



ITA No.3620/Mum/2012
Athene Construction LLP
Assessment Year-2009-10

आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI

श्री सी .नागेंद्र प्रसाद, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE SHRI C.N. PRASAD, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपीलसं./I.T.A. No.3620/Mum/2013
(निर्धारणवर्ष / Assessment Year:2009-10)

Athene Construction LLP [formerly known as M/s Athene Construction Pvt.Ltd] 203, Raikar Bhavan, Sector-17 Vashi, Mumbai-400 705	बनाम/ Vs.	Assistant Commissioner of Income Tax -10(3) Aaykar Bhavan Mumbai-400 020
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No.AAFCA-7068-N		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
Revenue by	:	Rajesh Kumar Yadav, Ld.DR
Assessee by	:	Piyush Chhajed, Ld.AR
सुनवाई की तारीख/ Date of Hearing	:	09/07/2018
घोषणा की तारीख / Date of Pronouncement	:	13/07/2018

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [AY] 2009-10 contest the order of the Ld. Commissioner of Income Tax (Appeals) – 22, Mumbai [CIT(A)] dated 12/03/2013 *qua* confirmation of certain addition of Rs.2,50,75,380/- on account of *alleged bogus / unproved purchases*. The assessment for impugned AY was framed by *Ld. Assistant Commissioner*



ITA No.3620/Mum/2012
Athene Construction LLP
Assessment Year-2009-10

of Income Tax-10(3), Mumbai u/s 143(3) of the Income Tax Act, 1961 on 25/12/2011 wherein the income of the assessee has been assessed at Rs.322.89 Lacs under normal provision after certain additions and disallowances as against returned income of Rs.72.13 Lacs *e-filed* by the assessee on 29/09/2009.

2. The name of the assessee has subsequently been changed from *Athene Construction Private Limited* to *Athene Construction LLP* which is evident from *Form No. 16* dated 26/02/2014 issued by *Ministry of Corporate Affairs*, a copy of which has been placed on record. The assessee has already filed revised *Form No. 36* reflecting such change. Finding the same in order, we proceed to dispose-off the assessee's appeal.

3. The assessee, being *resident corporate assessee* during impugned AY was engaged in the *business of construction and development of property*. It reflected Net Profit of Rs.65.19 Lacs against turnover of Rs.527.76 Lacs. The construction expenses were shown at Rs.4.17 crores. The assessee undertook a project at *Navi Mumbai* in *joint venture* and reflected purchase of *steel* for Rs.250.75 Lacs from following two entities:-

No.	Name	Amount (Rs.)
1.	<i>Anshu Mercantile Pvt. Ltd.</i>	1,25,38,912/-
2.	<i>Dhiren Mercantile Pvt. Ltd.</i>	1,25,36,468/-
	Total	2,50,75,380/-

To confirm the purchase transactions, notices u/s 133(6) were issued to the above entities, however, the same were returned *un-served* by postal authorities with remarks '*Not known*'. Consequently, the assessee was



ITA No.3620/Mum/2012
Athene Construction LLP
Assessment Year-2009-10

directed to substantiate the purchases made by him. The assessee defended by the purchases made by him by submitting copies of invoices, delivery challans and Architect's certificate to support the stand that the purchased material was used in the construction activities. However, not convinced, Ld. AO, after considering the factual matrix, disallowed the same and added the same to the income of the assessee.

4. Aggrieved, the assessee contested the same without any success before Ld. CIT(A) vide impugned order dated 12/03/2013 wherein the matter was concluded against the assessee in the following manner:

6.5. I have gone through the assessment order and the submission made by the appellant during the course of appellate proceeding. The issue of bogus purchases has been taken by the A.O. properly during the course of assessment proceeding. The objections raised by the A.O. have not been satisfactorily met by the assessee. Even during the course of appeal proceeding, the appellant could not substantiate this. However, from the details submitted by the appellant it is seen that Rs.89,31,312/- has been paid on different dates vide ICICI Bank but the payment dates pertain to F.Y.2009-10 whereas, assessment is being made for the F.Y.2008-09. Since during the F.Y.2008-09, the purchases could not be proved satisfactorily by the appellant, nor the payments took place, the same cannot be considered in the present appeal and the additions made on account of bogus purchases amounting to Rs.2,50,75,380/- is confirmed.

Aggrieved, the assessee is in further appeal before us.

5. The Ld. Counsel for assessee [AR], *Shri Piyush Chhajed* contesting the stand of lower authorities, pointed out that the assessee purchased *steel* during the impugned AY which was used in construction activities as certified by the *Architect*. It was further submitted that the impugned disallowance translates into exorbitant *Gross profit Rate* of more than 60% in the hands of the assessee, which was not, at all justified, in the



ITA No.3620/Mum/2012
Athene Construction LLP
Assessment Year-2009-10

assessee's line of business. The same was controverted by Ld. Departmental Representative [DR], *Shri Rajesh Kumar Yadav*, by submitting that the assessee miserably failed to prove the transactions, which justifies the stand of lower authorities in making full disallowance.

6. We have carefully heard the rival contentions and perused relevant material on record. We are of the considered opinion that the assessee was engaged in construction activities during the year which could not be carried out without consumption of *steel*. The aforesaid fact is undisputed and duly supported by the *Architect's certificate*. The assessee was in possession of primary purchases documents. Further, the said disallowance has resulted into shooting of *Gross profit Rate* to such a level which is unconceivable in assessee's line of business. However, at the same time, the assessee is unable to prove the purchase transactions carried out by him by producing any of the two suppliers under dispute. There was a long delay in making payment to the suppliers and both suppliers were new entities. The notices issued u/s 133(6) elicited no satisfactory response. The assessee is also unable to controvert the argument that majority of the work was completed in earlier years. All these factors cast serious doubt on assessee's claim. Therefore, in such a situation, the addition, which could be made, was to account for profit element embedded in these purchase transactions to factorize for profit element earned by assessee against possible purchase of material in the *grey market* and undue benefit of VAT against such bogus purchases.



ITA No.3620/Mum/2012
Athene Construction LLP
Assessment Year-2009-10

Therefore, keeping in view the overall factual matrix, we estimate the additions @8% of *alleged bogus purchases* of Rs.2,50,75,380/-. In other words, the impugned disallowance shall be restricted to Rs.20,06,030/- whereas the balance disallowance shall stand deleted. The Ld. AO is directed to re-compute the income of the assessee in terms of our above directions.

7. Resultantly, the assessee's appeal stand partly allowed.

Order pronounced in the open court on 13th July,2018

Sd/-

Sd/-

(C.N.Prasad)

न्यायिकसदस्य / **Judicial Member**

(Manoj Kumar Aggarwal)

लेखासदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 13.07.2018

Sr.PS:-Thirumalesh

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त (अपील)/ The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधिमुंबई ,आयकरअपीलीयअधिकरण ,/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard File

आदेशानुसार/ BY ORDER,

उपसहायकपंजीकार/ (Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण ,मुंबई / ITAT, Mumbai