

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 397/JP/2019
निर्धारण वर्ष/Assessment Years : 2013-14

M/s Shri Jeen Mata Buildcon Pvt. Ltd. 97, Arya Nagar, Murlipura Jaipur	बनाम Vs.	The ITO Ward 4(2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAQCS8904G		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Mahendra Gargieya (Adv.)
राजस्व की ओर से / Revenue by : Runi Pal (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 22/02/2022
उदघोषणा की तारीख / Date of Pronouncement: 08/03/2022

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the assessee is directed against the order of Id. CIT(A), Ajmer dated 24.01.2019 for the Assessment Year 2013-14.

2. The hearing of the matter was scheduled through Video Conferencing by both the parties in view of prevalent government guidelines on account of ongoing COVID-19 pandemic situation in the country.

3. The grounds of appeal raised by the assessee before us are as under:-

- "1. The Id. CIT(A) erred in law as well as on the facts of the case in confirming the addition, so made, of Rs. 18,78,750/- & 15,23,978/- on account of difference between the amount reflected as per TDS Form 26AS and receipts recorded in books of accounts. The addition so made and confirmed by the CIT(A) being totally contrary to the provisions of law and facts of the case, kindly be deleted in full.*
- 2. The Id. CIT(A) erred in law as well as on the facts of the case in confirming the lumpsum disallowance of Rs. 2,00,000/-. The disallowance so made and confirmed by the CIT(A) being totally contrary to the provisions of law and facts of the case, kindly be deleted in full.*
- 3. The Id. AO further erred in law as well as on the facts of the case in charging interest u/s 234A, 234B, 234C & 234D of the Act and as also in withdrawing interest u/s 244A of the Act. The appellant totally denies its liability of charging and withdrawal of any such interest. The interest so charged/withdrawn, being contrary to the provisions of law and facts, kindly be deleted in full.*
- 4. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing."*

4. The relevant facts, as culled out from the records is that, the assessee company is engaged in the business of labour contractor supplier with machinery under affordable housing policy for the year under consideration. The assessee company filed its return of income declaring income at Rs. 5,21,007/- on 30.03.2015 through e-filing portal and the same was processed u/s 143(1) of the Income Tax Act, 1961. Later on, the case was selected for scrutiny through CASS due to difference in turnover between 26AS and books of account. In the assessment proceedings, the Assessing Officer has observed that turnover

declared by the assessee for the year under consideration at Rs. 67,84,050/-. Whereas the turnover as reflected as per 26AS is Rs. 86,62,800/- the difference of Rs. 18,78,750/- is added back in case of the contract received from M/s Sidhi Vinayak Affordable Homes. Considering that the party has also booked that amount in their books as confirmed under enquiry made u/s 133(6) of the Act. In another case addition in respect of M/s Bhairav Township Pvt. Ltd, the Assessing Officer has observed that there is a difference between income offered and expenses booked. Therefore, he has derived the figure of addition at Rs. 15,23,978/- being the difference of the expenses booked and income offered, the same is derived as under:-

"A.Y	Income	Expenses		
2011-12	37,80,000/-	6,04,000/-		
2012-13	<u>10,70,00,00/-</u>	<u>15,39,99,78/-</u>		
	<u>1,44,80,000/-</u>	<u>1,60,03,978/-</u>		
	A	B	B-A	15,23,978/-
				(Short declared turnover)"

5. While dealing with the ground for these two additions, the Id. CIT(A) observed in his order at para 4.3 and has confirmed the addition by observing as under:-

"4.3 I have gone through the assessment order, statement of facts, grounds of appeal and written submission carefully. It is seen that the addition has been made by the AO after verification of the information available in Form No. 26AS of the appellant and result of enquiries conducted u/s 133(6) with M/s Sidhi Vinayak and M/s Bhairav Township Pvt. Ltd. The appellant has not furnished any documentary evidence to substantiate the submission made by it. Therefore, In view of the facts

discussed by the AO in the assessment order, I am of the considered view that the AO has rightly made the addition of Rs. 18,78,750/- and Rs. 15,23,978/-. Accordingly, the addition of Rs. 34,02,728/- made by the AO is hereby confirmed."

6. The 3rd addition made by the Assessing Officer is ad-hoc disallowance of Rs. 2,00,000/- out of Rs. 2,13,510/- on account of travelling expenses, Rs. 2,84,510/- on account of consumable expenses, Rs. 5,42,280/- on account of conveyance Expenses, Rs. 5,45,800/- on account of diesel expenses and Rs. 4,54,050/- on account of staff welfare expense. While making disallowance AO contended that the expenses incurred on self-made vouchers considering the nature of the expenses revenue leakage/personal use of the same and therefore, he has considered to disallow a lumpsum amount of Rs. 2,00,000/- out of the these expenses.

7. The Id. CIT(A) has also confirmed the finding of the AO in respect of the lumpsum addition of Rs. 2 lac without giving any separate findings.

8. Being aggrieved from the order of the Id. CIT(A), the assessee has moved an appeal before the Co-ordinate Bench wherein the contentions of appellant as appearing in paper book are as under:-

"1. Accounts not rejected by the AO: At the outset it is submitted that the assessee has maintained proper books of account which are duly audited u/s 44AB of the IT. Act. Complete books of accounts along with purchase bills, contract receipts bills, vouchers and other registers maintained by the assessee were produced before the AO in the course of assessment proceedings as admitted by him at top of the Pg-2.

Moreover, the assessee consistently has not been showing Closing WIP since earlier years. The method and manner of maintenance of the books of accounts is the same as was in the past without any objection raised by the revenue. The accounts of the assessee were never rejected in the past nor the AO, in the current year has rejected the books of account directly or even remotely. He made the impugned addition merely and blindly relying upon the receipts as shown in Form 26AS, which were higher than the contract receipts shown by the assessee in its books. The law is well settled that if accounts are not rejected u/s 145(3) no upward estimation of income is legally possible. Reliance is placed on the following decisions:

- *M/s Bansilal Abirchand Spg. & Wvg. Mills 75 ITR 260 (Bom)*
- *CIT vs. Maharaja Shree Umaid Mills Ltd. 192 ITR 565 (Raj.)*
- *DCIT vs. Mewar Textile Mills Ltd. 21 Tax World 821 (JP)*
- *Mohd. Umer vs. CIT 101 ITR 525*
- *Ajanta Constructions (P.) Ltd. vs. ACIT XXII TW 606 (ITAT Jaipur)*
- *DCIT vs. Associated Stone Industries (Kotah) Ltd. XXII TW 155 (JP)*
- *Ghewarchand vs. ITO- XXI TW 571*
- *Siddheshwari Cotton Mills P. Ltd. vs. CIT 117 ITR 953 at 957 (Call)*
- *ACIT vs. M/s Mount Malt Bru Ltd 34 TW 246 (JP)*
- *CIT vs. President Industries (2002) 258 ITR 654 (Guj.)*
- *CIT vs. Abhishek Corporation (2000) 158 CTR 374 (Guj.)*
- *ITO vs. Star Consortium 127 taxman 681 (Kol) (2021), (DPB?)*

9. Before us, the Revenue has relied upon two case laws as under:-

- Rah Jajharia E to E JV [2017] ITA No. 1848/Kol/2017 of the ITAT, Kolkata dated 21.12.2017.

- Surendra S. Gupta [2018] 93 taxmann. com 456 (Mumbai Trib.)

Wherein the 1st case as relied is related to the TDS credit on account of mobilization advance and in another case the allowing of TDS credit to the assessee whereas in these case, there is no such observation made by the Assessing Officer is only in respect of income reflected in the books as compared 26AS in one case & other additions is made on different facts of comparison of expenses. Therefore, these decisions are on different facts and we have considered the same as relied upon by the Id. DR. As regards, the addition of Rs. 2,00,000/-, the Id. DR has relied upon and vehemently argued that the said disallowance of Rs. 2,00,000/- is required to be sustained as per the findings of AO & CIT(A).

10. We have considered the rival submissions. The Id. AR of the assessee argued that merely there is a difference in the 26AS and the books results, there cannot be an addition to returned income the books of account of the assessee duly audited. AO has not found any single defect in the books of accounts that has been produced before the Assessing Officer. The assessment completed u/s 143(3) of the Act. Even, the inquiry made u/s 133(6) has properly been explained by the AR of the assessee in the assessment proceedings and reply is reproduced in the assessment order. The main contentions is that the other party has booked the expenses, that cannot be the reason while making the assessment in the case of the assessee, when the contract receipt got reflected in the subsequent year as per regular method of accounting followed. Surprisingly one addition is based on 26AS amount and amount in books and another from the expenses booked by the assessee and income of two years comparison. This shows how the additions were made by followings choose & pick. It is only elementary that information as per data base of the Revenue

authorities cannot be, by itself, a legally sustainable basis for making addition to the income of the assessee and that such imports are based starting point for appropriate inquiry which in this case made and explained by the assessee & reconciliation to that want also made. There is nothing more than this information input which has been put against the assessee. We have noted that the audited books of accounts and reconciliation and the various entities contract amount offered for tax over a period & time. Only difference between the contract value of each party matches over a period of time irrespective of the year offered by the assessee and therefore, grievance of the Revenue that the assessee has not offered correct income is fully explained by the assessee by filing the chart at page No. 5 of the assessee's written submissions which is reproduced hereinbelow.

Reconciliation Chart as per Assessee

F.Y.	Siddhi Vinayak			Bhairav Township		
	As per Books	As per 26AS	Variance	As per Books	As per 26AS	Variance
2011-12				38,00,000	10,00,000	28,00,000
2012-13	67,84,050	86,62,800	(18,78,750)	1,07,00,000	1,40,00,000	(33,00,000)
2013-14	59,99,625	59,99,625	-	15,00,000	10,00,000	5,00,000
2014-15	36,47,947	20,62,500	15,85,447	-	-	-
2015-16	95,911	-	95,911	-	-	-
Net Variance	1,65,27,533	1,67,24,925	(197,392)	1,60,00,000	1,60,00,000	-

11. The income offered for both the parties, in respect of which the addition made almost reconciled and offered for in the regular books, AO has not rejected the book results. Therefore, it is not required to disturb the books result which has been audited by an independent auditor. Thus, the addition made for an

amount of Rs. 18,78,750/-, Rs. 15,23,978/- totaling to Rs. 34,02,728/- as per ground No. 1 are deleted on the basis of finding discussed herein above.

12. As regards the lumpsum disallowance of Rs. 2,00,000/- , the observe of the Id. CIT(A) at para 5.3 is as under:-

"5.3 I have gone through the assessment order, statement of facts, grounds of appeal and written submission carefully. In view of the facts discussed by the AO in the assessment order, I am of the considered view that the AO has been most reasonable in making disallowance of Rs. 2 lac only out of the expenses debited under the head "travelling expenses (Rs. 2,13,510), consumable expenses (Rs. 2,84,510/-), conveyance expenses (Rs. 5,42,280) diesel expenses (Rs. 5,45,800) and staff welfare expenses (Rs. 4,54,050)". Therefore, the disallowance of Rs. 2 lac made by the AO is hereby confirmed."

13. It is apparent that on the best the reason known Id. CIT(A), he has not considered the contentions of the assessee that the books of accounts are being audited and no single defects found in the bills vouchers etc. produced before the Assessing Officer. Assessment proceedings no expenses so personal nature of the expenses brought on record. No defect in any of the voucher in nature and expended is placed on record and in absence of any such observations, the Id. Assessing Officer as well as Id. CIT(A) has erred in law as well as on facts in making /confirming disallowance of Rs. 2,00,000/-.

14. The AR of the assessee argued that there is an absolutely no basis to make lumpsum disallowance of Rs. 2,00,000/- and he has presented a chart

before us comparing the expenditure with that of the earlier years and the same is reproduced herein below.

Particular	AY 2013-14	%	AY 2012-13	%
Turnover	1,79,89,050/-		39, 30,000/-	
Staff Welfare Expenses	4,54,050	3%	1,71,998	4%
Conveyance Expenses	5,45,800	3%	2,45,800	6%
Travelling Expenses	2,84,510	2%	84,880	2%
Consumable Expenses	5,42,280	3%	2,38,500	6%

Looking to these factual position that even on comparative the expenses are on lower side with that of last year.

15. The Id. DR has not placed anything contrary to this and vehemently contended the observation of the AO. In the light of these observation that there are no defects in the books, bills and voucher no addition can be made. Not only that which expenses to what extent can be considered as private as assessee being an artificial person is not spelt out from the order of lower authorities. The chart suggest that the same are at reduced figure compared to last year. Considering the material evidences and facts placed before us, we delete the lumpsum addition of Rs. 2,00,000/- and thus the ground No. 2 is allowed.

16. Thus, Ground Nos. 1 and 2 are allowed and assessee get relief accordingly and ground No. 3 is consequential for levy of interest if any in accordance with law.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 08/03/2022.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 08/03/2022

*Ganesh Kumar

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- M/s Shri Jeen Mata Buildcon Pvt. Ltd.,
2. प्रत्यर्धी / The Respondent- The ITO, Ward- 4(2), Jaipur.
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 397/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar