

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

(Virtual Court)

**Before: Shri Amarjit Singh, Accountant Member
And Ms. Madhumita Roy, Judicial Member**

**ITA No. 898/Ahd/2017
Assessment Year 2012-13**

M/s. Arydeep Developers Pvt. Ltd. B-43 Asmaakam-I, Nr. Torrent Power Station, Makarba Road, Vejalpur, Ahmedabad-380051 PAN: AAHCA7791G (Appellant)	Vs	The ITO, Ward-1(1), Ahmedabad (Respondent)
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**Revenue by: Shri L.P. Jain, Sr. D.R.
Assessee by: Shri S.N. Divetia, A.R.**

Date of hearing : 16-07-2020
Date of pronouncement : 30-07-2020

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2012-13, arises from order of the CIT(A)-1, Ahmedabad dated 27-02-2017, in proceedings under section 143(3) of the Income Tax Act, 1961; in short "the Act".

2. The assessee has raised following grounds of appeal:-

"1.1 The order passed u/s.250 on 27.02.2017 for A. Y.2012-13 by CIT(A)-1 . Ahad upholding, the disallowance of sub-contract payments for land development expenses of Rs. 9,48,000/- made by AO is wholly illegal, unlawful and against the principles of natural justice.

1.2 The ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence, produced by the appellant with regard to the impugned additions. The Ld. CIT has grievously erred in law and or on facts in not allowing the opportunity to cross-examine the sub-contractors and relying upon the material gathered by AO behind the back of the appellant.

1.3 The Ld. AO has grievously erred in disallowing the expenses of RS. 94,48,000/-without giving sufficient and specific opportunity to the appellant and thereby violating the principles of natural justice. The AO has failed to appreciate that the appellant was prevented by sufficient cause in failing to produce the sub contractors with documents called for. The appellant should therefore be allowed to produce additional evidence during the course of appellate proceedings and should be admitted.

2.1 The Ld. CIT(A) has grievously erred in law and or on facts in upholding the disallowance of the entire sub-contractors payments of Rs. 94,48, 000/- as non-genuine.

2.2 That in the facts and circumstances of the case as well as in law, the ld. CIT(A) has grievously erred in upholding the disallowance of the entire sub-contractors payments of Rs. 94, 48,000/- as non-genuine.

3.1 Without prejudice to the above and in the alternative, when the contention of Dept was that the land development expenses paid by PACL Ltd were not genuine, both the lower authorities have erred in law and or in facts in bringing to tax the entire contract receipts as income

4.1 Without prejudice to the above and in the alternative, the Ld. CIT(A) ought to have restricted the addition to the reasonable rate of commission for providing accommodation to the contractor.

It is therefore prayed that the disallowance of RS. 94,48, 000/- made by the AO and upheld by CIT(A) should be deleted. "

3. During the course of appellate proceedings before us, the Id. counsel has contested only the grounds no. 3.1 and 4.1. As common issue is involved in both the grounds of appeal, therefore, for the sake of convenience, these grounds of appeal are adjudicated together in the succeeding para.

4. The fact in brief is that the assessee has filed return of income on 28th Sep, 2012 declaring total income of Rs. 4,200/-. The assessee company was engaged in the business of construction, road contractor etc. The assessing officer received information from the DDIT, Investigation that assessee had undertaken work contracts from PACL Ltd., Gurgaon. As per the information, the PACL Ltd. has claimed bogus development expenditure and assessee has

received Rs. 1,02,04,082/- as land development charges from PACL Ltd. To verify the genuineness of transactions, the case of the assessee was selected under scrutiny by issuing of notice u/s. 143(2) of the Act on 27th Sep, 2013. During the course of assessment, the assessing officer has verified the work agreement of the assessee company with the PACL Ltd. and the work carried out by the assessee through the sub-contractors. On verification, the assessing officer noticed that there was no detail of location of land, area of land, survey no of land etc. in the agreement of the work contract. Therefore, the assessing officer has issued notices u/s. 133(6) of the Act to the following sub-contractors:-

Sub-Contractors	
1.	Smt. Vibha Shasikant Soni
2.	Shri. Shasikant Soni HUF
3.	Shri. Shasikant Soni
4.	Shri. Navin K. Thakkar
5.	Shri Rishi S. Dholakiya

Vide the above notices, the assessing officer has asked the subcontractors to furnish copy of return of income, balance sheet, P & L A/c account, capital account of the proprietary, bank statement etc. None of the sub-contractors have made compliance with the notices, therefore, to prove the genuineness of the transaction made with the sub-contractor, the assessee was asked to furnish the location of the land and details of work carried out through sub-contractors. The assessee has failed to make compliance, therefore, the assessing officer has completed the assessment u/s. 144 of the Act and the amount of land

development expenses of Rs. 94,48,000/- was added to the total income of the assessee.

5. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee. The alternative ground of appeal to make addition of only commission income earned on the accommodating transactions was also rejected by the Id. CIT(A).

6. During the course of appellate proceedings before us, the Id. counsel has contended that it is unjustified to disallow the entire sub-contract payment of Rs. 94,48,000/- thereby unreasonably taxed entire contract receipt of Rs. 1,02,04,082/-. The Id. counsel has also submitted that assessee company had furnished copies of confirmation of accounts with income tax returns of the five sub-contractors and copies of bill for the cost of services rendered. The Id. counsel has submitted that only net income or commission earned from the transaction be disallowed in the case of the assessee as it is unjustified to tax the whole contract receipt and disallowed the entire expenditure. The Id. counsel placed reliance on the following judicial pronouncements:-

(i) Rahee Infratech Ltd. vs. DCIT, IT(SS)A Nos. 05/Ahd/2015 06/Ahd/2015,07/Ahd/2015 dated 4th July, 2018 (ITAT, Kolkata)

(ii) ITA vs. Rupa Promoters Pvt. Ltd., ITA Nos. 2640/Ahd/2011, 2641/Ahd/2011, 2642/Ahd/2011 & 2643/Ahd/201 J dated 31-07-2012 (ITAT, New Delhi)

(iii) ITO vs. Shri Maheshbhai Tulsibhai Patel, IT A No. 2284/Ahd/2015/SRT & C.O. No. 167/Ahd/2015/SRT, ITA No. 2285/Ahd/2015/SRT&C.O. No. 168/Ahd/2015/SRT, dated 07/09/2018. On

the other hand, Id. departmental representative has supported the order of lower authorities.

7. We have heard both the sides and perused the material on record. During the course of assessment, the assessing officer observed on the basis of information received in respect of PACL Ltd. from the DDIT Investigation, Gurgaon that PACL Ltd. had claimed fictitious land development expenditure and the assessee M/s. Arydeep Development Pvt. Ltd. has received Rs. 1,02,04,082/- as land development charges from PACL Ltd. In the light of the information received pertaining to fictitious claim of expenditure by the PACL, the assessing officer has called the corresponding detail/document from the assessee to verify the genuineness of land development charges received by the assessee from PACL Ltd. along with the details and documents in respect of sub-contract made by the assessee with different sub-contractors for carrying out the development work. On verification of the details, the assessing officer has noticed that assessee has failed to furnish the complete details of location of land, area of land, survey no. of the land, name of the village where the land development work was taken place to prove the genuineness of the land development expenses paid by the assessee to sub-contractors. The assessing officer has issued notices u/s. 133(6) to all the sub-contractors. During the course of assessment, no sub-contractor has made compliance with the notices issued u/s. 133(6) of the Act by the assessing officer. On the alternative the assessee has failed to produce the sub-contractors along with documentary evidences for examination before the assessing officer. Consequently, the assessing officer has treated the development expenses of Rs. 94,48,000/- claimed as paid to

sub-contractors as bogus expenses and added to the total income of the assessee. During the course of appellate proceedings before Id. CIT(A), the assessee has furnished additional evidences i.e. copies of confirmation account with IT returns of the said five sub-contractors, copies of bills for cost of services etc. The Id. CIT(A) has admitted the additional evidences on the ground of not providing adequate opportunity to the assessee. The assessing officer has examined the subcontractors during the course of remand proceedings by issuing of summon u/s. 131(1) of the Act. In response to the summons issued to Shri Rishi S. Dolakia, one of the contractor has attended and his statement was recorded u/s. 131(1) of the Act. In his statement, the said contractor had admitted that he has not done any land development work for the assessee, M/s. Arydeep Development Pvt. Ltd.. He has further stated that he has just provided accommodation entries for which he has received commission from the assessee. The other four sub-contractors had filed their affidavits and admitted that they have not carried out any land development work for the assessee. They have stated that they have only provided accommodation entries. They have stated that the payment received by cheque from the assessee was returned back to the assessee in cash after deducting their commission for providing accommodation entries. During the course of appellate proceedings before the Id. CIT(A), the assessee has also made alternative plea that the entire contract receipt was not chargeable in the hand of the assessee but only the reasonable commission income should be estimated. However, the Id. CIT(A) has sustained the action of the assessing officer of treating the whole amount of payment made to sub-contractors regarding land development charges to the amount of Rs. 94,48,000/- as bogus and added to the total income of the

assessee. The Id. CIT(A) has also rejected the alternative plea of the assessee to estimate the reasonable commission income. We have also gone through the judicial pronouncements referred by the Id. counsel during the course of appellate proceedings before us as referred above in this order. It is noticed that in case of Raheel Infratech Ltd. vs. DCIT supra, the Coordinate Bench of the ITAT, Calcutta on similar fact of making payment to a number of parties including PACL Ltd. it was held that no work was done by the assessee or the sub-contractor and the Hon'ble ITAT has sustained the decision of Id. CIT(A) in estimating income @ 5% of the book entry after reducing the income already disclosed by the assessee. In the case of ITO vs. Shri Maheshbhai Tulsibhai Patel supra referred by the Id. counsel, the Co-ordinate Bench of Surat in respect of accommodation entries obtained from fictitious contract receipt has sustained the finding of Id. CIT(A) in estimation of commission @ 2% of total accommodation entries. After considering the facts, judicial findings as referred above, we consider that Id. CIT(A) is unjustified in treating the entire contract receipt of Rs. 94,48,000/- as a taxable income of the assessee without disproving the material fact that assessee was indulged in facilitating accommodation entries. The assessee has not carried out any development work for the PACL Ltd. and provided accommodation entries to PACL Ltd. and on similar basis accommodation entries were provided by the subcontractor to the assessee. The assessee has failed to furnish the description of the land and other details where the land development work was carried out and the sub-contractors have also admitted in their statements and the affidavits they have only provided accommodation entries. In the light of the above facts and finding that assessee have not executed any work except providing accommodation entries, we consider that looking to the meager income shown by the assessee it will be reasonable to estimate the commission income earned

by the assessee @ 4% of Rs. 1,02,04,082/- to the amount of Rs. 4,08,165/-. Therefore, the appeal of the assessee is partly allowed. The remaining grounds of appeal no. 1.2 to 2.2 not contested by the ld. counsel stands dismissed.

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

Order pronounced in the open court on 30-07-2020

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER
Ahmedabad : Dated 30/07/2020

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद