

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.249/PUN/2024
निर्धारण वर्ष / Assessment Year: 2015-16

Sankalp Engineering and Services Private Limited, Gat No.1093/1 and 1093/2, Village Karandi, Chakan Shikharpur Road, Tal. Shirur, Pune- 412208. PAN : AAJCS8026N	Vs.	ACIT, Circle-10, Pune.
Appellant		Respondent

Assessee by : Shri Paresh Shaparia
Revenue by : Shri Ajay Kumar Keshari
Date of hearing : 12.06.2024
Date of pronouncement : 15.07.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 30.12.2023 passed by LD CIT(A)/NFAC for the assessment year 2015-16.

2. The appellant has raised the following grounds of appeal :-

- "1. Non grant of video conference hearing leading to no proper and reasonable opportunity whereby violating natural justice.*
- 2. Disallowance u/s 36(1)(va) of Rs.24,01,326/- on account of delayed payment as per relevant act for employees contribution to PF/ESIC.*
- 3. Non conclusion of disallowance of Rs.45,14,920/- as unexplained income u/s 68.*

4. *Confirming the protective addition on account of decrease in value of WIP of Rs.7,15,94,000/-.*
5. *The appellant craves leave and reserves the right to add, alter, amend, modify or delete any of the ground/s before or during the course of the hearing. The appellant reserves the right to produce additional evidence before or during the course of the hearing. Each one of the above grounds of appeal is without prejudice to the other.”*

3. The facts, in brief, are that the assessee is a company incorporated under the provisions of the Companies Act, 1956 on 02.02.2006. The appellant is manufacturer of various engineering products, such as coupling, pumps, joints, forged and machine components, etc. company business has been focused primarily to cater to the global Oil and Gas industry. The original Return of Income was filed on 29.01.2015 declaring loss of Rs.37,81,42,685/- after claiming refund of Rs.2,89,890/-. A survey u/s 133A of the IT Act was conducted on the business premises of the appellant on 20.01.2016. To give effect to overvaluation of stock in F.Y. 2012-13 and revaluation of stock in F.Y. 2013-14, the assessee filed revised return of income on 21.03.2016 declaring loss of Rs.24,21,03,789/- which was duly accepted by the A.O. without accepting the revaluation of stocks in earlier years. The assessment order was passed u/s 143(3) on 30.12.2017 assessing the loss at Rs.23,51,61,513/-. The difference between the revised

returned income of Rs.24,21,03,789/- and assessed income of Rs.23,51,61,513/- is on account of the following :-

1. Addition on account of interest income from MSEB amounting to Rs.26,030/-.
 2. Disallowance u/s 36(1)(va) on account of delayed payments as per relevant Act for Employee contribution to PF/ESIC amounting to Rs.24,01,326/- treating the same as income from other source u/s 56(2)(ia) r.w.s 2(24)(x).
 3. Disallowance of Rs.45,14,920/- as unexplained income u/s 68 based on page 1 of Diary found at the time of survey on 20.01.2016.
 4. Protective addition on account of decrease in value of WIP of Rs.7,15,94,000/- due to pendency of CIT(A) order for A. Y. 2013-14 & A. Y. 2014-15.
4. Being aggrieved with the above assessment order dated 30.12.2017 passed u/s 143(3) of the IT Act, the assessee preferred first appeal before LD CIT(A). Being unsatisfied with the contentions of the assessee, LD CIT (A)/NFAC, vide order dated 30.12.2023 dismissed the appeal of the assessee. Assessee then preferred an application for rectification u/s 154 of the IT Act

before LD CIT(A)/NFAC & also preferred 2nd appeal before this Tribunal.

5. At the time of hearing before us LD AR did not press ground of appeal no.1 regarding non-grant of video conference hearing. Therefore, the same is dismissed as such. In the second ground of appeal LD AR submitted before us that LD CIT(A)/NFAC was not justified in dismissing the ground regarding disallowance u/s 36(1)(va) of Rs.24,01,326/- on account of delayed payment as per relevant Acts for employees contribution to PF & ESIC. It was contended that such payments were made prior to the due dates of filing of return of income u/s 139(1) of the IT Act, hence allowable. We find that Hon'ble Supreme Court has already decided this issue in favour of revenue in the case of Checkmate Services (P.) Ltd. vs. CIT, 448 ITR 518 (SC), hence respectfully following above judgement we dismiss the second ground of appeal raised by the assessee. LD AR in third ground of appeal, challenged the addition of Rs.45,14,920/- as unexplained income u/s 68 of the IT Act. It was submitted before us that the order passed by LD CIT(A)/NFAC in this regard is not conclusive & non-speaking. Therefore, it was requested to delete the addition. In 4th ground of appeal the protective addition of Rs.7,15,94,000/- on account of decrease in WIP is challenged before us.

6. LD DR supported the order passed by subordinate authorities & requested to confirm the same.

7. We have heard LD Counsels from both the sides & perused the material available on the records. We have already dismissed the ground of appeal no.1 as not pressed. Ground of appeal no.2 is also dismissed in the light of Judgement of Hon'ble Spreme Court in the case of Checkmate Services (P.) Ltd. vs. CIT, 448 ITR 518 (SC). Now, effectively there remains only two grounds i.e. 3rd & 4th, for our consideration.

8. As regards to the ground no 3 of the appeal , we find that the order passed by LD CIT(A)/NFAC confirming the addition of Rs.45,14,920/- as unexplained income u/s 68 of the IT Act on the basis of entry on one page of the diary which was seized during survey is nonspeaking one. We find that LD CIT(A)/NFAC has not given any specific finding regarding confirmation of the addition. It was the submission of the counsel of the assessee that merely on the basis of a piece of paper & without any corroborating evidence of money trail the addition cannot be made. It was further contended by the counsel of the assessee that the AO is required to conduct an independent enquiry & ascertain whether cash payment is made or not. No such exercise has been made by the AO & the addition is merely based on assumption, surmises

and presumption and without any corroborative evidence. In support of its contention the assessee placed reliance on the following decisions :-

- (i) PCIT vs. Nishant Construction (P.) Ltd., 101 taxmann.com 180 (SC)
- (ii) DCIT vs. Sunil Kumar Sharma, 159 taxmann.com 179 (Kar.)
- (iii) ACIT vs. Shanker Nebhumal Uttamchandani, 161 taxmann.com 536 (Surat – Trib.).

9. We find force in the arguments of the ld. counsel of the assessee & therefore set-aside the order passed by LD CIT(A)/NFAC to re-adjudicate the issue of addition of Rs.45,14,920/- as unexplained income u/s 68 of the IT Act by passing a speaking order. Thus, the ground no.3 is allowed for statistical purposes.

10. As regards to the ground no.4, we find that LD CIT(A)/NFAC has confirmed the protective addition on account of decrease in work in progress of Rs.7,15,94,000/- on the ground that the appeal for assessment year 2014-15 is not yet decided. In this regard we find that the first appeal for Asstt Year 2014-15 has already been decided by LD CIT(A) on 28.03.2018, therefore, the reasoning given by ld. CIT(A) for sustaining the above addition is

not correct. We therefore deem it appropriate to set-aside the issue of protective addition to the file of the ld. CIT(A)/NFAC for fresh adjudication in the light of correct facts. Thus, the ground no.4 is allowed for statistical purposes.

11. Needless to say, the ld. CIT(A)/NFAC shall decide the above ground nos.3 and 4 after providing reasonable opportunity of hearing to the assessee.

12. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 15th July, 2024.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 15th July, 2024.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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