

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "D" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. AND SHRI O.P. KANT, A.M.

ITA.No.5689/Del./2012
Assessment Year 2004-2005

Web Overseas Limited, S- 385, Greater Kailash, Part-1, New Delhi. PIN - 110 048. PAN AAACW4777D	vs.	The Income Tax Officer, Ward - 18 (2), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Chandra Shekhar, C.A.
For Revenue :	Smt. Naina Soil Kapil, Sr.DR

Date of Hearing :	20.12.2018
Date of Pronouncement :	02.01.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-XXI, New Delhi, Dated 13.08.2012, for the A.Y. 2004-2005.

1.1. Earlier, this appeal was dismissed for default. The assessee moved M.A. which was allowed, therefore, appeal was re-fixed for hearing on merits.

2. We have heard the Learned Representatives of both the parties and perused the material available on record.

3. The assessee has filed the revised ground of appeal challenging the additions of Rs.8,04,846/- and Rs.1,76,117/-.

4. Briefly, the facts of the case are that assessee company filed return of income declaring total income of Rs.2,05,590/-. The A.O. noted that information was received vide CBDT Office Memorandum Dated 18.11.2005 in respect of mention of assessee-company in the Volcker Committee Report quoted from the Office Memorandum as reproduced in the assessment order in which it is mentioned that "In April, 2004, the United Nations Security Council appointed Independent Enquiry to investigate the administration and management of Oil-for-Food Programme in Iraq. The appointed Independent Inquiry Committee submitted its report on 27.10.2005 which documents the extensive manipulation of the Programme by the Saddam Hussain. The full report of the Committee has been placed

on public domain on the website which provides in detail the manipulation of the Programme by Saddam Hussain's regime in Iraq. It has been reported that Iraq's largest source of illicit income from the Programme came from kickbacks paid by companies that it selected to receive contracts for humanitarian goods under the Programme. These payments to Iraqi regiments were not reported to the United Nations by Iraq or the participating contractors and have been termed as 'illicit payments' by the United Nation. This was termed as After Sale Service Fee. A provision for the same was often incorporated into the contracts as a basis to inflate prices and to permit contractors to recover from the United Nation Escrow Account amounts they had paid secretly to Iraq in the form of kickbacks. This report contains complete list of these companies. It was, therefore, directed that suitable enquiries be conducted in detail into affairs of the assessee. The A.O. accordingly recorded reasons for reopening of the assessment and noted in the reasons that he has reason to believe income to the tune of Rs.8,04,846/- has escaped income. The assessee submitted

reply before A.O. in which it was submitted that assessee has not claimed after sales service fees in the P & L A/c, therefore, no disallowances under section 37 could be made. The A.O. noted that the reply of the assessee shows the fact that illegal payments were made is accepted by the Company. The A.O, therefore, noted that as per Explanation to Section 37, any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by Law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure. It was seen from the file that the expenses of Rs.8,04,846/- on account of ASSF is not booked against the business income of the assessee company. Nevertheless the illegal payments were made by assessee-company as seen above, therefore, it would fall under the purview of Section 69C of the I.T. Act. Since the assessee failed to explain satisfactorily the source of the expenditure, hence, the amount in question remain unexplained or was deemed to be income of the assessee. The A.O. accordingly made the addition of Rs.8,04,846/-.

5. The A.O. also required the assessee-company to produce the books of account, bills and vouchers vide notice dated 25.10.2010. The same was not done. The assessee was again requested to produce books of account along with bills and vouchers. However, no compliance have been made in this regard. In the absence of books of account, bills and vouchers for various expenses debited to the Trading and P & L A/c, it was difficult to verify their genuineness. The A.O. accordingly, disallowed 1% of these expenses and made addition of Rs.1,76,117/-.

6. The assessee challenged these additions before Ld. CIT(A) and a remand report from the A.O. was called for. The Ld. CIT(A) noted in his findings that assessee stated that it has lost the record pertaining to the assessment year under appeal and has filed FIR for the same as on 26.06.2012 and copy of the FIR was also filed. The Ld. CIT(A), therefore, noted that explanation of assessee is an afterthought because FIR have been filed for F.Y. 2003-2004 in June, 2012. The Ld. CIT(A) accordingly dismissed the appeal of assessee.

7. We have heard the Learned Representatives of both the parties and perused the material available on record.

8. Learned Counsel for the Assessee submitted that in fact the bill in question (PB-18) was not of the assessee company but of the firm M/s. Web Overseas located at the same address of the assessee-company. He has, therefore, submitted that since bill did not pertain to the assessee company, therefore, no addition could be made in the hands of the assessee. He has submitted that both the additions are unjustified.

9. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

10. We have considered rival contentions.

11. Learned Counsel for the Assessee during the course of arguments admitted that there are two entities operating from the same address of the assessee i.e., assessee-company as well as M/s. Web Overseas at the address of assessee i.e., S-385, Greater Kailash Part-1, New

Delhi. The same address is mentioned in the bill in question, copy of which is filed at page-18 of the PB. Learned Counsel for the Assessee also admitted that the Directors and the Partners are common in both the concerns i.e., assessee-company and the alleged firm namely M/s. Web Overseas. It is an admitted fact that the assessee did not produce books of account, bills and vouchers before the authorities below for examination at all. The re-assessment order was passed in December, 2011 and the assessee filed FIR for loss of the record in June, 2012 i.e., just prior to the passing of the appellate order by the Ld. CIT(A) on 13.08.2012. These facts, therefore, show that assessee made an afterthought story to hide the relevant facts from the revenue authorities. Since the deceptive similarly named companies were operating from the same address of the assessee and Directors and partners are common, therefore, it is a case of manipulation to avoid payment of legitimate taxes. The United Nations Security Council appointed an Inquiry Committee to investigate into the fact of illegal payments to Saddam

Hussain's regime. The name of the assessee-company also figured in the same. Therefore, it was for the assessee to explain to the satisfaction of the authorities below that it has not made any unaccounted payment in the matter in issue. The entire facts and circumstances and conduct of the assessee in not producing the books of account and records before the authorities below would clearly reveal that assessee was manipulating the records in the deceptive similarly worded other company just to manipulate the transactions. Otherwise, there was no reason why assessee would not produced the books of account and other details before the authorities below. These facts, therefore, would show that assessee has not explained the issue to the satisfaction of the authorities below, therefore, A.O. was justified in holding it to be an unaccounted expenditure incurred by assessee within the meaning of Section 69C of the I.T. Act. Since the books of account and bills and vouchers of the expenses were not produced before A.O, therefore, disallowance of 1% of the total expenditure is on very minimum side and as such no interference is required

in the matter. Considering the totality of the facts and circumstances of the case, we do not find any merit in the appeal of assessee and the same is accordingly dismissed.

12. In the result, appeal of Assessee is dismissed.

Order pronounced in the open Court.

Sd/-
(O.P.KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 02nd January, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'D' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.