

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI NARENDRA KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.3404/M/2024
Assessment Year: 2014-17**

Gammon- SPSCPL JV Gammon House, Veer Savarkar Marg, Prabhadevi S.O., Mumbai- 400025. PAN: AACAG3293N	Vs.	Assistant Commissioner of Income Tax, Circle 22(1) Piramal Chamber, Lal Baug, Parel, Mumbai- 400012.
(Appellant)		(Respondent)

Present for :

Assessee by : Ms. Vinita Shah, A.R.

Revenue by : Ms. Nayana Krishnakumar- Sr. A.R.

Date of Hearing : 26 . 08 . 2024

Date of Pronouncement : 28 . 08 . 2024

O R D E R

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short]

vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1054604280(1)

Dated 11/06/2024 for the Assessment Year 2016-17.

2. Following grounds of appeal have been raised by the appellant:

1. *“On the facts and circumstances of the case as well as in law, the Learned CIT (A) has erred in passing the ex-parte order without granting sufficient opportunity of being heard to the appellant.*
2. *On the facts and circumstances of the case as well as in law, the Learned CIT (A) has erred in confirming the action of the Learned Assessing Officer in making an addition Rs.4,61,36,109/- as alleged unaccounted income/suppressed sales being the difference between receipts as per AIR (26AS) and Profit and loss account, without considering the facts and circumstances of the case.*
3. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) as well as the Learned Assessing Officer has erred in not appreciating the fact that the difference in receipts was due to refundable mobilization advances received by the appellant which was not in nature of income, without considering the facts and circumstances of the case.*
4. *The appellant craves leave to add, amend, alter or delete the said ground of appeal.”*

3. The facts of the case, in brief, are that the Assessee is an AOP Joint venture formed by two co-ventures, viz., 1) M/s. Gammon Engineers and Contractors Pvt. Ltd., and 2) M/s SP Singla Constructions Pvt. Ltd. for the purpose to bid and execute the construction work of four laning of NH-37A from Km 0.0 (Kaliabor Tiniali Road junction) to Km 17.300

(Dolabari Road Junction) including construction of new Brahmaputra Bridge on EPC basis in the State of Assam under the Phase A of SaRDP-NE Project. As per the terms of the Joint Venture, the party shall execute the said contract jointly. Further as per the terms of Joint Venture, each party shall share the work in ratio of 55% and 45% respectively. Various notices were sent to the assessee seeking details of the Sales, Sub-Contracting Expenses, Finance cost and other expenses incurred in relation to the work executed. Query were also raised seeking an explanation as to why the results declared in the books of account be rejected and profit be estimated @ 8% of the revenue as the major payments were made to the related parties.

4. The assessee has filed return of income on 30/11/2016 declaring Total Income at Rs. Nil. The return was processed u/s 143 (1) and the case was selected for Scrutiny under CASS and statutory notice u/s. 143(2) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') was issued on 04.07.2017 and duly served upon the assessee. Subsequently, notices u/s. 142(1) of the Act was issued to the assessee electronically. In response to the notices, details were submitted by the assessee online electronically.
5. The AO has noted in the assessment order that though, some details were filed by the assessee but they were only some basic details. However, it

didn't produce necessary records for verification or for third party enquiry. The details filed by the assessee are given as under:-

- i. The JV did not carry out any work and as such was totally depended on its sub- contractors to execute the work by giving sub-contract on a back to back basis.
- ii. The JV Partners did not make any capital contribution or investment into JV for execution of the contract awarded to it.
- iii. The JV did not have any plant and machinery, equipments or any other infrastructure to execute the contract awarded to it.
- iv. The JV did not incur any expenses for the execution of the sub-contract works.
- v. The JV did not have even an office or set up for execution of the contract works.
- vi. The JV does not have the required technical qualified personnel on its rolls to execute the contract works
- vii. The JV did not have any funds/ resources or capital contribution from its members for execution of contract works.

- viii. The JV did not have requisite banking facilities by way of term loan, working capital loan, guarantee limits etc. Without which the contract works cannot be executed.
- ix. The JV has not borne any risk and responsibilities of the contract and has passed on the entire risk and responsibilities with respect to execution of the said sub-contract works to the sub-contractor, its members.
6. It was, further, submitted that since the JV has not actually executed any sub-contract work, no profit beyond 1% of the Turnover could be attributed to the JV and therefore, no profit beyond 1% can be estimated in the hands of the JV from the sub- contract business as the JV did not carry any risks and responsibilities of the sub- contracted work execution. Hence, the question of attributing any proportion of Gross contractual Receipts for the risk and responsibilities in the hands of the JV by estimating any profits in the hands of JV does not and cannot arise.
7. The AO analyzed the above submissions and found that the main contention of the assessee was that it has not been carrying any risk and responsibilities and without actually executing the contract work it has shown the net profit of Rs.1,32,46,651/- during the Financial Year 2016-2017 (Assessment Year 2017-2018). Hence, the proposal of invoking the

provisions of Section 145(3) of income tax Act 1961 and estimation of profit @ 8% is not correct.

8. After considering the above submissions, the AO held that the contention of the assessee of having 1% profit, does not match with financial results produced before us and hence, it can be firmly stated that the assessee is not sure of the results of its own books of accounts. The financial statement produced before us shows that assessee has claimed Subcontracting expenses of Rs.63,07,71,227/- and other expenses of Rs.18,85,837/- which ultimately leaves the profit of Rs.1,32,46,651/-, which works out to be 2.06% of the Gross Revenue of Rs.64,45,41,284/
- The AO has further stated that when the entire work was sub-contracted, the assessee should not claim any other expenses. The assessee has also failed to establish its claim of 1% net profit by producing any evidence to that effect. The work was executed by the members and their associates and sub-contract expenses have been charged against revenue, it is not right to state that JV has not earned the profit or has earned very little profit because it has neither executed the work nor deployed any resources in execution of the work. This proposition is not acceptable. In view of the forgoing facts and observations, the AO held that the Co-venturers have, for their own purposes and benefits, not declared the

income / profits in the hands of the assessee JV, which is separate taxable entity as far as Income Tax Act 1961 is concerned, and have deliberately and intentionally included such income / profits in their books in order that the exact profits are not distinguishable easily in the complexities involved in their own books, given the wide range of their activities and operations. Further, keeping in mind the fact that similar placed assessee JVs, in the same line of business activity as the assessee is in, who are getting such infrastructural construction activities executed by the constituent members on the back to back basis are offering taxable income ranging from 5% to 10% of the gross contractual receipts. In the given circumstances, the book results of the assessee are to be rejected by invoking section 145 of the income tax act 1961 and profit from contract receipts estimated at 4% of the Contractual Receipts of Rs.64,49,83,275/- declared by the assessee which works out to Rs.2,57,99,331/-, Accordingly Rs.2,57,99,331/- is taxed as business Income.

9. Aggrieved by the order of the Ld. AO, the assessee filed appeal before the Ld. CIT (A). The Ld. CIT(A) dismissed the appeal of the assessee on the ground that the assessee did not pursue his appeal before the Ld. CIT(A) and did not furnish any supporting documentary evidence or

written submission despite having been given sufficient opportunity of being heard.

10. Aggrieved by the order of the Ld. CIT (A), this appeal has been filed.

During the appellant proceedings before us, the assessee filed an affidavit as under:-

“ Shri Anupam Das, Indian Habitant, Adult, and Member of Gammon-SPSCPL JV, having Office situated at Gammon House, Veer Savarkar Marg, Prabhadevi 5.0, Mumbai 400025, Maharashtra, India do hereby state on solemn affirmation as under:

- 1) That, the appellant above named had filed an appeal before the Hon'ble CIT(A) being aggrieved by the Assessment order passed u/s.143(3) of the Income Tax Act, 1961 on 24.12.2018 for the A.Y. 2016-17, where in the Learned Assessing Officer has made an addition of Rs.4,61,36,110/ on account of alleged unaccounted income/suppressed sales being the difference between receipts as per AIR(26AS) and Profit and loss account.*
- 2) Being aggrieved by the said assessment order u/s 143(3) of the Income Tax Act, 1961 the appellant preferred an appeal before the Hon'ble CIT(A). This assignment was given to the Mr. Sunil Bahadur. He did not attend the notices sent by the Hon'ble CIT(A) and also did not informed the management about the said appeal. Consequently, the Hon'ble CIT(A) passed ex parte order dated 26.07.2023, dismissing the appeal.*

- 3) *The appellant was not aware of the fact that ex-parte order was passed as the concerned employee left the job without informing the management. As the lead company being the JV partner is undergoing restructuring, it was required to inform the new investors about the assessment status of entire period of companies as well as its JVs, at that point of time it came to the notice of the management that CIT (A) has passed the ex-parte order in July 2023 and no further appeal has been filed in ITAT. Hence, there is a delay in filing appeal before Your Honour.*
- 4) *Hence, the appellant is making this affidavit in support of its application for condonation of delay in filing of an appeal before Hon'ble Tribunal.”*

11. We have considered the above submissions and think it proper to remand the matter back to the file of the Ld. CIT (A) to decide the issue on merit after affording reasonable opportunities of being heard to the appellant considering the non-compliance due to Covid-19 Pandemic. The appellant is also directed to make compliance before the Ld. CIT (A) and explain its case on merit.

12. In the result, the appeal is allowed for statistical purpose.

Order pronounced in the open court on 28.08.2024.

Sd/-
NARENDRA KUMAR CHOUDHRY
JUDICIAL MEMBER

Sd/-
RATNESH NANDAN SAHAY
ACCOUNTANT MEMBER



Mumbai, Dated: 28.08.2024.

Snehal C. Ayare, Stenographer

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.