

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Ms. Astha Chandra, Judicial Member

(Through Video Conferencing)

ITA No. 6456/Del/2018 : Asstt. Year : 2008-09

Income Tax Officer, Ward-23(4), New Delhi-110002	Vs	Skyview Consultants (P) Ltd., M-107, Greater Kailash, Part-II, New Delhi-110048
(APPELLANT)		(RESPONDENT)
PAN No. AAICS2111H		

**Assessee by : Sh. Rakesh Gupta, Adv.
Revenue by : Sh. Umesh Takyar, Sr. DR**

Date of Hearing: 10.02.2022

Date of Pronouncement: 17.02.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the revenue against the order of the Id. CIT(A)-31, New Delhi dated 31.07.2018.

2. Following grounds have been raised by the revenue:

"1. Whether on the facts and circumstances of the case, the Ld, CIT (A) was justified in not sustaining the reopening proceedings for AY 2008-09 on the basis of order of the Hon'ble Delhi High Court in the case of assessee for AY 2009-10 & 2010-11 despite the facts that circumstances & facts for AY 2008-09 were different from AY 2009-10 & 2010-11.

2. Whether on the facts and circumstances of the case, the Ld, CIT (A) was justified in quashing the reopening proceedings for AY 2008-09 on the basis of order of the Hon'ble Delhi High Court in the case of assessee for AY 2009-10 & 2010-11 by ignoring the facts that tax evasion petition pertains to AY 2007-08 & 2008-09 and did not

contain any information for AY 2009-10 & 2010-11 on the basis of which Hon'ble High Court has quashed the proceedings for AY 2009-10 & 2010-11."

3. The assessee filed return of income declaring income Rs. 10,57,680/- on 20.09.2008. The assessee company was working as contractor of M/s Pernod Ricard India Pvt. Ltd. formerly known as Seagrams India Pvt Ltd. They were providing field support to their principal company at various locations. Their work included to assist in unloading of products, to check transit breakage, to get feedback by consumers regarding the quality of products and to study customer grievances and replacement of defective products. Further they assisted the principal company in there promotional activities and to collect all statutory forms etc.

4. The case was reopened on the basis of TEP filed with the investigation wing and their detailed report, with information and documents from the O/o DDIT (Inv.), unit 2 (2), New Delhi vide their letter F. No. DDIT(Inv.)/Unit-2(2)/112/TEP2014-15/448 dated 03.03.2015 through the Dy. Commissioner of Income Tax, Circle 23(2), New Delhi F. No. DCIT Cir. 23(2)/2014-15/466 dated 20.03.2015.

5. Subsequent to the reopening of the case, the AO disallowed an amount of Rs.1,60,94,500/- on account of sub-contracting expenses which is 88% of the consultancy income received by the assessee. The AO allowed 12% of the receipts in the hands of the assessee. The reasons for reopening are as under:

"INCOME TAX DEPARTMENT

23/03/2015-Reasons for reopening the case of M/s Skyview Consultants Pvt. Ltd. AY 2008-09, u/s 147/148 of the Income Tax Act, 1961:-

1. Information/documents along with relevant details has been received from the office of The Deputy Director of Income Tax (Inv), Unit-2(2), New Delhi vide his letter F.No. DDIT(Inv)/Unit-2(2)/112/TEP/2014-15/448 dated 03.03.2015 through The Dy. Commissioner of Income Tax, Circle 23(2), New Delhi letter F. No. DCIT Cir. 23(2)/2014-15/466 dated 20.03.2015, that the above assessee, M/s Skyview Consultants Pvt. Ltd. which was working as contractor of M/s Pernod Ricard India Pvt. Ltd. (Erstwhile M/s Seagram India Pvt. Ltd) for providing field support to their principal at various locations.

As per the TEP received in the investigation wing of the department the said company made collections from their principals i.e. M/s Pernod Ricard India Pvt. Ltd.

The Company further issued account payee cheques in the name of various sub-contractors (allegedly bogus entities) in their names and withdraw cash by self cheques from their accounts and distributed cash in Defence canteens as bribes. As per the Schedule 9 (Direct Expenses) of balance sheet of the assessee for the year ended 31-03-2008 received from tire investigation wing of the department, it has contractor's charges expenses of Rs. 1,89,34,807/-. It was alleged in the TEP that this is the bribe amount distributed by the assessee which it has shown as expenses under the head contractor charges.

2. From the above referred TEP, it appears that contractor's charges amounting to Rs.1,89,34,807/- claimed as expenses by tire assessee in its profit & loss account pertaining to FY 2007-08 relevant to AY 2008-09 and has been used by the assessee for non-business purposes, thus concealing its true income.

3. In view of the additional information/documents received from the Investigation Wing, I have reason to believe that Contractor's charges shown in its balance sheet are bogus and the assessee has willfully and knowingly concealed its particulars of income to avoid tax and that income of Rs. 1,89,34,807/- chargeable to tax has escaped assessment for AY 2008-09, within the meaning of sec. 147 of Income Tax Act, 1961.

Raj Singh
Income Tax Officer
Ward 23(4), New Delhi"

6. At the threshold, the Id. AR brought to our notice that the order of the Hon'ble High Court of Delhi in the assessee's own case for the A.Y. 2009-10 in WP(C) No. 10507/2016 order dated 07.09.2017 and also the order dated 30.07.2018 in WP (C) No. 11324/2017 for A.Y. 2010-11.

7. We have also perused the order of the Hon'ble Apex Court dated 17.08.2018 in SLP No. 27416/2018 for the A.Y. 2009-10 dismissing the SLP filed by the revenue.

8. For the sake of ready reference, the operative part of the orders is reproduced as under:

WP(C) No. 10507/2016 order dated 07.09.2017

"Dr. S. Muralidhar, J.:

1. The challenge in this writ petition is to the notice dated 29th March 2016 issued by the Income Tax Officer Ward 23(4), New Delhi (hereafter Assessing Officer - 'AO') under Section 148 of the Income Tax Act, 1961 ('Act') seeking to reopen the Petitioner's assessment for the Assessment Year ('AY') 2009-10. A challenge is also laid to the letter dated 4th July 2016 rejecting the objections filed by the Petitioner to the reopening of the assessment.

2. The facts in brief are that the Petitioner, Sky View Consultants Private Limited, is engaged in the consultancy business and looking after 'product promotion and sales services' of products being marketed by Seagram India Limited, presently known as Pernod Ricard India Limited (PRIL). The Petitioner filed its return for the AY 2009-10 on 24th October 2009 declaring an income of Rs. 13,59,848/-. The said return was processed under Section 143 (1) of the Act.

3. On 29th March 2016, the AO issued the impugned notice under Section 148 of the Act proposing to reopen the assessment for AY 2009-10. The reasons recorded by the AO on 10th March, 2016 for reopening of the assessment, as communicated to the Petitioner, were broadly as under:

(i) A Tax Evasion Petition ('TEP') had been received by the investigation wing of the Income Tax Department to the effect that the Petitioner had collected money from its Principal (PRIL) and thereafter issued account payee cheques in the name of

various sub-contractors (allegedly bogus entities). Cash was withdrawn from the said accounts by self-cheques and distributed in the Defence canteens as bribes. On the basis of the said TEP, the assessment of the Petitioner for the AY 2007-08 was reopened by an order passed by the Commissioner of Income Tax (CIT) under Section 263 of the Act. It was further noted that for the AY 2008-09, proceedings under Section 147 of the Act were in progress. Even for the AY in question i.e. the AY 2009-10, a perusal of the Profit and Loss (P&L) Account for the year ending 31st March, 2009 showed that the Petitioner was claiming an expense of Rs.2,41,79,349/- on account of 'contractor's charges'. This was in fact the bribe amount distributed by it.

(ii) The second reason was that the Income Tax Officer (Investigation) [ITO (Inv)] OSD-I, Unit-3, New Delhi issued the summons under Section 131 (1A) of the Act on 4th March, 2015 calling upon the Petitioner to provide the necessary details so that independent enquiries could be conducted from the third parties. The ITO (Inv) in his report stated that the Petitioner has neither provided any justification with documentary evidence nor the details of the parties to whom the contract charges were paid. From both the above documents and the report of the ITO (Inv) it was inferred that 'the modus operandi of the Assessee in the AY 2009-10 is the same as was in AY 2007-08 and 2008-09'. It was further inferred that the aforementioned sum of Rs.2,41,79,349/- had been used by the Petitioner for 'non business purposes', thus concealing its true income.

(iii) The third reason was that the Director General of Income Tax (DGIT) (Vigilance) by letter dated 2nd November, 2011 had also suggested that the claim of expenses made by the Petitioner would have to be examined. This was after a detailed inquiry into a complaint against the then AO of Circle 8 (1), New Delhi, who happened to be the AO of the Petitioner.

4. The AO concluded that he had reason to believe that the contractor's charges shown in the Petitioner's P&L Account were bogus and the Petitioner had wilfully and knowingly concealed its particulars of income to avoid tax and that income of Rs.2,41,79,349/- chargeable to tax had escaped assessment for AY 2009-10.

....."

Order dated 30.07.2018 in WP (C) No. 11324/2017

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 30.07.2018

+ *W.P.(C) 11324/2017, C.M. APPL.46251/2017*

SKYVIEW CONSULTANTS PVT. LTD. Petitioner

*Through : Dr. Rakesh Gupta, Sh. Sonil Agarwal,
Ms. Monika Ghai and Sh. Rohit Kumar Gupta,
Advocates.*

Versus

INCOME TAX OFFICER WARD 23(4), NEW DELHI AND ANR.

.... Respondents

Through : Sh. Zoheb Hossain, Sr. Standing Counsel with Sh. Deepak Anand, Jr. Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE A.K. CHAWLA MR. JUSTICE S. RAVINDRA BHAT

1. *The writ petitioner, which is engaged in consultancy business in the segment of product promotion and sales services marketed by M/s. Seagram's India Ltd is aggrieved by the re-opening of its assessment for A.Y. 2010-11 under Section 148 of the Income Tax Act, 1961 [hereafter "the Act"]. It seeks directions for quashing of the reassessment notice.*

2. *The facts briefly are that for two previous years - A.Y.s 2007-08 and 2008-09, orders seeking to re-examine the original scrutiny assessments were made under Section 263 and later under Sections 147/148 of the Act, respectively. These attempts to revisit the original scrutiny assessments, (on the allegation that claims for bogus expenditures were made) were unsuccessful and the final orders for the assessment year (A.Y. 2007-08) culminated in the revisional and subsequent remand orders by the Assessing Officer (hereafter "AO") finally in the assessee's favour. The order pursuant to the remand was, in fact, accepted after the appellate Commissioner endorsed that view on 08.05.2014.*

3. *The reassessment for A.Y. 2009-10 was through a notice dated 30.03.2016 which inter alia claimed that upon receipt of a Tax Evasion Petition (TEP), investigation was conducted which showed that for the year ending 31.03.2009, the contract charges claimed were unduly high - Rs.24,01,79,349/-. The TEP also alleged that these amounts were distribution of illegal gratifications by the assessee. The reassessment notice proceeded to state as follows:*

"5. From the above referred TEP, and report of the ITO (Inv) OSD-1, Unit-3, New Delhi, the modus operandi of the assessee in the AY

2009-10 is same as was in AY 2007-08 & 2008-09. It appears that contractor's charges amounting to Rs.2,41,79,349/- claimed as expenses by the assessee in its profit & loss account pertaining to FY 2008-09 relevant to AY 2009-10 has been used by the assessee for non-business purposes, thus concealing its true income.

6. In this case, Director General of Income Tax (Vigilance) vide their letter No.DIT(Vig)/NZ/2011-12 dated 02.11.2011 (Placed as annexure C) after their detailed enquiry in a complaint case against the then AO of Cir 8(i), New Delhi has also suggested to look into the claim of the expenses, as they are in crores in one year itself, and will have a major impact on revenue, taking into the number of years involved, as the assessee is doing the same business till date.

7. In view of the additional information/documents received from the Investigation Wing, material/documents available on record I have reason to believe that Contractor's charges shown in its P&L Accounts are bogus and the assessee has willfully and knowingly concealed its particulars of income to avoid tax and that income of Rs.2,41,79,349/- chargeable to tax has escaped assessment for AY 2009-10, within the meaning of Section 147 of the Income tax Act, 1961."

3. On 17.08.2017, the revenue sought to re-open the assessment by issuing notice under Sections 147/148 of the Act, on 27.03.2017, but for A.Y. 2010-11. In response to the assessee's request, the Revenue furnished the reasons for reopening an assessment. This inter alia reads as follows:

"2. In fact investigation into the affairs of the company started on receipt of TEP bearing UIN No. 090845052X (Placed as annexure B). As per the TEP received in the investigation wing of the department the said company made collections from their principals i.e. M/s

Pernod Ricard India Pvt. Ltd. The company further issued accounts payee cheques in the name of various sub-contractors (allegedly bogus entities) in their names and withdraw cash by self cheques from their accounts and distributed cash in Defence canteens as bribes. On the basis of said TEP and other material available on record case of the assessee for the AY 2007-08 was reopened u/s 263 of the Income Tax Act, 1961 and for AY 2008-09 proceedings u/s 147 of the Income Tax Act, 1961 were completed and therein a substantive addition of Rs. 1,60,94,586/- on account of disallowance of subcontracting expenses. Further the case of the assessee company for A.Y.2009-10 was also reopened on the similar grounds however the matter for this year is sub-judice with the Hon'ble Delhi High Court are currently in progress.

3. On perusal of P&L for the year ending 31.03.2010 received along with above quoted letter of ITO (Inv) OSD-1, Unit-3, New Delhi the assessee is showing Consultancy Income of Rs. 3,31,14,209/- and expenses on account of Contractor's charges amounting to Rs.3,07,95,559/- and has shown net income only at Rs. 3,10,336/-. It was alleged in the TEP that for the A Y 2007-08 & 2008-09 the contractor charges being claimed by the assessee is the bribe amount distributed by the assessee.

4. ITO (Inv) OSD-1, Unit-3, New Delhi in his findings has stated that the assessee was provided opportunity to explain the expenses and to provide the necessary details which were called for vide summons u/s 131 (1A) dated 04.03.2015 so that independent enquiries could be conducted from the third parties. As per his report the assessee has neither provided any justification with documentary evidence nor the details of the parties to whom the contract charges were paid.

5. From the above referred TEP, and report of the ITO (Inv) OSD-1, Unit-3, New Delhi, the modus operandi of the assessee in the A Y 2010-11 was same as was in A Y 2007-08, 2008-09 & 2009-10. It

appears that contractor's charges amounting to Rs. 3,07,95,559/- claimed as expenses by the assessee in its profit & loss account pertaining to FY 2009-10 relevant to A Y 2010-11 has been used by the assessee for non business purposes, thus concealing its true income.

6. In this case Director General of Income Tax (Vigilance) vide their letter No.DIT(VIg)/NZ/2011-12 dated 02.11.2011 (Placed as annexure C), after their detailed enquiry in a complain case against the then AO of Cir 8(1), New Delhi has also suggested to look into the claim of the expenses, as they are in crores in one year itself, and will have a major impact on revenue, taking into the number of years involved, as the assessee is doing the same. Business till date. Further in the letter of the office of Joint, DIT(Vigilance), North Zone-II, New Delhi has specifically give remark as under for the A.Y. 2010- 11:-

"Make a proposal to the concerned CIT to take-up the case of M/s Skyview Consultants Pvt. Ltd. for A. Y. 2010-11 under scrutiny and issue directions for proper examinations of the charge in business pattern & purchases made during the year.

It may also be suggested that the reason for "NIL" closing stock as on 31.03.2010 be also examined."

7. In view of the additional information/documents received from the Investigation Wing and O/o DGIT (Vigilance), New Delhi material/documents available on record I have reason to believe that Contractor's charges shown in its P&L Accounts are bogus and the assessee has willfully and knowingly concealed its particulars of income to avoid tax and that income of Rs.3,07,95,559/- chargeable to tax has escaped assessment for A.Y. 2010-11, within the meaning of section 147 of the Income tax Act, 1961."

4. *The petitioner assessee objected to the re-opening of its assessment for A.Y. 2010-11. It relied importantly upon the fact that its challenge to the opening of reassessment for A.Y. 2009-10 was sub judice and pending before this Court in W.P.(C) 10507/2016 - Sky View Consultants Pvt. Ltd. v. Income Tax Officer. It pointed out that on 07.09.2016, this Court had decided the cases and had allowed the petition, ruling that information relating to one A.Y. was not relevant for another A.Y. Besides quoting the decisions, it relied upon the assessee objecting to omission by the AO to refer to the previous orders for A.Y. 2007-08 which had gone into the same aspects to suspect expenditure. It was also stated that no changes were forthcoming and that revisiting sole issues did not constitute a valid ground for invoking the power of reassessment under Sections 147/148. In fact, the mechanical citing of same reasons vitiated and rendered invalid the impugned notice under Section 147. The other grounds, such as failure to mention the fact that though there was mention of substantive addition of Rs.1,60,94,586/- for A.Y. 2008-09 that was subject matter of an appeal, that relevant facts were not intentionally considered. The assessee complained that re-opening besides being the result of a mechanical exercise, appears to be on the basis of directions of higher authorities.*

.....

14. *In this case, the trigger for all the reassessment attempts by the revenue was the same TEP, which led to previous attempts to re-open completed assessments. The material on record show that the AO had conducted inquiries at the time of completion of the original assessments. There is nothing to show that the entities to whom payments were made (by the assessee) were fictitious; in fact TDS amounts were apparently deducted. There was no fresh evidence supporting the reassessment. Consequently, there was no tangible, specific material to justify the impugned reassessment notice."*

9. At the outset, we find that the reasons for reopening are same for the A.Y. 2008-09, A.Y. 2009-10 and A.Y. 2010-11. No doubt, each Assessment Year is to be seen differently, but the note from the Investigation unit indicate the same pattern of expenditure claimed over a period of 5 years. Two of these years were dealt with by the Hon'ble High Court and hence the same ratio applies to the year before us also. The SLP filed by the revenue has been summarily dismissed by the Hon'ble Apex Court. Hence, keeping in view the judgments of the Hon'ble Delhi High Court in the case of the assessee for the A.Y. 2009-10 & A.Y. 2010-11 and order of the Hon'ble Apex Court, we decline to interfere with the order of the Id. CIT(A) quashing the notice issued u/s 148 in the case of the assessee.

10. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 17/02/2022.

Sd/-

**(Astha Chandra)
Judicial Member**

Dated: 17/02/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)
Accountant Member**

ASSISTANT REGISTRAR