

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA

Before: **Shri J. Sudhakar Reddy, Accountant Member** and
Shri S.S. Viswanethra Ravi, Judicial Member

I.T.A No. 532/Kol/2015 A.Y: 2011-12

BLA JV

PAN: AAAAB6411F

Appellant

Vs

D.C.I.T, Cir-31, Kolkata

Respondent

For the Appellant : Shri A.K. Tibrewal, FCA, Id.AR
For the Respondent : Shri David Z. Chowngthu, Addl. CIT, Id.DR

Date of hearing : 20-09-2017
Date of pronouncement : 13-12-2017

ORDER

Shri S.S.Viswanethra Ravi, JM:

This appeal by Assessee is arising out of order dated 29-01-2015 of Commissioner of Income Tax (Appeals), *for short CIT(A) herein*, 9, Kolkata for the assessment year 2010-11.

2. The only question is to be decided as to whether the CIT(A) is justified in confirming the addition made on account of expenditure incurred on 'Material & Operating Cost & Employee Cost' in the facts and circumstances of the case.

3. Brief facts of the case relating to the issue are that the assessee is a joint venture (JV) between M/s. BLA Pvt. Ltd of Kolkata and M/s. Dinesh Chandra Agarwal Infracon Pvt. Ltd of Gujarat having proportionate share of profit of 95% and 5% respectively. The assessee JV succeeded in bidding in respect of highway road construction for development of 95 kms in the State of Bihar under the scheme 'Rashtriya Sam Vikas Yojana'.

4. In the course of executing said contract the assessee entrusted sub-contracts to M/s. BLA Pvt. Ltd & M/s. BLA Infrastructure Pvt. Ltd. According to AO, the assessee JV received a receipt of Rs.33,12,91,735/- and made payments to seven parties, major of which M/s. BLA Pvt. Ltd and M/s. BLA Infrastructure Pvt. Ltd totaling to Rs.30,69,38,537/-. The assessee also claimed business expenses of Rs.2,05,42,294/- and shown Net Profit at Rs.38,10,903/-, which is 1.2% of the turnover, the AO found the same not acceptable and accordingly, directed the assessee to provide cost of work attributable to sub contractors and the cost of the residual work executed by the assessee. Before the AO, the assessee filed comparative statement. The AO was not satisfied with the comparative statement showing contract payment made by the assessee for each such quantity of work with reference to R.A bills and observed that the assessee actually has not done any work. He held that the assessee produced bills and vouchers for expenses and without executing any work and substantiating the nature of work. The AO disallowed a sum of Rs.54,38,704/- being the expenses claimed as spent in cash, on Materials & Operating Cost and Employee Cost and added the same to the total income of the assessee. Relevant portion of AO's order in this regard is reproduced herein below :-

"4. The assessee claimed that a small part of Work (after subcontracting the Work for which 90% of the revenue receipt was paid off as sub-contract expense), was kept aside for execution by the JV, for which there was further expense of Rs.2,05,42,294.76 debited in the Profit & Loss account of assessee BLA JV. Effectively after paying out sub-contract payment of Rs.30,69, 38,537 from contract receipt of Rs.33,12,91,735 received from CPWD, a further sum of Rs.2,05,42,294 is reduced from the profit as business expenses to arrive at the year's business / profit of Rs.38,10,903. The net profit of the year was thus merely 1.2% of the turnover.

5. To find out what sort of residual Work was executed by the JV which was not given on sub-contract, and to make a cost analysis of the total executed Work as claimed in the accounts of the assessee, the assessee was asked to provide the cost of Work attributable to the sub-contractors and to 'itself, in a specified tabular format. A "comparison statement" was furnished on 25/3/2013 in the specified format but without all the specified details. Break up of quantity of Work of the two major sub contractors was given in the "comparison statement", showing contract payment made by assessee for each such quantity of Work with reference to R.A. Bills. Quantity of residual Work claimed to have been executed by the assessee-JV on its -own, was also given alongside, but the corresponding .cost of execution of the Work was not given - instead, an amount based on the CPWD contract rate (sales figure attributable to such Work) was given against such residual Work. It was thus not possible to carry out the intended cost analysis of the total executed Work. The authorized representative admitted (as recorded in note sheet) that there is no way to "evidence" that the assessee-JV "had actually done any Work" except by production of bills and vouchers of expenses, and "the expense cannot be quantified" category wise by item number of R.A.Bill as was done in the cases of sub-contractors' Work. Bill and vouchers were raised in thousands and cannot be

attributed to any Work performance of BLA Pvt Ltd in the status of a JV, and thus, could not be established as a proof of Work done by the assessee-JV.

6. During the entire proceedings no evidence could be produced to substantiate that there was Work which was not executed by the sub-contractor BLA Pvt Ltd and which had to be executed by BLA Pvt Ltd in the status of a JV, given the fact that the JV had no tools or machineries to execute any of the designated Work. It appears that the JV has devised an arrangement with its own member and allied companies/firms to reduce the normal profit of a contractor's business through multilayered expenditures. Most expenses relating to the alleged residual Work were made in cash and thus could not be related to stated recipients. In this assessment I am lifting the veil of impropriety of tax planning resorted to by the assessee by disallowing the expenses related to unidentifiable residual Work allegedly carried on by BLA Pvt Ltd in the status of a JV. Administrative & Other Expenses listed in Schedule 12 of the P&L account amounting to Rs.1,51,03,590 is allowed liberally for deduction u/s 36 and 37 for running of the administration of the JV. The sum of Rs.54,38,704 being the sum of expenses spent in cash, on 'Material & Operating Cost' and 'Employee Cost' is added back to the total income of the assessee in this assessment, as inappropriate expenditure which does not qualify for deduction u/s 36 or 37. I have compared net profits of other Joint Venture assesseees in construction businesses and particularly of 'M/s. Abhyudaya Rousing & Construction Pvt Ltd & Saket Nirman (JV), having PAN: AAAAA9954G, assessed with ACIT Circle - 33, Kolkata. 'M/s. Abhyudaya Housing & Construction Pvt Ltd & Saket Nirman (JV) was also engaged in road construction project of CPWD, in Kathiar Purnia District of Bihar under RSVY, and had shown a net profit of 4% in AY 2010-11. The net profit of the assessee is thus effectively increased to 2.79%."

5. Aggrieved the assessee challenged the same before the CIT-A. The CIT-A taking into consideration the decisions of Hon'ble Courts along with assessment order and the submission of assessee was of the view that the assessee failed to give the details of work executed by the JV with supporting documents and details either before AO or before him. The CIT-A found that there was no work executed by the assessee JV and that the assessee could not prove that the assessee had any machinery and tools to execute any work. In absence of supporting documents and details to substantiate the claim, the CIT-A held the AO was justified in disallowing the impugned amount. Relevant portion of CIT-A order is reproduced herein below:-

"After going through the facts and circumstances of the case, I find that the appellant failed to give the details of work executed by the JV with supporting documents/details either before the AO or before me. I do not find any infirmity in the AO's order as the appellant failed to produce any evidence or the documents to substantiate their claim that there was any work which was not to be executed by the sub-contractors and which was executed by the appellant JV. It also could not be proved that the appellant had any machinery/tools to execute any designated work. In absence of supporting documents/details to substantiate their claim in this regard, the stand taken by the AO was justified.

Further, the submission of the appellant that same type of expenses were claimed and allowed in the immediate two preceding years. Here it is mentioned that the general principle is that if finding or opinion recorded by the authority or even by a Court of Law for one assessment year has no binding effect on the issues in the subsequent assessment years. There are various decisions of the Hon'ble Courts in this regard in which it has been held that the principal of rest-judicata is not applicable in tax matters. Further, the contention of the appellant that the Books of accounts were not rejected by the AO. U/s. 145(3) of the I.T Act and therefore, he was not justified to estimate higher profit. However, I find from the facts and circumstances of the case that the AO had not estimated the profit but disallowed the claim of expenditure of Rs.54,38,704/- which was not substantiated with the supporting documents. In view of the facts and circumstances

of the case as discussed above, I find that the AO was justified to make disallowance of Rs.54,38,704/- . "

6. Before us the Id.AR submits that the CIT-A has erred in confirming the impugned disallowance made by the AO and that he disregarded the principle of consistency, as no such disallowance was made in earlier assessments, involving identical facts on a similar issue. He further submits that the AO made disallowance only by increasing Net Profit ratio from 1.15% to 2.79% without rejecting the books of account. The Id.AR of the assessee before us submitted a detailed paper book (2 sets) No. 1- containing pages 1 to 169 and No.2 pages 1 to 36 in support of the contention regarding various expenditure incurred by the assessee under various heads. The Id.AR also filed paper book containing four items i.e joint venture agreement, comparative chart, audited accounts & assessment order for A.Y 2009-10 dt. 27-12-2011. He also referred to page-1 of the 2nd paper book and the Id.AR also drew our attention to the page 10 of paper book and argued that the assessee being JV incurred expenditure under the main head at Sl.No.3 and submitted that the expenditure incurred under the Sub-heads – (b) to (i) was incurred wholly and exclusively for business purpose. The Id.AR pointed out Sl. No. 4 and submits that the costs were incurred towards employee cost and that the said expenditure required to be allowed as business expenditure.

7. On the other hand, the Id.DR relied on the orders of both the authorities below.

8. Heard rival submissions and perused the records. We observed that the AO liberally allowed Rs. 1,51,03,590/- as deduction U/Sec. 36 & 37 of the Act as found from P/L account under the head 'administrative and other expenses, which, admittedly, is inclusive of salary and allowances and staff welfare. Regarding the other expenses as pointed out by the Id.AR ie. (b) to (i) of Sl. No. 3 of paper book, in our opinion, cannot be allowed as expenditure for the reason that the assessee failed to give any details of work executed

by it and has also failed to produce supporting evidence in support of its claim of having incurred expenditure. Thereby the order of CIT-A is justified on this issue. Therefore, ground no's. 1 to 3 involving the above issue raised by the assessee fails and, are accordingly, dismissed.

9. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 13.12.2017.

Sd/-
J. Sudhakar Reddy
Accountant Member

Sd/
S.S. Viswanethra Ravi
Judicial Member

Dated :13.12.2017

*PP/SPS

Copy of the order forwarded to:

1. Appellant – M/s. BLA JV, 3rd Floor, Indicon Viva, 10B, Middleton Row, 4th Floor, Kolkata-69.
2. Respondent – The Deputy Commissioner of Income Tax, Cir-31, Kolkata, 10B, Middleton Row, 4th Floor, Kolkata-71.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

//True Copy//

By order,
Sr.PS/H.O.O
ITAT, Kolkata