

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 1324/Hyd/2018
(निर्धारण वर्ष / Assessment Year: 2014-15)

M/s. Maytas-Rithwik (JV) Vs. Assistant Commissioner of
Hyderabad Income Tax,
[PAN No. AAAAM9246R] Circle-14(1),
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri K.C.Devdas, AR
राजस्व द्वारा/Revenue by: Shri P.V.Subba Raju, DR

सुनवाई की तारीख/Date of hearing: 09/11/2022
घोषणा की तारीख/Pronouncement on: 30/11/2022

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 26/03/2018 passed by the learned Commissioner of Income Tax(Appeals)-6, Hyderabad ("Ld. CIT(A)") in the case of M/s. Maytas Rithwik JV ("the assessee") for the assessment year 2014-15, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is a joint venture engaged in contract works. The Government of Jammu and Kashmir awarded work to the assessee to the tune of Rs. 253.78 crores on 30/8/2007 for construction of many township for Kashmiri migrants. They have filed their return of income for the assessment year 2014-15 on 29/10/2014 declaring a loss of Rs. 5,61,89,350/-.

3. During the course of assessment proceedings, learned Assessing Officer found that the assessee has given certain works on subcontract basis to the tune of Rs. 3,89,44,284/-. From the details furnished by the assessee, learned Assessing Officer found that in respect of the claim of the assessee Rs. 4,03,06,38,644/- towards the subcontract work given to M/s Rithwik projects Pvt. Ltd, confirmation was only Rs. 4,02,66,45,570/- leaving one's of confirmation in respect of Rs. 39,93,074/-. Likewise in respect of the subcontract expenses in respect of Ambe Constructions and Minerals to the tune of Rs. 21,61,189/-. Learned Assessing Officer recorded that since there is no material supporting this claim, the same has to be disallowed and as a matter of fact, learned AR also agreed for such disallowance.

4. Learned Assessing Officer further found that the Balance Sheet of the assessee reveals that the work in progress under the head "current assets" did show an amount of Rs. 10,29,43,451/- as on 31/3/2013 and there was a substantial decrease in the inventory during the current year showing the same at Rs. 2,50,34,135/- as on 31/3/2014. According to the learned Assessing Officer when called upon to explain, the assessee submitted that they have written off a sum of Rs. 4.76 crores by way of reversal voucher evidencing the written off of work in progress to the tune of Rs. 4.76 crores. According to the learned Assessing Officer the assessee failed to substantiate the claim of work in progress written off, and therefore, the same should also be added to the income of the assessee.

By adding both the amounts of Rs. 61,54,263/- and Rs. 4.76 crores, learned Assessing Officer determined the loss of the assessee at Rs. 24,35,087/-.

5. Aggrieved by such an action of the learned Assessing Officer, assessee preferred appeal. Having gone through the assessment record including the order sheet, learned CIT(A) found that having agreed for the disallowance of Rs. 61,54,263/- through their counsel, assessee cannot be said to be aggrieved by such disallowance, and therefore, the assessee cannot maintain an appeal on that score. Learned CIT(A), however, examined the record and on merits found that the assessee failed to prove the genuineness of the subcontract expenses with supporting material, and therefore there are no reasons to interfere with the addition of Rs. 61,54,263/-.

6. In respect of the disallowance of the writing off of the work in progress, learned CIT(A) found that there is no material produced by the assessee to substantiate such a claim. Secondly, according to the learned CIT(A), there is no specific provision of section under which the assessee is eligible to claim work in progress as business expenses and the writing off of such work in progress as a bad debt under section 36(1)(vii) of the Act. Learned CIT(A) recorded that the assessee never offered the work in progress as income of the assessee in the earlier assessment years, but had shown it only as an expense and such expenditure is not eligible under the general provisions of section 37(1) of the Act inasmuch as the assessee failed to produce any evidence or having incurred the expenditure in the year under consideration. Learned CIT(A) accordingly confirmed both the additions.

7. Assessee is, therefore, before us in this appeal being aggrieved by the impugned order. It is argued by the learned AR that M/s Rithwik Projects Pvt. Ltd and Ambe Constructions and Minerals are entities of repute and assessed to tax, the assessee furnished the evidence of

payment to the aforesaid subcontractors and also furnished the respective PAN numbers of the two entities and therefore, it is not open for the learned Assessing Officer to rely on the alleged concession made by the learned AR of the assessee and to make the addition, without examining the material that was produced before him. Further according to him the writing off work in progress cannot be said to be non-deductible under section 37(1) or section 36(1)(vii) of the Act.

8. We have gone through the record in the light of the submissions made on either side. It is not the case of the assessee that the counsel did not agree for disallowance of Rs. 61,54,263/-. What all that is argued before us is that the assessee never authorised their counsel to make any such concession. By placing reliance on the decisions reported of the Hon'ble Apex Court in *Himalayan Co-operative Group Housing Society Vs. Balvant Singh* (2015) 7 SCC 373, *Bharat Heavy Electricals Ltd., Vs. Mahendra Prasad Jakhmola* Civil Appeal No. 1799 – 1800 of 2019 learned AR submitted that the concession made by the counsel will not bind the assessee. He accordingly submitted that when the assessee furnished the requisite information as could be found from the assessment order itself, the learned Assessing Officer is duty bound to consider such material to base the addition instead of depending upon the word of the learned AR.

9. In *Himalayan Co-operative Group Housing Society* (supra), the Hon'ble Apex Court observed that where doubt exists as to the admission of the agent on behalf of the principal, the court should be wary to accept such admission until and unless the counsel or the advocate is authorised by the client. In *Bharat Heavy Electricals Ltd.* (supra), the concession of the disputed facts by the counsel was considered. In this case, except the statement of the assessee, after a long passing of time, there is no material to show that the assessee did not authorise the counsel to make any concession. The statement of the assessee is not accompanied by conduct

to show that the counsel acted beyond his authorisation. At no point of time, the assessee pointed against the counsel.

10. Be that as it may, the assessment order itself shows that the assessee furnished the Information called for. Learned Assessing Officer, however, recorded that there is a gap in the confirmations given by the sub-contractors. Grievance of the assessee is that the learned Assessing Officer is influenced by the concession made by the learned AR in causing the verification of the material and calling for further information if any, required.

11. Having regard to the totality of facts and circumstances of the case, we are of the considered opinion that it would be in the interest of justice, to direct the learned Assessing Officer to consider the claim of the assessee with reference to the material on record and also the material if any, filed by the assessee.

12. Coming to the writing off of the work in progress, it is an admitted fact that the assessee debited certain expenses to the account of work in progress in the earlier assessment years a part of which they want to write off during the current year. According to the assessee for execution of Government contracts, till 31/03/2003, they have incurred an expenditure of Rs. 10,29,43,451/- which they debited to the account of work in progress, they have submitted the cumulative running account bill (RA Bill) No. 47 for Rs. 11,50,55,910/- dated 30/01/2014, but the Government certified the earlier RA Bill No. 46, 47 and allied works to the tune of Rs. 6,66,63,352/- leaving the balance of Rs. 4,83,92,442/- out of which, the assessee writes off Rs. 4.76 crores as irrecoverable.

13. Learned Assessing Officer doubted the assessee incurring any such expenses relating to Rs. 4.76 crores which the assessee desires to write off and, therefore, required the assessee to produce the material to support

the same. Except stating that the said difference amount was shown as an expenditure in the financial statements, the assessee failed to produce any material in support of the same.

14. Learned CIT(A) was also of the opinion that inasmuch as the assessee did not offer the work in progress as income in the earlier assessment years but it was only an expenditure that was debited to the work in progress account, and, therefore, the same cannot be allowed under section 36(1)(vii) of the Act. Learned CIT(A) recorded that the assessee did not produce any proof in support of rejection of its claim or the RA bills. Further according to him, the assessee did not furnish any confirmation letter from the Executive Engineer Relief and Rehabilitation Organisation, Government of Jammu and Kashmir to the effect that the claims of the assessee have been treated as null and void and, therefore, the assessee was not eligible to receive forever the amount raised in the bills to the extent of Rs. 4,76,00,000/-.

15. In these circumstances, it is clear that the assessee is now claiming the written off expenses which were already debited to the work in progress account without first offering such amount as an income and without any proof of incurring the expenses that were debited to the work in progress account in the earlier assessment years and without any proof of claim of such RA bills and the reasons for their rejection by the client. It is therefore now relevant to consider whether the expenses that were debited to the work in progress account were for the business of the assessee in executing the contract, and that the same were not passed for the reasons other than being bogus expenses.

16. We, therefore, direct the learned Assessing Officer to examine the contract document with reference to the work in respect of which the expenses debited to the work in progress in the earlier assessment years and to examine the reasons for the client not certifying the same. If the

assessee incurred the expenses for the purpose of business in executing the relevant contract and those were not certified by the client giving rise to the assessee to write it off, then the learned Assessing Officer may take a view according to law. Assessee is directed to produce all the relevant material before the learned Assessing Officer in respect of the sub contract expenses and also the debits to the work in progress account and writing off as directed above. Grounds are accordingly treated as allowed for statistical purposes.

17. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on this the 30th day of November, 2022.

Sd/-
(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 30/11/2022

TNMM

Copy forwarded to:

1. M/s. Maytas-Rithwik (JV), C/o. Sekhar & Co.,
Chartered Accountants, 133/4, R.P.Road, Secunderabad.
2. The ACIT, Circle-14(1), Hyderabad.
3. CIT(A)-6, Hyderabad.
4. Pr.CIT-6, Hyderabad.
5. DR, ITAT, Hyderabad.
6. GUARD FILE

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ITAT, HYDERABAD