

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H" MUMBAI**

**BEFORE SHRI ABY T VARKEY (JUDICIAL MEMBER) AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 7372/MUM/2019
Assessment Year: 2014-15
&
ITA No. 7365/MUM/2019
Assessment Year: 2015-16**

HCC Samsung Joint Venture,
Hincon House, LBS Marg,
Vikhroli (W),
Mumbai-400083.

Vs. Asst. CIT-29(2),
4th floor, Kautilya Bhavan,
C-41 to C-43, G-Block,
BKC, Bandra East,
Mumbai-400051.

**PAN No. AAAAH 8586 P
Appellant**

Respondent

Assessee by : Mr. H.P. Mahajani, AR
Revenue by : Mr. Kailash Kanojia, CIT-DR

Date of Hearing : 09/06/2022 & 17/06/2022
Date of pronouncement : 27/07/2022

ORDER

PER OM PRAKASH KANT, AM

These two appeals by the assessee are directed against two separate orders, each dated 27.08.2019, passed by the Ld. Commissioner of Income Tax (Appeals)-40, Mumbai [in short 'the



Ld. CIT(A)] for assessment year 2014-15 and 2015-16. Being common ground involved, permitting from same set of facts, both these appeals were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

ITA No. 7372/MUM/2019
Assessment Year: 2014-15

2. First, we take up appeal of the assessee for assessment year 2014-15. The relevant grounds raised by the assessee are reproduced as under:

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the Ld. AO in bringing to tax closing construction WIP of ₹32,29,26,445/-. The addition be deleted.*

In the alternative, the same be directed to be allowed as a deduction in AY 2015-16 as cost of opening construction WIP.

Amount of tax and interest u/s 234A and 234B be directly to be consequently recomputed.

2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the disallowance of ₹5,65,933/- u/s 40(a)(ia) on reimbursement of salary of deputed staff paid to a sister concern, Alphine Samsung HCC Joint Venture.*



3. The fact in brief of the case are that assessee is a joint venture (Association of persons for the purpose of status under the Income Tax Act, 1961) formed between M/s Hindustan Construction Company Ltd. (HCC) and Samsung C & T Corporation, Korea (Samsung) for the purpose of execution of design and construction of tunnels as part of Delhi MRTS Project of Delhi Metro Rail Corporation. The assessee filed its return of income on 24.11.2014 claiming loss of ₹24,31,31,346/-. The return of income filed by the assessee was selected for scrutiny and statutory notices issued under the Act were complied. In the assessment completed u/s 143(3) of the Act on 30.12.2016, the Assessing Officer made various additions to the returned income and assessed the total income at ₹9,45,17,862/-. On further appeal, the Ld. CIT(A) allowed part relief to the assessee.

4. Aggrieved, the assessee is in appeal before the Tribunal raising the grounds as reproduced above.



4.1 Before us, the assessee filed a Paper book containing pages 1 to 108 including copy of cases relied upon.

5. The Ground No. 1 of the appeal relates to addition of ₹32,29,26,445/- in respect of closing construction work-in-progress (WIP). The facts qua, the assessee issue-in-dispute are that the return of income was filed by the assessee on the basis of one set of audited financial statement i.e. balance sheet, profit and loss account, computation of income, wherein during the assessment year consideration loss of ₹22.30 crores was reported. But during the scrutiny proceeding before the Ld. Assessing Officer, another set of audited financial statement was filed, where profit of ₹9.99 crores was reflected. Before the Assessing Officer vide letter dated 23.12.2016, the assessee explained that second set of financial statement was prepared for the purpose of Management Information System (MIS) accounting purpose. The assessee explained that the MIS accounts have only one difference of



valuation of construction WIP of ₹32.29 crores. The Assessing Officer observed that in second set of financial statement the assessee has credited construction WIP of ₹3229.26 lakhs, which was also reflected in inventories shown of ₹1154.49 lakhs in the balance sheet as on 31.03.2014. The Ld. AO further observed that first set of audited financial statement on the basis of which return of income has been filed, the construction WIP of ₹3229.26 lakhs has been excluded from credit in profit and loss account and thus the assessee has accordingly computed loss of ₹2230.14 lakhs. The Assessing Officer is of the view that if said WIP is treated as revenue in nature and included in the current year expenses, then naturally same has been correctly credited to the profit and loss account and closing stock in second financial statement.

5.1 In view of the above observation, the Assessing Officer concluded that (i) the assessee has not furnished any reasons as to why second set of financial statement was prepared and that too



was duly audited by the said auditor who signed the first financial statement, (ii) the assessee has not furnished details of construction WIP of ₹3229.26 lakhs.

5.2 Finally, the Assessing Officer made addition for the sum of ₹3229.26 lakhs to the returned income, relevant to the construction WIP reported in second set of audited financial statement. It may be noted here that the Assessing Officer did not reject the books of account of the assessee in terms of section 145(3) of the Act.

6. Before the Ld. CIT(A), the assessee relied on the decision of Hon'ble Madras High Court in the case of CIT v. Shriram Transport Finance (ITA No. 621 of 2013) wherein the Hon'ble High Court has held that maintenance of two separate books of account for the purpose of Company Act and Income Tax Act was perfectly in order. In the set, for the purpose of Companies Act provision for doubtful debt was made whereas in the set for the purpose of Income-tax Act, the same doubtful debt was written off. It was also submitted by the



assessee that the Assessing Officer has duly verified the books of account of the assessee however the AO neither found any additional expenditure claimed by the assessee as per WIP of ₹3229.26 lakhs nor any fault in the accounting in terms of section 145 of the Act. The Ld. CIT(A) however upheld the addition holding that the return of income filed was not in line with the second set of accounts filed during the assessment.

7. Before us, the Ld. Counsel of the assessee has submitted that the said audited MIS financial statement was drawn up only to provide audited financial statements to Hindustan Construction Company Ltd. (HCC), one of the joint venture partner. It was submitted that HCC had disclosed in its mandatory published consolidated financial statement, interest in the joint venture on the basis of audited MIS financial statement. It was submitted that MIS financial statement had been drawn up so as to reflect various elements such as contract WIP, construction cost carried over as



WIP as also pure construction material carried over as part of inventory as on 31.03.2014. It was submitted that the disputed amount of ₹32.24 crores of construction WIP was recorded only in the audited MIS financial statement for the limited purpose of consolidating MIS financial statement of the assessee JV into the audited published financial statement of HCC. According to the assessee, the difference between the two statements was that whereas financial statement of the assessee JV were correctly recognized at cost but for consolidation in the financial statement of the HCC, even the budgeted profit was added to the inventory and therefore, the amount of ₹32.29 crores represents notional or budgeted profit, which were never earned in the year under assessment. During the hearing dated 09.06.2022, the Ld. Counsel of the assessee was asked to furnish a reconciliation of two sets of financial statement from the auditor who has signed both the audited statements. The Ld. Counsel of the assessee submitted the



said reconciliation duly signed by the auditor. The relevant part of the said reconciliation is reproduced as under:

"7. As represented to me, as per HCC's accounting policy, budgeted profit from the project was required to be recognized and loaded on to the inventory of Construction WIP irrespective of the actual % of profit/loss from the project at the year-end. Having regard to the representation that the said project was finally budgeted to have a profit of 6.75% of the Contract value, a sum of Rs. 999.13 lacs, being 6.75% of value of work done till 31 March 2014 viz. Rs. 14801.90 lacs, was required to be reflected in the MIS Financial Statements as profit for the year, thereby requiring Closing Construction WIP to be additionally valued at Rs. 3239.36 lacs being budgeted profit on inventory. The Annexure attached to this certificate reconciles the two sets of accounts which shows that the only difference is the addition of Construction WIP of Rs.3229.26 Lakhs under the head Inventories both in the Management Balance Sheet and in the Management Profit & Loss Account. This has resulted in the loss of Rs. 2230.14 Lakhs in the regular Profit & Loss Account being converted into a profit of R\$. 999.13 Lakhs, requiring provision for taxation of Rs. 372.02 Lakhs in the profit & loss account, which is duly reflected in the Management Balance Sheet under the head Loans and Advances Schedule VI. The relevant entry was recorded only in the Management Financial Statements being

Construction WIP A/c (Asset).....Dr Rs 3229.26 Lakhs

To Construction WIP A/c (P&L)...Rs. 3229.26 Lakhs



8. As explained by the Management, that though the financial statements show a loss of Rs.22.30 crores, the same is primarily on account of period costs such as employee costs, Office and site expenses, financial expenses and depreciation together aggregating to Rs. 28.56 crores. Furthermore, the project has in fact ended in a loss to the joint venture.

9. I reiterate that, the audited Financial Statements of the JV have been correctly drawn consistent with accounting policies followed by it and that Management financial statements were prepared, on the representation by the Management, for the limited purpose of consolidation of the joint venture's interest into the books of Hindustan Construction Company (HCC) in order to align accounting policies in line with method of accounting followed by HCC.

10. I confirm that there is no other difference between the two sets of financial statements.”

7.1 A comparative balance sheet and profit loss account of both the set of financial statement submitted by the auditor is also reproduced for ready reference :

Annexure to Reconciliation Certificate-Reconciling MIS Accounts and Non-MIS Accounts forming Basis for Tax Returns HCC-Samsung Joint Venture CC34 Balance Sheet as at 31 st March 2014					
	Schedule	Basis for Tax Return 31-March-2014	MIS Accounts 31-March-2014	31- March-2014	Difference
		₹ 'In Lacs'	₹ 'In Lacs'		₹ 'In Lacs'
Sources of Fund					
Current Account of Members	I	295.01		295.01	
		295.01		295.01	0.00
Profit and loss Account [Cr. Balance]		-		627.11	627.11
Total		295.01		922.12	627.11
Application of Fund					
Fixed Assets					



Gross Block	II	4,206.83	4,206.83	0.00
Less: Depreciation		405.52	405.52	0.00
		3,801.31	3,801.31	-0.00
Add : Items awaiting Capitalization		6,681.42	6,681.42	-0.00
		10,482.73	10,482.73	0.00
Current Assets				
Inventories	III	8,318.23	11,5437.49	-3,229.26
Cash and Bank Balances	IV	2,079.73	2,079.73	
Other Current Assets	V	47.71	47.71	-0.00
Loans & Advances	VI	2,051.66	1,679.64	372.02
		12,497.33	15,354.57	-2,857.24
Less: Current Liabilities & Provisions Net Current Assets	VII	-24,915.18	-24,915.18	
		-12,417.85	-9,560.61	2,857.24
Profit and Loss Account [Dr. Balance]		2,230.13	-	-2,230.13
		2,230.13	-	
Total		295.01	922.12	627.11

Annexure to Reconciliation Certificate - Reconciling MIS Accounts and Non-MIS Accounts forming Basis for Tax Return HCC-SAMSUNG - JOINT VENTURE CC34 PROFIT AND LOSS ACCOUNT AS AT 31ST MARCH 2014				
	Schedule	BASIS FOR TAX RETURN 31-MARCH-2014	MIS ACCOUNTS 31-MARCH-2014	Difference
		Rs 'In Lacs	Rs 'In Lacs	Rs 'In Lacs
INCOME				
Income from Operation				
Value of Work done and payment received				
Work Bill received (Gross)		12,706.84	12,706.84	-0.00
Escalation Received (Gross)		-	-	-
Miscellaneous Work Bill (DVAT Refund)		-	-	-
		12,706.84	12,706.84	-0.00
Add - Contract Work in progress, at close				
Works including utility diversion and ancillary items		2,095.06	2,095.06	-
DVAT Refund		-	-	-
Escalation		-	-	-
		14,801.90	14,801.90	-0.00
Less - Opening Contract Work In Progress.				
		14,801.90	14,801.90	0.00
Construction WIP		-	3,229.26	-3,229.26
Other Income	VIII	307.60	307.60	-0.00
Insurance Claims		-	-	-
Miscellaneous Receipt		-	-	-
Loss on Disposal of Asset		-	-	-
		307.60	3,536.86	-3,229.26
	TOTAL	15,109.50	18,338.76	-3,229.26
EXPENDITURE				
Construction Cost	IX	14,483.48	14,483.48	
Employee Cost	X	1,671.72	1,671.72	
Office & Site Expenses	XI	720.71	720.71	-0.00
Financial Expenses	XII	58.20	58.20	
Depreciation		405.52	405.52	0.00
Total Expenses		17,339.63	17,339.63	-0.00
Profit (Loss) Before Tax		-2,230.13	999.13	-3,229.26
Less Tax Expense		-	372.02	-372.02
Net Profit (Loss) Carried to Balance Sheet		-2,230.13	627.11	-2,857.24



8. On the contrary, the Ld. DR relied on the order of the lower authorities and submitted that the amount of construction WIP was not reported in the first set of financial statement, which is appearing in second set of the financial statement. According to him, the amount of construction of WIP ₹32.29 crores has not been considered while filing the return of income and therefore, addition by the Assessing Officer is justified.

9. We have heard rival submissions of the parties on the issue-in-dispute and perused the relevant material on record. The assessee has filed return of income on the basis of one set of audited financial statement reporting a loss of ₹22.30 crores. However, during the scrutiny proceedings, the assessee filed another set of financial statement wherein additional amount of construction WIP of ₹32.29 crores was reported. The contention of the assessee before us is that the additional amount of WIP is merely valuation difference. According to assessee, it has valued the construction WIP for the



purpose of MIS financial statement at a higher value for the purpose of consolidation with the financial statement of joint venture partner i.e. M/s HCC Ltd. We find that the Revenue has not disputed the fact of examination of books of accounts by the Assessing Officer. In our opinion, if in books of account any expenditure corresponding to the additional amount of construction of WIP is not found debited, then the amount is only in the nature of notional valuation which has been carried out by the joint venture partner for the purpose of consolidating in its books of account and which cannot be made a basis for addition in the hands of the assessee.

9.1 Further, we are of the view that when there is no change in number of items of inventory of construction WIP as shown in the first set of financial statement as well as second set (MIS account) of financial statement, then only difference is that in MIS account construction WIP has been valued higher by the amount of ₹32.29 crores only, for the purpose of consolidated account of the venture



partner. We note that the Hon'ble Rajasthan High Court in the case of CIT v. Laxmi Engineer Industries in order dated 18.03.2008 held that no addition could be made for higher valuation of the stock hypothecated to Bank if the AO had not been able to point out any discrepancy in the quantity of stock hypothecated to the Bank and the quantity of stock as per books of account. In this case also there is no observation of the AO that quantity of construction work-in-progress is more than the quantity valued as per first set of financial statement. In view of the above, we set aside the order of the Ld. CIT(A) on the issue-in-dispute and delete the addition made by the Assessing Officer.

10. The ground No. 2 of the appeal relates to disallowance of ₹5,65,933/- u/s 40(a)(ia) of the Act. The facts qua, the issue in dispute are that the Assessing Officer disallowed the amount u/s 40(a)(ia) of the Act for non-deduction of tax at source on



reimbursement of employee cost/salary by the assessee to M/s Alphine Samsung HCC Joint Venture i.e. related party.

11. On further appeal, the assessee submitted before the Ld. CIT(A) that there was no employer employee relationship between employee and assessee and the assessee reimbursed on cost to cost basis. It was further submitted that tax was deducted at source u/s 192 of the Act by the employer M/s Alphine Samsung and taxable in the hand of salaried employees. The Ld. CIT(A) dismissed the ground of the assessee.

12. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. The issue is of disallowance u/s 40(a)(ia) of the Act for non-deduction of tax at source, amount which has been claimed by the assessee as reimbursement of the salary to seconded employees. We find that the Ld. CIT(A) has sustained the disallowance in view of no evidence submitted by the assessee that same was taxed in the hands of the



employees either on the payment made by it or by the related party.

The relevant finding of the Ld. CIT(A) is reproduced as under:

“The appellant has submitted the Debit Memos for the salary being debited and also a signed certificate by the related party to the effect that the invoices do not contain any mark-up or profit and is purely reimbursement of costs. It is observed that the invoices are towards the salary of an employee belonging to the related party and include his Salary, Provident Fund and Super Annuation Fund Contributions as well as some components such as leave travel assistance etc. It may be noted that these are taxable in the hands of the employee however, the appellant has not produced any evidence that the same are taxed in the hands of the employee either on payment made by it or by the related party. Hence based on this the disallowance is upheld and the Ground of appeal is dismissed.”

12.1 Though before us, the Ld. Counsel of the assessee has relied on the various decisions of the Tribunal, however he expressed willingness to file necessary evidence to support that tax was duly deducted on salary paid to the seconded employee Mr. Srivastav. In view of submission of the assessee, the matter is restored back to the file of the Ld. Assessing Officer for verification, whether tax has been deducted by the employer M/s Alphine Samsung HCC JV in



respect of salary amount reimbursed by the assessee in relation to employee Mr. Srivastav or tax has already been paid by the seconded employee on reimbursement amount. The ground raised by the assessee is accordingly allowed for statistical purpose.

ITA No. 7365/MUM/2019
Assessment Year: 2015-16

13. The ground raised by the assessee in assessment year 2015-16 is reproduced as under:

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not entertaining the appellant's claim for deduction of ₹32,29,26,445/- being closing WIP as on March 31, 2014 wrongly brought to tax by the AO while passing the assessment order of AY 2014-15, which automatically forms the opening WIP of the year under consideration.

In any event, deduction for ₹32,29,445/- be allowed if the addition made in AY 2014-15 is sustained in the year.

Amount of tax and interest u/s 234B be directed to be consequently recomputed.

14. The ground No. 1 of the appeal is connected with the Ground No. 1 of the assessee in assessment year 2014-15. In this year only



an alternative prayer has been made that if said amount of construction of WIP ₹3229.26 lakhs is not allowed in the assessment year 2014-15 then claim of deduction for the same might be allowed in the year under consideration for deduction. Since we have allowed relief to the assessee on ground No. 1 of the appeal for assessment year 2014-15, therefore, this ground do not survive in the assessment year 2015-16. Accordingly, same is dismissed as infructuous.

15. In the result, the appeals filed by the assessee for AY 2014-15 & 2015-16 are allowed for statistical purposes.

Order pronounced in the Court on 27/07/2022.

Sd/-

**(ABY T VARKEY)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 27/07/2022
Rahul Sharma, Sr. P.S.



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai