

आयकर अपीलीय अधिकरण मुंबई "डी" खंडपीठ

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

सर्वश्री राजेन्द्र, लेखा सदस्य एवं संदीप गोसाईं, न्यायिक सदस्य

Before S/Shri Rajendra, A.M. and Sandeep Gosain, J.M.

आयकर अपील सं./ITA No. 359/Mum/2016, निर्धारण वर्ष /Assessment Year: 2010-11

Della Enclave Private Limited, Della Tower, 795 Jame Jamshed Road Parsi Colony, Dadar (E), Mumbai-400 007. PAN: AACCM 4457 C	Vs.	DCIT, Circle -5 (2), Room No.525, 5 th Floor, Aayakar Bhavan, Mumbai-400 020.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri Rajesh Kumar Yadav

Assessee by: Shri Bhupendra Shah

सुनवाई की तारीख / **Date of Hearing:** 21/02/2018

घोषणा की तारीख / **Date of Pronouncement:** 02/05/2018

आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश

Order u/s.254(1) of the Income-tax Act, 1961 (Act)

लेखा सदस्य, राजेन्द्र के अनुसार -Per Rajendra, AM:

Challenging the order dated 27/10/2015 of CIT(A)-10, Mumbai, the assessee has filed the present appeal. Assessee-company, engaged in the business of property development and construction activity, filed its return of income on 15/10/2010 declaring total income at Rs. NIL. The Assessing Officer (AO) completed assessment u/s.143(3), on 05/03/2013, determining the income of the assessee at Rs.42.53 lakhs.

2. First ground of appeal is about disallowance of Rs. 21.31 lakhs paid to R.R.Trading (RRT). During the assessment proceedings, the AO found that the assessee had debited Rs. 81.54 lakhs under the head staff welfare expenses. He disallowed Rs. 21.31 lakhs paid to RRT, Rs. 4.14 lakhs paid to Suraj Novelties (SN) out of the above. The AO found that the bills for Rs. 23.31 lakhs were raised in the name of Della Technicia and not in the names of the assessee. He held that the expenditure limned by the assessee was not allowable as the expenses belong to another entity.

2.1. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA) and made detailed submissions. After considering the available material, he held that bills submitted by RRT were in the name of Della Technicia and not in the name of Della Enclave Private Ltd., that the assessee submitted that RRT had erroneously raise the bills in the name of Della Technicia i.e. the popular name of the group. He held that

no evidence was produced before the AO during the appellate proceedings to prove that RRT had accounted the amounts properly in its books of accounts and that the expenditure was actually incurred by the assessee, that it was not known as how the assessee had approved the expenditure that was incurred by Della Technicia. Finally, he upheld the order of the AO.

2.2. Before us, the Authorised Representative (AR) stated that the group was popularly known as Della Technicia, that RRT by mistake raised the bills in the name of Della Technicia, that later on it had issued a confirmation letter stating that goods were purchased by the assessee, that RRT also made it clear that in the bills it is by mistake the name of Della Technician was mentioned. He referred to page number-32 of the paperbook. The Departmental Representative (DR) supported the order of the FAA and stated that bills did not belong to the assessee.

2.3. We have heard the rival submissions and perused the material on record. We find that the entire controversy has arisen as the bills issued by RRT were the names of Della Technician and not in the name of the assessee, that RRT in its letter dated 29/01/2013 has specifically mentioned that inadvertently bills belonging to the assessee were issued in the name of Della Technicia. We are unable to understand as to why the FAA discarded this evidence though the same was produced before him. He could have called for remand report or could have examined RRT in that regard. But, he simply confirmed the order of the AO. In our opinion the course adopted by the FAA is not as per the law. As a representative of the State, he is supposed to be an instrument in collecting due taxes and pass and adjudication order based on the evidences. As he has failed to do so, therefore, reversing his order we decide first ground of appeal in favour of the assessee.

3. Ground number two deals with disallowance of Rs.4.40 lakhs out of the staff welfare expenses. During the assessment proceedings, the AO found that the assessee had purchased refrigerators, television sets and microwave ovens from SN, worth Rs. 4.14 lakhs. He held that expenditure was not incurred for the business of the assessee.

3.1. In the appellate proceedings, the FAA, after considering the submission of the assessee, observed that AO had disallowed the amount which were paid for purchase of two television sets, three refrigerators, three washing machines and two microwave ovens, that the assessee had claimed that goods were purchased from SN, that the nature of expenses did not show that they were meant for staff welfare, that the assessee had failed to substantiate that the

expenditure was incurred wholly and exclusively for its business. Finally, he upheld the order of the AO.

3.2. Before us, AR contended that during the year under consideration the assessee had developed 24 villas and a clubhouse near Lonavala, that the area was far from the city, that for the convenience of the members of the staff television sets and refrigerators etc. were purchased, that expenses for purchasing those items were necessary for carrying out the business of the assessee, that same were spent wholly and fully for staff welfare, that it had to provide facilities to the staff and the workers at the site. The DR supported the order of the FAA.

3.3. We have heard the rival submissions. We find that there is no dispute about incurring of expenditure. The AO/FAA has not doubted genuineness of the expenditure. They have disallowed the expenditure holding that same was not incurred wholly and exclusively for the business of the assessee. We find that the AO, on the first phase of the assessment order, has specifically mentioned that assessee was engaged in constructing villas in remote area. Considering the above fact, in our opinion, expenditure incurred for purchasing television sets, refrigerators etc. cannot be disallowed. The necessity of the business is to be decided by the assessee itself and not by the AO. It is not the case of the revenue authorities that those items were used by the family of the directors of the company or by the families of the officers of the company. It is said that AOs should not step into the shoes of the assessee. Considering the peculiar facts of the case, we are of the opinion that the FAA was not justified in confirming the disallowance made by the AO. So, reversing his order we decide ground number two in favour of the assessee.

4. Disallowance of Rs. 10.10 lakhs out of the purchases made by the assessee is the subject matter of third ground of appeal. During the assessment proceedings, the AO found that the assessee had made purchases to the extent of Rs. 5.31 crore, that certain bills were raised in the names of Della Enclave Signature Villas, Della Technica, Della Adventure Private Ltd and Della Technica Office System Private Ltd. He held that the bills raised in the names of above-mentioned entities did not pertain to the assessee. He made a disallowance of Rs. 10,10,768/-.

4.1. In the appellate proceedings the FAA, following his order for the first ground of appeal, upheld the order of the AO holding that the bills were not in the name of the assessee company.

4.2. Before us, the AR and the DR made the same submission that are part of the submissions made for the first ground of appeal. Following our order for the first GOA, we allow ground No.3.

5. Disallowance of Rs.1.51 lakhs out of the labour charges has been challenged in the next ground of appeal. During the assessment proceedings, the AO found that the assessee had paid labour charges to 13 parties, that it did not furnish any details about the tax deducted at source. He observed that out of the 13 parties it had furnished few bills of only three parties. After considering the details he held that labour charges payment were not hundred percent genuine. He disallowed 10% of the total labour charges debited in the books of accounts, amounting to Rs. 1, 51, 115/-.

5.1. Before the FAA, during the appellate proceedings, the assessee made submissions and stated that necessary details about each labour payment was made during the course of assessment proceedings. After considering the available material, he held that the assessee had not filed complete details about all the parties, that the AO were justified in disallowing 10% of the expenditure.

5.2. Before us, the AR stated that the AO had arbitration made the disallowance out of the labour charges, that necessary details were filed. He referred to page number 36 of the paper book. The DR stated that complete details were not filed before the departmental authorities.

5.3. We have gone through the page number 36 of the paper book and the submissions made by the assessee before the AO. We find that matter needs further verification. The details given by the assessee had to be further investigated. Therefore, in the interest of Justice, we are restoring that the issue to the file of the AO. He's direct to afford a reasonable' into the assessee. The assessee would file detailed submissions and explanation before the AO. Ground number four is decided in favour of the assessee, in part.

6. Last ground of appeal pertains to deduction in closing value of work in progress by Rs. 42.53 lakhs. During the assessment proceedings the AO found that the assessee had not declared any income during the year under consideration, that all the expenses incurred by it were claimed under the head work in progress. Hence he reduced the expenditure on project work in progress claimed by the assessee from Rs. 29.98 crore to Rs. 29.55 crore, after adjusting the disallowance made in his assessment order.

6.1. The FAA, during the appellate proceedings, held that the AO had allowed the carry forward benefit of work in progress after reducing the expenditure disallowed by him in the

assessment order,that the assessee had argued that deduction should be restricted to undisputed disallowances only. The FAA, rejecting the request of the assessee, held that he had already confirmed the disallowances, that the AO was justified in reducing Rs. 42, 53, 450/- from the total work in progress of the assessee for the year under consideration.

6.2.Before us,the AR stated that work in progress should be restricted to the undisputed disallowances only. The DR supported the order of the FAA.

6.3.While deciding the earlier grounds,we have given relief to the assessee. We have restored back one issue to the file of the AO for the adjudication. In the circumstances we hold that no reduction can be made as far as the amounts involved in grounds of appeal no.1-3 are concerned. The AO is directed to restrict the reduction of work in progress to the undisputed disallowances only. Last ground is decided in favour of the assessee.

As a result, appeal filed by the assessee stands partly allowed.

फलतः निर्धारिती द्वारा दाखिल की गई अपील अंशतःमंजूर की जाती है.

Order pronounced in the open court on 2nd May, 2018.

आदेश की घोषणा खुले न्यायालय में दिनांक 2 मई,2018 को की गई।

Sd/-

(संदीप गोसाईं /Sandeep Gosain)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक/Dated : 02/05/2018.

Jv.Sr.PS.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR "D " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.