

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'A' PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI C.M. GARG, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1307/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

DCIT, Circle-6, Pune	Vs.	Sheth & Sura Engineers Private Ltd., Aqua house, 263/1, Sinhad Road, Near Parvati, Pune 411 030 PAN : AAECs1737P
Appellant		Respondent

आयकर अपील सं. / ITA No.694/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

DCIT, Circle-6, Pune	Vs.	Sheth & Sura Engineers Private Ltd., Aqua house, 263/1, Sinhad Road, Near Parvati, Pune 411 030 PAN : AAECs1737P
Appellant		Respondent

Assessee by : Shri Nikhil Pathak
Revenue by : Shri Piyush Kumar Singh Yadav
and Shri Sandeep Garg

Date of hearing : 09-11-2021
Date of pronouncement : 10-11-2021

आदेश / ORDER

PER R.S.SYAL, VP :

These two appeals by the Revenue relate to the assessment years
2011-12 and 2012-13. Since common issues are raised in these

appeals, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

A.Y. 2011-12 :

2. The first ground taken by the Department is against the deletion of addition of Rs.1.48 crore made by the Assessing Officer (AO) on account of understatement of Revenue and Debtors.

3. Briefly stated, the facts of the case are that the assessee is a Government Contractor for Water Supply projects. A return was filed declaring total income at Rs.4,36,17,500/-. During the course of the assessment proceedings, the AO observed that the assessee had understated the figure of Revenue and debtors. This was premised on the fact that the assessee raised a running bill for Rs.1,63,84,666/- on 31-03-2011 against which only a sum of Rs.15,84,666/- was received. Instead of recognizing the entire value of the running bill at Rs.1.63 crore, the assessee recorded sale only to the extent of payment received, namely, Rs.15.84 lakh. On this basis, the AO held that the assessee understated its revenue by Rs.1.48 crore. The Id. CIT(A) got satisfied with the assessee's explanation and deleted the addition. The Revenue has come up in appeal before the Tribunal.

4. We have heard the rival submissions and gone through the relevant material on record. The case of the Revenue is that the assessee under-reported sales by Rs.1.48 crore. This is based on the understanding that the invoice worth Rs.1.68 crore was accounted for income only at Rs.15.84 lakh. We have gone through page 121 of the paper book, which is a Memorandum of payments in respect such invoice relating to the Goa project, duly signed by Executive Engineer, Ponda, Goa. As per it, a total value of work actually measured stood at Rs.1.63 crore. Then, there is a deduction of Rs.1.48 crore with the remarks "*Deduct amount withheld*" giving net figure of Rs.15.84 lakh. It is only this amount on which the deduction of tax at source was made and the assessee also recorded revenue only to this extent. In fact, the remaining amount of Rs.1.48 crore has been included by the assessee in the amount of closing work in progress. Necessary details in this regard have been brought to our notice by showing the figure of work in progress in the assessee's balance sheet including the above amount of Rs.1.48 crore. In view of the fact that the amount of Rs.1.48 crore has been included in the closing work in

progress, there can be no question of making any addition on this score. We, therefore, uphold the impugned order.

5. The second ground is against the deletion of addition of Rs.3,60,25,627/- made by the AO on account of work in progress. The facts concerning this ground are that the assessee indicated certain value of work in progress at the end of the year. The AO opined that the value so shown was understated. A chart has been drawn at page 8 of the assessment order in which three projects have been considered. For example, the first project is Executive Engineer, Khadakpurna. Opening work in progress as on 01-04-2011 (i.e. closing figure for the year under consideration) stood at Rs.10,77,560/-. No work was carried out in the succeeding year in respect of this project. Total sum of Rs.92,15,016/- was realized against this project in the later year giving figure of additional amount of Rs.81,37,456/-. The AO held that the assessee understated closing work in progress for the year under consideration in respect of this project by Rs.81,37,456/- because in the subsequent year when the bill was realized the differential amount was too heavy. It is on this basis that the AO calculated a total of Rs.3.60 crore in respect of four

projects, which was added to the total income of the assessee. The Id. CIT(A), after examining all the details furnished on behalf of the assessee, deleted the addition. The Revenue has come up in appeal before the Tribunal.

6. We have heard the rival submissions and gone through the relevant material on record. It is seen that the sole basis of the addition is higher realization from projects in the subsequent year *vis-a-vis* closing work in progress in this year becoming opening work in progress of the next year as increased by the work done in the succeeding year. The Id. CIT(A) has observed that as against the difference of Rs.81,37,456/- in the project Executive Engineer, Khadakpurna, a sum of Rs.66,22,582/- was towards escalation/price variation, sanctioned/approved at the time of payment. For the second project, namely, Executive Engineer, MJP Department, Work Division, Gondia, the work order itself was received in the next financial year, namely, in the month of August 2011 for which the work was started in the month of December 2011. Thus, it is totally illogical to make addition in this year on the basis of a project, whose work was allotted in the succeeding year only. In the third project,

variation of Rs.92,93,303/- was received again on account of escalation for the works executed in earlier years. For the fourth project, the work was completed in the F.Y. 2006-07 and the amount was realized later on. In view of the foregoing discussion, we are satisfied that the Id. CIT(A) did no mistake by deleting the addition of Rs.3.60 crore made by the AO.

7. Ground No.3 is against the deletion of addition of Rs.8,39,005/- made by the AO u/s.40A(3) of the Act. The factual panorama of this ground is that the AO noted certain payments totaling Rs.1,25,500/- (Rs.20,500/- on 19-08-2010; Rs.63,000/- on 28-02-2011; and Rs.42,000/- on 08-01-2011) were made in cash. He calculated the percentage for such payments at 0.43% of the total sub-contract payments of Rs.2.88 crore made in respect of Nagpur site. By extrapolating the figures, the AO treated 0.5% of total sub-contract bills amounting to Rs.16.78 crore, i.e. Rs.8,39,005/- as disallowable u/s.40A(3) of the Act. The Id. CIT(A) deleted the addition.

8. Having heard both the sides and gone through the relevant material on record, it is seen that the bedrock for the addition of Rs.8,39,005/- are three payments of Rs.20,500/-, Rs.63,000/- and

Rs.42,000/- construed to have been made by the assessee in cash. On perusal of the relevant details, it can be seen that these are not the payments made by the assessee. Rather these represent the cash to be received by the assessee from the parties. The AO has captured on page 19 of his order some bill dated 18-01-2011 for which he treated Rs.42,000/- as cash payment made in violation of section 40A(3). In fact, there is a mention of the words, reading in English, as “*cash to be taken*” against it. Similar is the position regarding the other two alleged payments as well. If these three alleged payments are ignored, the entire edifice created by the AO for the estimation of 0.5% of total sub-contract bills as having contravened section 40A(3) of the Act, goes awry. We, therefore, hold that the Id. CIT(A) was justified in deleting the addition.

A.Y. 2012-13 :

9. The first ground is against the deletion of addition of Rs.37,51,163/- made by the AO on account of understatement of Debtors. The second ground is against the deletion of addition of Rs.6,50,31,919/- made by the AO on account of understatement of work in progress and the last effective ground is against the deletion

of addition of Rs.7,91,187/- made by the AO u/s.40A(3) of the Act. The three additions were made by the AO on the basis of the view taken by him for the earlier years. The above referred three additions came to be deleted by the Id. CIT(A), against which the Revenue has come up in appeal before the Tribunal.

10. After considering the rival submissions, it is found as an admitted position by the Id. DR that the facts and circumstances of the above three grounds are *mutatis mutandis* similar to those for the A.Y. 2011-12. In view of our decision incorporated in the earlier part of this order *qua* the A.Y. 2011-12, we countenance the view taken by the Id. CIT(A) on all the three grounds.

11. In the result, both the appeals are dismissed.

Order pronounced in the Open Court on 10th November, 2021.

Sd/-
(C.M. GARG)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 10th November, 2021
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-2, Pune
4. The Pr.CIT-3, Pune
5. DR, ITAT, 'A' Bench, Pune
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	09-11-2021	Sr.PS
2.	Draft placed before author	09-11-2021	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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