

आयकर अपीलीय अधिकरण, "एस.एम.सी", न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, CUTTACK

श्री चन्द्र मोहन गर्ग, न्यायिक सदस्य के समक्ष ।

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

आयकर अपील सं./ITA No.28/CTK/2019

(निर्धारण वर्ष / Assessment Year :2015-2016)

M/s SCS-UMSL JV, At-IMFA Building, Bomikhal, Rasulgarh, Bhubaneswar-10	Vs.	ITO, Ward-4(3), Bhubaneswar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAKAS 0148 J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri S.K.Jena, AR
राजस्व की ओर से /Revenue by : Shri Subhendu Dutta, DR
सुनवाई की तारीख / Date of Hearing : **06/03/2019**
घोषणा की तारीख/Date of Pronouncement **07/03/2019**

आदेश / O R D E R

This appeal has been filed by the assessee against the order of Commissioner of Income Tax (Appeals)-2, Bhubaneswar, dated 26.11.2018 passed in First Appeal No.00373/2017-18 for the assessment year 2015-2016.

2. Ground No.4 of the assessee is general in nature, whereas ground No.3 of assessee challenging the initiation of penalty proceedings is premature, therefore, both the grounds are not being adjudicated.

3. Remaining effective grounds of the assessee read as follows :-

"1. For that the impugned order of assessment passed by the Ld. A.O u/s. 143(3) of the Act, and in Para-3.0 to Para-9.0 by the Ld. A.O made ad-hoc disallowances of various expenses under presumption, without being brought anything on record about his dissatisfaction, hence such additions are impermissible under Law, thus liable to be deleted.

2. *For that the Ld. CIT (A) while deciding the appeal though allowed retention money payable one of the disallowance made by the Ld. A.O, but sustained/confirmed the Ad-hoc additions by ignoring the appellant submissions, without even verifying the facts and documents available on records. Therefore under such circumstances the confirmation of ad-hoc additions mentioned in Para-3.0 to Para-9.0 on percentage basis in the assessment order amounting to Rs.15,18,955.00 is not supported by any law hence deserve to be deleted.”*

4. I have heard the arguments of both the sides and carefully perused the relevant material placed on the record of the Tribunal. Ld. AR submitted that the AO made adhoc disallowances under the sub-head earth work expenses, purchase of cement, purchase of crushed granite coarse aggregates, purchase of sand, purchase of steel, purchase of wooden materials and other operative expenses without any basis and without rejecting the books of accounts of the assessee. Therefore, the adhoc disallowances are not sustainable. Ld. AR further submitted that the AO has not pointed out any defect, discrepancy or deficiency in the books of accounts of the assessee and, thus, he has accepted the books of accounts of the assessee without any doubt and objection, therefore, adhoc disallowances made by the AO are not sustainable and prayed that the same may kindly be deleted. The Id. AR has placed reliance on the following two orders of the Tribunal :-

- i) *Tripat Kaur Vs. ACIT, ITA No.3244/Del/2012, order dated 07.09.2012; and*
- ii) *Mukesh Kumar Mahawar, Sitapur Vs. ITO, ITA No.615/LKW/2014, order dated 16.09.2015.*

5. Replying to the above, Id. DR strongly supported the action of AO as well as Id. CIT(A) and submitted that the AO has taken a very balanced

and justified approach while making disallowance of part expenses which was claimed and relevant documentary evidence such as bills and vouchers could not be produced for examination and verification by the AO. Ld. DR pointed out that the AO is quite correct and justified as while making disallowance he has allowed the entire amount of claim wherein the assessee has submitted relevant documentary evidence for examination and verification and he has only made certain percentage of expenses which was claimed but relevant documentary evidence could not be submitted by the assessee for examination and verification. Therefore, Ld. DR submitted that the additions may kindly be sustained by dismissing the appeal of assessee. Ld. DR also submitted that the order of the ITAT Delhi Bench in the case of Tripat Kaur (supra) and ITAT Lucknow Bench in the case of Mukesh Kumar Mahawar (supra) are not applicable to the present case as facts and circumstances of disallowances in the present case are quite different and distinguishable from these orders.

6. Placing rejoinder to the above, Ld. AR submitted that the assessee prayed for deleting the entire addition. However, alternatively Ld. AR submitted that the percentage of disallowances is very high as the assessee could not complete his construction and contract work without incurring expenses and merely because some part of expenses are not supported with the documentary evidence, the higher percentage of disallowance cannot be held sustainable, therefore, the disallowances may kindly be reduced to a reasonable percentage.

7. On careful consideration of above submissions of both the parties, first of all, from the assessment and first appellate orders, I observe that the AO allowed the assessee to submit relevant documentary evidence in support of his claim pertaining to earth work expenses, purchase of cement, purchase of crushed granite coarse aggregates, purchase of sand, purchase of steel, purchase of wooden materials and other operative expenses. However, the assessee could not produce relevant documentary evidence such as bills and vouchers etc., for verification and examination by the AO regarding entire claim of said expenses. Ld. AO while making and estimating the adhoc disallowance considered all the relevant documentary evidence which was produced before him and the same was fully allowed to the assessee, however, the AO further observed that there are some part of expenses which could not be examined and verified in absence of relevant documentary evidence, accordingly, he made disallowance of certain percentage. Therefore, the order of AO in making disallowance of certain percentage of expenses regarding which the assessee could not produce the relevant documentary evidence is quite correct and justified and, hence, the main prayer of the assessee to delete the addition is not acceptable and I decline to delete the entire amount of addition.

8. On further careful consideration of alternative prayer of the assessee with regard to allowing reasonable percentage of disallowance, I find that the AO has made disallowance @1% of earth work expenses at

Rs.5,110/-, however, the assessee could not produce evidence to substantiate its claim before the AO and accordingly the AO made disallowance of Rs.5,110/-. In my opinion the disallowance is very meagre and insignificant, therefore, further reduction of disallowance from 1% would not be justified and, thus, I confirm the same.

9. So far as disallowance @20% on the expenses claimed by the assessee on account of purchases of cement, crushed granite coarse aggregates, sand, steel and wooden materials, are concerned, I am of the view that the assessee is engaged in the business of civil contract work, which requires expenses on all the heads as claimed by the assessee. I may also point out that no defect, discrepancy or deficiency has been pointed out by the AO in the books of accounts of the assessee and the same has not been rejected. However, I cannot ignore the fact that the assessee could not produce relevant documentary evidence regarding certain part of claim of expenses. The AO has adopted a very balanced and justified approach while estimating the disallowance as he has allowed total amount of claim of expenses pertaining to which the assessee filed documentary evidences and another part of claimed expenses for which the assessee could not produce relevant documentary evidence the AO estimated disallowance @20% on the said heads and @10% on other operative expenses. In my humble understanding, the disallowance @20% on purchases of cement, crushed granite coarse aggregates, sand, steel and wooden materials is on higher side, therefore, considering the entire facts and circumstances of the

case, I reduce the percentage of disallowance made by the AO @20% to 10% on the above heads and direct the AO to calculate the amount of disallowance accordingly.

10. So far as disallowance made under the head other operative expenses, is concerned, the assessee has claimed under the different sub-heads under the head other operative expenses to the profit and loss account amounting to Rs.60,25,307/- for which bills and vouchers and other relevant documentary evidence could not be produced by the assessee before the AO in support of the expenses claimed by the assessee. On being asked by the Bench, the Id. AR submitted that the assessee is not able to produce the documentary evidence as the assessee has closed his business of civil contract work. In view of this, the submission of Id. AR at bar, I am of the view that when the assessee is claiming huge expenses of more than Rs.60 lakhs under the head other operative expenses without any iota of evidence such as bills and vouchers etc., then the disallowance @10% of total expenses cannot be said to be excessive and unreasonable and, thus, I decline to reduce the percentage of disallowance @10% under the head other operative expenses. Accordingly, disallowance made under the head earth work expenses @1% and under the head other operative expenses @10% are confirmed and other disallowances of 20% on the expenses claimed by the assessee under the heads purchases of cement, crushed granite coarse aggregates, sand, steel and wooden materials, are hereby

reduced to 10% and the AO is directed to recalculate the disallowances.

Accordingly, grounds No.1 & 2 are partly allowed.

11. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 07/03/2019.

Sd/-
(CHANDRA MOHAN GARG)
न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 07/03/2019

प्र.कु.मि/PKM, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- .
M/s SCS-UMSL JV,
At-IMFA Building, Bomikhal,
Rasulgarh, Bhubaneswar-10
2. प्रत्यर्थी / The Respondent-
ITO, Ward-4(3), Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack