

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Kuldeep Singh (JM)

I.T.A. Nos. 2696 & 2697/Mum/2019
(Assessment Years 2013-14 & 2014-15)

ACIT-21(1) Room No.116, 1 st Floor Piramal Chambers Parel, Mumbai-400 012	Vs.	Achal Housing LLP 601, Orbit Plaza New Prabhadevi Road Prabhadevi Mumbai-400 025 PAN : AAXFA8987H
(Appellant)		(Respondent)

Assessee by	Shri Vijay Mehta
Department by	Shri Mehul Jain
Date of Hearing	09.12.2021
Date of Pronouncement	21. 01.2022

O R D E R

Per Shri Shamim Yahya (AM) :-

These appeals by the revenue are against orders of learned Commissioner of Income Tax (Appeals)-33 and pertains to assessment years 2013-14 & 2014-15.

2. Since the issues are common and appeals were heard together, these are consolidated for the sake of convenience.

3. We are referring to the grounds of appeal for AY 2013-14, which reads as under:-

1] "On the facts and in the circumstances of the case and in law the learned CIT(A) erred in deleting the disallowance of expenses of Rs. 8,00,22,424/- & reducing the same from the closing work-in-progress carried forward to the next AY. 2014-15 without appreciating the fact that the assessee did not satisfy the condition in clause 'e' of section 47(xiii)(b) of I.T.Act, 1961, since the sales/Turn Over/Gross Receipts in

the business of the company in the preceding three years exceeded Rupees Sixty Lakhs "

2] "The appellant prays that the order of the learned CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored"

4. Brief facts of the case are that the AO noted that during the course of assessment year it was seen that the assessee LLP came into existence by virtue of conversion of the same from M/s. Achal Housing Pvt.Ltd. to M/s. Achal Housing LLP. That the issue of conversion of M/s. Achal Housing P Ltd. to the assessee firm i.e M/s. Achal Housing LLP, needs to be examined in the light of the provisions of section 47(iii)(b) of the Income Tax Act, 1961. That it is seen that during the year assessee has paid a compensation of Rs. 3.50 crores to M/s Khosla Surgical Industries. That on being asked about these transactions it was stated that M/s Khosla Surgical Industries had booked 8 flats on the eighth floor of Pride Icon along with 10 car parking for an amount of Rs. 2 Crores. That Pride Icon is the building under construction by the assessee. That during the year the assessee had repurchased the same from the assessee for Rs. 5.51 crores. That when the reply to 133(6) by M/s Khosla Surgical Industries was received it was seen that they had subtracted the whole amount from the block assets even when the same is not put to use. That however on further enquiries with M/s Khosla Surgical Industries, it was stated by them that they received the possession of the flats in F Y 2011-12 and hence the same is subtracted from block of assets. Hence AO opined that the assessee does not satisfy the condition in clause(e) of subsection xiii b of the section 47 of the Act which states under,

"The total sales, turn over or the gross receipt in the business of the company in any of the 3 previous years preceding the previous year in which the conversion took place should not exceed Rs. 60 lakhs"

AO further noted that the company, M/s Achal Housing Pvt. Ltd. has not filed its return of income and the provisions of the Section 47(xiii)(b) remained to be examined in the hands of the Company i.e M/s Achal Housing Pvt. Ltd. That in view of the above, the Assessing Officer of the Company is being informed accordingly.

He held that since, during the year, the expenses in the hands of Company are shown to have been incurred in the hands of the M/s Achal Housing LLP., the Work-in-progress at the end of the year is reduced to that extent. Hence the closing WIP is worked out as below:-

Closing WIP in the hands of LLP as on 31/03/2013	Rs. 46,86,59,329/-
Less: Opening WIP in the hands of Company as on 01/04/2012	Rs. 38,56,25,373/-
	Rs. 8,30,33,956/-
Less: Expenses in the hands of	Rs. 30,11,532/-

LLP during the year which is allowed	
Expenses incurred in the hands of Company during the year	Rs. 8,00,22,424/-

In view of the above, the expenses amounting to Rs. 8,00,22,424/- is disallowed in the hands of the assessee LLP and the same is reduced from the Closing Work in progress as the same cannot be allowed to be capitalized. Penalty u/s 271(1)(c) for furnishing inaccurate particular is hereby initiated. Hence the closing WIP to be carried forward to the next year is Rs. 38,86,36,90s/-. After verification, the total income of the assessee is computed as below

Total Income as per return of income

467260/-

5. Ld. CIT(A) deleted the above addition holding as under:-

I have carefully considered the assessment order and the submissions made by the appellant. My observations and findings are as under:

- a) The appellant has filed return of income for AY 2013-14 in form ITR-5 on 28-09-2013 and the name of the filer is "Achal Housing LLP" with PAN: AAXFA8987H. The work in progress as on 31.3.2013 as per part A-BS of the said return [Balance Sheet as / on 31st day of March, 2013] has been shown at Rs. 46,86,59,329-. Closing work in progress has been shown at Rs. 46,86,59,329/- and opening work in progress at Rs. 38,56,25,373/- in part A-P&L [profit and loss account for the previous year 2012-13]. In the said P&L account, purchase of Rs. 5,15,71,094/-, interest of Rs. 2,55,26,376/-, commission of Rs. 31,52,973/-, salary and wages of Rs. 11,39,6817- has been debited. To conclude, the transactions for the entire period from 1.4.2012 to 31.03.2013 was incorporated in the single Balance sheet and Profit loss account filed with ITR-5 by assessee LLP as mentioned above.
- b) The company M/s. Achal Housing Pvt, Ltd. was converted into LLP as Achal Housing LLP on 19/03/2013. No return was filed by the Company. The entire business transactions for the whole year was reflected in the return of LLP. As per appellant, this was done because LLP has come into existence as on 31.03.2013 and the company has ceased to exist as well as for the reason that business entity has remained the same and only status has been changed from company to LLP.
- c) During the course of assessment proceedings, Balance sheet and profit and loss account for the period 01/04/2012 to 18/03/2013 belonging to company and for the period 19/03/2013 to 31/03/2013 belonging to LLP was filed separately.
- d) On perusal of copies of various letters submitted to the AO during course of assessment, it is found that the details of expenses for the entire financial year were submitted to the AO at different points of time.
- e) I am of the view that two different returns should have been filed i.e. one for the tenure of the company and second for the tenure of the LLP. This is obvious for the reason that the LLP cannot show transactions in its returns for the period when it was not in existence. Moreover, the form of ITR for filing return in case of company and LLP are different. However, this should be treated as procedural/ technical lapse and to correct the same, the AO in the assessment order had mentioned to inform the AO of the company to examine the requirements of section 47(xiii)(b). However, the balance sheet as on 31/03/2013 related to LLP reflecting position of assets and liabilities would remain the same unless there is adverse findings in case of company or LLP. The work-in- progress transferred from Company to LLP can only be altered if certain expenses incurred by the Company and debited to work- in- progress before its conversion into LLP was found to be bogus or inflated. From perusal of assessment order, it is found that there is no such finding that any of the expenses debited to Work in progress either by Company or the LLP is false or inflated.
- f) It is quite possible that the AO having jurisdiction of LLP will be different than the AO having jurisdiction over Company and for that reason the AO of LLP in the present assessment order has mentioned that since the company has not filed return and provisions of section 47(xiii)(b) remained to be explained in the hand of the company and hence the AO of the company is being informed accordingly. This simply means that the present AO of assessee LLP has no jurisdiction over the case

for the period before conversion. However, on contrary, the same AO of assessee LLP is disallowing expenses of Rs. 8,00,22,424/- in the hand of assessee LLP which was incurred before conversion and was related to the company without any such finding by any of the two AOs that the aforesaid expenditure was bogus or inflated. Such approach of the AO cannot be sustained. It is also found that details of expenses for entire period was filed with him. Therefore, it is held that the AO was not justified in reducing the work- in-progress in the hands of LLP which was a brought forward figure in LLP from Company on conversion merely on the ground that he has no jurisdiction over the company. In that case how the same AO has allowed the Work in progress of the company as on 01/04/2012 amounting to Rs. 38,56,25,373/- to be carried forward in the hands of LLP.

g) Merely non filing a separate return for the period from 01.04.2012 to 18/03/2013 in the status of a company cannot be a ground to disallow the expenses claimed to have been incurred by the company which was incorporated in the return of LLP and all details of the same were filed before the AO of the LLP because this is simply a procedural and technical lapse and the Department had right to ask the assessee to file separate return for the period up to date of conversion by issuing notice u/s 147.

h) The AO of LLP will be free to change the figure of work in progress of LLP if any adverse finding regarding genuineness of expenses of Company for the period 1.4.2012 to 18.03.2013 or any other period is given by the AO of the Company. The outcome of violation of provisions of section 47(xiii)(b) on conversion from company to LLP, if any, will have no impact on closing work in progress in the hands of the assessee LLP as on 31.03.2013. It can only create a separate tax liability. To change the figure of work in progress, a finding has to be given that certain expenses booked in work in progress was bogus or inflated. Without that, it is not-possible to change the figure of work in progress for any other reasons.

In view of above, the disallowance of expenses of Rs. 8,00,22,424/- in the hands of the assessee LLP is hereby deleted. As a result, the assessee LLP is allowed to carry forward work in progress of Rs. 46,86,59,3297- as on 31/03/2013. The grounds are allowed.

6. We have heard both the parties and perused the records. We note that in this case, there was a conversion of the company into a limited liability partnership firm. Consequent upon the disallowances made by the AO, Ld.CIT(A) has given the finding that two different returns should have been filed. One for the tenure of the company and second for the tenure of the LLP. He ha observed tha the LLP cannot show transaction in its return for the period, when it was not in existence. He has further noted that the form of income tax return in the case of company and in the

case of LLP are different. He has also asked the assessee to furnish the statement for period under company and LLP. After noting the above, he has observed that these should be treated as procedural lapse. Thereafter, he has hypothesized that the above balance sheet as on 31/03/2013 will be same unless adverse finding is there in the case of company. Thereafter, he has further hypothesized that it is also possible that the AO here having jurisdiction is different from the AO having jurisdiction over company. However, after further observations Id.CIT proceeded to delete the addition and also directed the AO to allow carry forward of work in progress, as claimed by assessee.

7. We note that the order of Ld.CIT(A) is full of conjectures and surmises. Despite observing that there should have been two returns of income, one for the period of company and one for the period of LLP and despite also observing that the AO of the company may be different, he has treated the same as procedural and also assumed jurisdiction over the said possible, AO and allowed the appeal. In our considered opinion, non filing of return for proper period and not in appropriate status is not at all a procedural mistake, it is quite substantial mistake. Moreover, Ld.CIT(A) cannot make a hypothetical order depending upon the order of assumed AO for the company. In our considered opinion, on the facts and circumstances of the case matter needs to be remitted to the file of AO. The AO shall examine the issue afresh keeping in light of the finding of the Ld.CIT(A) that there should have been two returns for the period and for the part of the period the AO may not have jurisdiction. Furthermore, the provision of section 170 dealing with “succession to business otherwise than on death” has to be kept in mind by the AO. Accordingly, we direct the at the AO to examine the issue as per law without being influenced by other observation of the Ld.CIT(A) as above. Needless to add, assessee should be granted adequate opportunity of being heard.

8. In the result, this appeal is allowed for statistical purpose.

ITA No. 2697/Mum/2019 for AY 2014-15

9. In this case consequent upon AO's order. Ld. CIT(A) has decided this appeal by holding as under:-

I have carefully considered the assessment order and the submissions made by the appellant. Since the addition made during the year is in consequence to reduction of closing WIP in AY 2013-14 by Rs. 8,00,22,424/- and the said reduction has not be sustained by me in the appeal for AY 2013-14 for detailed reasons mentioned therein, it is held that the addition of Rs. 5,66,66,715/- in income during the AY 2014-15 or change in closing stock for AY 2014-15 is not justified and hence the same is deleted. The ground is allowed.

10. Since, we have already remitted the issue for AY 2013-14 to the file of AO, this year appeal is also remitted to the file of AO. Our above adjudication applies mutatis mutandis to this year also.

11. In the result, these appeals are allowed for statistical purpose.

Pronounced in the open court on 21 .01.2022

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 21 /01/2022

Thirumalesh, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai