. The basis on which this sale was recognised has been explained clearly by the assessee as follows :-

“The Revenue Recognised by the company for the AY 2003-04 on the basis of above mentioned Percentage completion methods are as follows:-

“Bhilai Rail Mill A Project:-

POC Revenue as on 31.03.2003(cumulative) =	
9,73,453/105,968,186X115507144 =	43,31,132/ -
Revenue recogmzed till 31.03.2002 =	
(Since the project has started in the current financial year)	Nil
(A) Revenue for the period =	43,31,132/ -

Bhilai Rail Mill B Project:-

POC Revenue as on 31.03.2003(cumulative) =	6,333,656/-
58,09,340/206,337,561X224960349 ==	
Revenue recognized till 31.03.2002 ==	Nil
Since the project has started in the current financial year)	
(B) Revenue for the period =	63,33,656/-

ISPL BBC Project:-

In the same way as mentioned above,	
Cumulative POC Revenue for the project as on 31.03.2003 =	57,971,388/-
Revenue Recognized till 31.03.2002 =	104,84,356/-
(C) Revenue for the period =	47,487,032/ -

Project Vardhaman Special Steels

Cumulative POC Revenue for the project as on 31.03.2003 =	35,554,225/-
Revenue Recognized till 31.03.2002 =	33,688,180/ -
(D) Revenue for the period =	18,66,045/ -

Project UMI VD

Cumulative POC Revenue for the project as on 31.03.2003 =	27,833,199/-
Revenue Recognized till 31.03.2002 =	26,889,596/ -
(E) Revenue for the period =	9,43,523/ -

Project UMI FES

Cumulative POC Revenue for the project as on 31.03.2003	37,732,280/-
Revenue Recognized till 31.03.2002 =	35,676,443/-
(F)Revenue for the period =	20,55,837/-

Project JVSL

Cumulative POC Revenue for the project as on 31.03.2003 =	10,578,210/-
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Revenue Recognized till 31.03.2002 = -	53,37,352/-
(G) Revenue for the period =	52,40,858/-

Project Bhilai Steel Plant

Cumulative POC Revenue for the project as on 31.03.2003	= 166,759,418/-
Revenue Recognized till 31.03.2002 =	158,521,943/-
(H) Revenue for the period =	82,37,475/-

Project Aarti Steels Limited

Cumulative POC Revenue for the project as on 31.03.2003	= 27,707,785/-
Revenue Recognized till 31.03.2002 =	26,476,168/-
(I) Revenue for the period =	12,31,617/-

Project Tisco CTC

Cumulative POC Revenue for the project as on 31.03.2003 =	13,54,378/-
Revenue recognized till 31.03.2002 =	Nil
(Since the project has started in the current financial year)	
G) Revenue for the period =	13,54,378/-

Project Tisco BF

Cumulative POC Revenue for the project as on 31.03.2003 =	42,49,214/-
Revenue recognized till 31.03.2002 =	Nil
(Since the project has started in the current financial year)	
(K) Revenue for the period =	42,49,214/-

Therefore, adding (A) to (K), Total POC Revenue	= 83,330,765/-
Add: Sale of Ispat BF	= 170,52,500/-
Add: spares & services	= 56,284,732/-
Total Revenue' for the year	<u>156,667,997/-</u>

16. The assessee has also filed the sales invoices in support of his claim which are at pages 5 to 83 of the assessee's paper book. The basis on which the audit objection of suppression revenue by the assessee has been arrived at is not spelt out either in the audit objection or in the order of re-assessment by the AO. In fact the AO in the remand report has clearly admitted that details given by the assessee were correct. The AO has also accepted that there is no material based on which the suppression of revenues by the assessee has been quantified. Thus it is clear that there was no basis for the impugned addition and the same was rightly deleted by CIT(A). We find no ITA No.1578/Kol/2011 and CO No.72/Kol/2011 M/s. Vai Engineering Automation P.Ltd A.Y.2003-04 9

grounds to interfere in the order of CIT(A). Accordingly the appeal of the revenue is dismissed.

17. As far as the cross objection of the assessee is concerned, we are of the view that in the light of dismissal of the revenue's appeal, the grounds raised in the cross objection need not be adjudicated. Accordingly both the appeal and the cross objection are dismissed.

18. In the result the appeal of the revenue and the Cross Objection of the assessee are dismissed.

Order pronounced in the Court on 31.07.2017.

Sd/-
[Waseem Ahmed]
Accountant Member

Sd/-
[N.V.Vasudevan]
Judicial Member

Dated : 31.07.2017.

[RG PS]

Copy of the order forwarded to:

1. M/s. Vai Engineering & Automation Pvt. Ltd., Block-EP, Plot Y-9, Sector-V, Kolkata-700091.
2. D.C.I.T., Circle-2, Kolkata.
3. CIT(A)-I, Kolkata.
4. C.I.T.-I, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

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