IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'A' PUNE

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1170/PUN2023
निर्धारण वर्ष / Assessment Year : 2021-22

M/s. Shankar Ramchandra Earthmovers Private Limited, S.No.40, Sairang Building, Beside PMC Ward Office, Kothrud, Pune 411 038 PAN : AACCS3382E	Vs	DCIT, Circle-5, Pune
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Prathamesh Borkar – AR
Revenue by	Shri Keyur Patel - DR
Date of hearing	14/03/2024
Date of pronouncement	26/03/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by assessee against the order of Commissioner of Income-tax (Appeals) in the National Faceless Appeal Centre, Delhii passed u/s.250 of the Income-tax Act, 1961 (hereinafter referred to as 'The Act') for Assessment Year 2021-22 on 07-09-2023. The Grounds of appeal raised by the assessee are as under :

> "1. On the facts and in the circumstances of the case the Id. CIT(A) has erred in disallowing 10% of closing work in progress without giving due regard to the fact that the closing work in progress is not an item of expenditure for which deduction is claimed.
>
> It is pertinent to note that the above addition is made pursuant to section 69C of Income Tax Act. However no source of expenditure is asked for anywhere in the assessment proceeding. Work In Progress is credit side item, still addition is made as 10 percent on ad hoc basis.

2. On the facts and in the circumstances of the case the Id. CIT(A) has erred in disallowing the Provision for Operations & Maintenance expenses without giving due regards to the fact that the provision is based on a systematic estimation made by the Public Works Department of the Government Maharashtra, and the past experience of the Company.

Appellant has relied on following case laws in support of his claim:

1. Asstt. CIT v. CEC Soma CICI JV ITA Nos. 126 & 1822/Bang/2016
2. Calcutta Co. Ltd. v. CIT (1959) 37 ITR 1 (SC) : 1959
3. Rotork Controls India (P) Ltd. v. CIT reported in (2009) 314 ITR 62 (SC) : 2009
4. DCIT v. Ashiana Housing Ltd. ITA No. 714/Kol/2018
5. Grundfos Pumpas India Ltd. v. DCIT [TCA No. 1003 of 2008

3. On the facts and in the circumstances the ld. CIT(A) has erred in calculating the disallowance of provision at amount of Rs.6,29,20,000/- (being 20% of the Provision for Operation & Maintenance expenses) without giving due regard to the fact that the assessee has made a provision amounting to only Rs.15,73,00,000/- during the previous year.

4. On the facts and in the circumstances the ld. CIT(A) has erred in disallowing an amount of Rs.2,50,42,770/- under section 69C being 10% of the total amount paid to subcontractors on an adhoc basis without evaluating the source of the expenditure. Further the ld.CIT(A) has failed to appreciate fact that the AO has not pointed any defect in the books of accounts of the assessee."

BRIEF FACTS OF THE CASE :

2. Assessee is a Private Limited Company carrying on the business of Civil Contracts. It filed return of income on 03-02-2022. The case was selected for scrutiny under CASS. It was noticed by the AO that assessee made substantial purchases from suppliers who are either Non-filers or have filed non-business or reflected substantially lower turnover in ITR. He thus formed an opinion that income escaped assessment. Statutory notices calling for certain information were issued and the assessee filed written submissions. Eventually, the AO vide impugned order u/s.143(3) of the Act completed assessment determining total income at Rs.19,10,63,740/-and made certain disallowances. On an appeal before the CIT(A), the CIT(A) dismissed the appeal of the assessee *in limine* confirming

the additions made by the AO. Being aggrieved by the order of CIT(A), the assessee is in appeal before the Tribunal.

SUBMISSION OF LD. AUTHORISED REPRESENTATIVE (AR):

3. The ld. AR filed a voluminous paper book containing 1235 pages. Ld. AR invited our attention and submitted that an elaborate submission was made before the ld. CI(A). Ld. AR invited our attention to pages 1191 to 1201 of the paper book to demonstrate that elaborate submissions was made before the ld. CIT(A). Page No.1191 was a screenshot of the Income-tax Website showing the submissions of the assessee along with its attachment. Ld. AR submitted that inspite of making elaborate submissions, the ld. CIT(A) has not considered the submission and merely confirmed the assessment order without discussion on merits.

SUBMISSION OF LD. DEPARTMENTAL REPRESENTATIVE (DR) :

4. The ld. DR relied on the order of the CIT(A) and Assessing Officer.

FINDINGS AND ANALYSIS :

5. We have heard both the parties and perused and records. On perusal of the ld. CIT(A)'s order, it is observed that ld.CIT(A) has merely confirmed the additions without discussing merits of the additions. It has been alleged that assessee has not submitted details. However, on perusal of the page 1191 of the paper book it is observed that assessee had uploaded voluminous documents. These documents have been filed by the assessee in the paper book. Thus, though assessee had filed elaborate submissions and voluminous documents, the ld.CIT(A) has not considered these documents and confirmed the additions without discussing the documents filed by assessee. In these facts and circumstances of the case, we set aside the order of ld. CIT(A) to the ld.CIT(A) for *denovo* adjudication.

Ld.CIT(A) shall give opportunity to the assessee. Ld.CIT(A) shall consider the submission of the assessee and decide the case on merits. Accordingly, grounds of appeal are allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 26th March, 2024.

Sd/-	Sd/-
(PARTHA SARATHI CHAUDHURY)	**(DR. DIPAK P. RIPOTE)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 26th March, 2024
*Satish**

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT, concerned.
4. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण 'A' Bench, / DR, ITAT, "A" Bench.
5. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune