

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
 (समक्ष)Before श्री ए. टी. वर्की, न्यायीक सदस्य एवं/and श्री एम .बालागणेश, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Shri M.Balaganesh, AM]

I.T.A. No. 866/Kol/2015
Assessment Year: 2011-12

Assistant Commissioner of Income-tax, Circle-45, Kolkata.	Vs.	M/s. Deepak Construction Co. (PAN: AADFD3069R)
Appellant		Respondent

Date of Hearing	27.02.2018
Date of Pronouncement	23.05.2018
For the Appellant	Shri S. Dasgupta, Addl. CIT, DR
For the Respondent	Shri B. K. Poddar, FCA

ORDER

Per Shri A.T.Varkey, JM

The appeal filed by the revenue is against the order of Ld. CIT(A)-13, Kolkata dated 30.03.2015 for AY 2011-12.

2. The ground no. 1 of revenue’s appeal is against the action of the Ld. CIT(A) in not considering that the assessee failed to explain as to why the amount of Rs. 1 crore is not liable to be accounted for in the receipts during the assessment year under consideration as per the mercantile system of accounting adopted by the assessee.

3. Brief facts of the case are that the assessee is a partnership firm engaged in the business of civil construction work. During the course of assessment proceedings, the AO noted that as per 26AS tax deducted by M/s. Brahmaputra Crackers & Polymers Ltd. (M/s. BACP Ltd.) the assessee’s turnover must be to the tune of Rs.12,54,55,950/-, however, the assessee has shown turnover amounting to only Rs.11,54,55,590/-. The AO therefore asked the assessee to clarify the discrepancy found in less turnover disclosed by the assessee. In reply the assessee stated that as per provision of Income Tax Act, 1961 (hereinafter referred

to as the “Act”), assessee is supposed to claim TDS credit on the basis of income of the year and therefore income during the relevant AY 2011-12 the assessee has shown Rs.11,54,55,950/-, and that TDS credit was also claimed only on the said turnover in the return. According to assessee, the balance Rs. 1 cr. is the turnover related to AY 2012-13 instead of AY 2011-12, therefore it has not been shown during the AY 2011-12 and accordingly, TDS credit on Rs. 1 cr was not claimed in the return for AY. 2011-12. However, according to AO, the assessee failed to explain as to why the amount of Rs. 1cr is not liable to be accounted for as income during the AY 2011-12, when the payee has deducted the tax for the same. Therefore, he added the amount of Rs. 1cr. as unexplained under the head construction charges. Aggrieved, assessee preferred an appeal before the Ld. CIT(A), who after considering the written submission and clarification letter given to the AO in the subsequent assessment year i.e. AY 2012-13 found that while computing income by the AO for AY 2012-13, an amount of Rs.95,47,643/- was taken into account where TDS deducted provisionally in earlier AY 2011-12 as well as provisional tax deduction done during AY 2012-13 for contract amount of Rs. 2.8 cr. has not been taken into account. In view of the above, the Ld. CIT(A) held that since the receipt under dispute has been taxed by the AO in subsequent year, no addition on that account could be made in the relevant AY 2011-12 and he allowed the assessee’s ground of appeal. Aggrieved, revenue is before us.

4. We have heard rival submissions and gone through the facts and circumstances of the case. We note that for work order 168/2009 M/s. BACP Ltd. made payment on 04.07.2011 and for work order 083/2010 payment was made on 27.04.2011. We note that final bill against order no. 168/2009 was raised on 16.05.2011 for Rs.1,95,57,643/- against which a sum of Rs.1 crore was credited to the P&L Account for the year ended 31.03.2011 for part execution of work and the balance amount of Rs.95,57,643/- was credited to P&L Account for the year ended 31.03.2012 (AY 2012-13) and the same have been accepted and taxed by the AO in 143(3) proceedings for subsequent AY 2012-13. So, the Ld. CIT(A) taking note of these facts have deleted the addition, which action we uphold and dismiss this ground of appeal of the Revenue.

5. The ground no. 2 of revenue's appeal is against the action of the Ld. CIT(A) in deleting partially the addition made by AO of the expenses claimed by the assessee to have expended on purchases made from six parties, which the Ld. CIT(A) sustained only 50% of the claim made by assessee. Briefly stated the facts are that according to AO, it could not be verified from the sales account of the parties from whom the assessee made some purchases. According to AO, during the course of assessment proceedings, the assessee was unable to establish the genuineness of the transactions so made. Since the purchases made by the assessee from six parties to the tune of Rs.27,04,899/- have not been shown as receipt as per their respective ROI and since the entire purchases have been claimed to have been purchased in cash, hence he made the addition on account of in-genuine cash purchases of Rs.27,04,899/-. Aggrieved, assessee preferred an appeal before the Ld. CIT(A), who found that since all the persons from whom purchases were made (sellers) were regularly filing income tax and taking note that if the sellers did not account for the sales in their books, the AO ought to have cross checked the fact through further inquiry, when the fact remained that the assessee had duly produced the bills and vouchers from the said sellers of goods purchases from them, according to him the purchases cannot be fully disallowed. However, according to Ld. CIT(A), considering the fact that entire purchase was allegedly done in cash and the persons concerned had not shown the sales in their return of income filed, the possibility of assessee inflating expense cannot be ruled out and, therefore, Ld. CIT(A) sustained 50% of the expenses claimed on the above purchases and thus partly allowed the assessee's ground of appeal. Aggrieved, revenue is before us.

6. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the assessee had claimed to have purchased goods from six parties (whose names and amount is given in tabular form at page 10 of Ld. CIT(A)'s order) to the tune of Rs.27,04,899/-. However, the AO taking note that these sellers of goods have not reflected the sales in their ROI and that the assessee has claimed to have made the entire purchases from these six parties by mode of cash, came to the conclusion that the claim of cash expenses of Rs.27,04,899/- as not genuine and so, disallowed it in entirety. However, the Ld. CIT(A) taking note that the said six parties are filing Income Tax Returns and was

of the opinion that if the said sellers of goods did not reflect the sale consideration in their books, required further enquiry because the assessee had produced bills and vouchers to justify the claim of purchases. However, the Ld. CIT(A) taking note that assessee's entire claim of expenditure on purchases was made by cash, sustained the disallowance to 50% of the claim of Rs.27,04,899/-. We note that assessee had produced before the AO the bills and vouchers as proof of purchase of goods. The seller of goods are filing Income Tax Returns and the assessee cannot be faulted for the sellers of goods not booking the sales of the goods sold to assessee. However, we note that the Ld. CIT(A) sustained the disallowance of 50% of the claim since the assessee claimed the entire expenditure as made by cash, which decision of Ld. CIT(A) is reasonable order in the facts and circumstances brought out by the authorities below, so we confirm. So, Revenue's appeal is dismissed.

7. In the result, appeal of revenue is dismissed.

Order is pronounced in the open court on 23.05.2018

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 23rd May, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – ACIT, Circle-45, Kolkata.
2. Respondent – M/s. Deepak Construction Co., Somdeep Apartment, 35D, Bagmari Road, Kankurgachi, Kolkata-700 054.
3. The CIT(A) Kolkata.
4. CIT Kolkata.
5. DR, ITAT, Kolkata.

/True Copy,

By order,

Sr. Pvt. Secretary