

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T. VARKERY, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 2034/Chny/2018
निर्धारण वर्ष / Assessment Year: 2015-16

Assistant Commissioner of
Income Tax,
Corporate Circle -3(2),
Chennai – 600 034.

M/s. Viswakarma Real Estates &
v. Constructions P. Ltd.,
Alwarpet Street, Alwarpet,
Chennai – 600 018.

[PAN: AABCV-5770-E]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri. P. Sajit Kumar, JCIT
: Shri. J. Prabhakar, FCA

सुनवाई की तारीख/Date of Hearing

: 23.03.2023

घोषणा की तारीख/Date of Pronouncement

: 05.04.2023

आदेश / O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-11, Chennai, dated 02.04.2018 and pertains to assessment year 2015-16.

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

1. The Assessing Officer is not justified in making an addition of Rs. 1,22,83,021/- as Long term capital gain

2. The Assessing Officer is not justified in taxing the capital gains arising out of Rural Land since its exempt.

3. Moreover, the assessing officer ought to have accepted the fact that Property is a Joint property as reflected in property documents and should not tax the entire gains in our hands.

4. The Assessing officer ought to have accepted the improvement expenses made on the property based on evidences provided

5. The Assessing officer is not justified in disallowing a sum of Rs 5,38,72,144/- under Section 40A(2)(a) since expenditure is on an arms length basis as defined in Clause (ii) of Section 92F

*6. For these grounds, and for such other grounds that may be adduced at the time of hearing, it **is prayed that the order of assessment be cancelled.***

3. The brief facts of the case are that, the assessee is in the business of property development, filed its return of income for the assessment year 2015-16 on 30.10.2015, declaring a total income of Rs. 1,39,89,350/-. The assessment has been completed u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") on 27.12.2017 and determined total income of Rs. 8,01,44,515/-, by making additions towards income from long term capital gains and disallowed sub-contract

expenses paid to M/s. Mayan Infrastructure Pvt. Ltd., amounting to Rs. 5,38,72,144/-, on the ground that the assessee could not file necessary evidences to prove sub-contract charges paid to above party is genuine in nature. The assessee carried the matter in appeal before the first appellant authority and the Ld. CIT(A) for the reasons stated in their appellant order dated 02.04.2018, deleted additions made by the AO, on the ground that the assessee could able to file necessary evidences including return of income filed by M/s. Mayan Infrastructure Pvt. Ltd., along with financial statements for the relevant assessment year and also the Department has assessed the contractee u/s. 143(3) of the Act and accepted the income declared in return of income filed for the relevant assessment year. Aggrieved by the Id. CIT(A) order, the revenue is in appeal before us.

4. The Ld. DR, submitted that the Id. CIT(A) erred in deleting additions made by the AO towards sub-contract charges u/s. 40A(2)(b) of the Act, without appreciating fact that when the AO has issued notice u/s. 133(6) of the Act, M/s. Mayan

Infrastructure Pvt. Ltd., did not respond and filed necessary details. Further, when the inspector of Income-tax visited the address of the contractee, it was noticed that no such firm was found in the given address. The AO, on the basis of inspector report and also non-response from the party came to the conclusion that payment made to above party is bogus in nature, which cannot be allowed as deduction. He further submitted that, if you go through financial statement filed by the assessee, in respect of sub-contractee it appears that even the total payment made by the assessee was not fully accounted in the books of accounts and further, except this receipt there is no further receipts from business. From the above, it is very clear that payment made to above party is not genuine and thus, the AO has rightly made additions, but the Id. CIT(A) simply deleted additions made by the AO.

5. The Ld. Counsel for the assessee, referring to various documents including the order of National Company Law Tribunal, Chennai Benches dated 06.04.2018, submitted that Company was undergoing Insolvency and Bankruptcy Code (IBC) proceedings in pursuant to a petition filed by one of the

corporate creditor and because of this reason, nobody was available to respond to the proceedings with necessary evidences. However, fact remains that the assessee has filed all details including ITR filed by the sub-contractee along with relevant financial statement and also filed income tax assessment order passed by the Department, in the case of M/s. Mayan Infrastructure Pvt. Ltd. The Ld. CIT(A), after considering relevant submissions of the assessee has rightly deleted additions made by the AO and their order should be upheld.

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The sole basis for the AO to disallow sub-contract expenses paid to M/s. Mayan Infrastructure Pvt. Ltd., was that said entity is bogus in nature existed only in paper. The AO has reached to the above conclusion on the basis of report of the inspector of Income-tax, where he has stated that when he had visited the given address of M/s. Mayan Infrastructure Pvt. Ltd., no such company was found in the given address. The AO, further was of the opinion that when notice u/s. 133(6) of the Act was issued to M/s. Mayan Infrastructure Pvt. Ltd., no reply

from the party was received. Therefore, he came to the conclusion that M/s. Mayan Infrastructure Pvt. Ltd., is a bogus entity and payment made by the assessee to said entity is non-genuine in nature. Therefore, disallowed total payment u/s. 40A(2)(a) of the Act.

7. We have given our thoughtful consideration to the reasons given by the AO in light of various details filed by the assessee and we ourselves do not subscribe to the reasons given by the Assessing Officer for the simple reason that the assessee has filed income-tax return filed by the M/s. Mayan Infrastructure Pvt. Ltd., along with financial statement for relevant financial years and explained payment made to said party. The assessee had also filed assessment order passed u/s. 143(3) of the Act by the DCIT, Corporate Circle 4(1), Chennai in the case of M/s. Mayan Infrastructure Pvt. Ltd. From the above, it is very clear that the sub-contractee i.e., M/s. Mayan Infrastructure Pvt. Ltd., was very much existed and also carried out business, which is evident from the fact that sub-contractee has filed income-tax returns for the relevant assessment year disclosing contract receipts from the assessee. Therefore, we are of the considered

view that the observation of the Assessing Officer that M/s. Mayan Infrastructure Pvt. Ltd., is bogus entity and existed only in paper is devoid of merits. In so far as, genuineness of payment made by the assessee towards sub-contract charges, it is not in dispute that the assessee has deducted applicable TDS as per law and also made the payment through proper banking channel. The Id. Counsel for the assessee, had also clarified doubt raised by the Ld. DR for the revenue on the issue of mismatching payment made by the assessee and gross receipts admitted in the financial statement of sub-contractee and explained that said difference is on account of GST/VAT payment, which has been separately accounted in the books of accounts of the assessee. From the above, it is very clear that payment made by the assessee towards sub-contract charges to M/s. Mayan Infrastructure Pvt. Ltd., is supported by necessary evidences and also the payee has accounted said receipts in his books of accounts. The AO, without appreciating relevant facts simply disallowed payment made by the assessee towards sub-contract charges. The Id. CIT(A), after considering relevant submissions of the assessee has rightly deleted additions made

by the AO and thus, we are inclined to uphold the findings of the Id. CIT(A) and dismiss appeal filed by the Revenue.

8. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the court on 05th April, 2023 at Chennai.

Sd/-

Sd/-

(एबी टी. वर्क,)

(ABY T VARKEY)

न्यायिकसदस्य/Judicial Member

(मंजुनाथ. जी)

(MANJUNATHA. G)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 05th April, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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