

आयकर अपीलीय अधिकरण
मुंबई पीठ "एच", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
सुश्री पद्मावती एस, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
MS. PADMAVATHY S, ACCOUNTANT MEMBER
आसं. 323/मुं/2023 (नि.व. 2011-12)
ITA NO.323/MUM/2023 (A.Y.2011-12)

M/s KVR Infra
G-2, Room No.4, Shri Rani Sati Nagar
CHSL, S.V. Road, Malad (West),
Mumbai-400064.
PAN: **AAKFK3458Q**

..... अपीलार्थी /Appellant

बनाम Vs.

ACIT-30 (2),
Mumbai.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : None (written submission dt. 19.07.2023)
प्रतिवादी द्वारा/Respondent by : Sh. Prakash Kishinchandani, Sr. DR

सुनवाई की तिथि/ Date of hearing : 07/08/2023
घोषणा की तिथि/ Date of pronouncement : 18/08/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'the CIT(A)') dated 27.12.2022, for the Assessment Year 2011-12.

2. The solitary issue raised in appeal is against addition of Rs. 50,24,875/- made under section 69B of the Income Tax Act, 1963 (hereinafter referred to as 'the Act')

3. The facts of the case as emanating from records are: The assessee is a partnership firm engaged in the business of hiring Cranes. During the period relevant to the AY under appeal, the assessee had purchased a Crane i.e. Manitowoc 3900, the said Crane was purchased by the assessee from KGN Earthmovers vide agreement dated 31.03.2011. The cost of Crane as per agreement dated 31.03.2011 is Rs. 1,40,62,500/-. Whereas, in books of the assessee, cost of Crane is shown as Rs. 90,37,625/-. In assessment proceedings, the Assessing Officer (AO) asked the assessee to explain the difference of Rs. 50,24,875/-. The assessee explained that the actual cost of Crane is Rs. 90,37,625/- as reflected in the books of account, the assessee had exaggerated the cost of Crane in the agreement to avail extra banking loan facility. The AO rejected explanation furnished by the assessee and made addition of the difference between the agreement price and the amount shown in the books of assessee. Aggrieved by the assessment order dated 06.12.2016 passed under section 143(3) r.w.s. 147 of the Act, the assessee filed appeal before the CIT(A). The CIT(A) vide impugned order dismissed the appeal of assessee, hence, the present appeal.

4. The Counsel for the assessee on 03.08.2023 has filed written submissions dated 19.07.2023 along with case laws.

5. Per contra, Sh. Prakash Kishinchandani representing the Department vehemently defended the impugned order and prayed for dismissing appeal of the assessee. The Id. DR submits that the explanation furnished by the assessee for difference in rate of the Crane is unsubstantiated.

6. We have heard the submissions made by Id. DR and have perused the submissions filed on behalf of the assessee. We have also considered the case laws on which reliance has been placed by the Counsel for the assessee.

7. It is an undisputed fact that as against the cost of Crane Rs. 1,40,62,500/- mentioned in the agreement with vendor, the assessee in its books has shown cost of Crane at Rs. 90,37,625/-. Since, the assessee was unable to reconcile the difference between the cost of Crane mentioned in the agreement and the books of assessee, the AO made addition of the difference i.e. Rs. 50,24,875/- under section 69B of the Act. The sole contention of the assessee for the difference in cost is, that the cost of the Crane was exaggerated by the assessee to secure higher banking loan facility. The assessee *inter-alia* placed reliance on the decision to contend in the case of CIT Vs. Nangalia Impex [54 taxmann.com 225 (Guj.)] to contend that the AO could not show that assessee had made purchases out of undisclosed income, hence, addition under section 69B of the Act is unjustified. The assessee further placed reliance on the following decisions:

- (i) CIT Vs. Patel Proteins (P.) Ltd. [393 ITR 274 (Guj.)]
- (ii) CIT Vs. Vrundvan Roller Flourmills [72 taxmann.com 250 (Guj.)]
- (iii) Sri Chitta Ranjan Bara Vs. ITO [150 taxmann.com 277 (Calcutta)]

To support his arguments that addition cannot be made under section 69B where inflated statement was furnished to the Bank for availing higher credit facility.

8. The assessee has inflated the cost of Crane in the agreement purportedly to secure higher banking loan facility. According to the assessee the true value of Crane is Rs.90,37,625/- as reflected in the books duly audited under section 44AB of the Act. We find that the Hon'ble High Court in the case of CIT Vs. Vrundvan Roller Flourmills (supra) in somewhat similar set of facts, where addition under section 69B of the Act was made on the basis of inflated statement furnished to the Bank for availing of higher credit facility by overvaluation of the stock shown in books of account, the Hon'ble Court held, that the statement furnished to banking authorities could not be treated as undisclosed income.

9. We find that similar view has been taken by the Hon'ble Gujarat High Court in the case of CIT Vs. Patel Proteins (P.) Ltd. (supra). The Hon'ble High Court held that the difference in stock statement as furnished before Bank as compared to stock shown in the books of account for availing of higher credit facility could not be added under section 69B of the Act as undisclosed investments. Thus, in the light of aforesaid decisions, we hold that no addition under section 69B of the Act can be made in the instant case as the assessee had inflated the cost of Crane in the agreement merely to avail higher banking loan facility for financing of the Crane.

10. We find that in the instant case no effort was made by the AO to cross verify submissions of the assessee. No summons or notice were ever issued by the AO to the vendor of the Crane to know real cost of the Crane. Now, let us see effect of valuation of Crane from different perspective. The assessee would be eligible for the benefit of depreciation on book value of Crane and not on the value stated in agreement. If the assessee has undervalued the cost of Crane in books, then, the assessee would lose benefit of depreciation on higher cost as stated in agreement. There is no finding by the AO that the assessee has claimed depreciation on Crane at higher value as per agreement. Therefore, we see no merit in the addition made under section 69B of the Act.

11. Before parting, we would hasten to add that though the addition made under section 69B of the Act has been deleted as there was no impact in the books of assessee of higher price of Crane as stated in the agreement, nevertheless, we do not subscribe to this unscrupulous manner of availing higher credit facility from the bank by over valuation of the asset.

12. In the result, impugned order is set-aside and appeal of the assessee is allowed.

Order pronounced in the open court on **Friday**, the 18th day of August, 2023.

Sd/-
(MS. PADMAVATHY S)

Sd/-
(VIKAS AWASTHY)

लेखाकार सदस्य/ACCOUNTANT MEMBER
मुंबई/Mumbai, दिनांक/Dated: 18/08/2023
SK, Sr. PS

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. विभागीय प्रतिनिधि, आय.अपी.अधि. , मुंबई/DR, ITAT,
Mumbai
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai