

आयकर अपीलीय अधिकरण "D" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 6060/Mum/2017

(निर्धारण वर्ष / Assessment Year 2012-13)

आयकर अपील सं./ ITA No. 6059/Mum/2017

(निर्धारण वर्ष / Assessment Year 2011-12)

The Asst. Commissioner of Income Tax, Circle 25(3), Room No. 601, C-10, 6 th Floor, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai-400 051	Vs.	M/s Reliance Michigan (JV) Mithi River 105-C, Shyam Kamal, Agarwal Market, Vile Parle (East), Mumbai-400 057
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAJFR7731A		

अपीलार्थी की ओर से / Appellant by	:	Shri Abirama Karthikeyan, DR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Shalin S. Divatia, AR

सुनवाई की तारीख / Date of hearing:	18.03.2019
घोषणा की तारीख / Date of pronouncement :	18.03.2019

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

These appeals filed by the Revenue are arising out of the different orders of Commissioner of Income Tax (Appeals)-37, Mumbai [in short CIT(A)], in appeal Nos. CIT(A)-37/IT-201&199/ACIT-25(3)/2015-16 & 14-



ITAs No. 6059&6060/Mum/2017

15 even dated 03.07.2017. The Assessments were framed by the Asst. Commissioner of Income Tax, Circle-25(3), Mumbai (in short 'ACIT/ITO/AO') for the A.Ys. 2011-12 & 2012-13 vide order dated 26.03.2015 & 24.03.2014 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only common issue in these two appeals of Revenue is as regards to the taxability of profit arising from the contract receipts in the hands of the assessee firm or in the hands of its partners. The Revenue has raised the identically worded grounds in both the years and issue is exactly identical except the quantum. Hence, we will take up the facts from AY 2011-12. The revenue has raised following four grounds: -

"1. On the facts and in the circumstances of the case and in law, the Id. CIT (A) has erred in deleting the addition made on account of alleged diversion of profit to MIs Michigan & M/s Relcon of Rs. 2,90,57,828/- ignoring that the work has been subcontracted between the constituents on paper only and the profits of the JV has been diverted in the hands of its constituents by creating layer at each layer to reduce the profit."

2. On the facts and in the circumstances of the case and in law, the Id. CIT (A) has erred in deleting the disallowance of Rs. 20,74,738/- made on account of alleged bogus expenses in captive consumption claimed by MIs Relcon ignoring that the assessee failed to justify the expenses claimed under various heads by MIs Relcon.



3. *On the facts and in the circumstance of the case and in law, the Id. CIT (A) has erred in deleting the disallowance made on account of alleged bogus purchases by M/s Relcon of Rs. 56,45,316/- ignoring that the company had obtained bogus bills from three parties which are blacklisted by Sales Tax department of Maharashtra Govt. and that if bogus expenditure has been claimed by sub-contractor then the contractor is also responsible because the contractor has diverted his profits to the subcontractor by allowing him to claim bogus expenditure. Further Hon'ble ITAT failed to uphold the decision of Hon'ble Apex Court in the case of NM Proteins Ltd. Vs DCIT in SLP(Civil) No. 769/2017 dated 16.01.2017 where 100% addition was confirmed by the Apex Court.*

4. *On the fact and in the circumstances of the case and in law, the Id. CIT (A) has erred in not appreciating the fact that subcontracting the work between the constituents on paper does not make the entity genuine and if it is proved from facts that the awarding of subcontract is an eyewash and expenses claimed by the subcontractors are not genuine, then profit has to be taxed in the hands of the Joint venture to whom original contract was award.”*

3. At the outset, the learned Counsel for the assessee filed copy of Tribunal orders for AYs 2009-10 and 2010-11 respectively in ITA No. 6690/Mum/2012 and 6706/Mum/2014 vide order dated 26.04.2017,



wherein the issue of addition on account of alleged diversion of profits to M/s Relcon & M/s Michigan, Disallowance of Bogus expenses in captive consumption by M/s Relcon, Deletion of Disallowance of alleged bogus purchase by M/s Relcon and if awarding of contract to eyewash profit has to be taxed in hands of Joint Venture to whom original contract awarded are considered and adjudicated upon exactly on same facts and the Tribunal vide Para 9 to 10 adjudicate this issue as under: -

“9. We have carefully gone through the well reasoned and detailed findings recorded by Ld. CIT(A). The primary fact noted by us is that AO has himself noted in the assessment order that if the profit shown by all the three entities on the impugned contract receipts aggregating to ₹ 41.30 crores is aggregated, then it comes roughly to a sum of ₹ 5,43 crores which comes to 13.14% of the total contract receipts. Thus, apparently and prima facie, it cannot be said that there was any suppression of income. In addition to that, it is further noted that the returns filed by the partners, M/s Relcon & M/s Michigan have been accepted under section 143(3) wherein the income shown by these companies have been assessed in their respective hands. Thus, by making addition of the same income in the hands of the assessee also, the revenue has created a situation of double taxation which his not permitted under the law. It is further noted by us with the assistance of the parties that the tender document whereby contract was awarded to the assessee firm expressly permits the awardee



(assessee firm) to sub contract the work to the partners, who are specialized to do the job. This fact is on record that assessee firm was formed to bring together two persons having requisite skill and infrastructure in two different areas. This fact is also on record that assessee firm does not have any infrastructure, facilities or wherewithal of its own. Thus, it was dependent upon its partners for execution of the contract. Further, much debate is not required on this aspect since the factum of execution of entire contract by these partners companies has not been disputed by the Assessing Officer. Rather, the same has been accepted expressly in the assessment order passed under section 143(3) in the hands of these companies. The only apprehension or doubt in the mind of the AO was with regard to the method and manner adopted by the assessee firm whereby the contract was first taken in the name of the assessee firm and then it was sub contracted to its partners. In our opinion, the doubts expressed by the AO were misplaced and without any basis. The entire tendering process and the terms for the contract were structured in such a manner that two persons having skills and infrastructure in different areas were required to join hands to execute the project which, in turn, required highly specialized skills. Thus, the aforesaid companies, viz. Relcon & Michigan joined hands to execute these projects



jointly. The terms of the contract also expressly permit this arrangement. Nothing wrong or malafide could be noted in such an arrangement. The need of the business was such that MCGM wanted to handover the responsibility of the entire project to one entity, which in turn, could get it executed through its different constituents. Further, it is well settled that how the business is to be carried out is the sole prerogative and responsibility of the businessman. The revenue cannot sit in the armchair of the businessman to dictate terms as to how to do the business so long as evasion of tax is not detected or the arrangement is done in such a manner to evade tax. As mentioned by us earlier also, the AO has himself noted this fact that if profit shown by all the three entities from this project is aggregated, then it comes to more than 13% of the total contract receipts. Therefore, in our considered opinion, the AO could not have rewritten the terms of the agreement that too by disregarding the assessment order passed under section 143(3) in the hands of M/s Relcon and M/s Michigan. Thus, the Ld. CIT(A) has rightly deleted the addition made by the AO in this regard. Further, with regard to the disallowance of expenses claimed by these partner companies in their returns, we find that the AO of the assessee firm had not jurisdiction to examine the same in the hands of assessee firm. Whether the expenses



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claimed by the partners are genuine or otherwise can be the subject matter of examination and assessment in the hands of these partner companies only. Thus, Ld. CIT(A) has rightly reversed the action of the AO in this regard also.

10. *Thus, taking into account the totality of the facts and circumstances of the case we find that nothing wrong could be shown to us in the detailed and well-reasoned findings recorded by Ld. CIT(A). Thus, we endorse the findings recorded by Ld. CIT(A) and uphold the same. The judgements relied upon by the Ld. CIT(DR) are not applicable on the facts of the case before us. Thus, all the grounds raised by the revenue are hereby dismissed.”*

4. The learned Departmental Representative now before us has not pointed out any distinction or could not controvert the Tribunal’s order for AY 2009-10 and 2010-11. As the facts are exactly identical in both the years, what was in AY 2009-10 and 2020-11 respectfully following the same we dismiss both the appeals of Revenue.

5. **In the result, both the appeals of Revenue are dismissed.**

Order pronounced in the open court on 18.03.2019.

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)
(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 18.03.2019.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai