

आयकर अपीलीय अधिकरण न्यायपीठ जोधपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR

माननीय श्री संदीप गोसाईं, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI SANDEEP GOSAIN, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.124/Jodh/2020
(निर्धारणवर्ष / Assessment Year: 2016-17)

DCIT-Circle-2 Aaykar Bhavan, 2 nd Floor Sub City Centre Near Reti Stand, Udaipur Rajasthan-313 001.	बनाम/ Vs.	M/s. Unique Infra Engineering India Private Limited 5 , Second Floor 5-C Madhuban, Udaipur Rajasthan-313 001.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.AACU-4363-M		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Yogesh Pokharna (CA)- Ld. AR
Revenue by	:	Shri K.C. Badhok - Ld. CIT- DR

सुनवाई की तारीख/ Date of Hearing	:	04/11/2020
घोषणा की तारीख / Date of Pronouncement	:	21/12/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid appeal by revenue for Assessment Year (AY) 2016-17 contest the order of Ld. Commissioner of Income-Tax (Appeals)-1, Udaipur, [in short referred to as 'CIT(A)'], *Appeal No.203/IT/UDR/2018-19 dated 18/06/2020* on following effective grounds:-

1. Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) was justified in deleting the addition of Rs.1,53,55,879/- being the amount claimed under the head rebate and discount on account of non-acceptance of bills by the awarder company i.e. M/s American International Health Management.
2. Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) was justified in deleting the addition of Rs.1,53,55,879/- without appreciating the fact that if these expenses of Rs.1,53,55,879/- as raised as per bills were rejected by the awarder company and such rejection of expenses were not disputed or litigated by the assessee and then in such case these expenses of Rs.1,53,55,879/- cannot be said to be pertaining to contractual work as awarded to the assessee by the awarder company.
3. Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) was justified in deleting the addition of Rs.1,53,55,879/- merely by relying the general submission of the assessee and without assigning any specific reason.
4. The learned CIT(A) failed to consider the fact that once these expenses of Rs.1,53,55,879/- which were not accepted by the awarder company to be related to the contractual work as awarded to the assessee, the same cannot be held to be legitimately claimed to be incurred wholly and exclusively for the purpose of business and profession of the assessee.
5. The Id. CIT(A) failed to consider the fact that this non acceptance of expenses of Rs.1,53,55,879/- if not considered to be part of contractual receipts, the same cannot be considered as part of contractual expenses or business loss and hence claim of such expenses under the head rebate and discount was liable to be disallowed. This is more particularly in view of the fact that the assessee has never litigated or disputed such non acceptance or rejection of expenses of Rs. 1,53,55,879/- by the awarder company and therefore, these expenditures cannot be said to be incurred for the purpose of business and profession as the same were not related to contractual work awarded to the assessee.

As evident, the revenue is aggrieved by deletion of addition of Rs.153.55 Lacs by Ld. CIT(A).

2. We have carefully heard the rival submissions and perused relevant material on record including written submissions and documents placed in the paper book. The judicial precedents as relied upon during the course of hearing have duly been deliberated upon. Our adjudication to the subject matter would be as given in succeeding paragraphs.

3.1 The material facts are that the assessee being resident corporate assessee was assessed u/s 143(3) on 27/12/2018 wherein it was saddled with impugned addition of Rs.153.55 Lacs. The same would stem from the fact that the assessee reduced this amount from sales turnover as *written-off*. The said amount was under the head contract receipts with respect to a party namely M/s American International Health Management, Udaipur.

3.2 The assessee justified the deduction of the same u/s 37(1) since these were in the nature of rebate and discount on bills raised by the assessee. The assessee was a contractor and it was quite normal in the line of the business that the entire bills would not be accepted by the awarder for various reasons like calculation of percentage of completion method, physical measurement system, and qualitative differences etc. However, rejecting the submissions, the same was added back to the income of the assessee.

3.3 Before Ld. CIT(A), the assessee reiterated the circumstances under which the amounts were written-off and submitted that rebate and discount represent non-acceptance of certain parts of bills raised by the assessee. The rebates were less than 2.04% of total billed amount during the year and it was normal prevailing trend in the line of assessee's business. The same was a business loss and an allowable deduction u/s 37(1). In support, confirmed copy of account of M/s American International Health Management reconciling the difference of Rs.153.55 Lacs was also filed. The said figures were stated to be not reduced from service tax returns since there was no column in the return to claim such deduction.

3.4 The aforesaid submissions and explanations found favor with Ld. CIT(A) who in the backdrop of confirmed copy of statement as well as in the light of various judicial precedents, deleted the additions. Aggrieved, the revenue is in further appeal before us.

4. Going by the enumeration of facts as above, we find that certain part of bills raised by the assessee were not accepted by the awarder entity namely M/s American International Health Management and accordingly the same was claimed as rebate & discount. The sales figures as reflected in the audited accounts were duly reconciled by the assessee with service tax return figures. In support of claim, the confirmed copy of ledger account of M/s American International Health Management was also filed which was found to be in order. Hence, on the basis of these facts, the claim thus made by the assessee was clearly allowable u/s 37(1). The additions made by Ld. AO would have no legs to stand and therefore, Ld. CIT(A) was quite right in deleting the same.

5. The appeal stands dismissed.

*Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal)
Rules, 1963.*

Sd/-
(Sandeep Gosain)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 21/12/2020
Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, जोधपुर / DR, ITAT, Jodhpur
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, जोधपुर / ITAT, Jodhpur.