



IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND

SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA no.2568/Mum./2017
(Assessment Year : 2011-12)

Income Tax Officer
Ward-2(1)(4), Mumbai

..... Appellant

v/s

Aemaa Projects Pvt. Ltd.
D-0, 002, Yogi Nagar
Borivali (W), Mumbai 400 092
PAN - AAACH2612N

..... Respondent

Revenue by : Shri V.K. Chaturvedi
Assessee by : Shri Mahesh Saboo

Date of Hearing - 26.06.2019

Date of Order - 06.09.2019

ORDER

PER SAKTIJIT DEY, J.M.

Captioned appeal by the Revenue is against order dated 20th January 2017, passed by the learned Commissioner of Income Tax (Appeals)-3, Mumbai, pertaining to the assessment year 2011-12.

2. The only effective ground raised by the Revenue reads as under:-

"On the facts and in the circumstances of the case and in law, the learned Commissioner (Appeals) erred in giving relief of ₹ 7,17,51,837, by restricting the disallowances of expenses (in cash) from ₹ 8,18,11,290 to ₹ 1,00,59,453, despite of the facts that the cash vouchers were self made and non-verifiable."

3. Brief facts are, the assessee is a resident company. As claimed by the assessee, it is engaged in executing contract work. For the assessment year under dispute, the assessee filed its return of income on 30th September 2011, declaring nil income under the normal provisions and book profit of ₹ 8,89,522, under section 115JB of the Income-tax Act, 1961 (for short "*the Act*"). As alleged by the Assessing Officer, in spite of several notices being issued to the assessee calling for necessary details, the assessee repeatedly defaulted in furnishing the details. However, subsequently, the assessee appeared and furnished audited financial statement, tax audit report, etc. It was submitted by the assessee that it is engaged in the business of civil construction and during the year under consideration, it has undertaken road construction work on sub-contract basis from another company viz. Keti Construction Pvt. Ltd. (KCL). When the Assessing Officer called upon the assessee to furnish the documentary evidence to support the execution of contract work, the assessee, vide letter dated 18th December 2013, submitted that it has undertaken work of boulder breaking, spreading and leveling and covering with dust of road construction work. To cross verify the claim

of the assessee, the Assessing Officer issued notice under section 133(6) of the Act to KCL seeking certain information. In response, it was submitted by KCL that it had issued a work order to the assessee company for rendering certain services such as drawing of road work, layout of L-section, layout of X-section and levels, provide all types of plant and machinery to execute the work, procure labour license for staff employed, maintain and operate primary health centre manned by a medical practitioner, engage adequate number of engineers and work supervisors to execute the works etc. After verifying the information obtained from KCL, the Assessing Officer again issued a notice under section 142(1) of the Act to the assessee calling for further details to verify the genuineness of the work claimed to have been executed. In response to the said notice, the assessee vide reply dated 27th January 2014, furnished further details along with photographs taken at the site to demonstrate the execution of work. After verifying the material on record, the Assessing Officer observed that the claim of the assessee and information received from KCL are contradictory. He observed, in reality, the assessee had not undertaken any work on behalf of KCL, hence, the transaction is not genuine. On the aforesaid premises, the Assessing Officer held that the claim of direct expenditure debited to the Profit & Loss Account aggregating to ₹ 8,18,11,219, cannot be allowed. Accordingly, he

disallowed the said expenditure. Being aggrieved with the aforesaid disallowance, the assessee preferred appeal before learned Commissioner (Appeals). To verify the genuineness of assessee's claim and also for verifying the reality of the execution of contract work, as claimed by the assessee, learned Commissioner (Appeals) called upon the assessee to furnish his Books of Account and other documentary evidences in support of various expenditures claimed. In response to the query raised by learned Commissioner (Appeals), the assessee again produced its Books of Account and other documentary evidences. After examining the Books of Account and other documentary evidences, learned Commissioner (Appeals) found that KCL was awarded a contract by the Government of Maharashtra to construct a road from Jalna to Deulgaon. KCL in turn sub contracted a part of the work to the assessee. Thus, he accepted assessee's claim that it has undertaken sub-contract work on behalf of KCL. However, as regards the expenditure debited to the Profit & Loss Account, learned Commissioner (Appeals), after verifying the material placed before him, found that most of the vouchers are self-generated having thumb impression, hence, authenticity of such expenditure could not be established fully. Therefore, he held that the entire expenditure claimed by the assessee cannot be allowed due to lack of proper verification. At the same time, he observed that the Government is

committed to create infrastructure by building new roads and the construction work many a time takes place in remote areas. Therefore, considering the labour problem, lack of proper banking facility, payment is required to be made in cash. That being the case, the entire expenditure claimed by the assessee representing mostly labour payment cannot be disallowed. He observed, in such circumstances, the Books of Account can be rejected, however, profit earned by the assessee has to be estimated on reasonable basis. Accordingly, applying the rate of 12% to the total receipts of ₹ 8,38,28,776, he worked out the income of the assessee at ₹ 1,00,59,453. Thereby, deleting the balance addition of ₹ 7,37,69,323.

4. The learned Departmental Representative submitted, in course of assessment proceedings, the assessee had not filed any evidence of substance to prove its claim of executing contract work. Therefore, the Assessing Officer was justified in disallowing the expenditure claimed by the assessee. He submitted, learned Commissioner (Appeals) was not justified in deleting a part of the addition relying upon the fresh evidences. Thus, he submitted, the addition made by the Assessing Officer should be restored.

5. The learned Authorised Representative submitted, not only the assessee had filed all evidences including the work order before the

Assessing Officer, but, learned Commissioner (Appeals) had also specifically called for and examined not only the Books of Account but all other evidences to verify assessee's claim of having executed the contract work. The learned Authorised Representative submitted, the contract work executed by the assessee is relating to construction of a road and the said contract was awarded by the Government of Maharashtra to KCL. He submitted, learned Commissioner (Appeals) having examined all the evidences has accepted assessee's claim of execution of contract work, therefore, has estimated profit @ 12%. He submitted, the aforesaid decision of learned Commissioner (Appeals) was confirmed by the Tribunal while deciding assessee's appeal on identical issue vide ITA no.1422/Mum./2017, dated 12th December 2018. Thus, he submitted, the Tribunal having already confirmed the order of learned Commissioner (Appeals) on identical issue, the present appeal by the Revenue has become infructuous.

6. We have considered rival submissions and perused material on record. As could be seen from the facts on record, the Assessing Officer has disallowed the entire expenditure debited to the Profit & Loss Account primarily on the reasoning that the assessee has not undertaken any contract work on behalf of KCL. It is evident, in course of assessment proceedings, the assessee had furnished various documents including the work order to substantiate its claim of

execution of contract work. Further, the Assessing Officer had also made his own enquiry with KCL and obtained information relating to assessee's claim. It is relevant to note, in response to the notice issued under section 133(6) of the Act, KCL had admitted of having issued a work order to the assessee for execution of some portion of the work. It is further evident, learned Commissioner (Appeals), for ascertaining the factual aspect of the issue, had also called upon the assessee to furnish Books of Account and all other documentary evidences before him. On verifying the Books of Account and documentary evidences, he has found that the contract work relates to construction of a road awarded by the Government of Maharashtra to KCL. In turn, KCL has awarded a part of the work to the assessee. Thus, the aforesaid facts clearly establish that the assessee indeed had executed a part of the contract work on behalf of KCL. No contrary material has been brought on record by the Revenue to disturb the aforesaid factual finding of learned Commissioner (Appeals). It is also a fact on record that while deciding assessee's appeal on the issue of estimation of profit @ 12%, the Tribunal, in the order referred to above, has confirmed the decision of learned Commissioner (Appeals). At this juncture, we must observe, at the time of hearing of assessee's appeal before the Tribunal, neither the assessee nor the Revenue have brought to the notice of the Bench pendency of Revenue's appeal on

identical issue. Be that as it may, the Tribunal while deciding assessee's appeal on identical issue having upheld the decision of learned Commissioner (Appeals) in estimating profit @ 12% of the receipts, we do not find any reason to deviate from the said decision of the Co-ordinate Bench. That being the case, the ground raised by the Revenue deserves to be dismissed.

7. In the result, Revenue's appeal is dismissed.

Order pronounced in the open Court on 06.09.2019

Sd/-
G. MANJUNATHA
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 06.09.2019

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai