

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ A ‘ Bench, Hyderabad
(Through Video Conferencing)

Before Shri A.M. Alankamony, Accountant Member and
Shri S.S. Godara, Judicial Member

ITA No.227/Hyd/2019		
Assessment Year: 2014-15		
Dy. Commissioner of Income Tax, Central Circle 1(3) Hyderabad	Vs.	ASR Engineering and Projects Ltd, Hyderabad PAN:AAKCS5870P
(Appellant)		(Respondent)
Revenue by	Sri Y.V.S.T. Sai, CIT (DR)	
Assessee by:	Sri Kiran Manohar	
Date of hearing:	01/12/2021	
Date of pronouncement:	14/12/2021	

ORDER

Per S. S. Godara, J.M.

This Revenue's appeal for the A.Y 2014-15 against the order of the CIT (A)-1, Hyderabad in case no.399/2016-17/CIT(A)-11/Hyd/18-19, dated 19.10.2018 involving proceedings u/s 143(3) of the Income Tax Act, in short the Act. Heard both the parties. Case file perused.

2. The Revenue raises the following grounds which reads as under:

“1. Whether on the facts and in the circumstances of the case, and in law, Id.CIT(A) was correct in restricting the disallowance to 2% of cost of material as against 20% made by the Assessing Officer, when the assessee has failed to discharge it's onus as per section 37 of the LT. Act by substantiating the expenditure claimed with relevant documentary evidences.

2. Whether on the facts and in the circumstances of the case, and in law, Id.CIT(A) was correct in restricting the disallowance to 1 %

of construction costs as against 10% made by the Assessing Officer, when the assessee has failed to discharge it's onus as per section 37 of the LT. Act by substantiating the expenditure claimed with relevant documentary evidences.

3. Whether on the facts and in the circumstances of the case, and in law, Id.CIT(A) was correct in restricting the disallowance to 2% of expenditure claimed at Rs.22,21 ,63,802/- as against the disallowance made by the Assessing Officer at RS.6,00,00,000/-, when the assessee has failed to discharge it's onus as per section 37 of the LT. Act by substantiating the expenditure claimed with relevant documentary evidences.

4. Whether on the facts and in the circumstances of the case, and in law, Id.CIT(A) was correct in restricting the disallowances made in the assessment order to considerably lower amounts without any justification when the assessee has failed to produce proper supporting bills/vouchers/documents.

5. The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary”.

3. Both the learned representatives next invited our attention to the CIT (A)'s detailed discussion granting part relief to the assessee as follows:

“4. During the appellate proceedings, Sri S. Rama Rao, AR and Sri. D. Sreedhar Reddy, M.D of the appellant company appeared and the case was discussed with them. Ground nos..1 and 5 general in nature which do not require specific adjudication. Ground no.2 is against disallowance of 20% of the expenses incurred by the appellant towards cost of material. The AD discussed the issue as under:

"On perusal of the records, it is seen that the assessee has debited an amount of Rs.1,40,98,91,690/- under the head cost of material. During the course of assessment proceedings, the assessee's AR was asked to produce bills/vouchers in respect of this expenditure incurred by the assessee company. On verification of the same, it was found that some of the vouchers are not signed

properly and not supported by proper bills. Hence, 20% of the expenditure incurred towards cost of material is disallowed and added back to the total income which works out to Rs.28, 19, 78,338/-."

4.1. During the appellate proceedings, the appellant contended as under:

"The appellant submits that the total cost of material consumed was Rs. 140,98,91, 690/-. The AO disallowed 20% of the said cost on the ground that the bills and vouchers were not available for the expenditure. The appellant in this regard submits that the AO accepted the fact that proper books of accounts were maintained. The ledger accounts were also provided to the AO. The payments were made through cheques. In the circumstances, there is no reason why 20% of the expenditure debited is to be disallowed. Besides, the appellant submits that the disallowance made by the AO is too high".

4.2 I have considered the assessment order and submissions of the appellant. The AD has not specified/quantified the expenses not properly vouched. Disallowance on estimation has to be on some basis. Disallowance of 20% of expenses is on higher side. Considering the turnover, nature of business and the fact that major expenses are paid through cheques, a disallowance of 2% would meet the ends of justice. It is directed accordingly. The ground raised is partly allowed.

5. Ground no.3 is against disallowance towards construction costs. In this regard the AD discussed the issue as under:

"On perusal of the records, it is seen that the assessee has debited an amount of Rs.85,49,94,36Z/- towards cost of construction. During the course of assessment " proceedings, the assessee's AR was asked to produce bills and vouchers in respect of ~ the expenditure incurred by the assessee company under this head. On verification of the same, it was found that some of the vouchers are not signed properly and not supported by proper bills. Hence 10% of the expenditure incurred by the assessee under this head is disallowed and added back to the total income which works out to Rs. 8, 54, 99,436/-.

6.1 Further, the AR contended as under:

"This amount consists of subcontract charges, payment of royalty and repairs and maintenance. It is submitted that in so far as sub-contract charges and the royalty are concerned, no part of the amount should have been disallowed by the AO. Further, the percentage adopted by the AO is too high."

6.2 I have considered the assessment order and submissions of the appellant. The Aa has not specified/quantified the expenses not properly vouched. Disallowance on estimation has to be on some basis. Disallowance of 1 0% of expenses is on higher side. Considering the turnover, nature of business and the fact that major expenses are paid through cheques, a

disallowance of 1 % would meet the ends of justice. It is directed accordingly. The ground raised is partly allowed.

6. Ground no.4 is against adhoc disallowance of Rs.6,00,00,000/- under the head of "Other expenses". The issue is discussed by the AO as under:

"During the financial year relevant to the Assesment year 2014-15, it is seen that the assessee has debited an amount of Rs. 66,42, 64, 152/- towards other expenses. While arriving at profit from business, the assessee had voluntarily disallowed Rs.36,86,87,743/- towards provision for bad and doubtful debts and Rs. 7,34, 12, 607/- towards provision for expenses, out of the expenditure claimed under the head "Other expenses". The same is evident from the computation of income furnished by the assessee. When compared to the financials of the preceding year with the current year under consideration, it is also seen that despite the voluntary disallowance made by the assessee, there is still an increase of Rs. 8, 84, 80, 740/- under the head "Other expenses in the scenario when the gross receipts have been reduced substantially.

During the course of assessment proceedings, the assessee's AR was asked to produce vouchers in respect of the expenditure incurred by the assessee company under this head. The AR of the assessee was unable to justify the entire claim of the expenditure. Hence, an amount of Rs.6,00,00,000/- has been disallowed under this head and added back to the total income."

6.1 During the appellate proceedings, the AR contended as under:

"The AO disallowed an amount of Rs.6,00,00,000/- on the ground that out of the other expenses of Rs. 66,42, 64, 152/-, the appellant already disallowed Rs.36,86,87,743/- being the provisions towards bad and doubtful debts and provision for expenses respectively. The balance of the amount was worked out to Rs.22,21,63,802/-. The AO compared the same with the earlier years and stated that an amount of Rs.6,00,00,000/- is disallowable. The AO adopted an adhoc basis. The details of other expenses are available. They are rent, power and fuel, repairs and maintenance, rates and taxes, legal and professional charges, payment to auditors, travel and conveyance etc. These items, irrespective of turnover, are to be incurred. Therefore, the AO is not justified in making any disallowance from the said amount. "

6.2 I have considered the assessment order and submissions of the appellant. The AO has not specified/quantified the expenses not properly vouched. Disallowance on estimation has to be on some basis. Disallowance of Rs.6,00,00,000/- is on higher side. Considering the turnover, nature of business disallowance of other expenses is restricted to 2% of Rs.22,21,63,802/- to meet the ends of justice. It is directed accordingly. The ground raised is partly allowed”.

4. Learned CIT (DR) vehemently contended during the course of hearing that the Assessing Officer had rightly disallowed the assessee's corresponding expenditure claim(s) on estimation basis only despite the fact that it had not filed any supportive evidence qua of all the three heads of in issue. His next argument is that the CIT (A) has therefore, erred in law and on facts in restricting the same to a very meagre percentage of 2% qua 1 to 2%, as the case may be, qua all these three heads.

5. The assessee, on the other hand, has drawn a strong support from the CIT (A)'s foregoing discussion.

6. We have given our thoughtful consideration to the rival arguments and find merit in Revenue's stand for the reason that even the assessee is fair enough in its paper book running to 28 pages that it had not filed all the corresponding supportive bills and vouchers followed by confirmation of the corresponding payees. It was very much imperative for the assessee to file all the necessary particulars pertaining to these three heads of material cost, construction and other expenses involving varying sums (supra). It is an admitted fact that the CIT (A) has simply reproduced assessment findings while restricting these three heads of disallowance(s) to a paltry percentage ranging between 1 to 2% (supra). The fact also

remains that both the learned lower authorities are fair enough in not pinpointing any kind of abnormal trend in the assessee's corresponding expenditure claims as well. Faced with this situation and in larger interest of justice, we are of the opinion that the Assessing Officer's action disallowing 20% of cost of material, 10% of construction and other expenses involving disallowance of 28.19, 8.54 and 6 (in crores) deserved to be partly upheld to the extent of 50% thereof on lumpsum basis with a rider that the same shall not be treated as a precedent. We make it clear that we have partly reversed the CIT (A)'s findings under challenge and restore the three impugned disallowances to the extent of 50% of the corresponding sums added in the assessment order. Necessary computation shall follow as per law.

7. This Revenue's appeal is partly allowed in above terms.

Order pronounced in the Open Court on 14th December, 2021.

Sd/- (A.M. ALANKAMONY) ACCOUNTANT MEMBER	Sd/- (S.S. GODARA) JUDICIAL MEMBER
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Hyderabad, dated 14th December, 2021.

Vinodan/sps

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3	CIT (A)-1, Hyderabad
4	Pr. CIT -Central, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order