

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER  
[Through Video Conferencing]**

ITA No.2335/Del/2017  
Assessment Year: 2013-14

DCIT, Circle-15(1), New Delhi	<b>Vs.</b>	M/s. Lahmeyer International India (P) Ltd., A-3, 2 <sup>nd</sup> Floor, Neeti Bagh, New Delhi
<b>PAN :AAACL1902H</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri Nirbhay Mehta, Adv.
Respondent by	Dr. Prabha Kant, CIT

Date of hearing	16.06.2021
Date of pronouncement	16.06.2021

**ORDER**

**PER O.P. KANT, AM:**

This appeal by the Revenue is directed against order dated 21/02/2017 passed by the Learned Commissioner of Income Tax (Appeals)-5, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2013-14 raising following grounds:

- 1. The Ld. CIT(A) has erred in law and on facts in deleting the of Rs.15,38,00,157/- by way of disallowance of project expenses which the assessee failed to substantiate.*
- 2. The Ld. CIT(A) has erred in law and on facts in deleting addition of Rs.15,38,00,157/- towards unsubstantiated project expenses*

*even though the assessee failed to bring any material before the Ld. CIT(A) to substantiate the genuineness of such expenses.*

3. *The appellant craves leave to add, alter, amend or forego any ground of appeal raised above at.*

**2.** Briefly stated facts of the case are that the assessee company was engaged in the business of providing consultancy in the field of power and infrastructure sector. The return of income for the year under consideration was filed on 29/11/2013, declaring total income of ₹ 3,28,41,734/-. The return of income filed by the assessee was selected for scrutiny assessment. In the assessment completed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act') on 14/03/2016, the Assessing Officer, following his predecessor's decision in assessment years 2010-11 and 2012-13, disallowed 10% of the expenses, which amounted to ₹ 15,38,00,157/- on the ground that no project-wise accounting was available and no work-in-progress was reported. The Ld. CIT(A), following her predecessor's decision in assessment year 2012-13 (Appeal No. 0397/2014-15), deleted the addition observing as under:

*"3.4 I have perused the assessment order and the submission of the appellant on the issue. The appellant provides specialized engineering consultancy services in the water, energy and transportation sector. In the return filed for the year, gross receipts of Rs. 153.84 crores during the year have been shown from services rendered in India as well as exported abroad. Against this expenses of Rs. 153.80 crores (excluding depreciation) under various heads have been claimed. As per the method of accounting followed by the appellant, income is recognized on accrual basis and expenditure is recognized as and when the same is incurred. From the assessment order it is found that the exact same order of the AO for previous years has been followed without showing by way of a single example as to how the revenue have been booked on contractual basis and expenses had been incurred as an when due, leading to the inference that the appellant had claimed disproportionate expenditure in respect of revenue book. It is noted that this very*

same issue came up before the undersigned for the A.Y. 2012-13 in appeal no. 0397/2014-15 and relief was given to the appellant by holding that there could be no attribution of work in progress without finding any defects in the accounts maintained, the accounting standards do not mandate a service provider to make valuation of closing work in progress and from the point of view of the concept of matching costs vis-a-vis revenue also, there was no infirmity in the accounting policy followed. Since the AO has not brought any new fact on record I consider it appropriate to also rely upon the operative portion of the appellate order for A.Y. 2012-13 which reads as under:

3.3 .....The AO was furnished the project wise details of expenses and incomes earned during the year. He has not found any discrepancies between the incomes earned and the expenditures incurred. It was necessary on the part of the Assessing officer to examine each individual contract separately and after such examination, if he came to the conclusion that the correct contract costs has not been booked and matched against the revenue recognized, he could have come to the conclusion that the accounts of the appellant did not depict the correct picture of profits. Only then, he could have proceeded to reject the books of accounts and estimate the income. In the present scenario, it is seen that what the Assessing Officer has effectively done by not rejecting the audited books of accounts and estimating the dosing value of the work in progress is that he has accepted the books of accounts but not the results arising from those very books of accounts.

3.3.1 The addition has been occasioned by the fact that no closing work in progress or unbilled work has been shown by the appellant at the end of the year. The estimation of 10% of the expenses incurred and allocation of the same towards closing work in progress amounts to rejection of books but the reasons for such rejection are not discussed in the assessment order. In any case the books of accounts can only be rejected if serious discrepancies or infirmities are found therein. However, the AO has show caused the appellant as to why the impugned addition may not be made based only on his predecessor's assessment orders for the preceding years. When the books of accounts have not been rejected after examination of the books of accounts, the action of the AO cannot be endorsed.

3.4 Moreover, I find that in the assessment order, the AO has reproduced the appellant's submissions for the AY 2010-11 (which were part of the figures in the appellant's submissions dated 06.02.2015) filed in response to his show cause and he has not adverted to the facts of the present year at all. If the facts of the present year were to be examined, it would be seen that out of 291

*total jobs which have been billed during the year, 126 jobs were completed during the year and revenue of Rs. 20.53 crores was earned. Thus, the contention of the appellant that there could be no work in progress in respect of these 126 jobs, is acceptable. Another 95 jobs were lenders engineering jobs wherein the appellant conducts due diligence, site visits, review and monitoring services for banks and financial institutions. The appellant raises invoice in two phases: first and initial payment before the visit and second, on submission of the site visit report. The LE projects are low value projects and typically get completed in a few months. It is found that the AO has not called for details of some of these projects to examine whether the contention of the appellant are correct. He has not examined whether expenses have been claimed disproportionately in relation to the income received.*

*3.4.1 The appellant has undertaken 5 man-month or man-days jobs wherein revenue of Rs. 3.64 crores has been recognized. The billing is done to the respective clients at the end of each month in respect of the salaries/sub counseltant costs. In these circumstances, I find that there would be no occasion to have any work in progress as on 31.03.2012 and no disallowance in respect of expenses incurred or attributable against these jobs seems warranted. The appellant has also undertaken a 765 KVA transmission line project from Maharashtra Eastern Grid Power Transmission Corporation which it sub-contracted to the Adani Group. Revenue of Rs. 74.72 crores has been shown and expenditure of Rs. 72.53 crores was paid to them. The remaining 64 jobs are client specific and the technical staff/counseltants work as per the specification of the clients. Generally speaking, the activities are completed as scheduled and invoiced at the end of the month.*

*3.5 I have also perused the order of my learned predecessor for the AY 2010-11 wherein the issue regarding Accounting Standards and the concept of matching the cost with revenue was extensively discussed. The operative portion of the order in appeal no. 0131/2012-13 is extracted herein under:-*

*25."As regards the first contention of the Appellant I find that it has been categorically mentioned in the assessment order that books of accounts, bills and vouchers, bank statements were produced during the course of assessment proceedings and were put to test check. From the perusal of the assessment order it also found that books of accounts have not been rejected. The addition of Rs. 4,05,02,738/- has been made on the reasoning that Appellant company is a service provider and has not made provision for dosing Work In Progress with regard to estimated amount of unbilled work at the year end. On this reasoning the assessing officer has*

*estimated 10% of total expenses as estimated dosing WIP. This action of the assessing officer tantamounts to rejection of the audited P&L account which has been prepared on the basis of books of accounts. Therefore, the impugned addition is based upon rejection of book results. However, the assessing officer has failed to reject the books of accounts and discuss the reasons for such rejection in the assessment order. Section 145 (3) of the I.T. Act empowers the assessing officer to make a best judgement assessment-*

- (a) if he is not satisfied about the correctness or completeness of the books of accounts, or*
- (b) Where the method of accounting provided in section 145(1) or accounting standards notified under section 145(2), have not been regularly followed by the assessee.*

*In the instant case the assessing officer has nowhere discussed as to why he is not satisfied about the correctness or completeness of the books of accounts. Only after recording cogent reasons about the infirmities in the books of accounts and after rejecting the same the assessing officer can estimate any intangible addition. It also a settled legal position that prior to rejection of the books of accounts specific defects have to be pointed out by the assessing officer. All this has not been followed in the present case. It is a settled law that intangible additions can only be made after rejecting the books of accounts as per citations relied upon by the Appellant discussed in para 15 of this order. In view of the same the action of the assessing officer deserves to be reversed on this ground alone.*

*26. On merits the contentions of the Appellant can be summarized as under:-*

- (a) Project wise accounting is not feasible and moreover not mandatorily required in respect of nature of business carried on by the Assessee Company. Indian GAAP (Generally Accepted Accounting Principles) do not require an Enterprise to maintain project wise accounts. Also the Indian GAAP does not require an assessee who is a service provider to make valuation of dosing WIP as specifically retentioned in AS-2 (Accounting Standard -2) issued by ICAI dealing with valuation of Inventories.*
- (b) Question of allocating a portion of expenses as Closing WIP does not arise as all expenses are either in the nature of fixed overheads which are bound to be incurred irrespective of accrual of income or are such expenses are not having any positive correlation with accrual of income. Moreover owing to*

*peculiarity of the projects executed by the Appellant chances of any Closing WIP are not there as discussed in Para 17.*

- (c) Rule of consistency has to be followed while computing the income chargeable under the head Profit or gains from business or profession as no interference has been made by the assessing officers in the past on the impugned issue is assessments framed for earlier years under section 143(3) in scrutiny proceedings.*
- (d) Whenever any adjustment is made in the valuation of inventory, this will affect both the Opening as well as dosing stock.*
- (e) 2 instances Pointed out by in the assessment order of alleged mismatch between revenue recognized and expenses incurred stand clarified as discussed in para 22 & 23-*

*27. I have considered the above summarized arguments made by the Appellant. The issue to be determined under these grounds of appeal is whether work-in-progress is required to be considered for determination of profits?*

*The basic purpose underlying the valuation of the dosing stock is to balance the costs of the goods entered on the other side of the account at the time of their purchase or production, so that by cancelling out of the entries, relating to the same stock from both sides of the account, would leave only the transactions on which there have been actual sales in the course of the year showing profit or loss actually realised on the year's trading. The basic principle underlying the valuation of stock is to get a correct picture of the profitability of the business and not for reduction or enhancement of profit. It is merely a process of carrying forward of costs for goods which are yet to be sold at the year end. Valuation of stock-in-trade is not a source of profit, as laid by the Supreme Court in Chainrup Sampatram v. CIT, (1953) 24 ITR 481, 487 (SC).*

*Undoubtedly, whichever method of book keeping is adopted for computing the true profits of the year, the stock-in-trade must be taken into account. The same logic is applied in determination and accounting for work-in-progress. However, the question that arises in the case of the Appellant is whether the process of determination and accounting for work-in-progress applied also to an enterprise which is merely rendering services without any inputs as to materials, etc. and there is no tangible product or item in hand.*

*28. Work-in-progress in cases of assessee rendering services:*

*In cases where only services are rendered, there is no purchase or sale of goods or material, nor any production or manufacture of goods. In such a scenario, the source of receipt is service charges in the form of counsellancy receipts, professional charges, etc. In the expenditure side, the main element of expenditure is again payments related to services rendered i.e., in the form of Establishment Expenses, Administration & Marketing Overheads, Payments to sub-counsellants, Financial Charges etc.*

*There could be no element of any stock-in-trade or work-in-progress in case of mere rendering of services, for the reason that there is nothing tangible to value as on a particular date of valuation. There is nothing tangible in hand which can be sold to realize its value. Services are rendered and fees or charges for the same are receivable is the only tangible thing, but there is no stock, no material, nothing at all in hand which can be valued and credited in books of accounts at the year end. Unlike in a trading or manufacturing concern, where in the normal trade cycle before debtors on account of sale arise, concern would have stock-in-hand, whereas in case of a service concern, expense incurred is directly converted into debtors and there is no intermediary stage when tangible stock is in hand. As per the method of accounting regularly employed, if the assessee follows mercantile method of accounting, both the income and the expenditure is booked on accrual, whereas if the assessee follows cash system of accounting, only the actual payments and receipts are accounted for in the books of account. Thus, irrespective of the method of accounting employed, there is nothing tangible to value as on a particular date, since there is neither any goods or material in hand to which the assessee has a right, nor the services already rendered could be treated as stock-in-trade or WIP, since the work is already accomplished and no asset remains in hand. In such cases, the assessee has only right to recover dues for the services rendered. By the very peculiar nature of work done and service rendered, the Appellant is correct in contending that there is no work-in-progress, which has to be determined and accounted for. The assessing officer has failed to understand and appreciate the above discussed basic and fundamental accounting principle.*

*29. This issue can be viewed from another dimension. Concept of matching of cost with revenue:*

*The concept of matching of cost with revenue is subject to specific provisions of the Income-tax Act. As per the said principle, if cost has been incurred but revenue has not been realized and is expected to be realized in subsequent years, the cost is accumulated and carried forward to subsequent years and is not debited to profit and loss account of the year in which it is incurred. However, the*

*said accounting practice is at variance with specific provisions of the law. S. 37(1) provides for deduction of revenue expense incurred wholly and exclusively for the purpose of business. Once liability towards an expense has been incurred in accordance with the method of accounting followed by the assessee, as required by S. 43(1), then irrespective of the fact that any revenue has been earned, expense has to be allowed in the year in which it is incurred as held in CIT v. Malayalam Plantations Ltd., S3 ITR 140 (SC). Thus, once liability is incurred, there is no postponement of the same and the expenses have to be allowed in computing taxable profits, though in books of accounts they have been carried forward to be debited in the year in which revenue is earned. Mumbai High Court in Bhor Industries, 264 ITR 180 (Bom.) considered applicability of the said principle where the Department was contending that expense had to be spread over a number of years and allowed as per treatment in books of accounts. The Mumbai High Court rejected the contention of the Department and held that expense is allowable in the year in which it is incurred, irrespective of its treatment in books of account of debiting it over a number of years. As held in the said case, the concept of matching cannot be applied in income-tax proceedings for carry forward of costs, if the expense has been incurred, in accordance with the method of accounting followed.*

*In the present case, the assessing officer, by applying the principle of matching cost with revenue, has proposed to carry forward cost already incurred which is at variance with specific provisions of S. 37(1) and S. 43(1). The Appellant has incurred various costs as per the method of accounting followed by it and is, therefore, allowable as deduction and the same cannot be postponed to next year on the ground that revenue is not recognized. Thus, the assessing officer has grossly erred in introducing the artificial concept of dosing WIP in the case of Appellant who is a service provider. Even otherwise the Appellant is correct in contending that looking to the nature of expenses Establishment Expenses, Administrative Overheads, Financial Charges, Payments to Sub Counsellants, these expenses are bound to be incurred being fixed in nature irrespective of accrual or earning of any revenue. Once such nature of expenses have been found to be incurred legitimately and driven by commercial expediency no disallowance on estimated basis can be made by artificially introducing the concept of Closing WIP.*

*30. Accounting Standard (AS-2) issued by Institute of Chartered Accountants of India (ICAI) deals with Valuation of Inventories. Relevant portion of the same is reproduced below:-*

**OBJECTIVE**

*A primary issue in accounting for inventories is the determination of the value at which inventories are carried in the financial statements until the related revenues are recognized. This statement deals with the determination of such value, including the ascertainment of cost of inventories and any write-down thereof to net realizable value.*

*Scope*

*1. This Statement should be applied in accounting for inventories other than:*

- a) Work in progress arising under construction contracts, including directly related service contracts [see Accounting Standard (AS) 7, Accounting for Construction Contracts];*
- b) Work in progress arising in the ordinary course of business of service providers;*
- c) Shares, debentures and other financial instruments held as stock-in-trade; and*
- d) Producers' inventories of livestock, agricultural and forest products, and mineral oils, ores and gases to the extent that they are measured at net realizable value in accordance with well established practices in those industries.*

*From the above it is abundantly clear that in the case of service providers AS-2 is not applicable meaning thereby that enterprise engaged in the activity of providing services is not required to value any inventory at year end and take effect of the same in its books of accounts and financial results. That being so the assessing officer has erred in applying the concept of dosing WIP in the case of Appellant and making an addition by disallowing 10% of gross expenses on estimate basis.*

*31. The Appellant is also justified in submitting that rule of consistency should be followed. In the earlier years on same set of facts and same method of accounting the assessing authorities have fully allowed the expenses incurred by the Appellant. 2 instances referred in the assessment order alleging mismatch in expenses corresponding revenue stand explained as per submissions of the Appellant discussed in para 22 & 23 of this order.*

*32. On the basis of above discussion and findings ad hoc addition made by the Assessing Officer resorting to estimation is not tenable at law. Hence, addition of Rs. 4,05,02,738/- is deleted."*

*3.4.1 Having perused the order, I am in full agreement with my predecessor that project wise accounting is neither feasible nor mandatory in respect of service providers and there could be no*

*element of stock in trade or work in progress that was mandatory unlike, that of a trading or manufacturing concern. In the circumstances, it is held that the AO has erred in applying an adhoc amount of expenditure incurred for allocation of work in progress. Ground no. 2 to 2.2 are allowed.”*

**2.1** Aggrieved, the Revenue is in appeal before the Tribunal raising the grounds as reproduced above.

**3.** Before us, the parties appeared through Video Conferencing facility and filed paper-book electronically.

**4.** At the outset, the learned Counsel of the assessee submitted that the issue-in-dispute is covered in favour of the assessee by the order of the Tribunal in assessment years 2010-11 and 2011-12.

**5.** The Learned DR though relied on the order of the Assessing Officer but could not controvert this fact that same issue has already been decided by the Tribunal in the earlier year.

**6.** We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. It is undisputed that addition has been made by the Assessing Officer following the findings of his predecessor and the Learned CIT(A) has also deleted the addition following her predecessor's decision in AY 2012-13 (Appeal No. 0397/2014-15). The Tribunal in ITA No.4350 & 6073/Del/2014 for assessment years 2010-11 and 2011-12 respectively has decided the identical issue as under:

**“10.** *We have carefully considered the rival contentions and find that the ld. AO has disallowed 10% of the total expenditure incurred by the assessee on ad-hoc basis. As the assessee is engaged in providing services it recognized revenue on milestone basis. As soon as milestone is achieved the invoices have been raised, hence, it was contended by the assessee that there is not remained any work in progress at the end of the year. The ld. AO asked the assessee to furnish project-wise revenue and the project-wise expenses which the assessee did not maintain and therefore, same was not given and on our examination of the method of accounting applied by the*

*assessee, it appears that when the assessee has received billing as per milestone and from the milestone till the close of the year there are no expenditure identified by the Id AO then there cannot be any work in progress in the business of the assessee. The Id AO could not find out that whether there is such expenditure exists or not. It was also not found by the Id AO that the assessee has incurred substantial expenditure. If the milestone before the close of the year. As the assessee is engaged in the business of consultancy services definitely there can be sum over lap of the expenses between two years. However that does not give any rise to the AO to disallow the expenditure @10% and treat it as work in progress. We do not find any reason to deviate from this reason given by the Id CIT(A) in deleting the above disallowance. Even otherwise the order of the Id CIT(A) is reasonable as it follows the decision of the Hon'ble Bombay High Court, we do not have any reason to deviate from the same. Accordingly ground NO. 1 of the appeal of the revenue for both the years are dismissed.*

**5.1** Since the issue in dispute in the present appeal is identical to the issue decided by the Tribunal (supra), respectfully following the same, we uphold the finding of the Learned CIT(A) on the issue in dispute. The grounds of appeal of the Revenue are accordingly dismissed.

**6.** In the result, the appeal of the Revenue is dismissed.

***Order pronounced in the open court on 16<sup>th</sup> June, 2021***

***Sd/-***  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

***Sd/-***  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Dated: 16<sup>th</sup> June, 2021.

RK/-(DIDS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi