

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'B' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.349/Chny/2016 & C.O.No.65/Chny/2016
(In ITA No.349/Chny/2016)
(निर्धारणवर्ष / Assessment Year: 2012-13)

The Assistant Commissioner of Income Tax, Circle-I, Erode.	Vs	M/s. P & C Constructions Pvt. Ltd. 140, P & C Towers, Perundurai Road, Erode-638 011.
		PAN: AABCP 2483L
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent /Cross Objector)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. Guru Bashyam, CIT & Ms.V. Sreedevi, JCIT
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. B.Parthasarathy, Advocate

सुनवाई की तारीख/Date of hearing	:	01.06.2022
घोषणा कीतारीख /Date of Pronouncement	:	20.07.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by the Revenue and cross objection filed by the assessee are directed against order of the Commissioner of Income Tax (Appeals)-3, Coimbatore, dated 17.11.2015 and pertain to assessment year 2012-13. Since facts are identical and issues are common, appeal filed by the Revenue and cross objection filed by the assessee were heard and are being disposed off by this consolidated order.

2. The Revenue has raised following grounds of appeal: -

“1. The order of the learned CIT(A) is not acceptable on the facts & circumstances of the case.

2. The learned CIT(A) has erred in deleting the additions made by the Assessing Officer in the Assessment Order.

3. The learned CIT(A) has failed to appreciate the fact that the assessee has not shown to have received any payment from the contractee corresponding to the work done sub-contractor, which implies understatement of Work In Progress.

4. The learned CIT(A) failed to appreciate the fact that assessee has not furnished any satisfactory explanation for the source of funds which resulted in the credit balance in the Suspense Account.

5. The learned CIT(A) failed to appreciate the fact that the car was gifted to a single person which cannot be treated as staff welfare expense incurred for the purpose of business promotion.

6. The learned CIT(A) failed to appreciate the fact that the expenditure incurred in connection with the Contractors All Risky Policy was incurred for the business of the Joint Venture and not for assessee's business. Even otherwise, the assessee's share of income in the Joint Venture is exempted in the hands of the assessee and therefore not allowable.

7. The learned CIT(A) has failed to appreciate the fact that no evidence was furnished by the assessee either before the Assessing Officer or before the CIT(A) in support of having cleared-off the cash payments in the subsequent years towards liability.

8. The learned CIT(A) has failed to appreciate the fact that the assessee will raise bill only in respect of the work which is already completed and

expenditure should have booked already in the previous year itself. The assessee has not furnished any evidence in support of its claim that one bill was rejected. Even if that be the case, the consequential effect would be reduction of contract receipt to that extent and increase in WIP after inclusion of the cost of the works bill which is reversed.

9. The learned CIT(A) has failed to appreciate the fact that the Rule 8D is a self contained working and the proportionate interest on the cost of investment in income exempted assets is only worked out.”

3. Brief facts of the case are that the assessee company is engaged in the business of civil engineering construction contract works filed its return of income for the assessment year 2012-13 on 19.10.2012 admitting total income of Rs.12,50,83,420/-. The case has been taken up for scrutiny and assessment has been completed u/s.143(3) of the Income Tax Act, 1961, on 30.03.2015 and determined total income at Rs.15,42,60,020/- by making various additions. The assessee carried the matter in appeal before the first appellate authority. The learned CIT(A), for the reasons stated in his appellate order dated 17.11.2015 partly allowed appeal filed by the assessee, where the learned CIT(A) has deleted certain additions. Aggrieved by the learned CIT(A) order, the Revenue

is in appeal before us and the assessee has filed cross objection.

3. The first issue that came up for consideration from ground No.3 of Revenue appeal is additions towards difference in work-in-progress in respect of works contract undertaken at Central Railway, Mumbai. The assessee claims to have undertaken projects for Central Railway, Mumbai, and some work has been entrusted to sub-contractor M/s.Maglink Infra Projects. The assessee has shown opening balance of Rs.25,49,183/- in the name of sub-contractor M/s.Maglink Infra Projects. The Assessing Officer has added a sum of Rs.25,49,183/- on the ground that the assessee has not furnished any details to opening balance shown in the name of sub-contractor. It was explanation of the assessee that project work undertaken for Central Railway, Mumbai, was handed over to sub-contractor on back to back basis and thus, the opening balance in the books of account cannot be added in the impugned assessment year. The Assessing Officer, however, was not convinced with the explanation furnished by the assessee and according to him, although, the assessee has earned profit on back to back sub-contracts work given to M/s.Maglink Infra

Projects, but it has not accounted bills which resulted in understatement of profit to the tune of Rs.25,49,183/- and thus, made additions to total income. On appeal, the learned CIT(A) deleted additions made by the Assessing Officer on the ground that opening balance pertains to previous financial year and same cannot be added for the relevant assessment year.

4. We have heard both the parties, perused material available on record and gone through orders of the authorities below. There is no dispute with regard to fact that a sum of Rs.29,45,180/- has been shown as opening balance as on 01.04.2011. During the year, the assessee has neither raised any bills to sub-contract or nor received any payment and therefore, addition on account of said opening balance as income of the assessee for the year under consideration does not arise. The learned CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer. Hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the Revenue.

5. The next issue that came up for our consideration from ground no.4 of Revenue appeal is addition towards balance

appearing in suspense account amounting to Rs.5,92,167/-.

The assessee has shown suspense account balance at the end of financial year at Rs.5,92,167/-. The assessee explained before the Assessing Officer that suspense account represents advance paid to employees working at site for mess and other expenses against pending bills and same will be squared up as and when the assessee employees submit their bills. The Assessing Officer has made additions towards suspense account on the ground that the assessee could not explain credit balance in suspense account.

6. We have heard both the parties and perused materials available on record. There is no dispute with regard to fact that the assessee has shown certain credit balance in suspense account and explained that credit balance in suspense account represents advances paid to employees working at site and same is pending for adjustment, because expenses details were not submitted at the end of the relevant assessment year. The Assessing Officer never disputed fact that these are liabilities shown in the books of account of the assessee, however, made additions only on the ground that no details

has been filed. We do not find any merit in the reasons given by the Assessing Officer to make additions towards suspense account. It is well established practice in commercial accounting that when an assessee is executed work at different location, advance is given to various persons for petty expenses and the same is squared up against bills submitted by the employees. When the bills are submitted expenses is debited to corresponding head of account and credited to suspense account. In this case, the assessee is following method of accounting, as per which as and when advance is given to employees at work at site, same is debited to suspense account and further, when bills are submitted same is squared up and balance if any, at the end of the financial year is shown as liability. The Assessing Officer without understanding relevant concept of accounting simply made additions. The learned CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer and hence, we are inclined uphold findings of the learned CIT(A) and reject ground taken by the Revenue.

7. The next issue that came up for our consideration from ground no.5 Revenue appeal is additions towards motor

vehicle gift to Mr.D.G.Kumarasamy. The assessee has given motor car to Mr.D.G.Kumarasamy and same has been treated as employee welfare expenses. The Assessing Officer has made addition of Rs.80,000/- on the ground that gift given Mr.D.G.Kumarasamy cannot be treated as labour welfare expenses.

8. We have heard both the parties and considered relevant materials available on record. The assessee has given old motor car valuing Rs.80,000/- to Mr.D.G.Kumarasamy for official use purpose and claimed it as employee welfare expenses. The Assessing Officer disallowed amount of gifted car to the tune of Rs.80,000/- on the ground that gift given to employees cannot be considered as labour welfare expenses. We do not find any merit in the reasons given by the Assessing Officer, because when the assessee has given certain benefit to its employees as part of its business strategy, then same cannot be considered as personal gift to individual, particularly, when gift article is used for the purpose of business of the assessee. In this case, there is no dispute with regard to fact that old car given to Mr.D.G.Kumarasamy is for official purpose and thus, we are of the considered view that there is no error in

the reasons given by the learned CIT(A) and hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the Revenue.

9. The next issue that came up for our consideration from ground no.6 of Revenue appeal is accident risk insurance premium paid by joint venture and SPV assessed separately. The assessee has debited a sum of Rs.4,73,228/- to the profit & loss account towards premium paid on accident risk insurance taken for various works undertaken by the assessee. The Assessing Officer has disallowed said expenditure on the ground that premium paid on behalf of joint venture which is assessed separately cannot be allowed as expenses of the assessee company.

10. We have heard both the parties and considered relevant materials on record. Although, premium is paid on behalf of joint venture and SPV, but the assessee has taken insurance policy to cover risk in respect of work undertaken and thus, in our considered view, said expenditure partakes nature of expenditure incurred wholly and exclusively for the purpose of business of the assessee and hence, same needs to be allowed as deduction. The learned CIT(A), after considering

relevant facts has rightly deleted additions made by the Assessing Officer and hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the Revenue.

11. The next issue that came up for our consideration from ground no.7 of Revenue appeal is additions towards cessation of liability amounting to Rs.63,66,854/-. The assessee has shown a sum of Rs.3,14,13,826/- as liability towards amount withheld from various sub-contract works and said amount is not paid to sub-contractors in majority of cases. The assessee has filed details of withheld amount for more than one year as on 31.03.2012. From the details filed by the assessee, the Assessing Officer noticed that the assessee has paid majority of amounts in cash in subsequent financial years. Therefore, the Assessing Officer opined that the assessee has siphoned cash whenever required in the name of payment to withheld amount and thus, out of total cash payment made to liability against withheld amount, the A.O made addition of Rs.63,66,854/- as cessation of liability. On appeal, the learned CIT(A) deleted additions made by the Assessing Officer on the

ground that when the payment is made towards withheld amount, question of cessation of liability does not arise.

12. We have heard both the parties and considered relevant materials on record. It was not case of the Assessing Officer that the assessee has written off unpaid amount lying in withheld account of sub-contractors. In fact, the Assessing Officer admitted fact that the assessee has paid amount in subsequent years in cash. Since, the assessee has paid amount in cash, the Assessing Officer presumed that the assessee has siphoned cash from business in the name of liability which is not existing in the books of account and thus, same has been treated as cessation of liability, without appreciating fact that question of taxation of liability comes into play only when there is written off of liability in the books of account. In this case, the assessee has never written off liability, but in fact, paid amount. Therefore, in our considered view the Assessing Officer has clearly erred in taxing withheld amount lying in liability account as cessation of liability. The learned CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer and thus, we

are inclined to uphold findings of the learned CIT(A) and reject ground taken by the Revenue.

13. The next issue that came up for our consideration from ground no.8 of Revenue appeal is that additions towards set off claimed for profit stated to have declared excess in earlier years amounting to Rs.68,58,560/-. The Assessing Officer has made additions of Rs.68,58,560/- towards gross profit @ 21.59% on total work in progress amounting to Rs.3,17,67,300/- for the reason that the assessee has reversed a sum of Rs.3.17 crores from the revenue for the year under consideration. The Assessing Officer did not accept explanation of the assessee and according to him, the assessee has understated profit by reducing sales, instead of increasing work in progress for last financial year. Therefore, the Assessing Officer was of the view that the assessee has understated profit to the extent of Rs.68,58,560/- and thus, made additions. On appeal, the learned CIT(A) deleted additions made by the Assessing Officer by holding that the assessee has accounted sales in earlier years on the basis of estimation without there being any bill, however, when bills are

received in subsequent financial year, same is recognized as income and thus, has rightly reversed sales accounted in earlier financial year.

14. We have heard both the parties and considered relevant materials on record. The assessee is following method of accounting regularly as per which at the end of the year revenue from operations is accounted on estimation basis wherever there is no proper bills are received from the site. Further, when the assessee has received bills from work site in subsequent financial year, same has been accounted as revenue from operations, but provisional entry made in the earlier financial year is reversed. This method is consistently followed by the assessee. In our considered view, there is no error in the method of accounting, because as and when bill is submitted after completion of work, same is recognized as revenue and corresponding provisional entry earlier made has been reversed. Therefore, the Assessing Officer is incorrect in making additions towards reversal of provisional entry made in earlier financial year from the revenue. The learned CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer and thus, we are inclined to

uphold findings of the learned CIT(A) and reject ground taken by the Revenue.

15. The next issue that came up for our consideration from ground no.9 of Revenue appeal is disallowance u/s.14A r.w.rule 8D of I.T.Rules, 1962. The assessee has earned exempt income in the form of dividend from shares and profit from joint venture partnership consortium, however, has not made disallowance of any expenses relatable to exempt income. Therefore, the Assessing Officer determined disallowance u/s.14A r.w. rule 8D of I.T. Rules, 1962, and disallowed interest expenses and other expenses amounting to Rs.42,21,816/-.

16. We have heard both the parties and considered relevant materials on record. There is no dispute with regard to fact of earning dividend income which is claimed as exempt u/s.10(34) of the Income Tax Act, 1961. It is also an undisputed fact that the assessee has not made any suo motu disallowance for expenses incurred relatable to exempt income. Therefore, the Assessing Officer has rightly computed disallowance by invoking Rule 8D. However, fact remains that disallowance computed u/s.14A cannot exceed exempt income

and this principle is supported by decision of the Hon'ble Delhi High Court in the case of Cheminvest Ltd. Vs. DCIT 378 ITR 33 (Del), where the Hon'ble High Court has clearly held that disallowance contemplated u/s.14A cannot swallow entire exempt income. In this case, the assessee has earned exempt income, like dividend from shares and profit from joint venture partnership consortium in respect of joint venture partnership, there cannot be any disallowance, because Assessing Officer has not made out investments made in joint venture partnership firm taken out of borrowed funds and therefore, on this count, there cannot be any disallowance. However, when it comes to dividend from shares, the assessee has made investments and thus, we are of the considered view that disallowance u/s.14A can be made only in respect of exempt income being dividend from shares and therefore, we direct the Assessing Officer to restrict disallowance computed u/s.14A read with Rule 8D of I.T.Rules, 1962 to the extent of dividend income earned for the assessment year i.e, Rs.2,41,533/-.

17. In the result, appeal filed by the Revenue is partly allowed.

Cross Objection No.65/Chny/2016;

18. The first issue that came up for our consideration from ground no.2 of cross objection filed by the assessee is additions towards disallowance of brokerage paid for purchase of capital goods amounting to Rs.4,20,750/-. The assessee has paid brokerage amounting to Rs.4,50,000/- for purchase of scaffolding material on the ground that scaffolding material is a capital asset and thus, expenditure incurred for payment of brokerage is also needs to be capitalized and thus, disallowed brokerage charges and allowed @ 15% depreciation. It was argument of the assessee that brokerage paid for purchase of capital asset is revenue in nature and thus, same needs to be allowed as deduction.

19. We have heard both the parties and considered relevant materials on record. It is well settled principles of law that cost of any asset, including cost that was incurred to bring asset into site or till the time asset is put to use needs to be capitalized, including brokerage if any, paid on account of purchase of capital asset. In this case, assessee has paid brokerage for purchase of capital item being scaffolding material. Therefore, we are of the considered view that the

Assessing Officer has rightly disallowed brokerage paid for purchase of capital goods as revenue expenditure and allowed depreciation @ 15%. The learned CIT(A), after considering relevant facts has rightly upheld findings of the Assessing Officer and thus, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the assessee.

20. The next issue that came up for our consideration from ground no.3 of cross objection filed by the assessee is disallowance of broker charges for share purchase and sales and Tata Nano booking charges amounting to Rs.33,393/-. The Assessing Officer has disallowed brokerage charges paid for purchase and sale of shares on the ground that income from transaction has been treated as capital gain, and thus, it cannot be allowed as business expenses. Similarly, the Assessing Officer has disallowed booking charges paid for purchase of Tata Nano on the ground that it is only deposit, which is refundable and cannot be allowed as deduction. It was explanation of the assessee before the Assessing Officer that brokerage charges paid is revenue in nature whether or not income is offered under the head 'income from business' or

'capital gain'. Similarly, deposit paid for purchase of Tata Nano is revenue in nature, because same is forfeited by the seller.

21. We have heard both the parties and considered relevant materials on record. We find that the assessee has offered profit or loss derived from share transaction under the head 'capital gain' and thus, any expenditure including brokerage expenses cannot be claimed as business expenditure and thus, we are of the considered view that the Assessing Officer has rightly disallowed brokerage charges paid for purchase and sale of shares. As regards, Tata Nano booking charges, it was observation of the Assessing Officer that advance paid for booking Tata Nano has been claimed as expenditure. In our considered view, any advance paid for purchase of asset is in the nature of deposit, but not revenue expenditure, unless same is written off as irrecoverable. In this case, facts are not clear as to whether the assessee has furnished any details nor justified treatment of booking charges as revenue in nature. Therefore, we are of the considered view that there is no error in the reasons given by the Assessing Officer as well as learned CIT(A) to sustain additions made towards brokerage charges and Tata Nano booking charges and hence, we are inclined to

uphold findings of the learned CIT(A) and reject ground taken by the assessee.

22. The next issue that came up for our consideration from ground no.4 of cross objection filed by the assessee is additions towards disallowance of interest on mobilization advance to the tune of Rs.27,01,696/-. The assessee has paid mobilization advance to various vendors and has charged interest, however, while settling bills submitted by vendors failed to deduct interest chargeable on mobilization advance for earlier years. During the year under consideration, the assessee has considered interest recovered from vendors and treated as prior period expenses. The Assessing Officer did not allow claim of the assessee and according to the Assessing Officer, expenditure pertains to earlier financial years.

23. We have heard both the parties and considered relevant materials on record. The assessee has failed to prove with necessary evidences that item of expenditure classified under the head 'prior period expenses' is relatable to year under consideration and further, incurred for business purpose of the assessee. Except stating that, it has recovered mobilization

advance from vendors, no evidence has been placed to justify its case. Therefore, we are of the considered view that there is no error in the reasons given by the Assessing Officer to disallow prior period expenses, being interest chargeable on mobilization advance and thus, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the assessee.

24. The next issue that came up for our consideration from cross objection filed by the assessee is disallowance of depreciation on let out portion of P & C tower. At the time of hearing, learned counsel for the assessee submitted that the assessee does not want to press the ground and thus, ground raised by the assessee in its cross objection is dismissed as not pressed.

25. The next issue that came up for our consideration from cross objection filed by the assessee is disallowance of certain expenses for non-deduction of TDS amounting to Rs.22,19,215/-. The Assessing Officer has disallowed repairs and spares expenses for non-deduction of TDS. It was explanation of the assessee that expenditure under the head 'repairs and spares' mainly pertains to purchase of spares and

small portion relates to labour charges, which is less than threshold limit for application of TDS provisions and thus, no TDS is deducted. The Assessing Officer, however was not satisfied with the explanation furnished by the assessee and accordingly, disallowed a sum of Rs.10,73,354/-, however, while computing total income wrongly taken an amount of Rs.22,19,215/-.

26. We have heard both the parties and considered relevant materials available on record. The assessee has furnished certain details in respect of purchase of spares and labour in connection with repair works. As per ledger account furnished by the assessee, it has paid a sum of Rs.10,73,354/- towards labour charges for repair work. However, there is no details with regard to individual amount paid to vendors to ascertain whether it is in excess of prescribed limit provided for application of TDS provisions. Therefore, the Assessing Officer has disallowed a sum of Rs.10,73,354/-. Even before us, the assessee could not file necessary evidences to justify its case. Therefore, we are of the considered view that there is no error in the reasons given by the Assessing Officer to disallow expenses for non-deduction of TDS and thus, we are inclined

to uphold findings of the learned CIT(A) and reject ground taken by the assessee.

27. The next issue that came up for our consideration from cross objection filed by the assessee is additions towards cessation of liability amounting to Rs.22,19,215/-. The assessee was required to file confirmation from certain parties and to clarify whether credits are paid or outstanding as on date with mode of payment. The books of the assessee shows credit balance at Rs.22,19,215/- payable to M/s.SRS Pretech Engineering & Const. Pvt.Ltd. The assessee has not filed any confirmation or account copy from the party. Therefore, the Assessing Officer has disallowed a sum of Rs.22,19,215/- as cessation of liability.

28. We have heard both the parties and considered relevant materials available on record. There is no dispute with regard to fact that amount outstanding in the name of M/s.SRS Pretech Engineering & Const. Pvt.Ltd., is still outstanding in books of account of the assessee at the end of relevant financial year. It is also not in dispute that the assessee has not written off said credit balance to treat the same as cessation of liability. Therefore, we are of the considered view that merely

for non-furnishing of confirmation letter, amount outstanding in the books of account of the assessee in the name of party cannot be treated as cessation of liability and thus, we direct the Assessing Officer to delete additions made towards cessation of liability amounting to Rs.22,19,215/- being credit appeared in the name of M/s.SRS Pretech Engineering & Const. Pvt.Ltd.

29. In the result, cross objection filed by the assessee is partly allowed.

30. To sum up, the appeal filed by the Revenue and cross objection filed by the assessee are partly allowed.

Order pronounced in the open court on 20th July, 2022

Sd/-

(वी.दुर्गा राव)

(V.Durga Rao)

न्यायिक सदस्य /Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 20th July, 2022

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.

Sd/-

(जी.मंजुनाथ)

(G.Manjunatha)

लेखा सदस्य / Accountant Member