

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JABALPUR BENCH, JABALPUR**

BEFORE SHRI SANJAY ARORA, HON'BLE ACCOUNTANT MEMBER &  
SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER

I.T.A. No. 44/JAB/2022  
(Asst. Year: 2017-18)

|  |     |                               |
|--|-----|-------------------------------|
| Sweta Goenka,<br>Ward No.2, Near Central<br>Bank of India, Cinema Road,<br>Near Railway Over Bridge,<br>Kotma (MP)<br><br>[PAN : AJHPG 6073 H] | vs. | Principal CIT-1,<br>Jabalpur. |
| (Appellant)  |     | (Respondent)                  |

Appellant by : Shri Sapan Usrethe, Advocate

Respondent by : Shri U.B. Mishra, CIT-DR

Date of hearing : 11/07/2022

Date of pronouncement : 30/08/2022

**ORDER**

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed against the order under section 263 of the Income Tax Act, 1961 ('the Act' hereinafter) dated 09/03/2022 by the Principal Commissioner of Income Tax-1, Jabalpur ('Pr. CIT', for short) in respect of the assessee's assessment u/s. 143(3) of the Act, dated 23/12/2019 for the Assessment Year (AY) 2017-18.

2. The brief facts of the case are that the assessee's, a Government civil contractor, return of income for the relevant year, e-filed on 20/03/2018 at an income of Rs. 13,25,290, was, subsequent to processing u/s. 143(1), subject to the verification procedure under the Act. The assessee's gross receipt from contract

work, as disclosed, i.e., at Rs. 215.29 lacs, was at variance with that reflected in Form 26AS (compiled on the basis of annual returns filed by the contractee/tax-deductors), being at Rs. 795.32 lacs, i.e., in excess by Rs. 580.03 lacs. The assessee reconciled the said difference in the assessment proceedings, as under:

| <u>Particulars</u>  | <u>Amount</u>   |
|---|-----------------|
| a) Amount sub-contracted  | Rs. 570.03 lacs |
| b) Amount less received from Nagar Panchayat, Rampur, Naikin (NP1)  | Rs. 6.41 lacs   |
| c) Amount less received from Nagar Panchayat, Jai Singh Nagar (NP2) | Rs. 3.59 lacs   |

The amount less received from the Nagar Panchayats was explained as due to the practice of the Government Departments to withhold funds, to be released after the completion of work and formalities. The practice, as further explained, is adopted to save funds from being lapsed (PB pgs. 26-28). The profit on the disclosed turnover had been duly declared. Supporting documents, unspecified though, were also stated as furnished by the assessee. The Assessing Officer (AO) accordingly found the same as satisfactorily explained, so that no adjustment to the returned income was made by him on that account. Subsequently, the Id. Pr. CIT observed, *inter alia*, that the assessee had short-disclosed receipt from Nagar Panchayats, as under: (Amount in Rs.)

| Particulars                    | Nagar Panchayat<br>Rampur Sidhi | Nagar Panchayat<br>Jaisinghnagar |
|--------------------------------|---------------------------------|----------------------------------|
| Income as per Form 26AS        | 24,86,156                       | 59,65,200                        |
| Income as per return of income | 18,45,650                       | 40,31,768                        |
| Difference                     | 6,40,506                        | 19,33,432                        |

The assessee, in reply, in the section 263 proceedings, made like submissions, i.e., as before the AO; in fact, in greater detail, and more emphatically. The differential amount was kept on hold as the completion certificate/s had not been issued by the Engineers. *However, tax was deducted on the full amount.* This had been done as

Nagar Panchayats had to exhaust the budget by the year-end. The assessee, though received the balance amount in the following year, was, thus not sure as to when and how much would be received, i.e., at the relevant time. No bill was issued by the contractor for the completion of the work. The Id. Pr. CIT, however, not impressed, held as under:

“8.3 In continuation to the above, it is revealed that the AO failed to examine the issue of short disclosure of receipts under sections 194C & 194J of the Act. The assessee disclosed receipts of Rs.18,45,650/- & Rs.40,31,768/- as against the receipts / amount paid or credited reflecting in Form No.26AS at Rs.24,86,156/- & Rs.59,65,200/- received from Nagar Panchyat & Nagar Palika Parishad, Jaisingh Nagar respectively during the year under consideration. Evidently, there is short disclosure of receipts under sections 194C & 194J of the Act to the tune of Rs.6,40,506/- {Rs.24,86,156/- (-) Rs.18,45,650/-} on account of receipts from Nagar Panchyat & Rs.19,33,432/- {Rs.59,65,200/- (-) Rs.40,31,768/-} on account of receipts from Nagar Palika Parishad. There is cumulative short disclosure of receipts from both the deductors under section 194C & 194J of the Act comes to Rs.25,73,938/- {Rs.6,40,506/- (+) Rs.19,33,432/-}. Accordingly, the questioned sum of Rs.25,73,938/- remains to be taxed in the hands of the assessee and deserves to be added back to the total assessed income of the assessee for the year under consideration.

9. In the light of the aforesaid facts and circumstances of the case and legal findings, as the Assessing Officer has failed to make enquiries as well as apply his mind and proper application of law, it is held that the assessment order under section 143(3) of the Income Tax Act, 1961 dated 23/12/2019 is erroneous in-so-far as it is prejudicial to the interest of Revenue. Accordingly, the said order is SET ASIDE, with the direction to the Assessing Officer to pass a fresh Assessment Order. The A.O. is further directed to pass a suitable order by making proper investigation and enquiries and applying the correct provisions of the Act, after giving adequate opportunities of being heard to the assessee.”

3. We have heard the parties, and perused the material on record.

3.1 In our clear view there has been a gross non-application of mind by the AO in accepting the assessee's explanation, at least without further examination and clarification. To begin with, the sub-contract is only a part of the contract work, so that the same shall not in any manner reduce the amount thereof, i.e., as allotted to

or executed by the assessee, being only a part of and toward the performance of the contract work. *How could the same be then reduced in arriving at the assessee's contract receipt for the year, as the assessee does per the reconciliation statement?* In fact, the sub-contract is allowed only out of contract work of the assessee, and on which, on the contrary, she has deducted tax at source at 1%. It is nobody's case that the amount of contract turnover in Form 26AS bears a double addition. This aspect to the matter, which the Id. Pr. CIT examined from the stand point of the applicability of s. 40(a)(ia) in the facts and circumstances of the case, to find it as not, does not survive in view of his said satisfaction. We, an appellate authority, cannot extend the scope of s. 263 order, and this issue is stated inasmuch as it reflects gross non-application of mind and, further, is related to the determination of income from the contract work executed by the assessee during the year.

3.2 Coming to the issue under consideration, i.e., the difference in the turnover reported by the Nagar Panchayats, as apparent, while the inconsistency observed by the AO, and on which he was presumably satisfied with the assessee's explanation, is for Rs. 10 lacs (refer para 3 of the assessee's reply dated 01/12/2019), the actual difference, admittedly, and on which therefore the explanation ought to have been sought by the AO, is to the extent of Rs. 25.74 lacs (refer para 2 above). There is, thus, no explanation for the balance Rs. 15.74 lacs. That apart, the assessee's explanation is self-contradictory. While on one hand she says that the Nagar Panchayats were keen to exhaust their funds by the year-end, so that the budget does not lapse, on the other, she states that they had withheld funds as the work was not complete. Where, one may ask, is the question of release of funds when the work is, as stated, incomplete? *But why would they then credit the assessee's account for the full amount, i.e., without the work being complete?* The same only shows that the work was complete, or substantially so, though the Nagar Panchayats had exhausted their budget for the relevant year. Yes, the non-release of funds could be impending completion of some formalities.

However, in such a case, the bodies, bound as they are by the rules, would not have credited the assessee for the full amount. In fact, the credit for the full amount to the assessee's account signifies the work being complete, and the burden is on the assessee to show as to why, despite the same, income in full cannot be said to have accrued, but only in the following year (refer: *CIT v. Excel Industries Ltd.* [2013] 358 ITR 295 (SC)). An ancillary question would be as to how the assessee stands credited for the full amount without she raising the bill for the same on the Panchayats and/or the concomitant issue of completion certificate/s. These are the moot questions, overlooked by the AO, and on which therefore there has been no examination and, consequently, finding/s by him.

Continuing further, the assessee, however, does not categorically state so, i.e., of the work being incomplete, much less to the extent it is (i.e., incomplete). *Further, does it mean that no work has been executed after the last receipt, i.e., the entire work complete has been billed and the amount there-against received?* This gives rise to the question as up to which date (of the year) the work was performed, and why was it stopped thereafter; the project being admittedly incomplete even by the year-end, so that work in its respect stood to be performed. In fact, it is nobody's case that the work had not been continued after the last bill for which the amount stands received, so that the assessee, following mercantile system of accounting, ought to have accounted for the same. The transaction dates mentioned in Form 26AS (PB pgs.19-23), reproduced as under, being at midyear, also make this amply clear, i.e., what is being sought to be said, while making the assessee's case incomprehensible:

NP1

| Date       | Amount Rs. in lacs |
|------------|--------------------|
| 29/06/2016 | 03.55              |
| 03/01/2016 | 18.40              |
| 29/03/2017 | 02.85              |
| Total      | 24.86              |

NP2

|            |       |
|------------|-------|
| 07/05/2016 | 59.65 |
|------------|-------|

Further, the assessee has in fact itself been billed for the entire amount work sub-contracted – so that the same was complete by the year-end, and has accordingly deducted tax at source on the entire of it @ 1%. As a corollary, the question would arise if the assessee had billed the same to the contractees or otherwise accounted for the same as closing stock/work-in-progress, of course along with the reason for non-billing.

3.3 At this stage, Shri Usrethe, the Id. counsel for the assessee, would state that the assessee had disclosed the income for the following year, i.e., on receipt, and, in any case, it is only the net amount, i.e., net of expenses, estimated at 94%, on which therefore profit could be said to be under-reported for the current year. In our view, it would be pre-mature to comment on the quantum of profit that may stand to be determined as under-assessed for the current year. It is perhaps Shri Usrethe's apprehension, in view of the Id. Pr. CIT stating (at para 8.3 of his order) that the entire amount short disclosed (Rs. 25.74 lacs) deserves to be added as receipt and, thus, as income for the current year, that led him (Shri Usrethe) to so remark during hearing. There is no room for apprehension as, it is, in the final analysis, an open set aside, i.e., to adjudicate afresh by passing a suitable order, upon due enquiry and observing the principles of natural justice (para 9 of the impugned order).

3.4 The issue, it needs to be appreciated, is primarily factual. The assessee admittedly following mercantile system of accounting, the credit to her account for full contract amount by the Nagar Panchayats (contractees) indicates the completion of the relevant contract/s. Where so, the entire amount so credited, is, irrespective of the assessee accounting for the same in the following year, i.e., on receipt, is liable to be regarded as the current year's turnover/receipt. The claim of

TDS (on contract receipt) at full amount by the assessee, where so, would only endorse this position. This would be so irrespective and despite the assessee having, as claimed, not raised the final bill/s on the Nagar Panchayats. The fact, assuming so, that the assessee has returned the balance sum in the following year and has even been, resultantly, assessed to tax for that year, is no reason for the same being not taxed for the current year, i.e., in which it is liable to be assessed u/s. 5 r/w s. 145; each year being a separate and independent unit of assessment. The law in the matter is well-settled, and toward which we may refer to some decisions, in all of which, this plea was, and for that reason, rejected, viz. *CIT v. A. Gajapathy Naidu* [1964] 53 ITR 114 (SC); *CIT v. Chunni Lal Mehta & Sons (P.) Ltd.* [1971] 82 ITR 54 (SC); *CIT v. British Paints India Ltd.* [1991] 188 ITR 44 (SC)). Further, the assessee, except where it shows proper accounting for the unbilled work as the closing stock as at the year-end, valued at cost, as indeed ought to be the case (*CIT v. A. Krishnaswami Mudaliar* [1964] 53 ITR 122 (SC)), has, without doubt, claimed and been allowed, against the disclosed credit/receipt in her operating statement (profit and loss account), the entire cost incurred on the contract/s, booked on accrual basis, i.e., including the bills raised on her by the sub-contractors. There is in such a case no question of the assessee being assessed at a predetermined profit rate of 6%. Further still, where and to the extent the assessee is able to show that a part of the work was yet to be completed, work on which was performed only in the following year, the assessee can be subject to tax only on proportionate basis, with the cost incurred being a ready surrogate and sound basis for ascertaining the percentage of work yet to be completed. That is, both factually, and legally (s. 43CB), percentage completion method would apply. The credit for the tax deducted at source, in such a case, would also be to the proportionate extent only (s. 199 r/w the relevant rules). That is, merely because the assessee has recognised income only to the extent of receipt, the same cannot, for that reason, be regarded as representing the work completed as at the year-end, once again emphasizing of the matter being purely factual, as well as, as found by

the ld. Pr. CIT, factually indeterminate. Again, if the entire amount is, on the basis of the contract, accrued, the assessee shall surely be entitled to deduction for expenditure on the work yet to be completed on the basis of a reasonable estimate thereof (*Calcutta Co. Ltd. v. CIT* [1959] 37 ITR 1 (SC)).

4. For the reasons afore-stated, we find no reason to interfere with the impugned order and, accordingly, decline to. The revision proceedings, in our clear view, stand rightly initiated and applied in the instant case. The AO shall decide considering all the relevant aspects of the case, including those highlighted by us, by issuing definite findings of fact after allowing due opportunity of hearing to the assessee. We decide accordingly.

5. In the result, the assessee's appeal is dismissed.

*Order pronounced in open Court on August 30, 2022*

Sd/-  
(Manomohan Das)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Dated: 30/08/2022

*vr/-*

Copy to:

1. The Appellant: Sweta Goenka, Ward No.2, Near Central Bank of India, Cinema Road, Near Railway Over Bridge, Kotma (MP)
2. The Respondent: The Principal CIT-1, Jabalpur.
3. The CIT-DR, ITAT, Jabalpur.
4. Guard File.

By order

(VUKKEM RAMBABU)  
Sr. Private Secretary,  
ITAT, Jabalpur.