

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : F : NEW DELHI

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.6861/Del/2018
Assessment Year: 2015-16

ACIT,
Circle-19(2),
New Delhi.

Vs PCI Precision Casting Ltd.,
Plot No.300, Sector-6,
IMT Manesar,
Haryana.

PAN: AAHCP7551P

(Appellant)

(Respondent)

Assessee by : Shri Satish Agrawal, CA
Revenue by : Shri Mandeep Pawar, Sr. DR
Date of Hearing : 24.09.2024
Date of Pronouncement : 17.10.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Revenue against the order dated 21.08.2018 of the Commissioner of Income Tax (Appeals)-7, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No. 10165/156/CIT(A)-7/Del/2017-18 arising out of the appeal before it against the order dated 09.11.2017 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the ACIT, Circle 19(2), New Delhi (hereinafter referred to as the Ld. AO).

2. Brief facts of the case are that the assessee filed its return of income on 30.09.2015 for the A.Y. 2015-16 disclosing loss of Rs. 1,60,73,482/-. The case was selected for scrutiny assessment under CASS. Order u/s 143(3) was passed on 09.11.2017, assessing the income at Nil after disallowance of business loss of Rs.21,60,73,482/-.

3. On hearing both the sides it comes up that the assessee company was incorporated on 08.07.2014 to take over the running business of Casting Division of M/s PCI Limited. It purchased the Casting Division of PCI Limited on slump sale basis w.e.f 01.01.2015 at net consideration of Rs.1,55,60,600/-. The assessee company had requested its parent company M/s PCI Limited to conduct business activities during the period 1st January 2015 to 31st March 2015 in its name after slump sale on its behalf and to its account. The same was associated as the name change from M/s PCI Ltd to M/s PCI Precision Casting Ltd as vendor in the record of major customer M/s BHEL was becoming difficult due to proposed change being in the Financial Year 2014-15.

3.1 The activities of the casting unit which was purchased by the assessee company on a slump sale basis w.e.f. 01.01.2015 were agreed to be continued by M/s. PCI Ltd for the three months period of 01.01.2015 to 31.03.2015 to meet business exigencies. The slump sale agreement entered into between the parties specifically empowered the company to enter into an agreement with M/s. PCI Ltd, for conducting business activities on its behalf.

3.2 The business activities for the three months period from 1st January 2015 to 31st March, 2015 were conducted by PCI Ltd on its behalf as a commercial arrangement. The assessee company and M/s. PCI Ltd both had incurred losses and the assessee company had no motive in conducting the business of casting unit on its behalf for the period 01.01.2015 to 31.03.2015 through PCI Ltd.

3.3 The assessee replied during the course of assessment proceedings that the same was done to meet business exigencies. The main customer of the assessee was government owned Bharat Heavy Electricals Ltd (BHEL) and the company had to be registered as a vendor with BHEL before it could supply goods in its own name. The matter had been under discussion with the top management of BHEL. BHEL, Haridwar was to be supplied 5-7 number MOP assembly before 31.03.2015. However, the assessee company was to be registered as a separate vendor for which purpose BHEL Ltd, Haridwar was to be taken into confidence and also assured that the change of name from PCI Ltd to M/s. PCI Precision Casting Ltd would not result in any disadvantage to the customer in terms either of the quality of product, delivery or Cenvat benefit as were being earlier made available through M/s PCI Ltd. The Company had to maintain business relations and also not jeopardize its orders. The business for three months was conducted through M/s. PCI Ltd despite the sale of casting unit as slump sale to the appellant company in view of business exigencies.

3.4 The case of assessee is that the various averments of the Assessing Officer do not have any revenue implication as the parent company M/s. PCI

Ltd and M/s. PCI Precision Casting Ltd both had incurred huge losses. In case the loss is not allowed in the case of M/s. PCI Precision Casting Ltd on the reckoning that the business activities during the period 01.01.2015 to 31.03.2015 were conducted by M/s. PCI Ltd, the loss claimed by the assessee has to be allowed in the case of M/s. PCI Ltd.

4. The assessing officer had denied the claim of loss claimed by the assessee company due to following broad propositions: -

(a) That casting business which was the subject matter of slump sale was being carried on by M/s PCI limited in its own name and not in the name of the assessee company, therefore, slump sale was effectively made w.e.f 01.04.2015 and not from 31.12.2014.

(b) That the agreement of Slump Sale was entered into and executed on 09/03/2015 & 11/03/2015 respectively which was after the date of slump sale declared by the assessee effective from 31/12/2014.

(c) That the Stamp paper for the purpose of Slump Sale Agreement was dated 12/02/2015.

(d) That no communication was submitted from the customers expressing their inability to conduct business with the assessee company.

(e) That no TDS compliance was made by the assessee company.

f) That there is no evidence to show there was reluctance of the customers to undertake business with the appellant company after 1st January, 2015 in view of which the slump sale deserves to be made effective from 01.04.2015.

5. However, the Ld. CIT(A) allowed the appeal of assessee for which the Revenue has come in appeal raising the following grounds:-

“1. “Whether on the facts and under the circumstances of the case, the Learned CIT (A) has erred both on facts and in law in deleting the addition of Rs. 1,60,73,782/- made by the assessing officer on account of disallowance of business losses, as no business was carried out by the assessee company during the year under consideration and casting business was being carried out by M/s PCI Ltd. in its own name?”

2. Whether on the facts and circumstances, the Ld. CIT (A) has erred in holding that the slump sale was effect from 31.12.2015 and not from 1.4.2015 despite the fact that agreement of slump sale was entered into and executed on 9.3.2015 and 11.3.2015 respectively and stamp paper for the purpose of slump sale agreement was dated 12.02.2015.

3. Whether on the fact and circumstances of the case, the Ld. CIT (A) had erred both on facts and law in deleting the addition made by the assessing officer despite the fact that no tax has been deducted at source by the assessee on expenses of Rs.1,24,12,254/- (other than depreciation of Rs. 36,25,937/-) debited in its P&L account either u/s 194C of the I.T. Act on account of contractual payments or under section 194J of the Act on account of royalty payment and therefore these expenses were not allowable under section 40(a)(ia)of the Act?

4. The appellant craves to be allowed to add any fresh ground(s) of appeal and/or delete or amend any of the ground(s) of appeal. ”

6. Heard and perused the record. The ld. DR has submitted that the ld.CIT(A) has failed to take into consideration the fact that by a retrospective arrangement the assessee company has made the claim of loss while there was no business operation.

7. On the other hand, the Id. AR has supported the findings of the Id.CIT(A) and reasserted the submission as made before Ld.FAA.

8. We have given thoughtful consideration to the matter on record and what we find material from the slump sale agreement (clauses 7.4.1 and 7.4.5) available at pages 1 to 5 of the paper book, that it is established that as a part of the arrangement, it was agreed at the time of agreement itself that as a transition support the seller PCI Ltd. *“shall operate business in the name of PCI Precision Casting Limited independently after getting registration under Excise Act, VAT Act, Service Tax Act and Factories Act, till then the business shall be done in the name of seller for which seller shall transfer all cost/revenue to the buyer.”*

8.1 Further it was agreed that *“Without limiting the foregoing, for a period of 6 (Six) months, the Seller shall make reasonable endeavours to provide all cooperation and assistance to the Buyer as the Buyer may reasonably request to enable the Buyer to conduct the INVESTMENT CASTING AND PRECISION ENGINEERING BUSINESS in the Ordinary Course of Business and provide industrial relations expertise and legal support.”*

9. We are of the considered view that the Ld. AO was quite oblivious of the fact that when a slump sale was on running business basis and there were pending contracts, then, the parties were very much in their right for making arrangements of the transitional period. The business prudence of parties is not to be questioned unless the arrangement is alleged to be in any way a decoy for

evading upcoming tax liability on either of the entities. Thus, there was no justification with the Ld. AO to hold that because there was no business during the period of three months, the assessee is not entitled to claim of loss.

10. There is substance in the contention of the ld. AR that as the parent and subsidiary were both in losses, there can be no justification for making an allegation of evasion of tax liability on the basis of the assessee claiming the loss during the transitional period as otherwise the said loss would have been added to parent company. The findings of ld. CIT(A) deserve no interference. The grounds have no substance . **The appeal of Revenue is dismissed.**

Order pronounced in the open court on 17.10.2024.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Dated: 17th October, 2024.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi