

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.901/Ind/2019
(Assessment Year:2012-13)

ACIT Circle 2(1) Bhopal	vs.	M/s. Gilcon Sacpes Joint Venture, Old Subhash Nagar, Bhopal
Revenue)		Respondent
PAN: AAAAG 3559 M		
Revenue by	Shri Ashish Porwal, Sr. DR	
Assessee by	Shri Ashish Goyal & N.D. Patwa, ARs	
Date of Hearing	13.04.2023	
Date of Pronouncement	12.05.2023	

ORDER

Per Vijay Pal Rao, JM:

This appeal by the Revenue is directed against the order dated 31.07.2019 passed by Commissioner of Income Tax (Appeals), for Assessment Year 2015-16. The department has filed the following grounds of appeal:

1. "On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating the fact that the assessee and its two constituents have maintained books of accounts on mercantile basis but credits by Gilcon Project Services of Rs. 24,35,314/- "and M/s Scapes Associates appear in assessee books and not reflected in the books of two constituents as debtor".

2. "On the facts and in circumstances of the case, the Ld. CIT(A) has erred in deleting the addition made by the AO u/s 41(1) when

balances in partners account cease to exist." 3. "Any other ground, allowed to add, amend or alter at the time of hearing."

2. The assessee is a joint venture concern formed by two partners i.e. M/s Gilcon Project Services Ltd. Navi Mumbai and M/s. Scapes Associates, Bhopal vide joint venture agreement dated 10.06.2005. As per the joint venture agreement the shares of two partners M/s Gilcon Project Services Ltd. and M/s. Scapes Associates are 8% & 92% respectively. The assessee's joint venture is engaged in the business of providing consultancy services to various Government Departments like MPPWD, CPWD, CGRRDA etc. in the area of preparation of detailed project reports and supervisions and quality control of Government roads etc. The assessee filed its return of income on 28.08.2012 declaring total income of Rs.Nil. Scrutiny assessment was completed u/s 143(3) on 03.03.2015 at the total income at Nil. Thereafter a revision order u/s 263 was passed by the Ld. CIT(A) on 14.03.2017 setting aside the assessment order on the issue that the assessee has shown in its balance sheet creditors of its two partners to the extent of Rs.24,35,314/- and Rs.1,82,65,525/- total amounting to Rs.2,07,00,389/- whereas joint venture partners in their balance sheet have not shown any outstanding receivable from the assessee as on 31.03.2012. In pursuant to the revision order passed u/s 263 the AO issued notice u/s 142(1) and ask the assessee to explain and justify as to how the assessee has shown the creditors to the tune of Rs.2,07,00,389/- whereas the joint venture partners have not shown any outstanding balance or receivable from the assessee. The assessee has explained that as per the terms and conditions of the joint venture agreement the entire revenue received by the assessee from the clients shall be distributed between the joint venture partners in the ratio of 8% and 92 % respectively. Accordingly the assessee booked the revenue/income on accrual basis from the Government departments and only when the amount is actually received from the Government Departments the same is transferred to the joint venture partners. The part of the amount which was not received from the client/

Government Department is shown as liability in the balance sheet in the name of the joint venture partners to whom the amount is to be paid. The Joint venture partners are showing outstanding only when the amount is actually received by the assessee joint venture. Therefore only because of different timing of recognizing the revenue by assessee joint venture and its partners this disturbance has arisen. The assessee is recognition the revenue becomes due from the clients and the joint venture partners are recognized only when the amount is actually received from the Government Department by the assessee joint venture. The AO did not accept this explanation of the assessee and made an addition of the entire amount of Rs.2,07,00,839/- u/s 41(1) of the Act.

3. On appeal the Ld. CIT(A) deleted the addition by considering the fact that the assessee's joint venture has not shown any profit in the books of account but the profit component has been shown in the name of individual constituents / partners of the assessee joint venture. This method of accounting has been adopted by the assessee since inception and there is no change in accounting policies during the year under consideration. The Ld. CIT(A) has further observed that there is no revenue effect as the income is reported by the joint venture partners in the subsequent years. Further the Ld. CIT(A) has held that provision of section 41(1) are not applicable as there is no remission or cessation of liability and assessee is finally paid the said amount to same to tax.

4. Before the Tribunal the ld. DR has submitted that the AO has passed the assessment order in pursuant to the revision order passed u/s 263. The assessee has not challenged the revision order passed u/s 263 of the Act. There is no dispute that the assessee has shown liability as sundry creditor of Rs.24,35,314 in the name of M/s Gilcon Project Services Pvt. Ltd. and Rs.1,82,65,525/- in the name of Scapes Associates whereas there is no corresponding receivables shown in the books of joint venture partners as the assessee was neither shown as a debtor in respect of these amounts nor outstanding balance against the assessee in the books of the joint venture partners. Therefore, the liability shown by the

assessee in books ceased to exist and accordingly the AO has added the same u/s 41(1) of the Act. He has further submitted that Id. CIT(A) has deleted the addition without examining the correctness of the claim and valid basis of recognizing the revenue by the assessee joint venture as well as its constituents/partners. Ld. CIT-DR has point out that there is no justification for recognizing revenue by assessee joint venture in one year and joint partners in different year. He has relied upon the orders of the AO.

5. On the other hand, Ld. AR has submitted that the AO has failed to consider the method of accounting adopted by the assessee as well as its partners over years which was never disputed by the revenue and even per se not disputed for the year under consideration. The amounts accrued from the Government Department was booked by the assessee as income and the same was distributed in the ratio of 8% to 92% between M/s Gilcon Project Services Ltd. and M/s. Scapes Associates. He has pointed out that as per the joint venture agreement the entire received amounts from the Government was paid to the both partners. The work has been executed by the partner M/s. Scapes Associates and the bills is done to the assessee similarly the services provided by the M/s Gilcon Project Services Ltd. are billed to the assessee and correspondently the amount is paid to both the partners when it is received from the Government Departments. The right to receive the amount by both Joint Venture partners arises only once, the amount is received from clients. The amount was paid to them, by the assessee, after receiving the same from client/government department. Therefore, the assessee has booked income on accrual basis from Government/client and the same was distributed to both the joint venture partners in the given ratio whenever it is received from the clients. The amount which is not received from the Government Department is shown as liability in the balance sheet whereas the joint venture partners are booked the income only when their right to receive the same arose after the amount is received from the clients. Hence no amount was shown as receivable in the books of the

joint venture partners as it becomes due only when it is received from the clients. This revenue recognition policy was adopted by the entities since inception and has never been disputed by the department. The assessee has produced reconciliation of this discrepancy of showing outstanding amount along with income tax return and audited amounts of both joint venture partners for subsequent years to show that there is no revenue loss but the entire amount is subjected to tax in the hands of the joint venture partners. Ld. AR has further submitted that the provision of section 41(1) or not applicable in the case of the assessee as the same can be applied only where there is a cessation/remission of a trading liability. In absence of any cessation/ remission of liability the provision of section 41(1) cannot be invoked. He has support the impugned orders of the Ld. CIT(A).

6. We have considered rival submissions as well as perused material on record. The controversy is only in respect of amount which is shown by the assessee as a liability in the balance sheet in the name of the joint venture partners whereas the joint venture partners of the assessee have not shown the said amount as outstanding from the assessee as on 31.03.2012. The revenue has not disputed that the assessee joint venture recognized the revenue when it becomes due from the clients/ Government Departments and therefore, whatever amount is due from the Government Departments but yet to be received is shown as liability in the balance sheet to be paid to the joint venture partners in the ratio of their shares i.e. 8% to 92%. The AO has given these details in para 3.1 as under:

3.1 However, upon examination of the copies of the audited accounts of the assessee as well as those of its constituents i.e.M/s Gilcon Project Services & M/s Scapes Associates, it was seen that both these parties were reflected as creditors, in the assessee's Balance sheet, for the FY 2011-12. The relevant entry is reproduced below:

Sundry Creditors

Gilcon Project Services 24,35,314

Scapes Associates 1,82,65,525 2,07,00,839

7. As per clause (k) of the joint venture agreement the amounts become due to the joint venture partners only when it is received from the clients into joint venture bank account. For ready reference clause (k) of the joint venture agreement is reproduced as under:

(k) Bank accoutns(s) will be opened separately in the name of Gilcon-Scapes JV with any scheduled or Nationalized Bank and will be operated jointly by the representatives of M/s Gilcon and M/s. Scapes as chosen. On receipt of payment of bills from the client into JVs bank account the amount pertaining to SCAPES towards billing done by the JV shall be paid to SCAPES and the amount pertaining to Gilcon shall similarly be billed and paid for various activities.

8. Thus, the assessee has not shown any profit from the amount received from the government Department as the entire work is executed by its partners and therevenue received by the assessee joint venture is distributed betwee the partners in the prescribe ratio who in turn report their respective income for taxation from the terms and conditions of the joint venture agreement it is clear that the assessee's joint venture is only pass through entity and the income and expenditure is booked by the joint venture partners. Therefore once the amount becomes due from the clients/government Departments the assessee recognized it as revenue and credit in the account of the joint venture partners. Whereas the joint venture partners recognizing the revenue only when the amount is actually received in the bank account of the assessee joint venture. There is time lag between the amount becomes due from the client and the same actually received and to be distributed to the joint venture partners. This difference is only because of the mutual agreement between the parties as per joint venture agreement. Once the entire receipt is distributed between the joint partners the question of any income escape from tax in the hands of the assessee does not arise. The AO has not disputed the fact that it is only a time difference when the assessee is recognizing the revenue and till it is actually received from the government Departments it is shown as outstanding both receivable from the Government Departments and payable to the joint venture partners whereas the joint

venture. Therefore the partners are showing the receivable from the assessee only when the amount is actually received in the bank account of the assessee joint venture partners are recognizing the revenue only when it becomes due to be distributed between the joint venture partners. It is also not in dispute that this liability is shown by the assessee as on 31.03.2012 in the name of joint venture partners was discharged by the assessee when amount was received from the clients /Government Departments and consequently the same was duly shown by the joint venture partners in their books of account and offered to tax in the subsequent year. The CIT(A) after considering all these facts has deleted the addition in para 7.4 to 7.6 as under:

7.4 The appellant is a Joint Venture concern having regularly filing its ITR and audited accounts as per the provision of section 44AB of the Income Tax Act. The appellant is Joint venture of two parties known as under;

Gilcon Project Services Pvt. Ltd. (First Part) Scapes Associates. (Second Part

As per the joint venture deed, second part should undertake the project and entire execution of the project will be done by second part only. Also, as per the 'deed', the amount so received in the name of Joint Venture shall be distributed in the ratio of 08:92 between both the parties. Both the constituents of the JV shall be treated same amount as income of the JV and depicted in the Profit & loss account. Therefore, the amount so received in the name of JV shall be distributed to the individual constituents and after receiving the amount from Government Departments, it should be paid to the them. The constituents should recognise the income on 'cash basis', therefore, the amount so received from the JV shall be shown as income of the individual constituents.

The JV shall not show profit in its books of accounts, but the profit component has been shown in the name of individual constituents (i.e. M/s Gilcon Project Services Pvt. Ltd. & M/s Scapes Associates.). The appellant has adopted this method of accounting since inception and there is no as such any variation of the accounting policies adopted during the year under consideration. The copies of ITR along with audited accounts of individual constituents of the Joint Venture appellant has been filed.

It is clear from the audited accounts and ITR that the constituents are still exists and difference in the balances has been occurred due to

change in accounting policies adopted by the parties. Therefore, it shall not be considered as escapement of any income and also there is no loss of revenue due to change in accounting methodology of two units.

7.5 In support of the same facts and justifications, the appellant submitted copies of ITR along with audited accounts of individual constituents (i.e. M/s Gilcon Project Services Pvt. Ltd. & M/s Scapes Associates.) for the AY - 2010-11, 2011-12 & 2012-13 & 2013-14. Therefore, it is apparently clear that the appellant has not escaped any income from taxation, but the profit so arisen had been dually shown in the Profit & loss accounts of the Individual constituents (i.e. M/s Gilcon Project Services Pvt. Ltd. & M/s Scapes Associates.). Hence, contention of the AO that the individual constituents of the JV concern (i.e. Appellant) are ceased to exist and there are no liabilities payable to the independent constituents in this regard is not correct. The appellant has already assessed u/s 143(3) of the act and payments toward consultancy fees were made to M/s Gilcon Project Services Pvt. Ltd. & M/s Scapes Associates, during the period 2011-12 & 2012-13 respectively. In support of the same facts, the appellant filed the copies of ledgers accounts of M/s Gilcon Project Services Pvt. Ltd. and M/s Scapes Associates, respectively and payments made to the respective parties are duly shown the bank accounts.

Considering the above payments made by the appellant JV in the name of independent constituents (i.e. M/s Gilcon Project Services Pvt. Ltd. and M/s Scapes Associates.), it is apparently clear that the liability of Rs. 2,07,00,839/- shown in the hand of JV concern was duly discharged by account payee cheques in the year 2012-13. Hence, contention of AO was incorrect that the liability of creditors shown in the hand of JV concern was ceased to exist.

7.6 Applicability of the section 41(1) of the Act:

As per the provision of section 41(1) of the act specifically stated as under;

41.(1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the appellant (hereinafter referred to as the first-mentioned person) and subsequently during any previous year,-

(a) the first-mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year,

whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or

(b) the successor in business has obtained, whether in cash or in any other manner whatsoever, any amount in respect of which loss or expenditure was incurred by the first-mentioned person or some benefit in respect of the trading liability referred to in clause (a) by way of remission or cessation thereof, the amount obtained by the successor in business or the value of benefit accruing to the successor in business shall be deemed to be profits and gains of the business or profession, and accordingly chargeable to income-tax as the income of that previous year.

Also, in the landmark Judgement of Hon. SC in case of "CCIT vs. Kesaria Tea Co. Ltd (2002) 254 ITR 434 (SC) held that; In order to apply section 41(1), the following points are to be kept in;

In the course of assessment for an earlier year, allowances or deductions have been made in respect of trading liabilities incurred by the appellant;

Subsequently a benefit is obtained in respect of such trading liabilities by way of remission or cessations thereof during the year in which such event occurred.

In that situation the value or benefits accruing the appellant is deemed to be the profit and gains of business in which otherwise would not be his income;

Such value of the benefits is made chargeable to income tax as the income of the previous year wherein such benefit was obtained.

In support of this the "Investors Corporation vs. CIT 201 ITR 378 (Cal) was held that where loss of stock in trade destroyed in fire has been allowed to the appellant as deduction in the earlier year and subsequently the appellant receives insurance compensation for such loss, the entire award is taxable.

The Supreme Court in the case of Polyflex (India) (P) Ltd. v. CIT [2002] 257 ITR 343/124 Taxman 374 has examined the constitution of section 41(1). The Court has pointed out that section 41(1) consists of two main ingredients: (a) loss or expenditure and (b) trading liability. The two ingredients of section 41(1) have to be read independently. As the first ingredient relates to loss or expenditure and the second ingredient relates to remission or cessation of trading liability, the Court has categorically ruled that the words remission or cessation thereof shall apply only to a trading liability.

Therefore, the section 41(1) is only providing for charging tax on amount of any remission or cessation' of liabilities, for which

deduction had been allowed earlier by way of loss, expenditure or any trading liabilities.

The appellant's liability of Rs. 2,07,00,839/- shown in the balance sheet of the appellant, in the name of M/s Gilcon Project Services Pvt. Ltd. & M/s Scapes Associates, respectively was never be ceased to exist but it was properly discharged by the appellant via account payee cheques and in support of the same, bank statements along with copy of ledgers has been filed. The appellant also filed the copies of ledgers accounts of M/s Gilcon Project Services Pvt. Ltd. and M/s Scapes Associates, respectively and payments made to the respective parties are duly shown the bank accounts. Therefore, the addition made by the AO amounting to Rs.2,07,00,839/- is deleted. Therefore appeal on this ground is allowed.

9. Having considered the facts as discussed above since the liability was finally discharged by the assessee when the amount was received from the clients, therefore, the same cannot be treated as cessassion of liability as on 31.03.2012. Accordingly we do not find any error or illegality in the impugned order of the Ld. CIT(A) and same is upheld.

10. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 12.05.2023.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 12.05.2023

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore