



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK 'SMC' BENCH, CUTTACK**

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

ITA Nos.58 & 59/CTK/2023
Assessment Years :2009-10 & 2011-12

M/s.PKM-CRS (JV), Azimabad, Balasore	Vs.	Income Tax Officer, Ward-1, Balasore.
PAN/GIR No.AAAAP 7451 R		
(Appellant)	..	(Respondent)

Assessee by : S/Shri Sunil Mishra/ Sheshahdev Das , ARs
Revenue by : Shri Kishore Chandra Mohanty, Sr DR

Date of Hearing : 19/05/2023
Date of Pronouncement : 19/05/2023

ORDER

These are appeals filed by the assessee against the order of the Id CIT(A), NFAC, Delhi, both dated 8.12.2022 in Appeal No.ITBA/NFAC/S/250/2022-23/1047882994(1)and ITBA/NFAC/S/250/2022-23/1047883128(1) for the assessment year 2009-10 & 2011-12, respectively.

2. S/Shri Sunil Mishra and Sheshadev Das, Id ARs appeared for the assessee and Shri Kishore Chandra Mohanty, Id Sr DR appeared for the revenue.

3. Since facts are identical in both the assessment years except change in figures, they are disposed of by this common order for the sake of convenience.

4. It was submitted by Id AR that the assessee is a joint venture namely; Shri P.K.Mohanty and Shri Chita Ranjan Swain. It was the submission that the joint venture had been entered into for the purpose of participation in the tenders issued by South Eastern Railway, Kolkata. It was the submission that during the relevant assessment year 2009-10, the assessee had received a net contract receipt of Rs.3,48,63,746/-. This included an amount of Rs.59,00,906/- towards income tax, sales tax, security deposits, Royalty, etc. For the assessment year 2011-12, the assessee had received a total contract receipt of Rs.39,86,645/-. The assessee had transferred the entire contract receipts to its constituent Shri Chitra Ranjan Swain, as he was the sub-contractor who had done the physical execution of the contract. It was the submission that Shri P.K.Mohanty was the technical advisor in respect of the execution of the contract on behalf of JV. It was the submission that the Assessing Officer took the stand that the books of account of the assessee had not given true and fair picture and estimated the income of the assessee. It was the submission that the TDS had also been done by South Eastern Railway, Kolkata on the JV and JV had also deducted TDS in respect of the payments made to Shri Chita Ranjan Swain. It was the submission that Shri Chita

Ranjan Swain had disclosed the entire profits from the contract in his return and as there was no profit in the hands of the assessee JV. The assessee had filed its return and had claimed refund of the 2% of the TDS made by South Eastern Railway, Kolkata. It was the submission that as the income has already been offered by Shri Chita Ranjan Swain in respect of the contract work executed by him as a sub-contractor of the assessee and as there was no expenditure in the hands of the assessee, no income could be assessed in the hands of the assessee.

5. In reply, Id Sr DR submitted that the work done by Shri Chita Ranjan Swain is as a constituent of the joint venture and books of account of Shri Chita Ranjan Swain was liable to be produced in respect of the said contract for examination. It was the submission that the profit from the contract is assessable only in the hands of the assessee , who was the main contractor and not offering the income in the hands of the assessee, has led to estimation of the income of the assessee. It was the submission that the order of the Assessing Officer as well as Id CIT(A) is liable to be confirmed.

6. I have considered the rival submissions. A perusal of the facts of the present case clearly show that the books of account as produced by the assessee before the Assessing Officer has been rejected and the income of the assessee estimated. The reasons given for rejection of the books of account are on four counts:

(i) The joint venture assessee is not justified in transferring the entire gross bill amount to so called sub-contractor by violating its own agreement.

Admittedly, this is not a ground valid enough for the rejection of books of account. How the assessee does its business is for the assessee to decide. The rejection of books of account is permissible when the profit or the total income is not properly discernible from the books as maintained by the assessee.

(ii) The source payment of Rs.59,00,906/- has not been justified with proper accounts and evidence and the same has not been clarified in the accounts of joint venture as produced.

A perusal of the profit and loss account of the assessee, which is shown at page 52 of PB shows that the net bill raised by the assessee is Rs.3,48,63,743/-. The net receipt by the assessee from South Eastern Railway, Kolkata is Rs.2,89,62,837/-. The deductions have admittedly been made by South Eastern Railway, Kolkata. This is not in dispute. This is not expenditure, *per se* claimed by the assessee. Nothing stopped the Assessing Officer from raising the query with South Eastern Railway, Kolkata in regard to the deduction made by South Eastern Railway. Thus, this is also not an issue which can lead to rejection of books of account.

(iii) The claim of refund by the assessee against the TDS having no work and nil income is not justified.

All that the provisions of TDS is required that the TDS is to be claimed by the person who disclosed the income. The assessee has in its books disclosed its income of Rs.3,48,63,743/-. Just because the net total income is Nil will not be a ground for non-granting of the benefit of TDS or rejection of books of account.

iv) The compliance dated 4.1.2014 does not support any material evidence or any accounts to justify the transfer of any refund in favour of M/s. PKM/CRS(UV) to Shri C.R.Swain.

Here, it is mentioned that the TDS has been done by South Eastern Railway, Kolkata at 2% of the contract amount. Thus, the TDS is Rs.7,90,014/-. The assessee, who is a JV has transferred the entire work to Sri Chita Ranjan Swain and has deducted TDS at 1% being to an extent of Rs.3,95,007/-. The Assessing Officer has taken the view that the differential amount of Rs.4,42,913/- is a benefit being transferred to the constituent Shri Chita Ranjan Swain. When the TDS has been claimed by the assessee in its return to say that the benefit of TDS is given to constituent does not hold water. In any case, this is also admittedly not a substantial ground for the purpose of rejection of books of account of the assessee.

7. This being so, as all the four grounds on the basis of which the Assessing Officer has rejected the books of account and adopted the estimation of income is found to be unsubstantiated and unsustainable, the rejection of books of account by the Assessing Officer itself stands reversed and the estimation of income as done by the Assessing Officer stands deleted.

8. In regard to the issue of TDS certified issued by Corporation Bank on an interest income of Rs.4,65,094/- assessed in the hands of the assessee, though Id AR submits that the said amount has been disclosed by the constituent in his return of income, I am of the view that the income of the year is to be assessed in the hands in which the income is received. The income is received in the hands of JV, therefore, interest is to be assessed in the hands of JV. After taxing the same in the hands of the JVs, the profit, if any, is to be apportioned in the line with JV agreement. In these circumstances, I am of the view that the addition as made by the AO in respect of Rs.4,65,094/- being the interest received from Corporation Bank has been rightly made and does not call for any interference. However, the Assessing Officer shall examine whether the said amount has been disclosed by the constituent members of JV in their returns. If it is found that the amount has been disclosed by the constituent JVs in their returns, the same is to be deleted from the hands of the constituent.

9. In the result, appeals of the assessee stand partly allowed.

Order dictated and pronounced in the open court on 19/05/2023.

Sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 19/05/2023
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : M/s.PKM-CRS (JV),
Azimabad, Balasore
2. The Respondent: Income Tax Officer, Ward-
1, Balasore
3. The CIT(A)-, NFAC, Delhi
4. Pr.CIT-, Cuttack
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack