

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 2255/Hyd/2018
(निर्धारण वर्ष / Assessment Year: 2013-14)

Asst. Commissioner of
Income Tax,
Central Circle-1(3),
Hyderabad

अपीलार्थी / Appellant

M/s. Veerabhadra Minerals
Private Limited,
Hyderabad
[PAN No. AAACV6321Q]

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Sashank Dundu, AR
राजस्व द्वारा/Revenue by: Ms. TH Vijaya Lakshmi, CIT-DR

सुनवाई की तारीख/Date of hearing: 17/10/2023
घोषणा की तारीख/Pronouncement on: 19/10/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 31/08/2018 passed by the learned Commissioner of Income Tax (Appeals)-11, Hyderabad ("Ld. CIT(A)"), in the case of M/s. Veerabhadra Minerals Private Limited ("the assessee") for the assessment year 2013-14, Revenue preferred this appeal.

2. Brief facts of the case are that, the assessee company is engaged in the business of mining contracts. In pit mining operations, it is necessary to remove overburden and other barren waste materials to access ore and other minerals. Cost incurred to extract the same are called as overburden charges or stripping costs. Subcontract was awarded by assessee company to GVP E&C, which is the proprietorship of Mr. GV Pratap Reddy, the Managing Director of the assessee company. The subcontracts were then given to the employees of the assessee company. Mr. GV Pratap Reddy is a civil contractor and has been executing a variety of contracts for more than 20 years even before the assessee company has been incorporated. He is assessed to income tax and has been filing his returns of income for all such years. Mr. GV Pratap Reddy also executed substantial amount of other works apart from the works awarded by the assessee company. Assessee company claimed overburden charges during the year under consideration.

3. The learned assessing officer disallowed the expenditure claimed as 'overburdened charges' on the grounds that no agreements available for the sub-contracts; that no PAN or bank details available of persons to whom subcontract was awarded by the employees; and that even though res judicata is not applicable, burden is on the assessee to prove the work done by subcontractors and prove their identity and genuineness.

4. When the aggrieved assessee preferred appeal, learned CIT(A) deleted the said addition observing that, the assessing officer, while making the addition in the current year, relied upon the fact that the assessee company had voluntarily offered amounts for disallowances of the overburdened charges claimed as expenditure in the previous years, but in the earlier assessment years, the addition made was based on voluntary offering of the assessee company, while there was no such offer by the assessee company for the year under consideration. He further observed that the overburden removal expenditure for the year under consideration is substantially lower compared to earlier years, namely,

expenditure on overburden removal is Rs. 14.04 crores, Rs. 18.97 crores and 5.25 crores on a turnover of Rs. 46.82 crores, Rs. 60.52 crores & 41.03 crores for the assessment years 2011-12, 2012-13 & 2013-14 respectively. Lastly, he observed that the turnover on account of overburden removal has been assessed in the hands of Mr. GV Pratap Reddy and further in the hands of his employees, whose returns have been filed, there is no concrete material brought on record by the learned assessing officer to justify the disallowance of the expenses claimed on overburden removal. Accordingly, he deleted the addition while allowing the appeal.

5. Revenue is aggrieved by such deletion, and filed this appeal contending that the assessee company claimed the business expenditure by way of transfer of its money in the guise of subcontract work to its employees, who in turn gave it to some unknown subcontractors, who does not have either bank account or PAN and whose details are virtually never received by the assessee. According to the Revenue, no contract agreement/work order or documentary evidence in support of the expenses claimed were found during the search operations nor were submitted during the assessment proceedings. Contention of the Revenue is that the onus is on the assessee to substantiate the genuineness and reasonableness of expenses claimed and more so, when the alleged payments were made to the proprietary concern of the Managing Director of the assessee falling in the ambit of section 40A(2)(b) of the Act.

6. Learned DR, in line with the assessment order, argued that in commercial transactions, subcontracts involving crores of rupees will not be done without any agreements/work orders which are conspicuously absent in this case and the ultimate payments went to the so called unknown subcontractors without having any PAN or bank account, no clue is given by the assessee to the learned Assessing Officer about the details of such un-known persons. Further according to him, on a perusal of the bank records it was found that an amount of Rs. 17.3 lakhs was transferred to the account of one Dumper Operator towards subcontract payments by

way of three cheques and the entire amount was withdrawn on the very immediately next day in the form of cash. Mr. Pratap Reddy answered that such Mr. Subba Reddy paid the amount to un-known subcontractors. She, therefore, submitted that all these circumstances, no doubt furnish a basis for the learned Assessing Officer to entertain a doubt in respect of such an expenditure and there is every justification for the learned Assessing Officer to reach a conclusion that this particular expenditure is a bogus expenditure. She submitted that by making certain general statements and without giving any cogent reasons basing on verifiable facts, learned CIT(A) deleted the addition and such findings cannot be sustained.

7. Per contra, it is the contention of the learned AR that there is no material available with the assessing officer to show that the expenditure incurred was bogus or there was no expenditure incurred at all; that the only basis for the assessing officer to make the addition in the year under consideration is the fact that voluntary disclosure has been made in the earlier years. According to him, there was no voluntary disclosure made by the assessee company for the year under consideration. He invited our attention to the declaration of the managing director contained at page no. 8 of the paper book, wherein there was an additional amount of Rs. 1,40,14,000/- to cover all other contingencies or commissions or omissions arising out of the scrutiny of search materials. He submitted that all the assessment years were open at the time of making such a declaration, and therefore, the assessing officer could not have placed any reliance on the declaration for the purpose of making any disallowance/addition for the current year.

8. He further submitted that it is not the case of the assessing officer that there was any cash which was received back by the assessee company, nor is there any statement given by any employee against the assessee company stating that the said expenditure was not incurred or such expenditure was rooted back to the assessee company in any other mode; that it is also not the case where the Managing Director has

withdrawn the statement at a later point in time. He submitted that there is no material at all, in the possession of the assessing officer, to show that such expenditure was incorrectly claimed. According to him, all the documentary evidences such as statement giving the names and addresses of all the subcontractors along with PAN numbers and details of deduction of TDS are furnished before the learned assessing officer which are not contradicted, and all the subcontractors have filed the returns of income and paid taxes and the copies of the returns and bank accounts of the employee subcontractors have been filed before the learned Assessing Officer.

9. We have gone through the record in the light of the submissions made on either side. Only issue that arises for consideration in this matter is whether or not the assessee incurred the overhead removal charges. Assessment order reveals the disbelief of learned Assessing Officer as to the genuineness of overhead removal charges, as highlighted by the learned DR, is based on the statement of Mr. GV Pratap Reddy recorded on 08/07/2014. In such statement, he clearly stated that he did not enter into any subcontract agreements and they did not issue any work orders for the subcontract work. He admitted that some of the names appeared in the list of subcontractors are the employees of his business concerns and one such person is the store keeper. This Mr. Pratap Reddy stated that the subcontractors did not have bank accounts and PAN and the subcontract payments were sent to the accounts of the employees, and the said amounts were disbursed to the un-known subcontractors, who in fact did the work. He also did not dispute the immediate withdrawal of the amounts deposited in the accounts of the employees of the assessee.

10. These circumstances cited by the learned Assessing Officer and highlighted by the learned DR, cannot totally be brushed aside, the fact remains that there is no dispute that the assessee has been in the mining contracts, and in mining contracts, for extracting the required ore or minerals the overburden has to be removed involving expenditure, which

goes on decreasing year after the year. Generally, in the initial years it would be high and thereafter such an expenditure may get reduced substantially. Such a fact is evident in the case of the assessee company also. Expenditure on overburden removal has been Rs. 14.04 crores, Rs. 18.97 crores and Rs. 5.25 crores on a turnover of Rs. 46.82 crores, Rs. 60.52 crores & 41.03 crores for the assessment years 2011-12, 2012-13 & 2013-14 respectively, demonstrating that such an expenditure incurred for overburden removal, was high in the earlier years and lowest in the year under consideration.

11. Assessee's declaration of income of Rs. 2.76 crores and Revenue accepting the same during the year clearly shows that there were business operations in mining by the assessee during the year. When the income is accepted, the expenditure cannot be denied in toto. Even if we go by the reasoning of the learned Assessing Officer that the subcontractors are unknown, the fact remains that in respect of such an expenditure, TDS was affected. By no stretch of imagination could it be said that no mining work was done to earn the income. Natural inference is that for earning such expenditure by mining operations, inevitably the assessee must have incurred some overhead removal expenditure. Only question that could have legitimately been raised by the learned Assessing Officer is about the quantum of such expenditure but not doubting the entire expenditure, so as to disallow the same. Learned DR, however, submitted that there is no clinching evidence to show that the overburden removal relevant for earning the profits in this year, was done in this year only. However, in respect of the overburden removal expenditure of the earlier years, the assessee voluntarily made a disclosure in respect of such expenses.

12. In this set of facts and circumstances of the case, and also in view of the fact that there are no written agreements for subcontract and sub-subcontract and also fact that the subcontractor as well as the sub-subcontractor, sub-sub-unknown contractors are all related parties and the payments and withdrawals do not inspire any confidence, we are of

the considered opinion that disallowance of a portion of this overhead removal charges would meet the ends of justice. Having regard to nature of expenditure and line of business of the assessee, we deem it reasonable to estimate the disallowance at 25% of such expenditure. Balance 75% is accordingly directed to be deleted. The learned Assessing Officer is directed to make the necessary computation.

13. In the result, appeal of Revenue is partly allowed.

Order pronounced in the open court on this the 19th day of October, 2023.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 19/10/2023

TNMM

Copy forwarded to:

1. Asst. Commissioner of Income Tax, Central Circle-1(3), Hyderabad.
2. M/s. Veerabhadra Minerals Private Limited, Plot No. 32, 3rd Floor,
Sivasai Sannidhi, Opp: Saibaba Temple, Hindi Nagar, Punjagutta,
Hyderabad.
3. Pr.CIT-Central, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ITAT, HYDERABAD