

**IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI
BENCH, RANCHI**

BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER

&

SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.184 & 72/Ran/2017

Assessment Year : 2011-2012 & 2012-2013

ACIT, Central Circle, Jamshedpur	vs	M/s Suraj Solution Private Limited, 706, New Sitaramdera, PO- Agrica, Jamshedpur- 831009
PAN No. : AAJCS 9438 G		
(Appellant)	..	Respondent

AND

Cross Objection Nos.23 & 22/Ran/2017

(Arising out of ITA Nos.184 & 72/Ran/2017)

Assessment Year : 2011-2012 & 2012-2013

M/s Suraj Solution Private Limited, 706, New Sitaramdera, PO-Agrica, Jamshedpur-831009	vs	ACIT, Central Circle, Jamshedpur
PAN No. : AAJCS 9438 G		
(Appellant)	..	Respondent

Revenue by

Shri A.K.Mohanty, JCIT(Jr. DR)

Assessee by

Shri Devesh Poddar, Adv.

Date of Hearing : 27.11.2018

Date of Pronouncement : **29.11.2018**ORDER**Per Pavan Kumar Gadale, JM:**

The Revenue has filed these appeals against the order of CIT(A), Patna, dated 05.05.2017 & 31.01.2017 for the assessment years 2011-2012 & 2012-2013. The assessee has also filed cross objections.

2. Since the issues involved in the appeals of Revenue are common, therefore, they are heard and disposed off by this consolidated order. For the sake of convenience, we shall take into consideration the facts and grounds narrated in ITA No.184/Ran/2017 for the assessment year 2011-2012. Grounds of appeal in the said appeal read as under :-

- I. *That under the facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 94,62,598/- under the head Clinker Rake Handling Charges.*
- II. *While granting relief to the assessee the CIT(A) totally ignored the statement given by Sri Praveen Agarwal during the course of search where it was admitted by him about bogus accommodation entry amounting to Rs. 94,62,598/- given to the assessee.*
- III. *The CIT(A) has erred in relying on the evidences about the permission of Railway Authorities obtained for the Clinker Handling work at the Goods shed. While doing so he totally overlooked whether actual execution of work had been done by the alleged party or whether any services were provided to the assessee company as handling charges.*

The CIT(A) has erred in relying on the circumstantial evidences like Service Tax Bills and lower deduction certificate 197(1) of the I.T. Act, 1961 without going into the crux of the issue i.e. whether any actual services was rendered by the alleged party the assessee company.

Any other ground that may be raised during the course of hearing.

3. Brief facts of the case are that the assessee is a contractor and engaged in transportation service. A search and seizure action was carried out in the assessee's case u/s.132(1) of the Act on 12.11.2011 in the case of one Sh Praveen Agarwal in his premises at 2C, Dover Road, Flat No.2C/D, Kolkata. During the course of search Shri Praveen Agarwal admitted that he had provided a bogus entry of commission

amounting to Rs.94,62,598/- to the assessee. Consequently, notice u/s.148 of the Act was issued to the assessee. Accordingly, the assessee filed return of income for the A.Y. 2011-2012 declaring total income of Rs.68,85,650/- and for the A.Y. 2012-2013 declaring total income of Rs.63,51,510/-. Subsequently, the case was selected for scrutiny and the AO framed the assessment u/s.147/143(3) of the Act determining a total income of Rs.1,63,48,250/- making an addition of Rs.94,62,598/- and for the assessment year 2012-2013 the AO completed the assessment u/s.143(3) of the Act determining total income of Rs.1,47,26,890/- making addition of Rs.93,75,381/- on account of clinker rake handling charges.

4. Aggrieved by the order of AO, assessee preferred an appeal before the CIT(A). In the appellate proceedings, the AR of the assessee appeared and argued the grounds and reiterated the submissions made before the AO. The CIT(A) after considering the submissions of the assessee and the findings of AO, partly allowed the appeal of the assessee for both the assessment years under consideration i.e. 2011-2012 & 2012-2013.

5. Aggrieved by the order of CIT(A), the Revenue has filed appeal both appeals before the Tribunal.

6. Before us Id. DR relied on the order of AO and submitted that the CIT(A) has totally overlooked whether actual execution of work had been done by the alleged party or whether any services were provided to the

assessee company as handling charges and prayed for allowing the appeal of Revenue.

7. On the other hand, Id. AR supported the order of CIT(A).

8. We have heard the rival submissions and perused the material on record. Ld. DR before us submitted that the CT(A) while granting relief to the assessee has totally ignored the statement recorded during the course of search where it was admitted about bogus accommodation entry given to the assessee. We find that the CIT(A) for the assessment year 2011-2012 has deleted the addition made by the AO and observed as under :-

“After considering the finding of the AO in assessment order and the submission of the appellant, I find that the AO had disallowed Clinker handling expenses of Rs. 94,62,598/- on the ground that the expenditure on this account is nothing but the accommodation entry for the purposes of inflation of expenses to reduce the taxable income of the appellant. In coming to this conclusion, the AO has referred to the search operation in the case of one Sri Praveen Aggrawal who had admitted in his sworn statement that he was control of around 200 companies (the recipient of the expenses being one of the company) engaged in providing accommodation entry only related subcontract, bogus commission fees and accommodation entries, purchase and sale of unquoted shares through group concerns. It was also accepted on oath by Sri Aggrawal that for such accommodation entries, only commission is received by them. Further, the AO carried out enquiries at the given address of the recipient of the expenses, Subhshree Hirise Pvt. Ltd. (SHPL) and found out that the said concern was not in existence at the said address which brought to the notice of the appellant who furnished an alternate address on which summons under section 131 of the Act had been issued for the personal attendance of the Director of the recipient company alongwith the production of books of account and documents in support of the claim of expenditure in question which was complied in part without personal attendance or production of books of account. On the basis of this, the AO concluded that the appellant had paid bogus Clinker rake handling charges which is the subject matter of appeal.

To understand the factual matrix of the case, it would be relevant to look into the background of the business affairs of the appellant-company who is engaged in the carrying, forwarding and transportation of clinker at the Tatanagar Railway Site for the Jojobera Cement Plant of M/s Lafarge India Pvt Ltd. And for the purposes of the rake handling, the appellant has not only engaged SHPL but four other transporters as well who were (1) Sridihi Transport Company (2) Cargo Movers (3) Vaishali Enterprises (4) Ashwini Kumar Aggrawal. And since, any Railway property is not an open thoroughfare, permission of the concerned agency has also been obtained from the Railway Authority in this regard after informing the contractee agency i.e. M/s Lafarge India Pvt. Ltd. In addition to this, the SHPL has also charged Service tax on the bills raised to the appellant for the services rendered by them and also submitted the certificate issued under section 197(1) of the Act for the lower deduction of tax on the payments made to them.

So far as change of the address leading to non-service of summons and consequent non-compliance, it was submitted by the appellant that the change in address was evident from the website of the RCA which was not enquired into by the AO though specifically pointed out in the course of the assessment proceedings. And as regards, non attendance of the Director of the SHPL, it was once again pointed out that summons in question was issued and dispatched on 21.03.2015 for compliance on 30.03.2015 which was received by the addressee on 28.03.2015 leading to consequent non compliance which was not factored in. In respect of the sworn statement of the Sri Praveen Aggrawal, it was submitted that Sri Aggrawal is unrelated third party neither in receipt of payment nor connected in anyway with the payer or payee which at best can be disregarded.

Alternatively, it has also been submitted that if disallowance is upheld it would lead to abnormal increase in profit of the appellant which is unheard of in this line of business.

As discussed hereinabove and as held in the case of the appellant itself in the Appeal No. 12/CIT-A-/PAT/14-15 for the assessment year 2012-13 allowing the appeal, an inevitable conclusion emerges that in spite of the sworn statement of the Sri Praveen Aggrawal remaining unsubstantiated on the particular facts of the case that the contractee agency has been informed about the engagement of the sub-contractors including the SHPL, permission of the Railway authorities had been obtained for the clinker handling work at the Goods Shed, the Service tax has been raised, in the bill and paid as well as the certificate under section 197(1) of the Act issued by the Department has been furnished for the lower

deduction of tax, payment made to the SHPL cannot be said to be an accommodation entry thus, bogus. The reasoning and conclusion of the AO is devoid of merit and thus cannot survive.

In view of the aforesaid, disallowance made on account of the clinker handling charges to M/s Subshree Hirise Pvt. Ltd. is directed to be deleted.”

9. Similarly, the CIT(A) for the assessment year 2012-2013 has also deleted the addition made by the AO on account of clinker handling charges and observed as under :-

“After considering the finding of the AO in assessment order and the submission of the appellant, I find that the AO had disallowed Clinker handling expenses of Rs. 93,75,381/- on the ground that the expenditure on this account is nothing but the accommodation entry for the purposes of inflation of expenses to reduce the taxable income of the appellant. In coming to this conclusion, the AO has referred to the search operation in the case of one Sri Praveen Aggrawal who had admitted in his sworn statement that he was control of around 200 companies (the recipient of the expenses being one of the company) engaged in providing accommodation entry only related subcontract, bogus commission fees and accommodation entries, purchase and sale of unquoted shares through group concerns. It was also accepted on oath by Sri Aggrawal that for such accommodation entries, only commission is received by them. Further, the AO carried out enquiries at the given address of the recipient of the expenses, Subhshree Hirise Pvt. Ltd. (SHPL) and found out that the said concern was not in existence at the said address which brought to the notice of the appellant who furnished an alternate address on which summons under section 131 of the Act had been issued for the personal attendance of the Director of the recipient company alongwith the production of books of account and documents in support of the claim of expenditure in question which was complied in part without personal attendance or auction of books of account. On the basis of this, the AO concluded that the appellant had paid bogus Clinker rake handling charges which is the subject matter of appeal.

To understand the factual matrix of the case, it would be relevant to look into background of the business affairs of the appellant-company who is engaged in the carrying, forwarding and transportation of clinker at the Tatanagar Railway Site for the Jojobera Cement Plant of M/s Lafarge India Pvt Ltd. And for the

purposes of the rake handling, the appellant has not only engaged SHPL but four other transporters as well who were (1) Sridihi transport Company (2) Cargo Movers (3) Vaishaii Enterprises (4) Ashwini Kumar Aggrawal. And since, any Railway property is not an open thoroughfare, permission of the concerned agency has also been obtained from the Railway Authority in this regard after informing the contractee agency i.e. M/s Lafaree India Pvt. Ltd. In addition to this, the SHPL has also charged Service tax on the bills raised to the appellant for the services rendered by them and also submitted the certificate issued under section 197(1) of the Act for the lower deduction of tax on the payments made to them.

So far as change of the address leading to non-service of summons and consequent non-compliance, it was submitted by the appellant that the change in address was evident from the website of the RCA which was not enquired into by the AO though specifically pointed out in the course of the assessment proceedings. And as regards, non attendance of the Director of the SHPL, it was once again pointed out that summons in question was issued and dispatched on 21.03.2015 for compliance on 30.03.2015 which was received by the addressee on 28.03.2015 leading to consequent non compliance which was not factored in. In respect of the sworn statement of the Sri Praveen Aggrawal, it was submitted that Sri Aggrawal is unrelated third party neither in receipt of payment nor connected in anyway with the payer or payee which at best can be disregarded.

Alternatively, it has also been submitted that the appellant has declared profit at the rate of @ 13% as against even presumptive rate of 8% prescribed under section 44AD of the Act and if disallowance is upheld it would lead to increase in profit of the appellant to 36% which is unheard of in this line of business.

As discussed hereinabove, an inevitable conclusion emerges that in spite of the sworn statement of the Sri Praveen Aggrawal remaining unsubstantiated on the particular facts of the case that the contractee agency has been informed about the engagement of the sub-contractors including the SHPL, permission of the Railway authorities had been obtained for the clinker handling work at the Goods Shed, the Service tax has been raised in the bill and paid as well as the certificate under section 197(1) of the Act issued by the Department has been furnished for the lower deduction of tax, payment made to the SHPL cannot be said to be an accommodation entry thus, bogus.

In respect of the discrepancy in the transportation handling charges and clinker handling charges in "the details of parties for expenses" and the name of SHPL not figuring the details, it has been

submitted and explained that the details submitted related to transportation whereas SHPL had been engaged for the Clinker handling work and that the AO has cumulated the entire payment made during the year which also included certain payments pertaining to earlier years as well which has not been understood by the AO leading to one of the reason for disallowance. The reasoning and conclusion of the AO is devoid of merit and thus cannot survive.

In view of the aforesaid, disallowance made on account of the clinker handling charges to M/s Subshree Hirise Pvt Ltd is directed to be deleted.”

10. From the observations of the CIT(A) for both the assessment years under consideration, we find that the CIT(A) while dealt on the disputed issue has found that the statement of the Sri Praveen Aggrawal remained unsubstantiated on the particular facts of the case and the contractee agency has been informed about the engagement of the sub-contractors including the SHPL, permission of the Railway authorities had been obtained for the clinker handling work at the Goods Shed, the Service tax has been raised in the bill and paid as well as the certificate under section 197(1) of the Act issued by the Department has been furnished for the lower deduction of tax, therefore, the CIT(A) observed that payment made to the SHPL cannot be said to bogus accommodation entry. Ld. DR during the course of hearing has only supported the order of Assessing Officer and could not bring any new cogent evidence to controvert the above findings of the CIT(A). Accordingly, we are of the opinion that the CIT(A) has passed a reasoned order for both the assessment years under consideration i.e. A.Y.2011-2012 & 2012-2013 and we uphold the same

and dismiss the grounds of appeal of Revenue in both the appeals i.e. ITA Nos.184 & 72/Ran/2017.

11. Thus, both appeals of the Revenue are dismissed.

12. The assessee has filed Cross Objections i.e. CO No.23 & 22/Ran/2017 which are arising out of ITA Nos.184&72/Ran/2017 for the assessment years 2011-2012 & 2012-2013, wherein in the first ground of cross objections, the assessee has supported the order of CIT(A). Since we have dismissed the appeals of the Revenue, therefore, the first ground raised by the assessee in both the cross objections has become infructuous and the same is dismissed.

13. In the second ground of both cross objections, the grievance of the assessee against the charging of interest u/s.234B of the Act. We find that this ground of assessee does not emanate from the order of the CIT(A). Accordingly, we direct the assessee to raise this issue of charging of interest before the CIT(A) and the CIT(A) shall consider the grievance of the assessee with regard to charging of interest as per the decision of jurisdictional High Court in case of Ajay Prakash Verma in ITA No.38 of 2010 reported in 2013(1) TMI 140, wherein the Hon'ble High Court has held that interest u/s.234B can be levied only on the returned income and not on the assessed income. Accordingly, this ground of assessee in both the cross objections is allowed for statistical purposes.

14. Thus, both the cross objections of the assessee are partly allowed for statistical purposes.

15. In the result, both appeals of the Revenue are dismissed and the cross objections of the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 29/11 /2018

Sd/-
(N.S.SAINI)

ACCOUNTANT MEMBER

Ranchi, Dated 29/11/2018
Prakash Kumar Mishra , Sr. Ps

Copy of the Order forwarded to :

1. The Appellant –
ACIT, Central Circle, Jamshedpur
2. The Respondent –
M/s Suraj Solution Private Limited, 706,
New Sitaramdera, PO-Agrica,
Jamshedpur-831009
3. The CIT(A) concerned
4. CIT , concerned
5. DR, ITAT, Ranchi
6. Guard file.

//True Copy//

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

BY ORDER,

SR.PS, ITAT, RANCHI