

THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Ramlal Negi (JM)
I.T.A. No. 2618/Mum/2018 (Assessment Year 2007-08)

Gammon Infrastructure Projects Ltd. Gammon House, Veer Savarkar Marg, Prabhadevi Mumbai-400 025. PAN : AABCG8641H (Appellant)	Vs.	ACIT, CC-41 Room No. 655 6 th Floor Aayakar Bhavan M.K. Road Mumbai-20. (Respondent)
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Assessee by	Shri Farooq Irani Shri Vinod Modi
Department by	Shri Ajay Kumar
Date of Hearing	19.12.2019
Date of Pronouncement	06.02.2020

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned CIT(A) dated 30.4.2013 and pertains to A.Y. 2007-08.

2. Grounds of appeal read as under :-

1. On the facts and in the circumstances of the case, the Learned Commissioner of Income Tax (Appeals) - 47, Mumbai ["CIT(A)"J, erred in dismissing the Additional Ground raised by the Appellant during the course of the appeal proceedings, by holding that the incriminating material found in relation to Gammon India Limited were inseparably connected with the Appellant and that the AO was empowered to frame assessment under Section 153A of the Income Tax Act, 1961 ("the Act"), disregarding the binding decision of the Bombay High Court in the case of CIT Vs. Continental Warehousing Corporation (Nhava Sheva) Ltd. [137 ITR 645 (Bom.)].

2. On the facts and in the circumstances of the case, the Learned Commissioner of Income Tax (Appeals) - 47, Mumbai ["CIT(A)"j, erred in holding that the Appellant is not eligible for deduction of Rs. 3,99,29,8887- under Section 80-IA of the on Developers Fees.

3. Each of the above grounds is without prejudice to one another.

3. Brief facts of the case are that the assessment u/s. 143(3) was duly completed in this case. Subsequently pursuant to search and seizure action in the case of Gammon India Limited and its other group companies, assessment was opened u/s. 153A. In the assessment order the Assessing Officer did not mention or refer to any incriminating material and made assessment disallowing the claim of the assessee u/s. 80IA on the same reasoning as was done in the original assessment order u/s. 143(3). In its appeal before learned CIT(A) the assessee took additional ground that since addition is without any incriminating material found during search assessment was not within jurisdiction. Assessee in this regard relied upon the decision of Hon'ble Bombay High Court in the case of CIT Vs. Continental Warehousing Corporation (Nhava Sheva) Ltd. (374 ITR 645) and CIT Vs. All Cargo Global Logistics Ltd. (374 ITR 645). Learned CIT(A) asked for the remand on the additional ground from the Assessing Officer. However, there was no report from the Assessing Officer. After noting these facts learned CIT(A) held that in view of several incriminating documents found during the course of search u/s. 132, relating to M/s. Gammon India Ltd. a cumulative declaration was made by M/s. Gammon India Ltd. amounting to Rs. 50 crores. That the incriminating documents related to unaccounted scrap sales, which has generated unaccounted cash, bogus purchases, bogus sub-contracts and miscellaneous income. Hence, learned CIT(A) held that the incriminating seized material found in relation to M/s. Gammon India Ltd. is intimately and inseparably connected with the assessee company. Learned CIT(A) held that there was enough incriminating material on record of the Assessing Officer to frame an assessment u/s. 153A. Hence, he dismissed this claim by the assessee.

4. Against this order the assessee is in appeal before us.

5. We have heard both the counsel and perused the records. At the outset, learned Counsel of the assessee submitted that in the original assessment u/s. 143(3) more or less same assessment was done. He submitted that there is no

whisper whatsoever of any incriminating material linked to the addition mentioned in the assessment order pursuant to search. Despite no finding of any material in the assessment order and also no report in this regard, learned CIT(A) proceeded to hypothesize that incriminating material found in relation to M/s. Gammon India Ltd. is intimately and inseparably connected with the assessee company. Learned counsel contended that the above fact by no stretch of imagination can be held to be satisfying legal requirement that for assuming jurisdiction for addition/assessment u/s. 153A of the Act incriminating material has to be found. Learned counsel submitted that even for argument sake learned CIT(A)'s hypothesis that some incriminating material intimately and inseparably connected with the assessee was found in relation to M/s. Gammon India Ltd., then it would be the case of assessment u/s. 153C of the Act for the assessee. Then the whole issue of satisfaction by the Assessing Officer would arise. Learned counsel submitted that there is no whisper of incriminating material found in this case in the assessment order. Hence, he submitted this addition dehorse any incriminating found is not sustainable on the touchstone of jurisdiction decision submitted as above.

6. Per contra, learned Departmental Representative relied upon the order of learned CIT(A).

7. Upon careful consideration we agree with learned counsel of the assessee that the Revenue has failed to prove that addition in the present case is based upon any incriminating material. This is neither emanating from the assessment order nor any cogent evidence or record has been submitted by the Revenue. Learned CIT(A) has only made hypothesis that incriminating material intimately linked to the assessee might have been found in the case of M/s. Gammon India Limited. This hypothesis itself is not sustainable as it is only a conjecture. Even in that hypothetical case incriminating found relating to the assessee found in the case of M/s. Gammon India Limited can lead to assessment u/s. 153C and not u/s. 153A. In these circumstances and facts in our considered opinion on the touchstone of jurisdiction in the case of

Continental Warehousing Corporation (supra) and All Cargo Global Logistics Ltd. (supra) assessment in this case is devoid of valid jurisdiction. Hence, we set aside the order of learned CIT(A) on this issue and decide the issue in favour of the assessee. Accordingly assessment has been found to be not valid on the ground of lack of jurisdiction. Hence, this issue is decided in favour of the assessee.

8. In the result, the appeal of the assessee is allowed.

Order has been pronounced in the Court on 6.2.2020.

Sd/-
(RAMLAL NEGI)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 6/02/2019

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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