

IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'B', KOLKATA

[Before Shri J.Sudhakar Reddy, AM & Shri Aby. T. Varkey, JM]

I.T.A. No. 669/Kol/2015
Assessment Year 2011-12

D.C.I.T., Circle 7(1) Kolkata.....Appellant
P-7, Chowringhee Square,
8th Floor, Room No. 18,
Kolkata - 700069.

M/s. Beekay Vanijya Pvt. Ltd.....Respondent
15, Loudon Street, 3rd Floor,
Kolkata - 700 017
[PAN: AABCB1093Q]

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D.C.I.T., Circle 7(1) Kolkata.....Appellant
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Appearances by:

Shri Saurav Kumar, Addl. CIT (DR) appearing on behalf of the Revenue.
Shri Miraj D. Shah, AR appearing on behalf of the Assessee.

Date of concluding the hearing : September 09, 2017

Date of pronouncing the order : November 17, 2017

ORDER

SHRI J. SUDHAKAR REDDY, AM

These are cross appeals directed against the order of the Commissioner of Income Tax (Appeals) – 4, Kolkata dated 09.03.2015 to the assessment year 2011-12.

2. Facts in brief. The assessee is a company and is engaged in the business of trading in cloths, finance, investment in shares & hire of equipments. During the year, the assessee had given on hiring 14 transit mixer to M/s. Hindustan Construction Company (Dagachu) Bhutan Ltd. (HCC). The scope of work included operation, maintenance, repairs, overhauling and ensuring that there is no breakdown etc. of these machines given on hire.

3. The assessee had in turn given a 'Operation & Maintenance' contract to M/s. Mooncity Vincom Private Limited (which is now called Blueray Trading P. Ltd.) to run, operate, maintain, repair, overhaul and assure continuous running without break down and set up necessary infrastructure with respect to the 14 transit mixtures given on hire to Hindustan Construction Co. (Dagachu) Bhutan Ltd. (HCC). For this, the assessee paid a sum of Rs. 2,15,22,824/- to M/s. Mooncity Vincom Private Limited by an account payee cheques after deducting tax at source as per provisions of Income Tax Act, 1961 ('the Act'). The Assessing Officer during the course of assessment proceedings issue summons to M/s. Mooncity Vincom Private Limited which was later converted as M/s. Persistent Commodities Tradelink Pvt. Ltd. and again further into M/s. Blueray Trading Pvt. Ltd. The party did not appear but a letter was filed by M/s. Blueray Trading Pvt. Ltd. before the Assessing Officer confirming the transaction. For the various reasons given in his order, the Assessing Officer came to a conclusion that this is bogus expenditure booked by the assessee to reduce profits and he disallowed Rs. 2,04,96,000/-. On appeal the First Appellate Authority partly confirm the disallowance. Aggrieved both the assessee as well as the revenue are in appeal before us.

4. We have heard Mr. Saurabh Kumar, Ld. Addl. CIT DR on behalf of the Revenue and Mr. Miraj D. Shah, Ld. AR on behalf of the Assessee. On a careful consideration all the facts and circumstances of the case as well as case law cited, we hold as follows:

It is an undisputed fact that the assessee contract with HCC required not only mere supply of machines but also to deploy maintenance staff but also to run, operate and maintain the said equipments and also to set up necessary infrastructure for the same. This is clear from the terms and conditions of the contract extracted by the Ld. CIT (A) from page no 6 of para 5.4.1 to page 13.

5. Thus the assessee was necessarily required to depute staffs, technical personnel, such as mechanics, drivers etc, and also to undertake the repairs and maintenance of the machinery. The assessee has off loaded this part of the contract back to back to M/s. Mooncity Vancom Private Limited now called M/s. Blueray Trading Pvt. Ltd. Bill were raised on the assessee by M/s. Mooncity Vancom Pvt. Ltd. The payments were made through banking channel. Tax was deducted at source on these payments and remitted to the Govt. On direct enquiry from Assessing Officer, M/s. Blueray Trading Private Limited had filed a letter along with all details documents and explanation confirming the transaction and furnishing evidence in support of the genuineness of the transaction. This is noted by the A.O. in 4.3 of the assessment order. In this letter they had stated that they have entered into works contract with the assessee for the operation and maintenance of transit mixer at the Dagachu site of

HCC. The A.O. also found that the amount in question as declared by Blueray Trading Pvt. Ltd. in its income tax returns Just because M/s. Buleray Trading Pvt. Ltd. claimed expenditure of Rs. 2,13,07,600/- on this receipt the Assessing Officer came to a conclusion that the payment is bogus on the ground that it is not clear as to who exactly executed the said contract. He was of the view that M/s. Blueray Trading Pvt. Ltd. has no infrastructure or manpower or skill to execute the contract. In our view this finding is without any evidence. It is a mere surmise and conjecture of the A.O. The A.O.'s finding that there was no real and true contract between the assessee and M/s. Blueray Trading Pvt. Ltd. and it was a paper transaction to reduce the profit is also contrary to fact on record. The contract between HCC and the above requires operation and maintenance of these 14 transit mixer at the Dagachu site and this requires incurring of expenditure. The learned DR did not deny the fact that the assessee had to operate and maintain those machine at the site and this would require incurring of expenditure. Merely because the representatives of M/s. Blueray Trading Pvt. Ltd. have not appeared before the Assessing Officer, the expenditure cannot be doubted as held as bogus. The conclusion that Blueray Trading did not have any infrastructure etc. and that it had not incurred the expenditure is drawn by the A.O. without enquiry much less being based on evidence. This conclusion of the A.O. is arbitrary and unjustified.

6. The Ld. CIT (A) has without considering the evidence on record, estimated the expenditure likely to have been incurred by the assessee on an adhoc basis. Such adhoc decision is not in accordance with law or facts of the case. The assessee in this case had discharged

the burden of proof that lay on it. No contrary evidence has been brought on record by the A.O.

7. The learned counsel for the assessee filed before this bench and order of the Commissioner of Income Tax (Appeals) – 3 dated 29.02.2016 in the assessee's own case for the immediately succeeding assessment year 2012-13, wherein the very same expenditure claimed by the assessee as paid to M/s. Mooncity Vancom Private Limited for operation and maintenance of 14 transit mixer of Hindustan Construction Company Dagachu site at Bhutan was allowed. The revenue accepted this decision and had not filed an appeal before the ITAT. Reliance was placed by the Ld. Counsel for the assessee on these findings of the Ld. CIT (A) for the assessment year 2012-13.

8. In view of the above discussion and the facts and circumstances explained above and the evidence produced by the assessee and the Assessing Officer could not bring on record any contrary evidence in support of the disallowance, we delete the addition made in this case and allow the appeal of the assessee. Consequently, the appeal of the revenue is dismissed.

9. In the result, the appeal of the revenue is dismissed and the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 17th November, 2017.

Sd/-
(Aby T. Varkey)
(JUDICIAL MEMBER)

Sd/-
(J. Sudhakar Reddy)
ACCOUNTANT MEMBER

Dated: 17/11/2017

Biswajit, Sr. P.S.

Copy of order forwarded to:

1. M/s. Beekay Vanijya Pvt. Ltd., 15, Loudon Street, 3rd Floor, Kolkata – 700 017.
2. DCIT, Circle 7(1), P-7, Chowringhee Square, 8th Floor, Room No. 15, Kolkata – 700069.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata