

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : F : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.1275/Del/2016
Assessment Year : 2011-12

ITO,
Ward-19(2),
New Delhi.

Vs. P.I. Advisory Pvt. Ltd.,
1st Floor, 27, Babar Lane,
Bengali Market,
New Delhi.
PAN: AADCC6092N

(Appellant)

(Respondent)

Assessee by : Shri Gaurav Singhal & Shri Sunny Mittal, CAs
Revenue by : Shri Surender Pal, Sr. DR

Date of Hearing : 11.02.2019
Date of Pronouncement: 14.02.2019

ORDER

PER R.K. PANDA, AM:

This appeal by the Revenue is directed against the order dated 4th December, 2015 of the CIT(A), New Delhi, relating to assessment year 2011-12.

2. Ground of appeal No.1 by the Revenue reads as under:-

“1. On the facts and in the circumstances of the case, the Id.CIT(A) has erred in deleting the addition of Rs.46,18,143/- made by the Assessing Officer on account of disallowances of the expenses.”

3. The facts of the case, in brief, are that the assessee is a private limited company and filed its return of income on 16th March, 2012 declaring total income of Rs.27,60,818/-. The Assessing Officer, on perusal of the note on ratio of employees

expenses in comparison with revenue earned, observed that the personnel expenses of M/s Protiviti Consulting Pvt. Ltd. for the year ended 31.03.2011 were Rs.16,39,59,858/- as compared to consulting income of Rs.26,49,00,769/- which is 61.89% whereas the assessee company has remitted 90% of the total billed amount. Thus, there is a difference of 28.11%. On being questioned by the Assessing Officer, it was submitted by the assessee that profit before taxes of M/s Protiviti Consulting Pvt. Ltd was 3.18 whereas the assessee company has been assigned 10% which is more to M/s Protiviti Consulting Pvt. Ltd. It was further submitted that M/s Protiviti Consulting Pvt. Ltd. bears total expenses including legal and professional expenses, rent charges, communication expenses, printing & stationery expenses, etc., which included administrative and other expenses which is 31.88% of the total expenses.

3.1 However, the Assessing Officer was not satisfied with the explanation given by the assessee for the following reasons:-

“(1) M/s Protivity Consulting Pvt. Ltd. has its employees for management and running of its own business. These same employees are providing their services to the assessee company apart from regular services to M/s Protivity Consulting Pvt. Ltd. The expenses shown are including the expenses of these employees also and comparison is neither justified nor in accordance with the terms & conditions of the agreement.

(2) Despite remittance of 90% of total billed amount, the assessee company has also shown/debited its separate administrative expenses in the P & L Account for the year under consideration. The details are as under:-

(i)	Electricity Charges	-	2,05,521/-
(ii)	Rent & Hire charges	-	4,69,322/-
(iii)	Rates & Taxes	-	6,980/-
(iv)	Foreign rate fluctuation loss	-	13,334/-
(v)	Travelling expenses	-	8,75,004/-
(vi)	Printing & Stationery expenses	-	17,365/-
(vii)	Communication expenses	-	92,109/-
(viii)	Advt. & Marketing expenses	-	1,655/-
(ix)	Misc. expenses	-	46,005/-”

4. He, therefore, allowed expenses to the extent of 70% of the total billed amount and the remaining 20% over remittance debited in the P&L Account was disallowed by him totaling to Rs.46,18,143/-.

5. In appeal, the Id.CIT(A) deleted the addition by observing as under:-

3.3. “I have carefully considered the order passed by the AO and submissions filed by the AR of the appellant. The AO has allowed expenses to the extent of 70% of the total billed amount on the basis of direct employee cost booked for the year ended 31.03.2011 at Rs.16,39,59,858/- by M/s Proviti Consulting Pvt. Ltd. (PCPL). Prima facie, the reliance by the AO on only a part of expenditure in the P & L A/c of PCPL to arrive at disallowance in the case of the appellant company does not appear to be in order. For a realistic comparison, the other expenses incurred by PCPL should have been considered by the AO. It appears that the AO has missed out a critical point in the entire scheme of arrangement between the appellant company and PCPL. The agreement between the appellant company and PCPL was effective from 19.11.2010. It is only after this date that no major expenses were incurred by the appellant company except few nominal administrative expenses such as audit fee, rates & taxes. From the submissions of the AR, P & L A/c of the appellant company for two periods i.e. from 01.04.2010 to 19.11.2010 and from 20.11.2010 to 31.03.2011, it is apparent that the ratio of expenses to revenue for the former period is at 96% and profit percentage of revenue is 4%. In the later period, the profit percentage of revenue after work is outsourced to PCPL is at 9.28% giving an aggregate profit percentage of revenue at 5.89% for the entire year. Further, it is only for the period 20.11.2010 to 31.03.2011 that 90% of the billed amount of the appellant company is transferred to PCPL. For the earlier period i.e. 01.04.2010 to 19.11.2010, the appellant company has incurred regular expenditure against revenue of Rs.2,22,65,383/-. In the later period, out of revenue of Rs.1,23,67,213/- professional charges of Rs. 1,11,30,492/- (90% of the revenue) is transferred to PCPL. Only a sum of Rs.33,818/- as operating and administration expenses was incurred by the appellant company as the entire expenditure is incurred by PCPL. It is therefore clear that 90% of the billed amount i.e. Rs.1,11,30,492/- has been paid to PCPL in the period 20.11.2010 to 31.03.2011 whereas the revenue and expenditure for the earlier period is entirely accounted for in the accounts of the appellant company. Therefore, the base taken by the AO to disallow 20% of the expenditure in the hands of the appellant company on the total professional and consultancy expenses of Rs.2,07,81,644/- as amount of sub-contract cost to PCPL is not correct. It is not the case of the AO that the expenditure for the period 01.04.2010 to 19.11.2010 was overstated or wrongly claimed. The AO has also not brought on record any facts or evidence to support his contention that the margin of profit of the appellant company was as high as 30%. The sub-contracted amount of Rs. 1,11,30,492/- has been regularly accounted as receipts

in the books of PCPL. The AO has not invoked the provisions of section 145(3) of the Act to reject the accounting results of the appellant company. The entire edifice of his finding is on the expenditure on account of direct employee cost debited in the accounts of PCPL. It is not understood as to why he chose to ignore the other administrative and related expenditure disclosed in the accounts of PCPL. It is only proper that overhead expenses of PCPL should have been added to the personnel expenses to arrive at the profit margin. Once this is considered, the entire basis of the AO's finding does not stand scrutiny.

3.4. In the light of the above, I am of the considered view that the action of the AO in disallowing expenses of Rs.46,18,143/- is not sustainable and is, therefore, ordered to be deleted. These grounds of appeal are ruled in favour of the appellant.”

6. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal.

7. We have heard the rival submissions made by both the sides and perused the relevant material available on the record. We find the Assessing Officer, in the instant case, has allowed the expenses to the extent of 70% of the total billed amount on the basis of direct employee cost booked for the year ended 31.03.2011 at Rs.16.40 crores by M/s Protivity Consulting Pvt. Ltd. We find the Assessing Officer, in the instant case, has considered only a part of the expenditure in the P&L Account of the PCPL to arrive at the disallowance and has not considered the other expenses incurred by PCPL. Therefore, we concur with the finding of the CIT(A) that the base taken by the Assessing Officer to disallow 20% of the expenditure in the hands of the assessee company on the total professional and consultancy expenses of Rs.2,07,81,644/- as amount of sub-contract to PCPL is not correct. The Assessing Officer, in the instant case, has not brought on record any facts or evidence to support his contention that the margins of profit of the assessee company was as high as 30%. The provisions of

section 145(3) of the Act has also not been invoked. The Id. DR also could not controvert the factual findings and reasonings given by the CIT(A) while deleting the addition. In view of the above and considering the detailed reason given by the CIT(A) while deleting the addition, we find no infirmity in his order deleting the addition. Accordingly, the same is upheld and the ground raised by the Revenue is dismissed.

8. Ground of Appeal No.2 of the Revenue reads as under:-

“2. On the facts and in the circumstances of the case, the Id.CIT(A) has erred in deleting the addition of Rs.54,06,734/- made by the Assessing Officer on account of difference shown in the reconciliation statement by assessee.”

9. Facts of the case, in brief, are that the Assessing Officer, during the course of assessment proceedings, observed that the assessee company has entered into a service agreement with Bharti Infratel Limited. From the perusal of the AIR information, he observed that the assessee company has received an amount of Rs.3,62,41,310.31. On being questioned by the Assessing Officer to reconcile the above figure along with the figure reflected in the AIR information, the assessee company filed the following reconciliation statement:-

1.	Total amount billed during FY 2011-12	19115652
2.	Amount report by Bharti Infratel ltd.	15992023
3.	Add: TDS deducted by them	1743797
4.	Total amount report by Bharti Infratel Ltd.	17735820
5.	Less: Amount belongs to F.Y. 2009-10	(4069390)
6.	Amount report by Bharti Infratel belongs to FY 2010-11	13666430
7.	Amount report by Bharti Infratel belongs to FY 2010-11 (short payments)	42488
9	Difference	5406734

10. The Assessing Officer, on perusal of the information received u/s 133(6) of the Act from M/s Bharti Infratel Ltd., noticed that an amount of Rs.1,59,92,020/- has been paid to the assessee company during the year under consideration which confirmed the amount returned by the assessee in the reconciliation. The Assessing Officer, accordingly made addition of Rs.54,06,734/- being the difference as per the details filed by the assessee.

10.1 In appeal, the Id.CIT(A) deleted the addition by observing as under:-

“4.2. I have carefully considered the order passed by the AO and submissions filed by the AR of the appellant. The AO added back Rs.54,06,734/- as difference in the payments made by M/s Bharti Infratel Ltd. and the receipts disclosed by the appellant company for the year. The AR has argued that a detailed reconciliation statement was furnished with reference to the payments made by M/s Bharti Infratel Ltd. to the appellant company. It is evident from the tabulation forming part of the submission as appearing in para 4.1 above that the impugned amount of Rs.54,06,734/- has been included by the appellant in its receipts. In fact, the reconciliation was made on the basis of the ledger account of the appellant company as appearing in the accounts of M/s Bharti Infratel Ltd. which was requisitioned by the AO u/s 133(6) of the Act. The amount of Rs.54,06,734/- represents receipts for invoices raised on M/s Bharti Infratel Ltd. for F. Y. 2010-11 accounted in F. Y. 2010-11 for which payments were received by the appellant company in F. Y. 2011-12. Since the amount stands reconciled, the basis of the addition does not survive. The addition of Rs.54,06,734/- is ordered to be deleted. These grounds of appeal are ruled in favour of the appellant.”

11. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal.

12. We have heard the rival submissions and perused the relevant material available on the record. The submission of the Id. counsel for the assessee that the assessee himself has offered the amount of Rs.54,06,734/- to tax during the impugned assessment year and addition of the same again amounts to double addition could not

be controverted by the ld. DR. Since the amount has already been offered to tax by the assessee during the impugned assessment year, therefore, taxing the same amount again for the impugned assessment year will amount to double addition which is not justified. We, therefore, uphold the order of the CIT(A) on this issue and the ground raised by the Revenue is dismissed.

13. In the result, the appeal filed by the Revenue is dismissed.

The decision was pronounced in the open court on 14.02.2019.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 14th February, 2019

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Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi