

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'B', HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA Nos. 1731 & 1732/Hyd/2016
Assessment Years: 2011-12 & 2012-13

Dy. Commissioner of Income-tax,
Circle – 2(1), Hyderabad.

vs. IJM (India) Infrastructure
Ltd., Hyderabad.

PAN – AAACI7067A

Appellant

Respondent

Revenue by: Shri Y.V.S.T. Sai
Assessee by: Shri V. Raghavendra Rao

Date of hearing: 04/02/2019
Date of pronouncement: 27/03/2019

ORDER

PER S. RIFAUR RAHMAN, AM:

Both these appeals filed by the revenue are directed against the orders of CIT(A) –2, Hyderabad, for the AYs 2011-12 and 2012-13. As identical issue is involved in both these appeals they were clubbed and heard together and therefore, a common order is passed for the sake of convenience.

2. Brief facts as taken from AY 2011-12 are, during the course of survey u/s 133A at the premises of the assessee on 08/02/2011, blank letter heads in the name of various concerns apparently located at Delhi were found. Upon questioning, the assessee could not provide proper answers.

2.1 The details of expenditure booked in the name of the concerns during the year is as follows:

1. Sheetal Enterprises	Rs. 8,30,45,016
2. Marco Enterprises	Rs. 3,35,98,243

3. Rajinder Construction	Rs. 9,24,24,033
4. Poonam Enterprises	Rs. 76,23,316
5. Rishabh Trade Metallic Pvt. Ltd.	Rs. –
6. Raj Traders	Rs. –
Total	Rs. 21,66,90,608

2.2 The AO observed that during the current assessment proceedings, the assessee vide letter dt. 20-02-2014 submitted that the assessee furnished detailed submissions justifying the work supposedly done by the concerns but in the end agreed for the disallowance. The last para of the submissions reads as follows.

"taking the above aspects into consideration in a holistic manner, we wish to submit that, the works executed through the sub-contractors as listed in para 10 above may be dealt by the Department in the manner, whatever the department may think quite appropriate and reasonable, since, we are not in a position to produce the sub-contractors in view of the details as explained above. We further submits that, even in the event of disallowance of the said subcontractors amount, we will abide by the department stand for giving a quietus to prolonged litigation and to buy peace subject to not to levy the penalty proceedings".

2.3 The AO noted that the above submissions clearly show that the assessee is unable to justify the work/ purchases from the alleged parties and escaping all through by stating that the work was done long back and it is not possible to trace the parties. It can be seen from the letter of the assessee that it is an admission of the fact that they are unable to establish the genuineness and capacity to execute works of the above sub-contractors and, therefore, admitted that they will abide by the department stand for giving quietus to prolonged litigation.

2.4 In view of the above observations, the AO disallowed the sub contractors payments to the above parties amounting

to Rs. 21,66,90,608/- and added to the income of the assessee.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A) and the before the CIT(A), inter-alia, submitted that the issue involved in this appeal is squarely covered by the decision of the coordinate bench of this Tribunal in assessee's own case for AY 2008-09 wherein it was held that 15% of such expenditure can be disallowed instead of 100% expenditure disallowed by the AO.

4. The CIT(A) after considering the submissions of the assessee and following the decision of the coordinate bench in assessee's own case for AY 2008-09 (supra) directed the AO to disallow the expenditure to the extent of 15% out of the total expenditure of Rs. 21,66,90,608/-.

5. Aggrieved by the order of CIT(A), the revenue is in appeal before us raising the following grounds of appeal:

"1. The learned CIT (A) erred both on facts and law.

2. Whether, on the facts and circumstances of the case, the CIT(A) is correct in law in holding that the disallowance should be restricted to 15% even when the AO had conclusively proved during the assessment proceedings that all entities are bogus in nature?

3. Whether, on the facts and circumstances of the case, the CIT(A) is correct in law in restricting the disallowance to 15% even when the assessee was not able to produce any of the entities before the AO during assessment proceedings despite availing reasonable opportunity?

4. Any other ground that may be urged at the time of hearing."

6. Before us, the Id. DR apart from relying on the assessment orders for A.Y. 2011-12 and 2012-13, filed the written submissions, which are as under:

“• In this case, incriminating evidences, in the form of blank letter heads in the names of the entities to whom payments were made were discovered during the course of survey action under sec. 133A of the I T act. These evidences have not been satisfactorily explained by the assessee.

• When the assessee was asked to produce the parties for verification, the assessee failed to do so.

• On the basis of the details furnished by the assessee, when letters were addressed to AD, such letters were returned back.

• Mere furnishing of basic details of the parties does not amount to discharge of burden of proof on the part of the assessee in the light of the compelling facts and circumstances of the case.

• Analysis of the bank account copies of the parties revealed suspicious aspects which have not been answered.

• All facts clearly show that the entities merely accommodated the transactions / entries and have meager asset bases.

• In the assessment proceedings, the assessee surrendered the payments made and agreed for the taxation of the same. Later, however, retracted by agitating over the matter in the appeal.

• With admission, there was nothing further to be done by the AO. In any case, on the basis of the details provided, all possible enquiries were conducted and the outcome is against the case of the assessee.

More importantly, the incriminating evidences clearly show the bogus nature of the transactions involved.

In view of the above, the transactions / payments are not genuine and the assessee cannot escape taxation by making mere statements without any substance. Accordingly, it is submitted that restricting the

disallowance to 15%, as done by the CIT(A), based on the decision of the Hon'ble ITAT, is not correct and reasonable. The disallowance in its entirety needs to be upheld.”

6.1 Further, the Id. DR relied on the following cases:

1. NK Industries Vs. DCIT, [2016] 72 Taxmann.com 289 (Guj)
2. NK Proteins Ld. VS. DCIT, [2017] 84 Taxmann.com 195 (SC)
3. Shoreline Hotel (P) Ltd. Vs. CIT, [2018] 98 Taxmann.com 234 (Bombay)
4. CIT Vs. Narender Kumar Gupta, [2015] 55 Taxmann.com 371 (P&H)
5. Kalyani Medical Stores Vs. CIT, [2017] 80 Taxmann.com 158 (Cal.)
6. CIT Vs. N.R. Portfolio (P) ltd. [2013] 29 Taxmann.com 291 (Delhi)

7. The Id. AR, on the other hand, relied on the order of CIT(A) and submitted that the case law relied on by the Id. DR are distinguishable.

8. Considered the rival submissions and perused the material on record. We find that the issue in dispute is squarely covered by the decision of the coordinate bench in assessee's own case for AY 2008-09 (supra) wherein the Bench observed as under:

“7.13 The initial onus and burden of proof was on the assessee. In the instant case, stich initial onus and burden of proof has been duly discharged by the Assessee Company by producing its audited books of accounts, payment vouchers-and other documents giving full details as to the nature of transactions, which necessitated the payment of such subcontract works and that this :vas an accepted norm and established in this line of business and that without such payment, it was not possible to survive in this line of business, as well as the prevalent trade practice in the line of business carried on by the Assessee Company all along. However, in this case the inflating of expenditure by the assessee cannot be ruled out. Considering the entire facts and circumstance of the case and chances of inflating the expenses by the assessee, to meet the

ends of justice, we are inclined to disallow 15% of this payment.”

As the issue under consideration is materially identical to that of AY 2008-09, following the decision therein, we uphold the order of the CIT(A) in directing the AO to disallow the expenditure to the extent of 15% out of the total expenditure of Rs. 21,66,90,608/- and dismiss the grounds raised by the revenue on this issue.

9. As the facts and grounds are materially identical in AY 2012-13 to that of AY 2011-12, following the decision therein, we uphold the order of CIT(A) and dismiss the grounds raised by the revenue.

10. In the result, both the appeals of the revenue are dismissed.

Pronounced in the open court on 27th March, 2019.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, dated 27th March, 2019.

kv

Copy forwarded to:

1. DCIT, Circle – 16(2), 2nd Floor, “B” Block, IT Towers, AC Guards, Masab Tank, Hyderabad.
2. M/s Ocean Sparkles Ltd., 126, Srinagar Colony, Hyderabad – 500 073.
3. CIT(A) - 4, Hyderabad
4. Pr. CIT – 4, Hyderabad
5. The DR, ITAT, Hyderabad
6. Guard File