

आयकर अपीलीय अधिकरण “के” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“K” BENCH, MUMBAI

माननीय श्री पवन कुमार गडाले, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI PAVAN KUMAR GADALE, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकरअपील सं./ I.T.A. No.5313/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2011-12)

ACIT – 14(2)(1) Room No. 474, 4 th floor Aaykar Bhavan, M. K. Road, Mumbai-400 020	बनाम/ Vs.	M/s ITD Cementation India Ltd. National Plastic Building, A-Subhash Road, Paranjape B Scheme, Vile Parle(E), Mumbai-400 057
स्थायीलेखासं./जीआइआरसं./ PAN/GIR No. AAACT-1426-A		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Sunil Kumar Mishra-Ld. Sr.DR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Vijay Mehta-Ld. AR

सुनवाईकीतारीख/ Date of Hearing	:	06/09/2021
घोषणाकीतारीख / Date of Pronouncement	:	06/09/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid appeal by revenue for Assessment Year 2011-12 is recalled matter since the appeal was dismissed on account of low tax effect vide common order dated 01/01/2016. However, the appeal has been recalled, at revenue’s instance, vide MA No. 617/Mum/2019 order dated 06/03/2020

since the tax effect was found to be higher. Accordingly, the appeal has come up for fresh hearing before this bench.

2. Aforesaid appeal by revenue arises out of the order of Ld. Commissioner of Income Tax (Appeals)-22, Mumbai [CIT(A)] dated 24/08/2015 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s 143(3) on 26/03/2015. The grounds of appeal read as under:-

1. On the facts and the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition made by the AO u/s. 14A r.w. Rule 8D(2)(ii) of the Act, without appreciating the fact that the assessee's investment were made from intermix of funds i.e. interest bearing as well as interest free funds. Further erred in not appreciating that the assessee company has huge interest cost of Rs.66.72 Crores.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that out of the total bogus purchases of Rs.30,67,002/- only 12.5% of bogus purchase may be confirmed being profit element in bogus purchase while the assessee failed to substantiate the claim of purchase with evidence.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in applying the ration of the Hon'ble Gujrat High Court decision in the case of CIT Vs Simit P.Seth,356 ITR 451(Guj) and hereby Ld.CIT(A) erred in not appreciating the fact that the assessee failed to substantiate its case with evidences.

As evident the revenue is aggrieved by deletion of certain disallowance u/r 8D(2)(ii) as well as by relief provided by Ld. CIT(A) on account of alleged bogus purchases.

3. Having heard rival submissions and upon perusal of material on record, our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

4. Disallowance u/s 14A

4.1 The assessee earned share of profit of Rs.1194.25 Lacs (net) from certain joint ventures which led Ld. AO to make disallowance u/s 14A. The assessee submitted that no expenditure was incurred to earn share of profit and further, in earlier years, similar disallowance as made by Ld. AO was

deleted by first appellate authority. However, Ld. AO, applying Rule 8D, worked out aggregate disallowance of Rs. 248.77 Lacs including interest disallowance u/r 8D(2)(ii) for Rs.232.49 Lacs and indirect expense disallowance u/r 8D(2)(iii) for Rs.16.28 Lacs.

4.2 The Ld. CIT(A), after considering assessee's submissions, noted that the assessee's opening as well as closing interest free funds in the shape of capital and free reserves were more than investments made in the joint ventures. Therefore, in terms of the decision of Hon'ble Bombay High Court in **CIT V/s Reliance Utilities and Power Ltd. (2009) 313 ITR 340 (Bom)**, it was to be presumed that the investments were made out of interest free funds available with the assessee. Therefore, interest disallowance was to be deleted. Aggrieved, the revenue is in further appeal before us.

4.3 We find that the aforesaid position that interest free funds as available with the assessee were more than the investment made in the joint venture entities, remain uncontroverted before us. In such a situation, the ratio of binding judicial pronouncement was squarely applicable to the fact of the case. Therefore, no fault could be found in the impugned order, in this regard. The ground raised by the revenue stand dismissed.

5. Addition on account of Alleged Bogus purchases

5.1 Pursuant to information received from Sale Tax Department, it was alleged that assessee made suspicious purchases of Rs.30.67 Lacs from an entity namely Suraj Tube Corporation. The assessee furnished documentary evidences and submitted that the payments were through banking channels. However, in the absence of evidence regarding

consumption of these goods for business activity, Ld. AO disallowed these purchases.

5.2 Upon further appeal, Ld. CIT(A) primarily relying on the decision of the Hon'ble Gujarat High Court in the case of **CIT V/s Smith P. Sheth (2013) 356 ITR 451 (Guj)**, directed Ld. AO to estimate the additions @ 12.5%. Aggrieved, the revenue is in further appeal before us.

5.3 Upon careful consideration of material fact, it could be gathered that the assessee was engaged in civil construction which would require consumption of various material. The assessee could produce copies of invoices, delivery Challans as well as material inward register. The payment to the supplier was through banking channels. Therefore, it was a fit case for estimation of addition to plug the leakage of revenue. The estimation of 12.5% as made by Ld. CIT(A), in our considered opinion, was quite fair & reasonable on the given factual matrix. Finding no reason to interfere in the same, we dismiss the ground raised by the revenue.

6. The appeal stand dismissed.

Order pronounced on 06th September, 2021.

Sd/-

(Pavan Kumar Gadale)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 06/09/2021
Sr.PS, Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/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, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**