

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA Nos. 985 & 986/Bang/2013
Assessment years : 2007-08 & 2008-09

The Deputy Commissioner of Income-Tax, Central Circle-2(3), Bangalore	Vs.	M/s Fiza developers & Infrastructure Pvt. Ltd., No.25/1, Residency Road, Bangalore PAN: AABCF 0978Q
APPELLANT		RESPONDENT

CO Nos.9 & 10/Bang/2014 [in ITA Nos. 985 & 986/Bang/2013]
Assessment years : 2007-08 & 2008-09

The Deputy Commissioner of Income-Tax, Central Circle-2(3), Bangalore	Vs.	M/s Fiza developers & Infrastructure Pvt. Ltd., No.25/1, Residency Road, Bangalore PAN: AABCF 0978Q
CROSS OBJECTOR		RESPONDENT

Appellant by	:	Shri V. Chandrashekar & Shri V. Narendra Sharma, Advocates
Respondent by	:	Shri Dilip, Standing Counsel for Dept.

Date of hearing	:	11.03.2022
Date of Pronouncement	:	13.05.2022

ORDER

Per Chandra Poojari, Accountant Member

These are appeals by the revenue and cross objections by the assessee against the common order dated 29.1.2010 of the CIT(Appeals), Mysore for the assessment years 2008-09 & 2009-10.

2. The revenue's appeals are with regard to deletion of addition made on account of amount received by the assessee from M/s. Poorva Powergenco Ltd. [PPL]. The facts are that the AO made the addition based on an agreement dated 02.03.2007 between M/s Four E F Wind Power Pvt Ltd, Fiza Developers Pvt Ltd , Fiza Developers & Infrastructure Pvt Ltd and Poorva Powergenco Ltd. for setting up of wind power project of 51 MW as follows:-

FY	Amount Rs.
2006-07	8,07,33,377
2007-08	1,52,36,900

3. Out of the amount of Rs.8,07,33,377 for AY 2006-07, Rs.2.55 crores was received as advance for road works. After this expenditure, the balance is Rs.5,52,33,377 which is related to completed project which was treated as income of the assessee by the AO. Now the Id. AR contended that the project is not complete, the entire amount for both the assessment years which has been shown as advance only and no income accrued to the assessee. The AO conducted enquiry with PPL wherein they confirmed the completion of the project. It has also been brought on record by the AO that Investigation Wing conducted investigation in the post search proceedings and called the asse to produce books of accounts, vouchers, etc. for examination. However, the assessee had not produced any books of accounts and evidence for incurring any expenditure in connection with the project with PPL. The assessee had also not produced any vouchers, bills, etc. for any expenditure incurred by it in connection with transfer of windpower project to PPL. The minimum expenditure on this project has been incurred by PPL itself. The amount was received from PPL against the completed works and the same has been brought to tax by the AO.

4. However, the CIT(Appeals) observed that the agreement entered with PPL on 2.3.2007 and payments have been received from PPL towards setting up of windmill project. The work of setting up of windmill involves obtaining of various approvals from various departments like Department of Environment & Forests, NOC from KPTCL, tie up with KPTCL for evacuation and transmission of power, PPA agreement with the grid for sale of power, approval from Karnataka Renewable Energy Dept., studying & analysis of daily wind data for past 5 years, setting up of sub-station, commissioning

and other works. As such, the CIT(Appeals) agreed that the project has not been completed and he considered the amount received from PPL as advance only.

5. However, we find that the assessee has not been able to explain how the income received from PPL was accounted for in its books of accounts and offered for taxation in any other subsequent year. The amount received from PPL was subject to TDS. The assessee has not explained how the TDS has been treated in its books of accounts, if the income has not accrued to the asse. The AO called for explanation from the assessee's M.D. vide summons u/s. 131 to produce books of accounts for FY 2007-08 and the assessee submitted copies of books of accounts. However, no bills and vouchers have been produced by him. On this reason, the AO observed that it cannot be said that asse has incurred any expenditure and he treated the receipt from PPL as income of the assessee. Even before us, the asse has not placed any evidence to suggest that assessee has incurred any expenditure on this count and how the income has been recognized by the assessee in any other assessment years. In the absence of these details, we are not in a position to uphold the order of the CIT(Appeals). Accordingly, we remit the entire issue in dispute to the file of the AO to examine the progress of the project when it was completed and how the income has been recognized by the assessee in its books of accounts. Accordingly, the entire issue is remitted to the AO fresh consideration.

6. With regard to the cross objections, in the CO of the assessee for AY 2007-08, there is a delay of 23 days in filing the appeal before the Tribunal. The delay is explained stating that the entire file papers pertaining to AY 2007-08 were with the AR who represented before the CIT(A). The revenue also filed appeal for this assessment year the brief of which was given to the present AR, who advised that a CO has to be filed against the appeal of the revenue. Soon after, the CO was filed and there occurred a delay of 23 days. It was submitted that the delay was on account of wrong professional advise of earlier AR and the same may be condoned, relying on the Supreme Court decision in the case of *Collector, Land Acquisition v. MST. Katiji* (167 ITR 471). Accordingly, we are of the opinion that there was reasonable cause for delay in filing the CO before the Tribunal and condone the delay.

In the CO for AY 2007-08, the preliminary issue is with regard to assuming jurisdiction u/s. 153A of the Act. In this case, there is a valid search u/s. 132 after execution of warrant of authorization. When there is a valid search, the department has to issue notice u/s. 153A of the Act and validity of search cannot be questioned before us in view of amendment to section 132 by way of Explanation 1 inserted by the Finance Act, 2017 w.r.e.f. 1.4.1962. Accordingly, we dismiss this ground.

7. The other ground in both these COs are with regard to disallowance of expenditure with regard to windmill project. These grounds in the revenue's appeals are remitted to the AO for fresh consideration. Accordingly, these grounds of the assessee in the COs are infructuous and dismissed as such.

8. In the result, the appeals of the revenue are allowed for statistical purposes and the COs of the assessee are dismissed.

Pronounced in the open court on this 13th day of May, 2022.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 13th May, 2022.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.