

IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "B", HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

ITA No.973/Hyd/2019		
Assessment Year: 2014-15		
DCIT, Circle-3(1), Hyderabad.	Vs.	Ramky infrastructure Limited, Hyderabad. PAN: AAACR 9627 B
(Appellant)		(Respondent)
Assessee by:	Shri A.V. Raghuram	
Revenue by:	Smt. Komali Krishna, DR	
Date of hearing:	22/2/2021	
Date of pronouncement:	06/5/2021	

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the Revenue against the order of the Id. CIT(A)-3, Hyderabad in appal No. 10083/ACIT-CC-2(4)/Hyd/CIT(A)-3/2017-18, dated 5/3/2019 passed U/s. 143(3) r.w.s 250(6) of the Act for the AY 2014-15.

2. The Revenue has raised three grounds in its appeal however, the crux of the issue is that:

The Ld. CIT (A) has erred in deleting the disallowance of Rs. 19,53,29,255/- made by the Ld. AO being 5% of the

aggregate expenditure incurred on account of labour contract charges, Hire charges, Power & Fuel and Transportation Charges.

3. The brief facts of the case are that the assessee is a Limited Company engaged in the business of development of infrastructure, filed its return of income for the AY 2014-15 on 29/11/2014 admitting loss of Rs. 102,42,89,362/-. Subsequently, the case was taken up for scrutiny and assessment was completed U/s. 143(3) of the Act vide order dated 28/12/2016 wherein the Ld. AO made addition of Rs. 19,53,29,255/- by disallowing 5% of the aggregate expenditure incurred towards labour contract charges, Hire charges, Power & Fuel and Transportation Charges. During the course of scrutiny assessment proceedings, it was observed by the Ld. AO that the assessee had incurred expenditure towards (i) labour contract charges - Rs. 274,47,20,162/-; (ii) Hire Charges - Rs. 42,27,40,822/-; (iii) Power & Fuel - Rs. 58,41,87,849/- and (iv) Transportation charges - Rs. 15,49,36,273/- aggregating to Rs. 390,65,85,106/-. On verifying the bills and vouchers for the above stated expenditure it was revealed that some of the vouchers were self-made and the full address of the payees were also not recorded. Therefore, considering the nature of expenditure incurred by the assessee and the business of the assessee, the Ld. AO disallowed 5% of the aggregate expenditure of Rs. 390,65,85,106/-

which works out to Rs. 19,53,29,255/-. On appeal, the Ld. CIT (A) deleted the addition by observing as under:-

*“VIII. Ground No.2, 3 and 5 in appeal relates to adhoc disallowance. Facts, issues and circumstances of the case were seen. It is noticed that the books of account, bills and vouchers and information / details were produced at the assessment stage. This is mentioned in page-1 of the assessment order and also in written submissions of the appellant. The assessment order was subsequently completed on 28/12/2016 making an adhoc disallowance representing 5% of the expenses claimed under the heads labour contract charges, hire charges, power & fuel and transportation charges. It is seen that there were no specific deficiencies with reference to maintenance of bills and vouchers pointed out in the tax audit report. Further, it is seen that the production of books of account, bills and vouchers was acknowledged by the Assessing Officer who later said that the bills and vouchers were not produced. It is also noted that from the assessment order did not specify any specific bills or vouchers other than stating that certain vouchers were self-made. In this context, the submissions of the appellant were duly considered, and it is noted that the same Assessing Officer who assessed the same appellant for the AY 2013-14 vide 143(3) r.w.s 144C (order dated 14/03/2016) did not point out to any such deficiencies in the case of the appellant. With reference to self-made vouchers, in a similar case, the hon'ble ITAT, Hyderabad in ITA No. 1084/Hyd/2016 (in the case of Sri Vinayaka Paper & Boards Limited vide order dated 29/12/2017) had held that unless the Assessing Officer has not pointed out any specific defects nor any finding stating that such expenditure was excessive, no disallowance could be made. The appellant has also placed reliance on this decision of the Hon'ble ITAT Hyderabad and similar decisions of various Tribunals. Considering the facts, issues and circumstances of the instant case and respectfully following the decision of the jurisdictional Tribunal, Ground Nos.2, 3 and 5 in appeal are allowed.”*

4. Ld. DR vehemently argued before us that when the assessee was not in a position to produce proper bills and vouchers towards the expenses incurred by it, then it was appropriate on the part of the Ld. AO to fairly estimate the disallowance of expenditure. The Ld. DR further submitted that the Ld. AO had considered the nature of the business of the assessee and was liberal to make disallowance of only 5% on the aggregate expenditure incurred towards (i) labour contract

charges - Rs. 274,47,20,162/-; (ii) Hire Charges – Rs. 42,27,40,822/-; (iii) Power & Fuel – Rs. 58,41,87,849/- and (iv) Transportation charges – Rs. 15,49,36,273/- aggregating to Rs. 390,65,85,106/-. It was therefore pleaded that the order of the Ld. CIT (A) may be set-aside and the order of the Ld. AO may be reinstated. The Ld. AR on the other hand relied on the order of the Ld. CIT (A) and pleaded that the same may be confirmed.

5. We have heard the rival submissions and carefully perused the materials on record. From the order of the Ld. AO it is apparent that the assessee has not properly maintained the supporting evidence with respect to expenditure incurred towards (i) labour contract charges - Rs. 274,47,20,162/-; (ii) Hire Charges – Rs. 42,27,40,822/-; (iii) Power & Fuel – Rs. 58,41,87,849/- and (iv) Transportation charges – Rs. 15,49,36,273/- aggregating to Rs. 390,65,85,106/-. This fact is not in dispute. The Ld. CIT (A) has granted relief to the assessee by simply stating that the Ld. AO had not noted and cited in his order the details of the bills and vouchers which had deficiency. On this observation of the Ld.CIT(A) We failed to understand as to how the Ld. AO will be able to cite in his order the particulars of the entire bills and vouchers which has deficiency as it would be voluminous. When there is a general finding that the assessee has not maintained the bills and vouchers properly for certain expenditures incurred then resorting to estimate the

disallowance reasonably is an appropriate and a general practice which is approved by various judiciary. Further, the Ld. CIT (A) has relied on several decisions of the Tribunal while deleting the addition. However, while doing so, the Ld. CIT (A) has not examined the facts of the case of the assessee, and the facts of the cases relied by the Ld. CIT (A). Further, the Ld. CIT (A) has also heavily relied on the Auditor's Report of the assessee which may not be appropriate in the case of the assessee. On perusing the paper book filed by the assessee the following facts are revealed:-

- (i) Page No.2 of the paper book "Auditor's Responsibility":- The Auditors have adopted only those standards that are necessary to comply with the ethical requirements and performed the Audit to obtain reasonable assurance that the financial statements are free from material misstatements.
- (ii) Page No.2 of the paper book "Auditor's Responsibility":- The Auditors have expressed only an opinion on the effectiveness of the internal control of the organisation.
- (iii) Page No.2 of the paper book "Auditor's Responsibility":- The Auditor's had expressed only their opinion that the financial statements of the assessee are true and fair.
- (iv) Page no.5 of the paper book "Annexure to the Independent Auditor's Report":- At para No.(iv) the Auditors have qualified as follows:-

*“During the course of our audit, we noted in certain incidents that the underlying supporting documentation needs to be further strengthened with respect to purchases of inventories, services and sale of services.”*

- (v) Page no.6 of the paper book “Annexure to the Independent Auditor’s Report”:- In para (v)(b) the Auditors have mentioned that on the basis of information and explanation provided to us the same appears reasonable with respect to transactions made in pursuance to contract arrangements etc.
- (vi) Page no.6 of the paper book “Annexure to the Independent Auditor’s Report”:- In para (vii) the Auditors have mentioned that the coverage of internal audit needs to be increased.
- (vii) Page no.6 of the paper book “Annexure to the Independent Auditor’s Report”:- In para (viii) the Auditors have also mentioned that they have not made a detailed examination of records.

6. Thus, it is apparent that the Auditors have not certified that the entire expenditure incurred by the assessee are vouched. It is a known fact that the Auditors generally carry out their work by adopting various techniques like test checks etc., and not by examining the entries on voucher-by-voucher basis. Therefore, the reliance placed by the Ld. CIT (A) on the Auditors report for deleting the addition made by the Ld. AO is not appropriate.

7. Further, from the assessee's paper book page no. 39, Para 2.32 it is evident that the assessee has several related parties where the assessee's control exists and with whom there are several transactions.

8. From Page No.42 to 45 of the paper book "Note to finance Statements", it is apparent that the assessee is predominantly engaged in the activity of executing contract on behalf of its related parties. It is also apparent that many of the related parties are also engaged in infrastructure development which may be eligible for various deductions provided under the Act. In this situation, there is every possibility for the assessee to absorb expenditure relating to other connected parties and thereby incur loss while as the related party's profit will be inflated and thereby escape tax due to tax deductions. Needless to mention that the assessee has declared a loss of Rs. 142,41,89,362/-. In this situation, verifying the expenditures incurred by examining all the bills and vouchers meticulously is justifiable. Moreover, in the case of the assessee, the entire bills and vouchers towards the expenditure incurred have not been properly maintained with respect to (i) labour contract charges - Rs. 274,47,20,162/-; (ii) Hire Charges - Rs. 42,27,40,822/-; (iii) Power & Fuel - Rs. 58,41,87,849/- and (iv) Transportation charges - Rs. 15,49,36,273/- aggregating to Rs. 390,65,85,106/-. Therefore, it is appropriate on the part of the Ld. AO to make disallowance on estimate basis. However, as pointed out by the Ld. CIT (A), the Ld. AO

ought to have cited the details of at least some of the deficient bills and vouchers towards which the expenditure is incurred by the assessee. Therefore, in the interest of justice, we hereby remit the entire matter back to the file of the Ld. CIT (A) with directions to obtain a remand report from the ld. AO who shall examine and make a proper finding with respect to the genuineness and deficiency in the bills and vouchers towards the expenditure incurred by the assessee viz., (i) labour contract charges - Rs. 274,47,20,162/-; (ii) Hire Charges – Rs. 42,27,40,822/-; (iii) Power & Fuel – Rs. 58,41,87,849/- and (iv) Transportation charges – Rs. 15,49,36,273/- aggregating to Rs. 390,65,85,106/- and thereafter make appropriate disallowance if need be. It is ordered accordingly. Consequently, the order of the Ld. CIT (A) is hereby set-aside.

9. In the result, appeal of the Revenue is allowed for statistical purposes as indicated herein above.

Pronounced in the open Court on the 06<sup>th</sup> May, 2021.

Sd/-  
(P. MADHAVI DEVI)  
JUDICIAL MEMBER

Sd/-  
(A. MOHAN ALANKAMONY)  
ACCOUNTANT MEMBER

Hyderabad, Dated: 06<sup>th</sup> May, 2021.

OKK

Copy to:-

- 1) M/s. Ramky Infrastructure Limited, Ramky Grandiose, 15<sup>th</sup> Floor, Sy. No. 136/2 & 4, Gachibowli, Hyderabad – 400 032.

- 2) Dy. Commissioner of Income Tax, Circle-3(1), R.No. 714, 7<sup>th</sup> Floor, Signature Towers, Opp. Botanical Gardens, Kondapur, Hyderabad.
- 3) The CIT (A)-3, Hyderabad.
- 4) The Pr. CIT-3, Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File