

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "L", MUMBAI

Before Shri Mahavir Singh, Judicial Member &
Shri G Manjunatha, Accountant Member

ITA No.2024/Mum/2016
Assessment Year : 2012-13

IPMS Uluslararası Proje İnşaat Ve Yönetim Hizmetleri Ltd. Şirketi, Adarsh Mandir, Datta Mandir Road, Malad (E), Mumbai 400 097.	Vs.	DCIT (IT) 2(2)(2), Mumbai
PAN AACCI5218H (Appellant)		(Respondent)

Appellant By : Shri Shrikant V Marathe
Respondent By : Shri Samuel Darse

Date of Hearing :17.07.2018

Date of Pronouncement : 17.07.2018

ORDER

Per G Manjuntha, Accountant Member

This appeal filed by the assessee is directed against the order passed by the DRP-1, Mumbai, dated 09.12.2015 for A.Y. 2012-13, u/s. 144C(5) of the Income Tax Act, 1961. The assessee has raised the following Grounds of appeal:-

"1) The disallowance cu Rs. 79,60,478/- has been upheld by the Hon. Members of Dispute Resolution Panel (DRP) with wrongful assumption that the consideration for the contract was split into the two contracts with the intention to keep some part of the consideration away from taxation under the Income Tax Act, 1961. The existence of the two kinds of payments to be received by the assessee v.i.z.

- a) Lump Sum Price Payment-USD 21,94,200 in two years*
- b) Staff Support Services:-USD 32,82,550 in three years*

instead of one composite contract is wrongfully perceived by Assessing Officer (AO) as a method for not offering the staff support service for

taxation in the Return of Income. The approach of the Deputy Commissioner (DC) and subsequent non reversal of AO's proposed action by the Hon. Members of DRP is not at all congruent with the reality of the case.

2) The approach as stated in Ground No.1 reflects the existence of a bias against the Assessee that the Assessee has not offered Rs.79,60,478/- intentionally. This is evident from the fact that the gross amount of Rs.79,60,478/- was erroneously but inadvertently not offered as income in the Return of Income. Form No.26 AS reflects the generation of income Rs.79,60,478/- accrued to the assessee as on 31st March, 2012 which was mistakenly not included in the income for A.Y.2012-13. The above said omission is misunderstood by the AO and the DRP as a deliberate measure to remain away from the taxation of income of Rs. 79,60,478/-.

3) With regard to the disallowance of Rs. 1,03,92,464/-, it is submitted that the details of the expenses claimed have not been considered at all for granting the same as business expenditure. Thus, the evidence in the form of the detailed statements of expenses and the certificate by the Auditors already submitted are fully ignored without any valid reason for such disregard of the evidence made available to the AO and Members DRP.

4) The apportionment of total expenditure is altogether ignored by AO and DRP. The total office expenses of Rs. 91,66,953.89 is claimed @ of 92% i.e. Rs. 83,96,387.63 and the total employee expenses of Rs.3,91,86,469.72 is claimed @ of 67% i.e. Rs.26,300,536.80. Thus, total disregard of the aspect of incurrence of the expenditure.

5) The certificate by İlmaz Kilic, C.P.A. of M/s Karnica Yeminli Mali Musavirlik Ltd. Şti. in respect of the expenditure of Rs.2,63,00,536.80 incurred in Turkey for the cost of services rendered for the business carried out in India and total of other expenses of Rs.83,96,387.63 comprising of Rs. 22,060/-, Rs.83,41,009.33 and Rs.33,318.30 being payment to Auditors & Others should be considered for the purposes of allowance of expenditure as claimed by the assessee.

6) -The false presumptions behind the income addition of Rs.79,60,478/- have led to an adverse view adopted by the AO and the Members of DRP resulting in the disregard of the fact of incurrence of expenditure. Non appreciation of the evidence submitted is highly unjustious to the Assessee.

7) The DCIT has disallowed and Members of DRP have confirmed the disallowance of 30% of total expenses of Rs.3,46,96,924/-. Thus, it is

implied that 70% of total expenditure is justifiable on the basis of the same evidence which is rejected for the purposes of 30%. This view of partial allowance is itself amounts to acceptance of the evidence submitted and simultaneously confirms the self contradiction in the Final Order of DCIT based on the verdict of DRP.

8) The two parts of the remuneration to IPMS were for Lump sum portion to be received as and when the technical need arises whereas Staff support portion was to be received as per monthly fees. Thus, the inherent nature of payments to IPMS was genuinely different considering the work involved and the necessity to pay to IPMS.

9) The payment schedules have also been submitted to the AO and the Members of DRP reflecting the nature of payments done genuinely as per technical nature of job. These payment schedules were also produced to the AO during assessment and also to the Members of DRP on Page Nos.71 to 73 for initial commitment amounts and on page Nos 141 to 143."

2. The brief facts of the case are that the assessee is a company incorporated in Turkey. The assessee provides integrated and holistic project management solutions. The assessee has filed its return of income for A.Y. 2012-13 on 30.09.2012 declaring total loss of ₹ 7,41,250/-. The case was selected for scrutiny and total income of the assessee was determined at ₹ 1,76,11,692/- in the draft assessment order dated 25.03.2015 u/s. 144C(1) r.w.s. 143(3) of the Income tax Act, 1961. In the draft assessment order, the Assessing Officer has made additions towards difference in contract assets of ₹ 79,60,478/- being difference between gross receipts admitted in the Profit & loss account and gross receipts as per Form 26AS as well as TDS Schedule shown in the return of income. The Assessing Officer also made adhoc disallowance of 30% of expenses incurred on cost of services rendered and general administrative expenses and worked out disallowance of ₹ 1,03,92,464/-. The assessee has filed its objections to the draft assessment order before the DRP. Before the DRP, the assessee has challenged the draft assessment order passed by the Assessing Officer by making the additions towards difference in turnover over as well as adhoc disallowance of expenses. The assessee has filed certificate by its auditors M/s. Karnica Yeminli Mali Musavirlik Ltd. Sti. In respect of expenses incurred in Turkey for the cost of services rendered for the business

carried out in India. The DRP after considering relevant submissions of the assessee dismissed objections filed by the assessee and upheld the additions made by the Assessing Officer towards difference in receipts as per Form 26AS and adhoc disallowance of expenses by holding that the assessee has not filed any valid justification either before the AO or before us that this amount does not represent income of the assessee for A.Y. 2012-13, rather the evidence on record clearly shows that the claim of ₹ 79,60,478/- is assessable in the A.Y. 2012-13. As regards the disallowance of expenses, all that the assessee has submitted is that the expenses were incurred in Turkey and the same is duly certified by the auditors. No other documentary evidence was either produced before the Assessing Officer or before us. Even the documents or evidence on which the auditors could issue the certificate as relied on has not been produced. Hence, certificate cannot be held as reliable and credible. In the absence of evidence the disallowance of expenditure is upheld. Aggrieved by the directions of the DRP the assessee has preferred appeal before the ITAT.

3. During the course of hearing, the learned AR for the assessee submitted that he did not want to press Ground no.1 challenging the directions of the DRP in upholding the additions made by the Assessing Officer towards the difference between the income reported in Profit & loss account and gross receipts appearing in Form 26AS. Therefore, Ground no.1 is dismissed as not pressed.

4. The next issue that came up for consideration is adhoc disallowance of expenses of ₹ 1,03,92,464/-. The Assessing Officer has disallowed 30% expenses incurred under the head cost of services rendered and general administrative expenses as according to him assessee has not provided any substantiation of the expenses with credible evidence. The Assessing Officer further observed that even the assessee did not furnish any evidence to prove that these expenses are incurred to carry out business activities in India, which comes u/s. 37(1) of the Act. The DRP also upheld the findings of the Assessing Officer by observing that no documentary evidence to show the incurring of expenses has been furnished either before the Assessing Officer or before us except filing of the auditors Certificate without any

further evidence to justify how the auditor could issue certificate. The DRP therefore opined that the certificate cannot be reliable and credible. It is the contention of the assessee that it has furnished necessary details of expenses along with certificate of auditor to prove that cost of services rendered have been incurred towards business activities carried out in India. The Assessing Officer as well as the DRP ignored all the evidences filed by the assessee to make adhoc disallowance of 30% of the expenses.

5. We have heard both the parties and perused the material available on record. The Assessing Officer as well as the DRP has given categorical finding that the assessee neither furnished any evidence nor justified nexus between expenses incurred and business activity of the assessee in India. The Assessing Officer has made adhoc disallowance of 30% of the expenses for the reason that the assessee has not substantiated expenses with credible evidence. The DRP has upheld the findings of the Assessing Officer with similar observations and stated that without any further evidence the certificate issued by the auditor cannot be considered as credible evidence. We find that the assessee has filed certain evidence in the form of statement of expenses incurred under the head cost of services rendered and summary of expenses incurred towards general administrative expenses. The assessee claims that the said details have been furnished before the Assessing Officer. The facts are contradicting each other. The Revenue authorities stated that no evidence has been filed whereas the assessee claimed that all evidence has been filed before the lower authorities. In fact, the assessee has filed certain statement of expenses before us. Therefore, we are of the considered view that the issue needs to be re-examined by the Assessing Officer in the light claim of assessee that expenses incurred under the head cost of services rendered and general administrative expenses are supported by evidences and also there is a live link between the expenses incurred and business activities of the assessee. Hence, we set aside the issue to the file of the Assessing Officer and direct him to call for necessary evidences to justify the expenses.

6. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on this day of 17th July 2018.

**Sd/-
(Mahavir Singh)
JUDICIAL MEMBER**

Mumbai, Dated : 17th July, 2018.
SA

**Sd/-
(G Manjunatha)
ACCOUNTANT MEMBER**

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'L' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai