

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "A" New Delhi

BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No: 2960/Del/2011
Asstt. Year: 2007-08

Income Tax Officer, vs
Ward-2(4),
3rd Floor,
C.R. Building,
I.P. Estate,
New Delhi.
(Appellant)

Beacon Elevator Company Pvt. Ltd.,
B-38D, Sidhartha Extension,
New Delhi.
(PAN: AABCB6573H)

(Respondent)

Appellant by : Shri S.L. Anuragi, DR
Respondent by : Shri M.G. Arora, CA

Date of Hearing : 16.2.2016
Date of pronouncement : 16.05.2016

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

This appeal is preferred by the Department against the impugned order dated 11.3.2011 passed by the Ld. CIT (Appeals)-V, New Delhi for Assessment Year 2007-08.

2. The assessee is engaged in the business of installing elevators and filed its return of income declaring an income of Rs. 4,87,719/-. Due to improper compliance, the assessment was

completed at an income of Rs. 69,68,787/- after making the following additions:-

	(Rs.)
Donations	9000/-
Purchases from Prakash Enterprises	145124/-
Lift Erection Expenses	3120707/-
Fabrication expenses	2247751/-
Audit fee	22472/-
CST Payable	316969/-
CST payable against Commissioner Forms	131044/-
Service tax payable	156390/-
TDS	37669/-
House Tax	2942/-
Printing of Stationery	200000/-
Generator Hiring Expenses	91000/-

3. Before the Id. CIT(A), the assessee filed application under Rule 46A of the Income Tax Rules, 1962 along with additional evidences which were duly considered after obtaining a remand report from the Assessing Officer. The assessee was granted substantial relief and the Department is in appeal against the

relief allowed by the Ld. CIT(A) and has raised the following grounds of appeal:-

- “1. The Ld. CIT(A) has erred on facts and in law in restricting the addition of Rs.1,45,125/- to Rs.37,999/- on a/c of difference from assessee’s books and from confirmation received from M/s Prakash Enterprises ignoring specific findings recorded by the assessee with respect to the above difference.*
 - 2. The Ld. CIT(A) has erred on facts and in law in deleting addition of Rs.31,20,707/-,Rs.22,47,751/- and Rs. 22,472/- on a/c of lift erection expenses, fabrication expenses and audit fee, respectively, ignoring that the assessee failed to produce bills and also TDS deduction remained unverified with the comments in the Tax Audit Report para 27(b)(i) that TDS is not deducted on all payments.*
 - 3. The Ld. CIT(A) has erred on facts and in law in deleting addition of Rs.3,16,969/- on account of CST payable, Rs. 1,56,390/- on a/c of service tax payable, restricting addition of Rs.37,669/- to Rs.3,316/- on a/c of TDS payable, ignoring that additions were made u/s 43 B as the assessee had to pay the dues shown payable as on 31/03/2007 before the filling of tax return.*
 - 4. The Ld. CIT(A) has erred on facts and in law in restricting addition of Rs.2,00,000/- to Rs.90,000/- on a/c of printing & stationery expenses, ignoring that fact that while incurring such expenditure a benefit of enduring nature was drawn by the assessee.*
 - 5. The Ld.CIT(A) has erred on facts and a law in deleting addition of Rs.91,000/- on a/c of generator running expenses, ignoring that the assessee failed to prove the genuineness of the expenditure.”*
4. The Learned Departmental Representative relied heavily on the order of the Assessing Officer and submitted that the Ld. CIT(A) has ignored the findings of the Assessing Officer while granting relief to the assessee. The Ld. AR strongly

supported the impugned order and submitted that the order of the Ld. CIT(A) ought to be upheld.

5. We have heard the rival submissions and have perused the relevant material on record. A perusal of the impugned order shows that the Ld. CIT(A) has discussed the issues at length before recording his finding. As far as ground no. 1 of the appeal is concerned, the same is dealt by the Ld. CIT(A) in paras 2.2 to 2.4 of the order as under:-

“2.2 The next addition in this ground is of Rs.1,45,125/- on account of difference from the assessee's books and from confirmation received from Parkash Enterprises. The A.O has in the remand report stated that the entry passed on 31/3/07 showing purchase of Rs.1,45,125/- was bill no 30 dated 5/9/06 whereas the bill now produced is bill no 30 dated 7/9/05 certain discrepancies and stated that verification of records would have to be made alongwith cross reference from Parkash Enterprises is also required.

2.3 Before me, it has been explained by the a/r present for the appellant that during the relevant year the assessee made purchases from Parkash Enterprises for Rs. 1,45,125/- against bill no 030 dtd. 07.09.2005. But the materials delivered were not upto the satisfaction and hence were rejected. The bill was not accepted but after the materials were rectified and were made in the condition to sell, the r bill was entered in the books of accounts in the Assessment Year 2007-08 on 15.05.2006. The difference in the purchases by the assessee company from M/s Parkash Enterprises during the Assessment Year was

Rs.1,45,125/-which is equal to the value of this bill. The date of the bill dated 7.9.05 was stated to be correct and the error in the books written as 5/9/06 was stated to be clerical error.

2.4 I have considered the remand report as well as the written submission of the appellant. I find that the difference in purchases by the assessee co with the concerned party is equal to the amount of this bill and the explanation submitted by the appellant to be satisfactory, hence the addition is deleted. However, the appellant is showing excess liability of Rs.37,999/- as on 31/3/07 after adjustment of this bill. As the appellant has not been able to explain this satisfactorily, this amount is added back and has been conceded by the appellant. Thus the addition is limited to Rs. 37,999/-.”

6. It is seen that the Ld. CIT(A) has upheld additions of Rs. 37,999/- after due examination of the facts and the Department has not been able to controvert this finding of the Ld. CIT(A) before us also. Hence, we see no reason to interfere with the findings of the Ld. CIT(A) on this issue and uphold the same. Ground no. 1 is dismissed.

7. Ground No. 2 pertains to additions on account of lift erection expenses and audit fee. These issues have been discussed in paras 3.3 to 3.5 in detail in the impugned order as under:-

“3.3 Bill no 636 and 651 of Ramgrahia Engg. works alleged to be not entered has been entered in the ledger

account for Fabrication materials totaling to Rs 201464/- on 20.5.07 and 25.7.06 respectively. I have perused the fabrication material a/c of Rs 201464/- and I find this claim of the appellant to be true. It is seen that the fabrication expenses have two major components (a) fabrication material of Rs. 201464/- and (b) fabrication expenses of Rs 20,46,287. It appears that the A.O has looked for this two bills in the ledger a/c of fabrication expenses and not in the account of fabrication materials. I find that copy of account of fabrication expense showing date wise expenses was filed along with the major bills and are found to be in order, hence the AO's objection that all bills have not been filed and therefore indicates the incorrectness of books of accounts is not justified. It is also seen that compared to immediately preceding year the fabrication expenses is much less in relation to sales. TDS has also been found to be deducted on fabrication charges of Rs 20,46,287/- and deposited on various dates. From the details of fabrication charges filed, it is seen that tax is not deductible only on Rs.2,01,460/- as it is on account of purchase of material and tax is deductible on the balance of Rs.20,46,287/- and has been duly deducted and deposited. Therefore the AO's allegation that tax has not been deducted on fabrication expenses is found to be incorrect.

3.4 With regard to lift erection expenses, the Assessing Officer's objection is that all bills were not submitted and tax has not been deducted. Appellant has responded that only major bills were submitted for test check during remand. It is seen that the remand report has been submitted by the A.O only on the bills filed on sample basis without further giving opportunity to appellant .It is not practicable to file each and every bill as additional evidence and if the A.O had any doubts about the same further opportunity should have been given to the appellant to produce all documents.

It was submitted that lift erection charges have three major blocks comprising of;

- a) Lift erection material of R.s 16,47,570/- No TDS required to be Deducted*
- b) Lift erection charges Rs. 3,07,714/- TDS deducted*
- c) Lift erection material exp Rs. 11,65,423/- No TDS required to be deducted*

3.5 I have carefully considered the remand report as well as the submission of the appellant and I find the claim of the appellant that TDS is not applicable on the material purchase to be correct. I have gone through the bills and I find no infirmity in them and all bills are found duly entered. TDS of Rs 56,496/- @ of 2.4% on Rs 23,54,001 (Rs. 20,46,287/- on fabrication expenses + Rs. 3,07,714 on lift erection charges) has been found to be deducted and deposited within the due dates as given in paper book. As regards the A.O's objection that in the case of Delson international, the figures differ, I find from the notings in the bill, that the assessee's explanation that the appellant tried to negotiate with them for discount but was not successful and had to pay the original amount to be logical.

With regard to non deduction of TDS on RS 22,472/- on audit fee, it was submitted that the above amount comprised of Rs 20,000 audit fee and Rs. 2,472/- as service tax and hence TDS was not required to be deducted. I find the claim of the appellant to be correct.

In view of the above discussion, that TDS has been duly deducted and deposited wherever required, additions on account of Fabrication, Lift Erection and Audit Fees are directed to be deleted.”

8. In the appeal proceedings before us, the Ld. DR could not negate the findings of the Ld. CIT(A) and hence we find no reason to interfere on this issue

also. While upholding the findings of the Ld. CIT(A), we dismiss ground no. 2 of the department's appeal.

9. Ground No. 3 pertains to additions on account of CST payable and service tax payable. The issue has been adjudicated in para 4.2 of the impugned order as under:-

“4.2 I have considered the remand report and the submission of the appellant. With regard to the addition on account of CST, Service tax payable and TDS payable, I find from the details and evidences submitted that the statutory dues have been paid before filing of return except for an amount of Rs 3316 out of TDS payable. As regards CST payable against C form, I am in agree with the appellant/that this is not a statutory liability disallowable u/s 43B. Therefore, the additions are deleted except for Rs.3316/- out of TDS payable which has not been deposited.”

10. In view of the specific finding of the Ld. CIT(A) we dismiss ground no. 3 also.

11. Ground no. 4 pertains to restriction of addition of Rs. 200000/- on account of printing and stationery expenses to Rs. 90000/-. The issue has been discussed in para 6.2 of the impugned order as under:-

“6.2 The submission as well as the order has been considered. The A.O in this case has made an ad hoc disallowance of Rs.2 lacs. After considering the appellants contention that the brochures were only printed leaflets and as is evident from the description given in the bill itself, I agree with the appellant that this cannot be considered as capital expenditure. However I find that TDS has not been deducted on payment of Rs.90,000/- bill no 124 dated 5.2.07.Hence the ad hoc addition is deleted, however the addition to the extent of Rs.90,000/- on which TDS has not been deducted is confirmed.”

12. In view of the findings of the Ld. CIT(A) remaining uncontroverted before us, we dismiss ground no. 4 of the department's appeal.

13. Ground no. 5 challenges the deletion of addition of Rs. 91,000/- on account of generator hiring expenses. The issue has been dealt in para 7.2 of the impugned order as under:-

“7.2 I find that the appellant has given the suppliers name and address, and payments were made by cheques and hence to suggest that no evidence has been submitted is incorrect. I am of the opinion that only because the bills are in running sequence, the same cannot be disallowed without bringing any other reason on record. Hence this addition is directed to be deleted.”

14. In the appeal before us, the Ld. DR could not bring out any fact which could controvert the

findings of the Ld. CIT(A) and hence, we decline to interfere on this issue also. Accordingly, ground no. 5 of the appeal is also dismissed.

15. In the final result, the department's appeal is dismissed.

Order pronounced in the open court on 16th May, 2016.

Sd/-

(S.V. MEHROTRA)
ACCOUNTANT MEMBER

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: the 16th of May 2016
'GS'

Copy of the Order forwarded to:

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

By Order

ASSTT. REGISTRAR