

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.353 /Viz/2017
(निर्धारण वर्ष / Assessment Year : 2012-13)**

M/s MDR Cranes & Infrastructure Pvt. Ltd. HIG-1, D.No.49-58-4 Green Park Colony Akkayapalem, Visakhapatnam [PAN : AAGCM1052M] (अपीलार्थी/ Appellant)	Vs. Dy.Commissioner of Income Tax Circle-3(1) Visakhapatnam (प्रत्यर्थी/ Respondent)
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अपीलार्थी की ओर से/ Appellant by : Shri G.V.N.Hari, AR
प्रत्यर्थी की ओर से / Respondent by : Dr.Satyasai Rath, CIT(DR)

सुनवाई की तारीख / Date of Hearing : 21.02.2024
घोषणा की तारीख/Date of Pronouncement : 29.02.2024

आदेश /O R D E R

Per Shri Duvvuru RL Reddy, Judicial Member :

This appeal is filed by the assessee against the order of Principal Commissioner of Income Tax (PCIT)-1, Visakhapatnam in F.No.Pr.CIT-1/VSP/263/2016-17 dated 27.03.2017 for the Assessment Year (A.Y.) 2012-13.

2. Brief facts of the case are that the assessee company has filed its return of income for the A.Y.2012-13 on 14.10.2012, declaring total income at Rs.36,46,500/-. Subsequently, the case was selected for scrutiny under

CASS and assessment u/s 143(3) of the Act was completed on 18.09.2014 by assessing the total income at Rs.43,57,275/-. The assessment records were called for and examined by the Ld.PCIT under the powers vested u/s 263 of the Act. On perusal of the record, the Ld.PCIT noticed that the enquiries conducted by the DDIT(Inv), Unit-III(1), Visakhapatnam revealed that the assessee had booked bogus expenditure towards sub-contract payments made to the following persons who were previously employed in the assessee's company as supervisors / garage in-charge for monthly salaries ranging from Rs.10,000/- to Rs.15,000/- and huge amounts had been credited to their bank accounts on various dates :

S. No.	Name of the person	PAN	Details of bank account	Total amount credit / received
1.	Shri B.K.Chakravarthy	AHGPC5298P	A/c No.911020018391836	Rs,1,26,25,000
2.	Shri Kona Appala Naidu	AURPK8293L	A/c No.911020023574987	Rs.75,00,000
3.	Sri Tadikonda Suri Babu	ADIPT4994M	-	Rs.3,36,85,000

The Ld.PCIT further observed from the sworn statements of the above persons recorded before the DDIT(Inv) that these persons denied to have any knowledge of the above transactions and stated that Shri M.Dharma Rao, Managing Director of the assessee company had made all these transactions without their knowledge and had taken their signatures on blank cheques. On cross examination of Shri M.Dharma Rao

by the DDIT(Inv), he replied that the said persons were sub-contractors of the company and they have given statements against him out of personal rivalry. The DDIT(Inv) further reported that other claimed sub-contractors namely Sri Adibhatla Bhaskara Rao, Sri Yegireddy Madhusudhan Rao and Sri S.Mohan Rao have not responded to summons issued by DDIT(Inv). The Ld.PCIT further noticed that during the assessment proceedings, the assessee company in its letter dated 16.06.2014, while giving reasons for lower percentage of profit had stated that 60% of its total work had been allotted to sub-contractors, as the work had to be completed in short duration. The Ld.PCIT observed that the details of the sub-contracts given by the assessee company have not been called for by the AO to verify the genuineness of the sub-contractors and the claims of the assessee in this regard were accepted by the AO in a perfunctory manner without any inquiry or verification. Thus, held that the assessment order dated 18.09.2014 passed u/s 143(3) of the Act is prima facie erroneous and prejudicial to the interest of the revenue as the same was passed without making any inquiries or verification regarding genuineness of sub-contractors and hence proposed for revision u/s 263 of the Act. Accordingly issued show cause letter dated 13.05.016 to the assessee and it was asked to show cause as to why the assessment order u/s 143(3) dated

18.09.2014 should not be revised. The assessee was asked to furnish names and latest addresses of the alleged sub-contractors, their PAN and copies of their returns of income for the A.Y.2012-13. The assessee furnished a list of 5 sub-contractors with their names, PAN, mobile No. and addresses. After careful examination of the contentions put forth by the assessee that since the assessee had furnished all the details of sub-contractors and reasons for low profit, the revision proceedings initiated u/s 263 are to be dropped, the Ld.PCIT held that the contentions of the assessee are not acceptable since the AO has called for the reasons for low profit only and he has never verified the genuineness of sub contract payments or made enquiries in this regard at any stage of the assessment proceedings. The Ld.PCIT further held that the claim of the assessee was accepted by the AO without making any inquiries and verification in this regard, which the AO should have been made when the sub-contract expenditure claimed by the assessee is so huge and glaring to arrive at a conclusion on the genuineness of sub-contract charges. The Ld.PCIT further held that the assessee has not furnished any credible evidence to prove the genuineness of the alleged sub-contractors or to rebut the statements given by claimed sub-contractors before the DDIT(Inv), except furnishing the names and addresses of four persons out of six sub-contractors. No evidence in the

form of confirmations from the alleged sub contractors, sub contract agreements, if any or copies of their income tax returns or statements of account is furnished and in the absence of which it is not possible to verify the genuineness of the alleged sub-contractors. The Ld.PCIT held that the order passed by the AO is not only erroneous but also prejudicial to the interest of revenue and the twin conditions for invoking jurisdiction u/s 263 read with Explanation-2 of the section are satisfied in the case of the assessee. Accordingly, set aside the assessment to the file of the AO with a direction to verify the correctness and genuineness of the sub-contract charges of Rs.25.72 crores debited to P&L a/c under the head “Direct Expenses” in the light of the report of the DDIT(Inv.) and after making necessary enquiries redo the assessment afresh after providing an opportunity of being heard to the assessee.

3. Aggrieved by the order of the Ld.PCIT, the assessee preferred an appeal before the Tribunal by raising the following grounds of appeal :

- 1. The order of the learned Commissioner of Income Tax, Visakhapatnam is contrary to the facts and also the law applicable to the facts of the case.*
- 2. The learned Commissioner of Income Tax is not justified in assuming jurisdiction u/s 263 of the Act in as much as the assessment order u/s 143(3) dated 18.09.2014 for the A.Y.2012-2013 is neither erroneous nor prejudicial to the interests of revenue.*

3. *The learned Commissioner of Income Tax is not justified in directing the assessing officer to redo the assessment to verify the correctness and genuineness of the sub-contract charges of Rs.25.72 crores claimed by the appellant as expenditure.*

4. *The learned Commissioner of Income Tax ought to have appreciated that the assessing officer initiated enquiries in respect of the above issues and as such it is not a case of "lack of inquiry" to enable the learned Commissioner of Income Tax to invoke the provisions of sec.263.*

5. *Any other ground that may be urged at the time of appeal hearing.*

4. It was the submission of the Ld.AR that the Ld.AO has initiated inquiries in respect of all the issues which were subject matter of 263 proceedings. Therefore, the assessment order passed u/s 143(3) dated 18.09.2014 is neither erroneous nor prejudicial to the interest of the revenue. He, therefore, pleaded to quash the order passed by the Ld.PCIT u/s 263 of the Act.

5. Per contra, the Ld.DR has submitted that the AO has never verified the genuineness of the sub contract payments during the course of assessment proceedings. He further submitted that the claim of the assessee was accepted without making any enquiries or verification. The AO should have made enquiries about the sub contract expenditure claimed by the assessee. He, therefore, submitted that without proper enquiries, the Ld.AO has allowed the entire expenditure of Rs.25,72,91,502/- claimed under the head "Sub Contract Charges" erroneously. The Ld.DR further

submitted that it is clear cut case of lack of enquiry and hence the Ld.PCIT has rightly initiated the 263 proceedings. He, therefore, pleaded to uphold the order passed by the Ld.PCIT and dismiss the appeal of the assessee.

6. We have heard both the parties, perused the material available on record and also gone through the assessment order passed by the AO dated 18.09.2014 u/s 143(3) of the Act. It is an admitted fact that the AO has not examined the payments made to the sub contractors during the assessment proceedings. The Ld.PCIT observed that the details of the sub-contracts given by the assessee company have not been called for by the AO to verify the genuineness of the sub-contractors and the claims of the assessee in this regard were accepted by the AO in a perfunctory manner without any inquiry or verification. Therefore, we have no hesitation to come to a conclusion that the Ld.PCIT has rightly initiated the proceedings u/s 263, saying that the assessment order passed by the AO is erroneous and prejudicial to the interest of the revenue. Hence, all the grounds raised by the assessee are liable to be dismissed. Accordingly, we dismiss the appeal filed by the assessee.

7. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 29th February,2024.

Sd/-

(एस बालाकृष्णन)
(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 29.02.2024

L.Rama, SPS

Sd/-

(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- M/s MDR Cranes & Infrastructure Pvt. Ltd.
HIG-1, D.No.49-58-4, Green Park Colony, Akkayapalem, Visakhapatnam
2. राजस्व/The Revenue – The Dy.Commissioner of Income Tax, Circle-3(1)
Visakhapatnam
3. The Principal Commissioner of Income Tax, Visakhapatnam
4. विभागीय प्रतिनिधि, आयकर अपीलिय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam