

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “A” BENCH**

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI WASEEM AHMED, ACCOUNTANT MEMBER)**

[Through Virtual Court]

**ITA. No: 1598/Ahd/2017
(Assessment Years: 2013-14)**

DCIT, Ahmedabad	Circle-3(2),	V/S	Shri Arvindbhai M Prajapati Prop. Of Jyoti Builder Mngaldas Estate, Nr. Dena Bank Amraiwadi, Ahmedabad
(Appellant)			PAN No. AFKPP5030L (Respondent)

**Appellant by : Shri S. N. Divetia, A.R.
Respondent by : Shri S. S. Shukla, Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 19-07-2021
Date of Pronouncement : 28-09-2021

PER MAHAVIR PRASAD, J.M.

1. This appeal has been filed by the Revenue is directed against the order of the Ld. CIT(A) vide Appeal No. CIT(A)-3/Cir. 3(2)/18/2016-17 order dated 10/04/2017

arising out of assessment order dated 28/03/2016. The Revenue has taken following grounds of appeal:

1) *The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.27,03,236/- made on account of penalty expenditure without appreciating the fact that the assessee had recovered the penalty expenditure from sub-contractor and there is no loss in the hands of the assessee to claim.*

2. *The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.1,73,454/- made on account of depreciation claim on JCB and concrete mixture machine and not considering that the assessee had allotted all works/proceedings of the projects to sub-contractor parties and there was no work/proceedings executed by the assessee himself.*

3. *The Ld. CIT(A) has erred in law and on facts in allowing relief of Rs.6,17,966/- out of total addition of Rs.7,72,458/- made on account of depreciation and interest on purchase of car and not considering the fact that the assessee is not directly doing any civil construction work.*

4. *The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.1,83,24,283/- made on account of less declaration of contract receipts in its Profit and Loss account as against the receipts mentioned in 26AS details.*

4.1 *The Ld. CIT(A) has erred in law and on facts in not appreciating that the assessee has taken benefit of TDS, but declared less receipts in the return of income and failed to reconcile the difference in party-wise receipts logically.*

5. *On the facts and circumstances of the case, the Ld. Commissioner of Income Tax(A) ought to have upheld the order of the Assessing Officer.*

6. *It is, therefore, prayed that the order of the Ld. Commissioner of Income Tax(A) may be set-aside and that of the Assessing Officer be restored.*

2. Brief facts of the case are that assessee is in the business of civil work contractor. And during the assessment proceedings, it has been noticed that assessee declared time limit penalty expenses amounting to Rs. 27,03,236/- and amount has been reduced from income and declared as administrative expenses as per Schedule – J of

the Audit Report. As per assessee explained of Rs. 27,03,236/- declared by him as administrative expenditure, assessee stated that contract to construct quarters in the police line was awarded on 04.10.2010 by the Govt. and the tender amount was Rs. 3,15,29,680/-. And thereafter the same contract was sub contracted by the assessee to Metsons Construction Company. And dead line of completion work was 13.12.2011. And assessee explained that 45% of work was completed by Metsons Construction Company within 9 months i.e. upto 18.07.2011. However, later on the work of construction was slow down hence the work was awarded to new sub-contractor by the assessee on 14.07.2012 but construction of staff quarter work was not completed within time and work contract was terminated by the State Government and Government deducted Rs. 27,03,236/- as penalty.

3. The issue in the present case is with regard to disallowance of earnest money deposited i.e. forfeited by the contractee which is claimed by assessee as revenue expenditure and same was disallowed by the Assessing Officer.
4. Thereafter in appeal, the claim of the assessee as allowed by the Ld. CIT(A).
5. Now revenue has come before us. The issue before us is forfeited penalty is to be considered as revenue expenditure or not.
6. As we can see, forfeited deposited money did not give any enduring advantage or capital asset and the amounts were written off in the course of assessee's business. And in support of its contention, Ld. A.R. cited an order of Bombay High Court in the matter of Narandas Mathuradas Co. vs. CIT [1959] 35 ITR 461 (Bom) on identical issue relief was granted to the assessee with following observations:

"Business loss - "Firm responding to tender for supply of commodity - Consequent to acceptance of the tender, assessee depositing money by way of security - Assessee failing to effect supplies as agreed - Accordingly security amount forfeited - The security deposit having

been made for carrying on the business and not for acquiring any business the loss due to forfeiture represented business loss.”

7. In our considered opinion, such expenses has to be allowed because assessee did not get any enduring benefit.
8. Thus respectfully following the decision of the Bombay High Court, we allow this ground of appeal and in our considered opinion, Ld. CIT(A) has passed detailed and reasoned order and same does not required any kind of interference at our end.
9. Now we come to ground no. 2 & 3 are interconnected that Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 1,73,454/- made on account of depreciation claim on JCB and concrete mixture machine.
10. In this case, Ld. A.O. has disallowed depreciation on JCB/Scoda Car. The assessee is in the business of Civil Work contract for the last 15 years and in order to complete the civil work, assessee also provide JCB machines to its sub-contractor. It is well settled principle that when any or if the vehicles are used for the business purpose they are entitled for the depreciation as per law. And in such case, depreciation has to be allowed. We do not find any discrepancy in the order passed by the Ld. CIT(A) and he has rightly allowed the claim of the assessee.
11. Thus, this ground of appeal is allowed.
12. Now we come to next ground no. 4 & 4.1 are interconnected and relating to deleting the addition of Rs. 1,83,24,283/- made on account of less declaration of contract receipts in its profit and loss account as against the receipts mentioned in 26AS details.

13. During the course of assessment proceeding and going through the 26AS data, Ahmedabad Municipal Corporation receipts wherein amount of Rs. 1,82,66,728/- was paid as per 26AS. In computation assessee declared an amount of Rs. 699749802/- and taken benefit TDS of Rs. 10413940/-. Hence even in written assessee had declared less contract receipt so there was difference of Rs. 1,83,24,283/- as assessee could not give any satisfactory reply to the Assessing Officer for the above said difference. Ld. A.O. made addition of Rs. 1,83,24,283/-.
14. Thereafter against the addition of Rs. 1,83,24,283/-, assessee preferred first statutory appeal before the Ld. CIT(A) who granted relief to the assessee. And before Ld. CIT(A), assessee filed certain additional document and as well as application u/s. 154 was also pending before the Ld. A.O. as per assessee that all details submitted before the Ld. A.O. was not considered by the Assessing Officer.
15. And after considering the additional evidence as and Assessing Officer failed to dispose of application of the assessee u/s. 154 of the Act. In such circumstances, in our considered opinion, Ld. CIT(A) has co-terminus power and Hon'ble Bombay High Court in the case of Smt. Prabhavati S. Shah 231 ITR 1, (Bom) has observed that Ld. CIT(A) is empowered u/s. 250(4) to make such further inquiry as he thinks fit and such power being quasi judicial power, it was incumbent on him to exercise the same if the facts and circumstances justify. It further held that if the first appellate authority failed to exercise his discretion judicially and arbitrarily refused to make inquiry in a case where the facts and circumstances so demand, his action would be open for correction by a higher authority.
16. The Hon'ble Supreme Court in the case of CIT vs. British Paints India Ltd. has held *"it is duty of A.O. to correctly deduce the income, no principle of estoppels, A.O. is not bound by the method followed in earlier years."*

17. Therefore, we hold that Ld. CIT(A) has passed detailed and reasoned order after considering the additional evidence filed before him and we are of the opinion that same does not require any kind of interference at our end.

18. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in Open Court on 28- 09- 2021

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 28/09/2021

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad