

IN THE INCOME TAX APPELLATE TRIBUNAL

"F" BENCH, MUMBAI

BEFOREMS. PADMAVATHY S, ACCOUNTANT MEMBER AND

SHRI. SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3587/Mum./2024

(Assessment Year :2018-2019)

JPE And DK Infra (JV)

1301, Rajul Apartment, Nepeansea Road,

Mumbai - 400006.

PAN - AACAJ649M

..... Appellant

v/s

Assessing Officer,

National E-Assessment Centre, Delhi

Jurisdictional Assessing Officer,

Income Tax Officer 19 (1)(1),

Piramal Chamber, Parel,

Mumbai - 400013.

..... Respondent

Assessee by :Shri. Anant Pai

Revenue by :Shri. Surendra Meena Sr. DR

Date of Hearing - 27/08/2024

Date of Order -01/10/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 24/05/2024 passed under section 250 of the Income Tax Act, 1961 ("the Act"), by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi. ["learned CIT(A)"], for the assessment year 2018-19.

2. In this appeal, the assessee has raised the following grounds: –

"1) Assessing Officer has erred in passing an Order making an addition of Rs 5751000

2) Assessing Officer has not appreciated all the facts of the case

3) Assessing Officer has overlooked the Ledger account copy of Ms.JP Enterprises which was furnished which revealed that they have accounted the entire receipts of Rs. 71893817 from the JV as Contract Receipts in FY 2017-18 i.e. AY 2018-19.

4) Financial Statements of Ms. JP Enterprises were submitted which reflect total Contract Receipts of Rs. 98,37,74,373 plus Rs. 26,88,37,733 is equal to Rs.125,26,12,106. This Contract Receipts included the Receipt from JPE DK Infra JV. Ms. J. P. Enterprises has executed the work and offered for taxation the income earned on receipts from the appellant. The present addition made by estimating NP at 8 percent would lead to taxation of an income never earned by the assessee.

5) Your Appellant submits that except the bidding for the tender the JV has not undertaken any activity for execution of the work and has subcontracted the said work Having sub contracted the entire work at par i.e at the same price as it is paid by the principals there is no income earned by the JV and therefore the addition made to the income is unjustified and is prayed to be deleted

6) Your appellant submits that the bank accounts submitted reveal that the amount received has been paid as Sub contract with due compliance to the provisions of TDS

7) Your Appellant submits that Ms. JP Enterprises the firm which has undertaken the Sub Contract has already offered to tax the income earned on all its Contract Receipts including the Contract receipts from the JV. The addition made to income in the hands of the JV amount to double taxation in respect of the same income.

8) Your Appellant submits that there is a justified reason offered with reference to the TDS claimed and the NIL income. Sub Contract of the work means that the risks and rewards are shifted from the JV the sub contractor Your Appellant submits that it is not the case that a revenue item is escaping taxation in its entirety. Sub Contractor has offered the income earned in its tax returns and therefore the addition made is unjustified and is prayed to be deleted.

9) Your Appellant prays that they may be allowed to add or alter the Grounds of Appeal."

3. The brief facts of the case are that the assessee is a civil contractor and has been allotted work of construction of roads in Nagpur by the Nagpur

Municipal Corporation. The assessee is a Joint Venture between M/s J.P. Enterprises, a partnership firm and M/s D.K. Infrastructure Private Limited. Both entities are civil contractors and execute various types of civil construction for various government and semi-government agencies. For the year under consideration, the assessee filed its return of income on 29/10/2018 declaring a total income of Rs. Nil. The return filed by the assessee was selected for scrutiny through CASS and statutory notices under section 143(2) and section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, the assessee was asked to furnish the details of persons to whom sub-contract payment amounting to Rs. 7,18,93,817 was made as per the trading profit and loss account along with bank account details through which the payment has been made and details of TDS deducted on it. In response, the assessee furnished the requisite details. Upon perusal of the same, it was noticed that the work was awarded to the assessee and the same was sublet to the lead member M/s J.P. Enterprises without retaining any profit. As per the assessee, no profit was earned by the assessee and therefore, no income was offered for tax. However, the assessee claimed a refund of all the TDS deducted by the Nagpur Municipal Corporation. After considering the details filed by the assessee, the Assessing Officer ("AO") vide order dated 06/04/2021 passed under section 143(3) read with section 143(3A) and section 143(3B) of the Act did not agree with the submissions of the assessee and held that no prudent businessman will transfer the whole contract receipts to any other person without retaining any profit margin.

The AO further noticed from the financials of M/s J.P. Enterprises that no sub-contract receipts from the assessee were reflected in the profit and loss account of M/s J.P. Enterprises. Accordingly, the AO proceeded to make an addition of Rs. 57,51,500, i.e. 8% of the total receipts of Rs. 7,18,93,817.

4. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and held that the assessee has not been able to support its claim with complete supporting documents and thus not able to rebut the observations made by the AO in the assessment order. Being aggrieved, the assessee is in appeal before us.

5. We have considered the submissions of both sides and perused the material available on record. In the present case, the assessee is a Joint Venture and was awarded the contract for the construction of concrete roads in Nagpur by the Nagpur Municipal Corporation. As per the Memorandum of Understanding for Joint Venture Agreement entered into on 05/04/2016, finance required by the parties was required to be provided in the profit-sharing ratio, i.e. M/s J.P. Enterprises to introduce 70% and M/s D.K. Infrastructure Private Limited to introduce 30%. However, vide letter dated 01/09/2016, M/s D.K. Infrastructure Private Limited due to financial constraints expressed its inability to provide the finance for the work and to arrange manpower and machinery, etc. as agreed upon in the MOU. M/s D.K. Infrastructure Private Limited further agreed that the work may be executed by undertaking a sub-contract from the Joint Venture with no retention from the contract receipts. As per the assessee, the agreement for

sub-contract was made and the entire work was sub-contracted by the assessee to M/s J.P. Enterprises. Thus, the work was awarded to the assessee and the entire work was sublet/sub-contracted to the lead member, i.e. M/s J.P. Enterprises without retaining any profit by the assessee. In this regard, the assessee has also placed on record the bank statement of the account maintained with the Bank of Maharashtra, which forms part of the paper book from pages 23-25, to support the submission that the amount received in cheque from the Nagpur Municipal Corporation was transferred to M/s J.P. Enterprises. In this regard, the trading profit and loss account, forming part of the paper book on page 16, was also placed reliance upon to support the submission that Nil profit was retained by the assessee and the entire amount received from the Nagpur Municipal Corporation was sub-contracted to M/s J.P. Enterprises. However, the lower authorities did not agree with the submissions of the assessee and estimated the income of the assessee @ 8% of the contract receipts on the basis that no prudent businessman would transfer the whole contract receipts without retaining any profit margin.

6. In the present case, it is undisputed that even though the assessee was constituted as a Joint Venture, however, due to the financial constrain of one of the members, the entire financial contribution, manpower and machinery was arranged by the lead member, i.e. M/s J.P. Enterprises. The assessee claims that the entire contract receipts received from the Nagpur Municipal Corporation were transferred to M/s J.P. Enterprises without retaining any profit. However, it is pertinent to note that the assessee is a

Joint Venture and thus is a separate taxable entity. Further, in the said capacity, the assessee is receiving the contract receipt from the Nagpur Municipal Corporation for the execution of work assigned to it after the deduction of tax, which has been claimed as a refund by the assessee. It is also an admitted fact that an agreement for sub-contract was made between the assessee and M/s J.P. Enterprises and the entire work was sub-contracted. Further, it is pertinent to note that the assessee itself has claimed the payment to M/s J.P. Enterprises as a sub-contract payment and treated it as an expense in its trading profit and loss account. Such being the facts, we do not find any infirmity in the findings of the lower authorities in concluding that no prudent businessman would transfer the whole contract receipts without retaining any profit margin. However, we are of the considered view that the estimation of the income of the assessee @ 8% of the contract receipts is on an ad-hoc basis which lacks legal sanctity. The fact that M/s J.P. Enterprises is a lead member of the assessee Joint Venture and now has substantial/complete interest in the assessee is also not disputed. Thus, we are of the considered view that before estimating the income of the assessee the procedure as laid down in the provisions of section 40A(2) of the Act is required to be followed. Accordingly, in order to compute the income of the assessee as per the provisions of section 40A(2) of the Act, we restore the issue to the file of the Jurisdictional AO. We direct that no order shall be passed without affording the reasonable and adequate opportunity of hearing to the assessee. With the above directions, the

impugned order is set aside and the grounds raised by the assessee are allowed for statistical purposes.

7. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 01/10/2024

**Sd/-
PADMAVATHY S
ACCOUNTANT MEMBER**

**Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

MUMBAI, DATED: /2024
Poonam Mirashi, (Stenographer)

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai