

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

[Before Shri P.M. Jagtap, AM]

I.T.A. No. 1994/Kol/2016

Assessment Year: 2010-11

Jayesh Industrial Suppliers Pvt. Ltd.Appellant
258, Lake Town,
Flat-S.J-2, Block-B,
Kolkata - 700069
[PAN : AABCJ 9566 E]

I.T.O. Ward 11(4).....Respondent
P-7, Chowringhee Square,
Kolkata - 700 069

Appearances by:

Shri I, Banerjee, FCA, appearing on behalf of the Assessee.

Shri Amitave Bhattacharya, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : January 11, 2018

Date of pronouncing the order : February 09, 2018

ORDER

Per P.M. Jagtap, AM

This appeal filed by the assessee is directed against the order of Ld. CIT(A) - 18, Kolkata dated 29.07.2016 and although there are as many as five grounds raised by the assessee, the solitary common issue involved therein relates to the disallowance of Rs. 35,00,000/- made by the A.O. and confirmed by the Ld. CIT(A) on account of supervision charges.

2. The assessee in the present is a company which is engaged in the business of trading of industrial consumables. The return of income for the year under consideration was filed by it on 28.09.2010 declaring a total income of Rs. 7,96,250/- In the Profit & Loss Account filed along with the said return, a sum of Rs. 35,00,000/- was debited by the assessee on account of supervision charges. Since no such

expenditure on account of supervision charges was incurred by the assessee in the earlier years, the A.O. required the assessee to furnish the relevant details in order to justify its claim for deduction on account of supervision charges. The assessee was also called upon by the A.O. to furnish the details of past experience of the supervisors, their technical qualification and Permanent Account Numbers. In reply, it was explained by the assessee that due to complaints of quality from customers, the pre-delivery inspection was made compulsory. It was also explained by the assessee that the contractors were appointed for this purpose and they were entrusted the job to ensure delivery as per order, get the quality certificates from the customers and help the customers in end use of the products. It is submitted by the assessee that the contractors so appointed did the required work through the skilled and unskilled staff appointed by them. It was submitted that the expenditure on supervision charges thus was incurred for providing services to the customers which had resulted in increase volume of business. This explanation of the assessee was not found acceptable by the A.O. and he proceeded to disallow the expenditure incurred by the assessee on supervision charges for the following reasons given in the assessment order:

- 1. The assessee has not required to appointed supervisors in earlier years.*
- 2. The supervisors staff are not technically qualified to check quality of product and not experience persons.*
- 3. Supervisors were not appointed by the assessee, they were appointed by the customers on contract basis but payment was made by the assessee.*
- 4. Supervisors were help to customers companies not the assessee company.*
- 5. The assessee has failed to file or produce any agreement with the customer in respect of appointment of supervisors.*

6. Out of turn over the assessee made sales to 134 parties. On behalf of which company/companies appointed the supervisors. It is remain unclear.

7. Out of five supervisors two supervisors were resided at same address and another two were also resided at another same address. For example, Ghanshyam Agarwal and Kamla Devi resided at A-6, Ganesh Bihar, Bhatia Basti, Kadma. Jsr. Both of them may be husband & wife and they resided at own flat or on rented. The contract labours cannot be afforded to purchase own residential flat or pay rent of flat.”

3. The disallowance made by the A.O. on account of supervision charges was challenged by the assessee in the appeal filed before the Ld. CIT(A). It was submitted on behalf of the assessee before the Ld. CIT(A) that it was a dealer of Usha Martin and had supplied wire ropes manufactured by Usha Martin to the various customers. It was also submitted that the supervision charges of Rs. 35,00,000/- were paid to five contractors @ Rs. 7,00,000/- each in pursuance of the agreement with M/s. Usha Martin. The following submissions were also made by the assessee to support and substantiate its claim for deduction on account of supervision charges:

“1.To increase customers satisfaction and services assessee was specifically required to appoint supervisors.

2. The payees were mere contractors. They were not technically expert but they had their own technical staff trained by Usha Martin to do the actual supervision.

3. Assessee denied that supervisors were appointed by the buyers. It was submitted that supervisors were appointed by the assessee and payments were made by the assessee.

4. Installation of wire ropes at the site of the buyer involves strict supervision. Hence these supervisors were placed at buyer's premises.

5. No adverse inference should be drawn if two contractors had the same address.

4. During the course of appellate proceedings before the Ld. CIT(A), additional evidence was also filed by the assessee in the form of copies of purchase orders of the clients, guarantee certificates issued by Usha Martin, documents relating to dealer policy etc. The said documents filed by the assessee were forwarded by the Ld. CIT(A) to the A.O. seeking his comments. In the remand report submitted to the Ld. CIT(A) on 31.05.2016, the Assessing Officer offered his comments on the issue as under:

"1. A.O. pointed out that the appeal proceedings assessee had submitted that supervisors work for groupings, fixing the loops at the ends at the sites as per testing requirements of the buyers to BSS/621 standards with the technically trained staff of the contractors; whereas in written submission dated 03.09.2015 before A.O. it was mentioned that supervision charges are paid to supervise the installation of wire ropes as per specifications of the buyers.

2. Assessee's claim regarding utility of services of the contractors are different at different stage.

3. In one submission assessee claimed that technically trained and skilled staff of the contractors were engaged for supervision. In another submission assessee submitted that contractors have their own technical staff trained by Usha Martin Ltd. to do the supervision work.

4. During remand proceedings assessee was specifically requested to produce evidences which can prove the identity of person, their qualification and to prove that they had provided technical services in different sites, but the assessee did not comply. At this point of time assessee's only plea is that payment was made to contractors and the technical persons who actually provided services are complete strangers to the assessee. Assessee failed to furnish any evidence to show the identity and technical skill of those persons.

5. A.O. appointed out that inspection clause in dealer policy says:

'in some cases the dealers may place order with inspection clause. In such cases, it will be the dealers responsibility to organise inspection as soon as being informed of the readiness of the row and also to bear all costs related to inspection'

Thus inspection is to be done by assessee in Usha Martin's premises as and when ropes are ready for dispatch. There is nothing mentioned about any services to be provided by assessee at buyer's premises.

6. *Specifications in Guarantee Certificate issued by Usha Martin speak about the quality of product. Supervisors have no role in product quality.*

7. *A.O. has pointed out that each of the contractor was paid following amounts on the same day:*

a) *Rs. 1,96,000/- on 05.03.20102*

b) *Rs. 4,14,000/- on 24.03.2010*

c) *Rs. 96,000/- on 24.03.2010*

A.O. has further pointed out that it seems unbelievable that each contractor provided equal services over a period of time which necessitated equal payments.

8. *Assessee did not furnish details of payments [cheque no., date of payment, clearing dates etc.] Further bills furnished by assessee is not signed by the contractors.*

9. *Purchase bills regarding which services of contractors were availed shows that the bills are for Seamless Pipes and Polyester Sling and not for wire ropes.*

10. *Assessee did not produce TDS details for payments made to contractors."*

5. When the remand submitted by the A.O. was confronted by the Ld. CIT(A) to the assessee, the later filed copies of acknowledgement of income tax returns filed by four contractors along with their Form 26AS. The assessee also offered following comments on the remand report submitted by the A.O.:

"1. Assessee has given jobs of supervision to contractors and the manpower supplied by them is solely in their control and pay roll. Assessing technical skill of the persons deputed by the contractors is not an issue in appeal. Rather the genuineness of payments made and their business weeds is relevant issue.

2. Assessee has made the payments and if the contractors do not account for these payments, their AOs may be informed about it.

3. Payments made on the same day do not in any way make these payments bogus."

6. After considering the entire material available on record including the additional evidence filed by the assessee, the remand

report submitted by the A.O. as well as the comments offered by the assessee on the said remand report, the Ld. CIT(A) decided the issue vide paragraph no 6 of his impugned order which reads as under:

"I have carefully considered the facts of the case and the submissions of the assessee. In the assessment proceedings it was claimed that payment for supervisory changes were made as per Dealers Policy. However perusal of the 'Inspection' clause shows that inspection was to be made of the Steel Wires manufactured by Usha Martin before it was supplied to customers whereas assessee had claimed that inspection/supervision was to be made a clients' place. Thus contradiction in assessee's statements start from the very basis of the need of supervision/inspection. Then assessee claims to have given this responsibility to contractors who are neither themselves qualified nor do they have any technically sound team to carry out the supervision. AO has pointed several discrepancies in the Remand Report but assessee has not been able to rebut these in the rejoinder. It only insists that payments have been made but even in this regard they have not submitted all details regarding payments and T.D.S. made. In the appeal proceedings, subsequent to filing of rejoinder, assessee submitted copy of acknowledgment of returns filed and form 26AS in respect of following 4 contractors:

contractors:

- 1) Smt. Kamla Devi Agarwal*
- 2) Sri Ashok Kr. Sharma*
- 3) Sri Ghanashyam Das Agarwal*
- 4) Sri Ramen Das*

No documents are filed in respect of Sh. Chandan Prasad" Perusal of these documents shows the following:

"1) All 4 returns are belated returns filed respectively on 13/01/ 2011, 12/01/2011, 14/01/2011 and 11/01/2011.

2. Form 26AS in the case of Smt. Kamla Devi shows that TDS of Rs.7301/- was made by Jagdamba Commercial Pvt. Ltd. and Rs.14,000/- was deducted by the assessee. However, in the return of income , she has claimed credit of only Rs.7301/-.

3) In the case of Sri Ashok Sharma, he has shown income receipts from only Maa Vaishnovi Sponge Ltd. and Reliable Sponge Ltd. There no mention of the assessee Co. in Form 26AS.

4) In the case of Sri Ghanashyam Das Agarwal, income has been received from Jagdamba Commercial Pvt. Ltd., Suraj Solutions Pvt. Ltd. and the

assessee company. However, in the return of income he has not claimed credit for TDS made by assessee company.

5) In the case of Sri Raman Das, only one income receipt is there and i.e. from the assessee company. Sri Raman Das has also claim TDS credit of Rs.14,000/- in the return of income.

Thus only one contractor Sh. Raman Das is showing the receipts from the assessee company. All other contractors have not accounted for the payments made by the assessee company. A note worthy feature of print out of Form 26A5 is that the entries in Form 26AS appear when the deductor uploads the TDS returns. Secondly, the print out of these Form 26A3 have been taken as on 13th July, 2016. Hence the contractors who are not showing any receipt from assessee, have definitely not received any money. Other wise assessee would have uploaded the details in Form 26A5. Other set of assesses in whose case receipts appear in Form 26A5 but these are not shown in Return of Income, possibility is that assessee has uploaded the details in their Form 26AS without their knowledge and after filing of their return. In the case of Sri Raman Das, receipts appear in Form 26AS and are also reflected in his Return but considering overall situation, this also appears manipulated because total income is below taxable limit and entire TDS has been claimed as refund.

Under the circumstances assessee's contentions are not acceptable. Assessee has failed to explain the purpose of payments made. Even the payments are doubtful in view of the facts narrated above. Hence, addition of Rs. 35,00,000/- is confirmed."

The Ld. CIT(A) thus confirmed the addition of Rs. 35,00,000/- made by the A.O. on account of disallowance of supervision charges. Aggrieved by the same, assessee has preferred this appeal before the Tribunal.

7. The only contention raised by the learned counsel for the assessee in support of the assessee's case is that no enquiry was made by the A.O. with the concerned contractors to verify the genuineness of claim of the assessee for supervision charges. He contended that the A.O. should have made such enquiry to find out the truth of the

matter and the disallowance made by him on account of assessee's claim for supervision charges without such enquiry is not sustainable. In support of this contention, he relied on the decision of the Hon'ble Supreme Court in the case of CIT vs Orissa Corporation (P) Ltd. 159 ITR 78.

8. The learned DR, on the other hand submitted that the onus to support and substantiate its claim for deduction on account of supervision charges by producing the relevant documentary evidence was on the assessee and he clearly failed to discharge the same. He submitted that there was no agreement or contract entered into with the concerned parties that is produced by the assessee to show the terms and conditions of the contract stated to be for rendering the supervisory services. He also submitted that there was no other documentary evidence that is filed by the assessee to show the services claimed to be rendered by the concerned contractors for the purpose of assessee's business. He submitted that the learned counsel for the assessee has not been able to make any submissions to explain the stand of the assessee in respect of various adverse findings / observations recorded by the A.O. in the remand report as well as by the Ld. CIT(A) in the impugned order. He contended that there is thus clear failure of the assessee to support and substantiate its claim for deduction on account of supervision charges and since the assessee has not satisfactorily discharged the onus that lay on it, it was not incumbent upon the A.O. to make any enquiry with the concerned parties before making disallowance on account of supervision charges. He, therefore, strongly supported the impugned order of the Ld. CIT(A) confirming the disallowance made by the A.O. on account

of supervision charges and urged that the same deserves to be upheld.

9. I have considered the rival submissions and also perused the relevant material available on record. As rightly contended by the learned DR, having claimed expenditure on account of supervision charges, the onus was on the assessee to establish on evidence that the said expenditure was incurred wholly and exclusively for the purpose of its business. In this regard, it is observed that no agreement or contract entered into with the concerned parties is produced by the assessee on record to show the nature of services agreed to be rendered by the concerned parties and the terms and conditions on which such services were to be rendered. The assessee has also not produced any evidence to show that the services were actually rendered by the said parties for the purpose of the assessee's business. As pointed out by the A.O. in the remand report as well as by the Ld. CIT(A) in his impugned order, there were discrepancies and deficiencies in whatever documents that were produced by the assessee in support of its claim for supervision charges. At the time of hearing before the Tribunal, the learned counsel for the assessee has not able to offer any satisfactory explanation in this regard. The only contention raised by him by relying on the decision of the Hon'ble Supreme Court in the case of Orissa Corporation (P) Ltd. (supra) is that the A.O. should have made enquiries with the concerned parties in order to verify the assessee's claim for deduction on account of supervision charges and the disallowance made by him without making such enquiry is not sustainable. It is however observed that the facts involved in the case of Orissa Corporation (P) Ltd. (supra)

are materially different from the facts involved in the present case in as much as the primary onus to explain the relevant cash credit in terms of section 68 was duly discharged by the assessee in the said case by producing the confirmation letters as well as discharged hundis and keeping in view the same, it was held that the addition made by the A.O. under section 68 without making any attempt to examine the creditors was not sustainable. As already noted by us, the assessee in the present case has failed to discharge the onus that lies on him to support and substantiate its claim for deduction on account of supervision charges by producing the relevant documentary evidence and this being so, we find no infirmity in the impugned order of the Ld. CIT(A) confirming the disallowance made by the A.O. on account of supervision charges. The same is accordingly upheld dismissing this appeal filed by the assessee.

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

Order Pronounced in the Open Court on 9th February, 2018.

Sd/-

(P.M. Jagtap)

ACCOUNTANT MEMBER

Dated: 09/02/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. Jayesh Industrial Suppliers Pvt. Ltd., 258, Lake Town, Flat SJ-2, Block-B, Kolkata – 700 089.
2. I.T.O., Ward 11(4), P-7, Chowringhee Square, Kolkata – 700 069.

3. The CIT(A)

4. The CIT

5. DR

True Copy,

By order,

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