

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2315/Mum/2017

(A.Y: 2006-07)

Dinesh L. Agarwal HUF) 210, Bajsons Industrial Estate, Chakala Road, Andheri (E) Mumbai-400069.	Vs.	ITO, Ward 24(1) Piramal Chambers, Lower Parel, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACHD0534N		
Appellant	..	Respondent

Appellant by :	Ms. Neha Pranjpe.AR
Respondent by :	Mr. S.G.Mehta.DR

Date of Hearing	01.06.2022
Date of Pronouncement	22.06.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)- 36, Mumbai passed u/s 143(3) r.w.s 254 and 250 of the Act. The assessee has raised the following grounds of appeal:

- The Ld. CIT(A) erred in confirming the addition of Rs.12,73,401/- being the amount received on account of labour contracts under section 68 of the Act without appreciating that the parties who have made payments to the*

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Assessee on supply of the labours have filed their confirmation. Thus, the addition of Rs.12.73,401/- made under section 68 of the Act is not justified and the same may be deleted.

2. The Ld. CIT (A) failed to appreciate that the Assessee has offered the entire gross receipts under the provisions of section 44 AD of the Act and paid the taxes thereon. Thus, the addition made under section 68 of the Act is not justified and the same may be deleted.

3. The Appellant craves leave to add, amend, alter or delete any of the above grounds of appeal.

2. The brief facts of the case are that the assessee is engaged in the business of supply of labour for construction activities. The assessee has filed the return of income on 31.10.2006 for A.Y.2006-07 disclosing a total income u/sec 44AD of the Act of Rs. 99,933/-. Subsequently, the case was selected for scrutiny and the assessee was called to provide the details of gross receipts along with the party wise breakup and other related documents. Since the assessee could not provide the requisite information, the Assessing Officer (A.O.) has made an addition of Rs.24,99,169/- and passed the assessment order u/s 143(3) of the Act on 17.12.2008. On appeal, the CIT(A) has directed the A.O. to verify the payments

and called for the remand report. In the remand proceedings, the assessee has produced 16 parties and statement u/sec131 of the Act was recorded. After considering the remand report, the CIT(A) has confirmed the addition of Rs.21,68,295/- u/s 68 of the Act and partly allowed the appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Honble Tribunal. Whereas the Hon'ble Tribunal has dealt on the facts and material information in ITA NO. 356/Mum/2012 dated 15-05-2013 and has restored the disputed issue to the file of the A.O. for fresh assessment after duly considering the statements and evidences produced by the assessee in the remand proceedings.

3, In compliance to the directions, the A.O. has issued notice u/s 143(2) and 142(1) of the Act along with questionnaire. The assessee has filed reply on 19.08.2014, 27.09.2014 and 04.02.2015 along with the notarized affidavit cum declaration of 10 parties out of 16 parties accepting that they have paid certain amount to assessee in lieu of the suitable job work. However, the affidavit were silent regarding the period of services and payments and there were some

correction in the figures therefore the A.O has issued summons u/s 131 of the Act on the 7 parties to furnish the details. Finally the A.O. has dealt on facts, evidences and was not satisfied with the submissions and observed that the assessee could not produce the parties for examination on oath and the 6 parties have not complied to the summons issued u/s 131 of the Act and the affidavit / self supported statement filed during the course of assessment proceedings found doubtful in nature and the credits of Rs. 23.26.590/-are treated as income and assessed the total income of Rs.23.06,590/- and passed the order u/s 143(3) r.w.s 254 of the Act dated19.03.2015.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee and findings of the AO and also earlier information on record related to the assessee and has dealt extensively on the facts with respect to the provisions of Sec 44AD of the Act and the nature of

the transactions. Finally out of the addition of Rs. 23,06,590/- by the A.O., the CIT(A) has granted relief to the extent of Rs. 5,33,194/- and has sustained the balance of Rs. 17,73,396/-. Further on the application by the assessee under Sec 154 of the Act, seeking rectification of the mistake on account of wrong figures in the CIT(A) order. The appellate authority (CIT(A)) has considered the mistake apparent on record and passed the rectification order U/sec154 of the Act dated 24-05-2017 sustaining the addition to the extent of Rs.12,73,401/-and partly allowed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Honble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the Ld. CIT(A) has erred in not considering the complete facts that the assessee has submitted the details and produced the parties before the A.O. Further the CIT(A) should have called for the additional information from the parties on the genuineness of transactions before sustaining the partial addition. The Ld.AR substantiated the submissions with the factual paper book containing

confirmations of the parties and other details filed in the course of Assessement and appellate proceedings and prayed for allowing the assessee appeal.

6. Contra, the Ld. DR relied on the orders of the CIT(A) and submitted that the assessee was provided several opportunities to substantiate the claim and was not complied.

7. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld. AR that the CIT(A) erred in restricting the addition to the extent of Rs. 12,73,401/-. The contentions of the Ld. AR are that the assessee is engaged in the business of supply of labour for construction activities. The Ld.AR emphasized that the business activities are in unorganized sector and has to depend on various people/ group for procurement of labour on wages / oral contracts and in return to provide/supply such labour to the entities engaged in the construction activities. The assessee has submitted the possible available details with the assessing officer over a period of time. The assessee has complied with the

directions of the A.O/CIT(A) in remand proceedings were the summons u/sec131 of the Act are issued to all the 16 parties and the statements were recorded in respect of 14 parties. The contentions of the Ld.AR that the assessee has been cooperative in submitting the information but the AO has doubted the claim of the transactions. The assessee has produced the parties who are available and it is practically not possible to produce the people who are not available in the address provided. We find the Honble Tribunal has restored the disputed issues to the file of the A.O. for fresh assessment after duly considering the statements and evidences produced by the assessee in the remand proceedings.

8. We find the Ld.AR has emphatically demonstrated the documents filed before the lower authorities and in particular the confirmation of the parties placed at page 25 to 32 of the paper book. The assessee on the additions by the A.O. in the A.Y.2007-08 has fought a long litigation before the Honorable Tribunal up to the year 2013 and the matter was restored to the file of the A.O with the directions and allowed the assessee appeal for statistical purpose. Prima facie, on perusal of

the information submitted it looks like the assessee has filed the details as and when called for by the lower authorities. We are of the opinion that this matter has to be decided based on the facts, time period and the Assessment year.

9. We considering the facts and circumstances, find that the assessee is working in the highly unorganized sector where there is no streamline of labours and depend on the contractors to supply the labour at the construction work places. Further for various reasons the assessee could not produce certain details due to non collection of information and non availability of concerned persons. We are of the opinion that the addition by the A.O. on the adhoc basis is without primary basis/ reasoning and cannot be sustained but the fact remains that the assessee should follow the minimum necessary norms and maintain such records necessary for authentication of the claims before the appropriate authorities and the assessee shall be bound to maintain the records at least in future. Accordingly, to meet the ends of justice, we restrict addition to the extent of 30% of disallowance sustained by the CIT(A) and modify the order of the

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CIT(A) on this disputed issue and restricting the disallowance to the extent @ 30% and partly allow the grounds of appeal of the assessee.

10. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 22.06.2022.

Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 22.06.2022

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Mumbai / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

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आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai