

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'E' : NEW DELHI)

**BEFORE SH. G.S.PANNU, HON'BLE PRESIDENT
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.6699/Del/2018
(Assessment Year : 2014-15)

Mistral Airconditioning Services Co. Pvt. Ltd. C-228, Greater Kailash-I, New Delhi-110048 PAN : AAACM2033L (APPELLANT)	Vs.	ITO, Ward-16(4), New Delhi (RESPONDENT)
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Assessee by	Sh. Rajendra Singh Rathor, Adv.
Revenue by	Shri Sanjay Kumar, Sr. DR

Date of hearing:	06.10.2023
Date of Pronouncement:	09.10.2023

ORDER

PER ANUBHAV SHARMA, JM:

Assessee has come in appeal against order dated 06.08.2018 in appeal no. 10609/2016-17 for assessment year 2014-15 passed by Commissioner of Income Tax (Appeals)-6, New Delhi (hereinafter referred to as the First Appellate Authority in short 'Ld. F.A.A.') in appeal against assessment order dated 30.12.2016 u/s 143(3) of the Income Tax Act, 1961 passed by

Income Tax Officer, Ward 16(4), New Delhi (hereinafter referred to as the Assessing Officer 'AO').

2. Heard and perused the record.
3. The assessee has raised following grounds of appeal :-

"1. On the facts and circumstances of the case and as per law, the Learned Assessing Officer has drawn an erroneous inference and the Learned CIT (Appeals) has erred in sustaining the same, in making an addition of Rs.70,77,519 treating the same as part of sales / revenue, which actually represents invoiced value of incomplete jobs in progress as on 31.03.2014. The fact that a sum of Rs.84,82,012 was incurred as expenditure against jobs in progress was not appreciated and completely disregarded while drawing the inference and hence the same is bad in law.

2. The determination made by Ld. Assessing Officer and later sustained by the Ld. CIT (Appeals) referred in above Ground No.1 is patently erroneous, against fundamental principles of accounting and incorrect in the light of nature and facts of the case. The determination is also against the recognized system of accounting followed by the appellant company consistently and accepted by the department in past years.

3. The determination and addition made by the Ld. Assessing officer and later sustained by the Ld. CIT (Appeals) as referred in above Ground No.1 is also resulting in duplication of tax liability due to the fact that the value of jobs in progress as on 31.03.2014 become part of revenue in the later years in the year of respective completion of jobs and offered and subjected to tax.

Hence, the action of Ld. Assessing Officer as well as of Ld. CIT (Appeals) is not sustainable being bad in law.

4. The appellant / assessee craves leave to add, amend or alter any or all the grounds herein and rely or refer to additional documents and details during the pendency of appeal."

4. It comes from the record and the submissions that the assessee is a private limited company engaged in the business of providing Heating Ventilation Air Conditioning (HVAC) services. The company was incorporated in the year 1989 and 25 years have passed. The nature of the services rendered by the company consists of various jobs and stages for installation of such Heating Ventilation Air Conditioning (HVAC) which are spread over to various A.Ys. The company claims to be following the accounting systems for recognition of revenue based project completion method as per terms of contract/agreement with Customer. The company claims accounts for unbilled revenue on year-to-year basis and recognise such unbilled revenue as revenue in Profit & Loss after achievement of certain stage of project and as per terms specified in Contract/ Agreement. The company claims that it makes a proper identification of cost and revenue of each job with distinguished number and assigned all cost & revenue on such job over a period of time. Further that the company recognised unbilled revenue internally on the basis of its stage of completion and invoice raised as per the term of contract i.e. after due commissioning / verification of the job by the customer, which may or may not represent the work completion stage. It is claimed that during the relevant year, the company booked all expenditure incurred on such job with a unique identification job no. and recognised only those expenditure which relate to revenue recognised during respective assessment year and balance amount of expenditure in transfer to the closing stock under work in progress of respective years.

The claim of company is that the company is following such system of accounting consistently and no deviation has been made in A.Y.2014-2015

also. The company has recognised unbilled called amount billed of Rs.70,77,519/- during the A.Y.2014-2015 and recognised such amount in subsequent A.Ys based upon the terms of the contract and stage of completion of such job. Similarly the company has not claimed expenditure incurred on such unbilled revenue called job in progress and carry forward such cost to claim in subsequent years a per the recognition of amount billed/unbilled amount as revenue in subsequent years of Rs.84,82,012/-. The details are furnished at page no 192 of paper books-1 for year wise recognition of unbilled revenue as revenue of Rs.70,77,519/-.

5. However in regard to the controversy raised in the grounds the ld AO had observed in Para no 8 to 10 as below;

“8. It is worth mentioning that the assessee in balance sheet reflected an amount of Rs. 61,94,405/-, as advance from the customers in which an advance of Rs. 50,07,354/- received from M/s Hindustan Syringes and medical devices Ltd. Further, the assessee submitted the bill raised on 27.06.2013 against work done of M/s Hindustan Syringes and medical devices Ltd. amounting to Rs. 35,70,500/-. As seen from the letter of intent issued by M/s Hindustan Syringes and medical devices Ltd. that the assessee was contractually bound to complete the work on 30.09.2013. Hence, the claim of the assessee was nowhere substantiated that why this advance has not been recognised as revenue earned during the year. Such practice being followed by the assessee is against the revenue recognition concept.

9. This is also relevant to highlight that the assessee-company was following the mercantile system of accounting and that even under this system in order to visit the assessee-company with the obligation to pay tax the profit must become actually due no matter when it is received and that income cannot be said to have accrued to an assessee-company if it is based on a mere claim not backed by any legal or contractual right to receive the amount at a subsequent date. It is also emphasised that it is the real income

which has been received by the assessee against billing of stock, which is distinguished from a hypothetical income. The assessee's submissions are leading to an hypothetical income on the future course of action and after an unending time period when the income received will be considered as revenue recognised during the future year. In the mercantile system of accounting the revenue accrued is to be brought to tax, moreover in this case the billing of stock has been done and revenue earned, so there was no merit in the contention of the assessee.

10. Therefore, from the discussion made above the inferences drawn is that the assessee sold stock of Rs. 1,01,35,524/- (70,77,519 + 30,58,005), which is closing stock as on 31.03.2013 sold against the purchase after 01.04.2013 to 31.03.2014 and closing stock as on 31.03.2014 stay billed amounting to Rs. 70,77,519/-. As the assessee company is a business entity which is in the market for profit making and hence, certainly certain percentage of profit must have been made while raising the bill of stock. Considering it 10% which is reasonable the total sale value comes at Rs. 1,11,49,076/-. As the assessee already reduced the total cost of sale and services amounting to Rs. 92,77,095/- from sale of product and service amounting to Rs. 1,45,25,321/- and the closing stock after reduction which amounts to Rs. 14,04,493/- is taken as actual closing stock. Hence, the billing of the closing stock amounting to Rs. 1,01,35,524/- is evaluated with a sale price of Rs. 1,11,49,076/- and no reduction of cost price is allowed.

In view of the discussion made above, an amount of Rs. 1,11,49,076/- is determined as business income and added to the income of the assessee.

(Addition of Rs. 1,11,49,076)

In view of above facts, I am satisfied that the assessee has furnished inaccurate particulars of its income within the meaning of Explanation 1 to section 271(l)(c) of the I.T. Act, 1961. Hence, it is a fit case for imposition of penalty u/s 271 (l)(c) of the Income Tax Act, 1961.”

To which Ld CIT(A) concluded in Para 4.1.2 as below;

“4.1.2 I have considered the assessment order and the submissions of the appellant in the submissions made the appellant has attempted to reconcile jobs in progress, closing stock, invoicing, jobs completed and transfer to revenue and proceeds against incomplete jobs. From the details submitted it is noted that the AO has considered the closing stock of the last year amounting to Rs. 30,58,005/- with amount of Rs. 70,77,519/- which is the amount billed during the year under consideration. The appellant has reconciled and compared the closing stock with the closing stock and amount billed with for both the years. Since the said amounts have been reconciled, the addition of the amount of Rs. 1,11,49,076/-, which includes markup of 10%, is not appropriate. However, at the same time appellant, in its reply, has not provided the basis for completed jobs which includes sale of products amounting to Rs. 19,92,086/- and sale of services amounting to Rs. 1,25,33,235/- (totaling to Rs. 1,45,25,321/-). Hence, the incomplete jobs in progress as on 31/03/2014 as per status of jobs finished during financial year 2013-14 amounting to Rs. 70,77,519/- is not verifiable. Accordingly, the addition is restricted to Rs. 70,77,519/-. Grounds of appeal nos. 1 to 3 are partly allowed.”

6. Having perused the respective orders of the lower authorities and considering the submissions made by both the sides before us, it clearly emerges that the case made out by the Assessing Officer for making an addition on account of revenue earned from undisclosed sales has not found favour with the CIT(A). This aspect of the controversy has become final in as much as the Revenue is not in appeal before us. The grievance of the assessee continues for the reason of the stand of the CIT(A), which we

have highlighted in the above para, with respect to the non-verifiability of a sum of Rs. 77,77,519/- representing the “amount billed” out of the “job in progress” as on 31.03.2014. The sum and substance of the case put up by the assessee is that due to its nature of work which involves rendering of services in the field of air-conditioning by executing job works, it declares its income by applying the project completion method, having regard to the terms of contract/agreement with the customers. It has been an assertion by the assessee since the stage of the AO that the instant accounting method employed by it is consistent and has been followed all along and that even for the year under consideration, there is no deviation. It has been explained before us that the revenue from projects based on execution of costs attributable and allocable thereto are recognised on full completion or substantial completion of the related projects and is billed in accordance with the terms specified in the contract/ agreement with the customers.

7. We find that neither of the authorities below have given any finding with regard to the consistency of method of accounting employed by the assessee over the years. Further, the observations of the CIT(A) regarding the un-verifiability of Rs. 77,77,519/-, as noted in para 4.1.2 of his order is also not clear. The CIT(A) has not specified as to what is the aspect of verifiability and in what manner the said amount is liable to be treated as income of the assessee qua its business, especially considering that the method of accounting employed by the assessee for recognition of revenue from business has been employed consistently, as in the past. Therefore, it was imperative for the CIT(A) to specifically confront the assessee on this aspect, if he had any doubts.

8. Be that as it may, we deem it fit and proper to restore the matter on this limited aspect to the file of the AO. The AO shall consider the method employed by the assessee to deduce its income from business and if the same, has been accepted in the past, no adverse inference is liable to be drawn. Qua the amount of Rs. 77,77,519/- representing “amount billed” out of the amount of “job in progress”, the assessee shall furnish the requisite details so as to demonstrate that the said amount is not required to be included in its business income over and above the amount already declared as per its regular method of accounting. For the said limited purpose, the matter is restored to the file of the AO who shall carry out the said exercise in accordance with law, after affording the assessee a reasonable opportunity of being heard.

7. In the result, the appeal of the assessee is allowed as above.

Order pronounced in the open court on 09 October, 2023.

Sd/-

**(G.S.PANNU)
PRESIDENT**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 09 .10.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**