



ITA No.3657/Mum/2012
B. Jeejeebhoy Vakharia & Associates
Assessment Year-2006-07

आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.3657/Mum/2012
(निर्धारण वर्ष / Assessment Year:2006-07)

B. Jeejeebhoy Vakharia & Associates 83, Jolly Maker Chamber II Nariman Point, Mumbai-400 021	बनाम/ Vs.	Income tax Officer-12(3)4 1st Floor, Aaykar Bhavan New Marine Lines, Mumbai-400 020.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AA AFB-7376-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri D.V. Lakhani-Ld. AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri K. Madhusudhan-Ld.CIT-DR
सुनवाई की तारीख/ Date of Hearing	:	01/10/2019
घोषणा की तारीख / Date of Pronouncement	:	14/10/2019

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member):-

1.1 Aforesaid appeal by assessee for Assessment Year [AY] 2006-07 contest the order of Ld. Commissioner of Income-Tax (Appeals)-23 Mumbai, [in short referred to as 'CIT(A)'], Appeal No. CIT(A)-23/12(3)(4)/IT-376/2010-11 dated 22/11/2011 on following grounds of appeal:-



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1. On the facts & circumstances of the case the Learned Commr. of Income Tax (A) has erred in confirming that the sum of Rs.10,00,000/- being the amount received by the appellant on sale of scrap is chargeable to tax. The appellant prays that the addition made by the Learned Assessing Officer and confirmed by Learned CIT (A) is not justified and may be deleted.
2. On the facts & circumstances of the case the Learned Commr. of Income Tax (A) has erred in confirming the additions made of Rs.3,00,000/- u/s 40 A (3) of Income Tax Act, 1961. The appellant prays that the addition may be deleted.
3. On the facts & circumstances of the case the Learned Commr. of Income Tax has erred confirming the invocation the provisions of Section 69 C of Income Tax Act,1961. The appellant prays that the basic conditions stipulated u/s 69 C are not satisfied. The appellant prays that additions made by invoking provisions of Section 69C may be deleted.
4. On the facts & circumstances of the case the appellant prays that they have not incurred any expenditure which is unexplained. The provisions of Section 69 C are not applicable in respect of the expenditure incurred by the appellant as the appellant has explained the source of the expenditure incurred in A.Y. 2006-07.
5. On the facts & circumstances of the case the appellant prays that additions made u/s 69 C amounting to Rs.14,34,000/- may be deleted.
6. The Learned CIT(A) has erred in confirming levying of interest u/s. 234A at Rs.3,95,714/-. The appellant denies the liability of payment of interest u/s. 234A. On the facts & circumstances of the case the appellant submit that levy of interest u/s. 234A at Rs. 3,95,7147- is not justified and be deleted.
7. The Learned Assessing Officer has erred in levying interest u/s. 234B at Rs.5,24,550/-. The appellant denies the liability of payment of interest u/s. 234B. On the facts & circumstances of the case the appellant submit that levy of interest u/s. 234B at Rs.5,24,550/- is not justified and be deleted.
8. The appellant prays that there is a reasonable cause for filing appeal late. The appellant prays that the delay may be condoned and appeal may be admitted.”

1.2 The registry has noted a delay of 36 days in filing of the appeal, the condonation of which has been sought by the assessee vide condonation petition dated 19/05/2012 by submitting that the assessee had preferred a rectification application u/s 154 before Ld. Assessing officer against order giving effect and was under a bona-fide belief that the appeal was not be preferred before Tribunal. Keeping in view the period of delay and explanation furnished by the assessee, the bench formed an opinion that in the interest of justice, the delay was to be condoned. Therefore, we



proceed to dispose-off the appeal on merits as per argument advanced by both the representatives. We have heard and considered the arguments, perused relevant material on record and deliberated on judicial pronouncements as cited before us. As evident from grounds of appeal, the assessee is contesting the addition of Rs.10 Lacs being sale of scarp material, addition of Rs.3 Lacs u/s 40A (3) and an addition of Rs.14.34 Lacs u/s 69C. Ground Nos. 6 & 7 contest levy of interest u/s 234A/234B. The interest being mandatory and consequential, would not require any adjudication on our part.

2.1 Facts on record would reveal that the assessee being resident firm stated to be engaged as Builder was assessed u/s 143(3) r.w.s. 153C on 29/12/2010 wherein the income of the assessee was determined at Rs.27.34 Lacs after certain additions as against *Nil* return filed by the assessee on 12/03/2010. The partners of the firm consisted of 6 corporate entities. These corporate entities entered into 6 separate development agreement with one concern namely M/s Usha Development Co-operative Housing Society Ltd. (UDCHSL) for development of certain land at Goregaon. Accordingly, these 6 entities formed partnership firm i.e. assessee for development of the plots. The development rights were originally obtained by M/s UDCHSL from M/s Pahadi Goregaon Land Development Pvt. Ltd. vide agreement dated 28/07/1988. Subsequently, the said concern was dissolved and the successors to the concerns were M/s Beeline Impex Pvt. Ltd. (BIPL) and M/s Pearl Cosmetics & Chemicals Pvt. Ltd. (PCPL).



2.2 The assessee entered into a MOU on 22/12/2001 with M/s Sahara India Commercial Corporation Ltd. (SICCL) for development of land wherein SICCL was to fund the project and the FSI was to be shared between the assessee and SICCL in certain proportions. Accordingly, SICCL advanced a sum of Rs.25 crores to the assessee. However, the project could not take off due to suspension of permissions by authorities and SICCL filed suit to restrain the assessee from alienating the land or creating a third-party right in the stated property.

2.3 Meanwhile, in another litigation proceedings by M/s BIPL & M/s PCPL against M/s UDCHSL wherein the assessee was also a defendant, in the matter of granting of development rights vide conveyance deed dated 19/07/1988, the said suit was decided out of court whereby the deed of conveyance was cancelled and since the amount payable by M/s UDCHSL could not be paid, only a small portion of the land was allowed to be continued in the possession of M/s UDCHSL.

2.4 The documentary supporting in connection with above transactions were found during the course of search proceedings at the premises of two other entities, which were operating from the same premises as that of the assessee. Consequently, proceedings u/s 153C was initiated for AYs 2003-04 to 2007-08. It transpired that the assessee obtained loans from various concerns and utilized the same mainly for advancing loans to partners and other group concerns and towards creation of work-in-progress (WIP). During the year, the amount of WIP increased from Rs.12.14 Crores to Rs.12.94 Crores i.e. reflected increase of Rs.0.80 Crores. The assessee



submitted that since there was no taxable income from projects, no return of income was ever filed for all the years. The last return was stated to be filed for AY 2001-02.

2.5 Upon perusal of cash book, it transpired that the assessee was in receipt of Rs.10 Lacs in cash from sale of scrap. It was submitted that the said amount was reduced from WIP. However, the assessee did not file any supporting to show that amount was reduced from WIP. Moreover, the sale of scrap, in the opinion of Ld. AO, could not be co-related to the WIP and the expenses debited to Profit & Loss Account could not be considered as incurred for earning the income from sale of scarp. Accordingly, the said income of Rs.10 Lacs was brought to tax as Business Income.

2.6 During the course of search proceedings, certain documents pertaining to assessee were found and upon perusal, it transpired that the assessee was shown to have incurred expenses of Rs.23.94 Lacs towards security and guarding including payment to policemen etc. The assessee explained the source to the extent of Rs.18.33 Lacs and for the balance, it was submitted that it did not incur any expenditure. It was also submitted that total expenses were only Rs.20.29 Lacs and not Rs.23.94 Lacs. However, upon perusal of documents, Ld.AO found that the expenses incurred were, in fact, Rs.37.67 Lacs out of which an amount of Rs.5 Lacs was stated to be paid in cash. The details of the same have already been extracted in para-9 of the quantum assessment order. Therefore, it was concluded that the assessee could not explain the source to the extent of Rs.14.34 Lacs which was added u/s 69C. Out of cash payment, 20% of the



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expenditure was disallowed u/s 40A(3) which resulted into an addition of Rs.3 Lacs in the hands of the assessee. Finally, the income was computed at Rs.27.34 Lacs.

3.1 Before learned first appellate authority, the assessee submitted that scrap was in the form of residual construction material, gunny bags, waste pieces of steel bars etc. and generated in the course of development activity and inextricably linked to development activity carried out by the assessee. Therefore, these receipts would go on to reduce the cost of project and therefore, the same has rightly been deducted from WIP account. Reliance was placed on the decision of Hon'ble Supreme Court rendered in **Bokaro Steel Ltd. 236 ITR 315**. However, the said submissions could not find favor with Ld. CIT(A) who upheld the action of Ld. AO in treating the scrap sale as business income.

3.2 Regarding disallowance of 20% of cash expenditure u/s 40A(3), the assessee submitted that it did not carry out any business activity and no income was computed under the head Profits & Gains of Business and therefore, the disallowance at the most, could be reduced from WIP account. However, disregarding the same, the disallowance made by Ld. AO was confirmed.

3.3 Regarding additions made u/s 69C, the assessee submitted that out of total expenditure of Rs.37.67 Lacs, the amount of Rs.12.73 Lacs was paid by Cheque while amount of Rs.15 Lacs was spent in cash since the disallowance u/s 40A(3) was made by Ld.AO at 20% resulting into addition of Rs.3 Lacs in the hands of the assessee. Therefore, the balance amount



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left would be Rs.9.94 Lacs and not Rs.14.34 Lacs as determined by Ld. AO which may be added with a view to conclude the matter. The Ld. first appellate authority, after appreciation of factual matrix directed Ld. AO to verify the cheque payments and add the differential amount to the income of the assessee. Upon perusal of order giving effect dated 07/02/2012, it is observed that the income has been re-computed at the same figures and no relief has been granted to the assessee.

Aggrieved, the assessee is in further appeal before us.

4. We have carefully considered the factual matrix as enumerated by us in the preceding paragraphs. So far as the addition of Rs.10 Lacs representing sale of scrap is concerned, it is observed that the assessee was undertaking development of certain project and sole activity being carried out by the assessee was construction activity. The same is evident from the fact that WIP stood at Rs.12.93 Crores at year-end. It is also undisputed fact that the assessee was following project completion method of accounting to offer income under the project. Therefore, the scrap generated out of construction / development activity, in our considered opinion was inextricably linked with assessee's main activity and therefore, the same would rightly go on to reduce WIP. Therefore, this addition would not be sustainable in law. The assessee has rightly deducted the same from WIP. On the similar analogy, the disallowance made by Ld. AO u/s 40A(3) @20% of cash expenditure would not be separate item of addition but since no expenditure has been claimed by the assessee during the year, the same would go on to reduce WIP account. Therefore, Ld. AO is



directed to reduce the said disallowance of Rs.3 Lacs from WIP account. Ground No. 1 stand allowed. Ground No.2 stand partly allowed.

5. Ground Nos. 3 to 5 are related with additions u/s 69C. Upon perusal of factual matrix, we find that total expenditure found to be incurred by the assessee was Rs.37.67 Lacs. Out of this expenditure, the amount paid through cheques was Rs.12.73 Lacs. The cash expenditure is stated to be made to the extent of Rs.15 Lacs, for which the assessee has already been saddled with disallowance u/s 40A(3) @20%. This would leave unexplained balance of Rs.9.94 Lacs. The same would stand confirmed in view of the fact that the source of the same remained unexplained. Hence, the addition to the extent of Rs.9.94 Lacs stands confirmed. These grounds stand partly allowed.

6. Resultantly, the appeal stands partly allowed to the extent indicated in the order.

Order pronounced in the open court on 14th October, 2019.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 14/10/2019

Sr.PS:-Jaisy Varghese

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

आदेश की प्रतिलिपि □ प्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent



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3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.