

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA.No.3919/Del/2016
Assessment Year: 2011-12**

**Asstt. Commissioner of Income-tax,
Central Circle -1, New Delhi.**

**vs M/s Aamby Valley Ltd.,
Hotel Sahara Star,
Opp. Domestic Airport,
Ville Parle, Mumbai.
PAN: AAGCA0045C**

AND

**C.O. No.301/Del/2016
(In ITA.No.3919/Del/2016)
Assessment Year: 2011-12**

**M/s Aamby Valley Ltd.,
Hotel Sahara Star,
Opp. Domestic Airport,
Ville Parle, Mumbai.
PAN: AAGCA0045C**

**vs Asstt. Commissioner of Income-tax
Central Circle -1, New Delhi.**

(Appellant)

(Respondent)

Revenue by: Shri Sanjay Goel, CIT DR
Assessee by: Shri Aditya Vohra, Advocate
Shri Arpit Goel, CA

Date of hearing: 09.10.2019
Date of order : 11 .10.2019

ORDER

PER K. NARASIMHA CHARY, J.M.

Challenging the order dated 26/4/2016 in appeal No. 387/15-16 passed by the learned Commissioner of Income Tax (Appeals)-23, New Delhi ("Ld. CIT(A)"), whereunder the Ld. CIT(A) deleted the addition of Rs.16,54,50,000/- made by the learned Assessing Officer, by way of order dated 14/12/2015 passed under section 154 of the Income Tax Act, 1961 (for short "the Act"), Revenue preferred this appeal. Assessee filed the cross objections in justification of the impugned order.

2. Brief facts of the case are that the assessee is a company belonging to the Sahara group of companies. For the assessment year 2011-12 they have filed their return of income on 30/11/2011 declaring a total loss of Rs.22,46,10,216/- and the assessment was complete by order dated 27/3/2015 at Rs.100,20,36,740/- by making certain additions. Subsequently, learned Assessing Officer by order dated 14/12/2015 passed under section 154 of the Act reversed the order dated 27/3/2015 to the extent of reduction of Rs.16,54,50,000/- from the Work In Progress (WIP), and added the same to the taxable income of the assessee.

3. When the assessee challenged the same in appeal, Ld. CIT(A) by way of impugned order deleted the same holding that such an amount was capitalised in WIP and was not debited in the P&L Account and, therefore, the question of its disallowance does not

arise. Aggrieved by this finding of the Ld. CIT(A) Revenue preferred this appeal.

4. Ld. DR submitted that in the assessment order there was a specific mention of addition of Rs.16,54,50,000/- but inadvertently learned Assessing Officer failed to mention the same in the computation of the taxable income and therefore, the order in section 154 of the Act is justified. According to him, the discussion made by the learned Assessing Officer vide paragraph No. 9.2 to 9.5 justifies the action of the Assessing Officer.

5. Per contra, it is the submission of the Ld. AR that the payment made to "Shiva ventures" was debited to the WIP account and the same was not charged to the P&L Account and, therefore, there was no justification for the learned Assessing Officer to add the related disallowance to the taxable income of the assessee under the guise of exercise of powers under section 154 of the Act.

6. We have gone through the record in the light of the submissions made on either side. During the course of assessment, learned Assessing Officer found that the assessee had incurred an amount of Rs.33,09,00,000/- on account of consultancy charges paid to Siva Ventures Ltd . On a consideration of the explanation submitted by the assessee in the light of the material furnished by them, it was the plea of the Assessing Officer that the assessee had not produced any documentary evidence to substantiate the

services rendered by the Siva ventures Ltd. In the absence of any evidence to establish the nexus between the payments made and the services received, according to the learned Assessing Officer, looking into the nature and volumes of business activities of the assessee such huge payment was not justifiable, despite the fact that the payments were made through cheque and TDS was also deducted thereon. Learned Assessing Officer, therefore, disallowed 50% of such amount which comes to Rs.16,54,50,000/- and excluded the same from WIP.

7. There is no dispute that the consultancy charges of Rs.33,09,00,000/- incurred by the assessee and paid to M/s Siva Ventures Ltd was debited to WIP and was not chargeable to the P&L Account. Though, in the assessment order, there was an inadvertent mention to the addition of Rs.16,54,50,000/-, there is a clear finding returned by the learned Assessing Officer that the disallowed amount of Rs.16,54,50,000/- shall be excluded from the work in progress.

8. In the order passed under section 154 of the Act, learned Assessing Officer mentioned that the mistake of not adding back the sum of Rs.16,54,50,000/- on account of payments made to M/s Siva Ventures Ltd is apparent from the record and it required rectification. On this aspect, on a consideration of the entire material before him, Ld. CIT(A) observed that inasmuch as the matter related to the payment wherein the Assessing Officer held

that 50% was to be disallowed and “shall be excluded from work in progress (WIP), which makes the things clear that such an amount was capitalised in WIP and was not debited in the P&L Account, and, therefore, the question of adding the same back to the income of the assessee does not arise. Ld. CIT(A), accordingly, did not find any mistake in the order dated 27/3/2015 except mentioning “Addition: 16,54,50,000/-” below para 9.5 which is only a mistake.

9. On a careful consideration of the matter, we are of the considered opinion that such a mistake occurred below para 9.5 in the assessment order which reads that “Addition: 16,54,50,000/-” does not warrant any rectification in the shape of adding it back to the taxable income of the assessee. Despite such a mistake that has crept in in the original assessment order, learned Assessing Officer was perfectly justified in not making any addition of such amount to the taxable income of the assessee while computing the same. If at all the learned Assessing Officer wanted to rectify the mistake that had crept in, in the original assessment order, it should have been rectified by removing the words “Addition: 16,54, 50,000/-“, but not by adding such sum to the taxable income of the assessee which had not passed through the profit and loss account.

10. With this view of the matter we do not find any illegality or irregularity in the impugned order. We, therefore, uphold the impugned order and dismiss the appeal of the Revenue. Consequently, Cross Objection filed by the assessee stands allowed.

11. In the result, whereas appeal of the revenue is dismissed,
Cross Objection filed by the assessee is allowed.

Pronounced in open court on 11th October, 2019.

Sd/-
(G.S. PANNU)
VICE PRESIDENT

sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 11th **October, 2019**

VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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