

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Ms. Sushma Chowla, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 4473/Del/2016 : Asstt. Year : 2010-11

Universal Facility Management Pvt. Ltd., 102, Antriksh Bhawan, 22, KG Marg, Connaught Place, New Delhi-110001	Vs	Deputy Commissioner of Income Tax, Circle-27(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACU8941K		

Assessee by : None

Revenue by : Sh. Saras Kumar, Sr. DR

Date of Hearing: 02.01.2020

Date of Pronouncement: 20.02.2020

ORDER

Per Dr. B.R.R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT (A)-17, New Delhi dated 16.03.2016.

2. Following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case and in law, the Order passed by Hon'ble CIT (A) is contrary to the facts and bad in law.

2. That on the facts and circumstances of the case and in law, Hon'ble CIT (A) erred and was not justified in confirming the addition of Rs. 96,43,596/- (20% of the total receipts of Rs. 4,77,12,855 plus Rs. 1,36,025/- other income) made by A.O. by rejecting books of accounts and estimating profits by invoking provisions of section 145(3) of the Act."

3. During the year under consideration, the assessee was engaged in the business of providing business centre facilities and maintenance of immovable properties i.e. to the owners/tenants of building viz. Universal Trade Tower at Gurgaon. During the assessment proceedings, the Assessing Officer has called for details of TDS credit claim and also the sundry debtors. The Assessing Officer has completed the assessment proceedings on rejection of books of account.

4. To understand the issue of rejection of books of account u/s 145(3) of the Income Tax Act, 1961, the entire portion of the assessment order relevant to the issue is reproduced below:

"a. Following are the queries raised vide Questionnaire dated 15-2-2013:

"As the assessee is engaged in the activity of maintaining the premises viz. Universal Trade Tower at Gurgaon, which is developed by Universal Buildwell Pvt. Ltd., provide full details of the Units in the said tower, with distinctive number, area, owner's name or in whose name the said Unit is registered."

"Furnish Reconciliation of Income & Expense with TDS credit claimed & TDS effected."

"In the list of Sundry Debtors, there is an opening balance of Rs. 55,29,535/- (as on 1-4-2009) in the name of Universal Business Centre, which is a Unit of assessee company and in Sundry Creditors there is an opening balance of Rs. 55,29,535/- and closing balance of Rs. 76,56,340/- in the name of Universal Facility Management P. Ltd. (Others), which happens to be the assessee co. Similarly, other group companies are also having multiple identities like Viva Strategic Solutions P. Ltd. (VSSPL) & Viva Strategic Solutions P. Ltd. (Others) (VSSPL-O), Universal Buildwell P. Ltd. (UBPL) & Universal

Buildwell P. Ltd. (Others) (UBPL-O). Also, in the assessee's Books, in the account of VSSPL, on 9-3-2010 there is an amount of Rs. 58,676/- credited in the name of VSSPL-0 but there is no corresponding debit entry in the account of VSSPL-0 in the assessee's books in the entire year of 2009-10. All these anomalies renders the Books of A/c not reliable & it is proposed to be rejected u/s. 145(3). Clarify."

b. Following is the reply of the assessee, vide its letter dated 26-2-2013:

"The assessee company is providing facility, maintenance, security services to tenants of Building Universal Trade Tower and receiving the charges for these services. A list of tenants and area provided to them is attached herewith."

"In respect of balances opening & closing of Universal Business Centre & Universal Facility Management Pvt. Ltd. it is submitted that Universal Business Centre is unit of Universal Facility Management Pvt. Ltd. and balances of both entity are merged in consolidated balance sheet. Therefore these balances are- showing same amount in debit & credit side. We have opened two accounts of those companies with them we are dealing two type of services such rental services, security services, maintenance services i.e. income part, it is shown marking others and group companies also incurred expenses on our behalf, it is shown under the accounts not mentioned other.

With respect to corresponding entry of Rs. 58,676/- in the account of VIVA Strategic Solutions Private Ltd. (Others) it is submitted that this entry is reflected in the accounts on the same date but in the confirmation given to you entry of Rs. 1,83,676/- on 9-3-2010 is consolidated, no we are providing confirmation in detailed format in which this entry is reflecting.

Considering the above explanation an accounting treatment is according to standard method followed by regularly in the industry, Books of Accounts have

been prepared on basis of double entry system method which is an accepted method under income tax law."

C. Findings on the above:

The above explanation is not tenable, on the following reasoning:

i. The Income from Business Centre Operations credited in P & L A/c is Rs.4,77,12,855/-, while in the reconciliation of income with TDS, which is given party-wise, it is Rs.3,19,03,736/- & TDS credit thereon is Rs.38,76,515/-.

ii. in the P & L A/c there is a debit item of Rent of Rs. 2,10,39,399/- under the heading 'Other Cost' of Rs. 4.75 Crores. As per assessee's own admission it is in the business of providing facility, maintenance, security services to tenants of Building Universal Trade Tower and receiving the charges for these services and if so, then where is the need for paying any rent. Besides, there is no details of TDS effected on this, despite a specific query.

iii. The contention of providing two type of services for which two separate accounts are opened is also an afterthought which does not match with the facts, as the services stated to ice rental services, security services, maintenance services. Further, if there are more than one services to the same party, the correct accounting method is to have a separate account for the nature of services like Security Service, Maintenance Service etc. and not separate accounts for the same party with a suffix of 'Others'. More intriguing fact is that in one's Books of Accounts, there cannot be an account in the name of self which in this case is evident as there are A/cs in the name of Universal Business Centre (which is a Unit of assessee company) and Universal Facility Management Pvt. Ltd. (Others).

In view of the above the Books of Accounts of the assessee company is rejected and the income from business is estimated @ 20% of Rs.4,77,12,855

which as per assessee's own admission is its total income from Business Centre Operations which works out to Rs. 95,42,571 and to this other income of Rs. 1,36,025/- admitted by the assessee is added. Thus the total income from business for the current year is Rs. 96,43,596/-. Further, as the Books of Accounts are rejected u/s. 145(3) there is no question of allowing any expenses. Similarly, as the assessee has stated this practice as a consistent one, there is no question of allowing any set-off for earlier year's losses. Penalty Proceedings u/s. 271 (1)(c) read with its Explanations is separately initiated on this issue."

5. The Id. CIT (A) confirmed the addition on the grounds that the assessee who is in the business of maintenance services has claimed loss in the business and the rent paid of Rs.2.10 crore is not needed as per the business activity. Further, the Id. CIT (A) confirmed the addition holding that there was a difference between the TDS certificates and receipts as per the P&L account and maintenance of separate accounts for different heads of income is an afterthought and the assessee has not filed any details with regard to the other cost of Rs.4.75 crores claimed in the P&L account. The Id. CIT (A) also held that the assessee has not produced any details of the rent or receipts/bills said to have been paid and claimed in the P&L account.

6. Before us, the Id. DR argued that the assessee is in the maintenance business wherein the main expenditure would be on account of labour expenditure and relied on the orders of the authorities below. None appeared on behalf of the assessee. Hence, we proceed to adjudicate the matter based on the facts and record available before us.

7. We find that the Assessing Officer after rejection of books did not allow any expenditure and estimated profit @20% on the gross receipts. The estimation is not based on any comparable cases. The profits of such business mainly depend upon number of properties maintained, services offered, types of properties rates occupancy and expenses incurred. We have also gone through the details of the rent paid by the assessee and also the details of the TDS deduction. Further, we hold that while determining the profit, the parameters like occupancy rate, typical arrears, tenant turnover, rent ready cost, average days-to-lease, alternative income, repairs & maintenance cost, fee management and revenue margins. After examining the entire facts available on record, we hold that justice would be well served, if the profit is estimated @10% on the gross receipts.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order Pronounced in the Open Court on 20/02/2020.

Sd/-

(Sushma Chowla)
VICE PRESIDENT

Sd/-

(Dr. B.R.R. Kumar)
ACCOUNTANT MEMBER

Dated: 20/02/2020

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR