

IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” Bench, Mumbai  
Before S/Shri B.R. Baskaran (AM) & Ramlal Negi (JM)

I.T.A. No. 355/Mum/2017  
(Assessment Year 2010-11)

M/s. Sudhir Brothers Uit-6, GGS Industrial Estate Off Western Express Highway Goregaon East Mumbai-400 063.	Vs.	ITO-31(3)(4) C-408, 4 <sup>th</sup> Floor C-13, Pratyaksh Kar Bhavan BKC, Bandra E Mumbai-400 051.
(Appellant)		(Respondent)

PAN No. AAYFS7940M

Assessee by	Shri Yogesh Thar & Ms. Ritu Panjabi
Department by	Shri Aarsi Prasad
Date of Hearing	13.4.2017
Date of Pronouncement	17.5.2017

O R D E R

Per B.R. Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 14.9.2016 passed by the learned CIT(A)-42, Mumbai and it relates to A.Y. 2010-11. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the following disallowances :

- (a) Addition of ₹ 64,26,260/- relating to purchases
- (b) Disallowance of labour charges of ₹ 20,09,073/-
- (c) Disallowance of labour charges of ₹ 30,80,428/-
- (d) Disallowance of motorcar expenses and depreciation ₹ 1,28,037

2. The assessee is a partnership firm and is engaged in the business of fabrication and assembling of machinery.

3. The first issue was related to the addition of Rs.64,26,260/- relating to purchases. During the course of assessment proceedings, the Assessing

Officer issued notices to the following parties from whom the assessee had purchased goods/services:-

(a) M/s. Ansh Hitech Ventures Pvt. Ltd.	- ₹ 64,26,260/-
(b) M/s. Gautam Engineering Works	- ₹ 20,09,073/-
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	₹ 84,35,333/-
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Notices were returned back by the postal authorities with the endorsement 'not known'. Hence the Assessing Officer took the view that the purchases made from the above said parties were not proved and accordingly added the entire sum of ₹ 84,35,333/- as unexplained expenditure.

4. Before the learned CIT(A), the assessee explained the transactions outstanding in the name of Ansh Hitech as under. It was submitted that the company named M/s. Ducon Technologies (I) Pvt. Ltd. (Ducon in short) had obtained a contract from M/s. Larsen & Toubro Limited (L&T) for supply of Cyclone Separator System. Initially Ducon assigned the contract relating to assembling and fabricating of cyclone separator system to M/s Ansh Hitech. Since L&T was not satisfied with the work of Ansh Hitech, M/s. Ducon cancelled the purchase order placed with M/s. Ansh Hitech and raised a new purchase order on the assessee after mutual discussion. It was agreed by all the concerned parties that the work already executed by M/s. Ansh Hitech would be purchased by the assessee and payment thereof will be paid directly by M/s. Ducon to M/s. Ansh Hitech. Accordingly, M/s. Ansh Hitech raised invoice for a sum of ₹ 64,24,260/- on the assessee in respect of materials supplied to it. As agreed, M/s. Ducon made direct payment of ₹ 60,55,525/- to M/s. Ansh Hitech. The assessee has also furnished a certificate obtained from M/s. Ducon in this regard. The learned CIT(A) called for a remand report from the Assessing Officer. In the remand proceedings, the Assessing Officer issued notices to M/s. Ansh Hitech but the same was again returned back by the postal authority with the noting "unserved/not known". Hence, the Assessing Officer issued commission u/s. 131 of the Act through proper channel to Additional DIT, Raipur for conducting requisite inquiries to M/s. Ansh Hitech.

When inquiries were made with M/s. Ansh Hitech, it filed a letter dated 18.11.2014 confirming the explanation furnished by the assessee. In addition to furnishing copy of letter filed by M/s. Ansh Hitech, Additional DIT, Riapur also forwarded a report, wherein it was submitted that an inspector was deputed to the site of M/s. Ansh Hitech and he has reported that there exists an open plot of land at the given address and the same is situated adjacent to the resident of father in law of the director of the said company. It was also reported that the Vehicle number given in the invoice related to heavy goods carrier. The learned CIT(A), after confronting the remand report to the assessee, proceeded to dispose of this ground. The learned CIT(A) took the view that the purchase order placed by M/s. Ducon with the assessee does not mention about the procurement to be made by the assessee from M/s. Ansh Hitech. He also noticed that the explanation of the assessee with regard to dissatisfaction of the L&T with the work carried out by the M/s. Ansh Hitech was also not substantiated. The learned CIT(A) also referred the ledger account copy of M/s. Ducon as available in the books of M/s. Ansh Hitech and expressed the view that the transaction entered therein are separate and unconnected to the impugned transaction. The learned CIT(A) after pointing out the some more deficiency, took the view that the assessee has not properly explained the nature of transaction and accordingly confirmed the addition of ₹ 64,26,260/- made by the Assessing Officer.

5. With regard to unproved purchase of ₹ 20,09,073/- made from M/s. Gautam Engineering Works, the learned CIT(A) noticed that the sum refers to labour charges relating to fabrication work. Even though the assessee has made payment of ₹ 20,09,073/-, it was seen that the assessee has deducted TDS of Rs.21,643/- by disclosing payment of ₹ 14,40,073/-. In view of the discrepancy of TDS, the learned CIT(A) took the view that the assessee has failed to prove the genuineness of the fabrication work and accordingly confirmed the addition of ₹ 20,09,073/-.

6. The Assessing Officer noticed that the assessee has claimed labour charges of ₹ 13,80,428/- as payment made to Mr. Amol Eknath Mahajan. The Assessing Officer noticed that the assessee has made entire payment by way of cash by making several payments of below ₹ 20,000/-. Since the assessee did not file copy of purchase bill and since the assessee did not offer satisfactory explanation that making payment in cash, the Assessing Officer disallowed the entire expenditure of ₹ 13,80,000/-. Alternatively, the Assessing Officer also invoked provisions of section 40(a)(ia) of the Act for not deducting tax at source from the above said payments. The learned CIT(A) noticed that the bills raised by the above said contractor were found to be net of tax deducted at source. The assessee also could not furnish proper explanation as to why he did not deduct tax at source. Hence, the learned CIT(A) confirmed the addition made by the Assessing Officer.

7. The Assessing Officer also disallowed 20% of the motorcar expenses and depreciation u/s. 38(2) of the Act. Since vehicles of the firm were also used by the partners for non-business purposes, the learned CIT(A) confirmed the same.

8. We heard the parties and perused the record. With regard to the first issue of disallowance of purchases of ₹ 64,24,260/-, the Ld A.R submitted that the assessee has obtained confirmation letters from L & T Ltd and requested to admit the same as additional evidences. He further submitted that the explanations of the assessee have been confirmed by M/s Ducon and also by M/s Ansh Hitech. However, the Ld CIT(A), without calling for explanations from the assessee, has expressed certain views and accordingly confirmed the addition. Accordingly he prayed that the matter requires fresh examination.

9. We heard Ld D.R on this issue and we find merit in the contentions of the assessee, as we noticed that the Ld CIT(A) has confirmed the addition by drawing his own inferences without calling for explanations from the assessee. Since additional evidences have been furnished by the assessee, we are of the

view that this issue requires fresh examination at the end of the AO. Accordingly we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO for examining the same afresh.

10. With regard to the disallowance of Rs.20,09,073/- pertaining to labour charges paid to M/s Gautam Engineering works, we notice that the Ld CIT(A) has confirmed the disallowance u/s 40(a)(ia) of the Act and also on the reasoning that the assessee is unable to prove the genuineness. The Ld A.R submitted that the assessee has proved the genuineness by furnishing supporting bills. He submitted that the payments made by way of cash cannot be a reason to disbelieve the genuineness. He further submitted the issue relating to applicability of provisions of sec. 40(a)(ia) requires fresh examination, as the assessee could not properly represent on this issue before the tax authorities.

11. We find merit in the contentions of the assessee that the payment by way of cash alone does not make the expenditure non-genuine. We notice that the genuineness of the expenditure has been doubted by the tax authorities on this ground alone. Accordingly we set aside the view so taken by the tax authorities. With regard to the disallowance made u/s 40(a)(ia) of the Act, we notice that the tax has been deducted on Rs.14,40,073/- as against the payment of Rs.20,09,073/-. Hence we find merit in the plea of Ld A.R that the issue relating to disallowance u/s 40(a)(ia) requires fresh examination. Accordingly we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO for examining the same afresh u/s 40(a)(ia) of the Act.

12. With regard to the disallowance of labour charges of Rs.13,80,428/-, we notice that the assessee has furnished bill copies by submitting that the concerned party has supplied labourers. However, the TDS has been deducted on an amount of Rs.7,72,428/- only. Further the Ld CIT(A) has found fault with the manner of rising of bill by the said party. It was also noticed that the

payments have been made by way of cash. Hence the genuineness of this expenditure was doubted by the Ld CIT(A) and accordingly he confirmed the disallowance.

13. The case of the assessee is that the genuineness of the expenditure has been proved by the assessee by furnishing the relevant bills. The Ld A.R further submitted that the issue relating to disallowance u/s 40(a)(ia) requires fresh examination. With regard to the genuineness of expenditure, we notice that the assessee has furnished bill copies. We notice that the Ld CIT(A) has found fault with the manner of rising of bills, i.e., net of TDS, but he did not call for any explanation from the assessee. Accordingly we are of the view that the issue relating to genuineness of expenditure as well as issue relating to disallowance u/s 40(a)(ia) requires fresh examination. Accordingly we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO for examining the same afresh.

14. The last issue relates to disallowance of 20% of motor car expenses and depreciation. Since the usage of vehicles for personal purposes cannot be avoided, we are of the view that the Ld CIT(A) was justified in confirming this disallowance.

15. In the result, the appeal of the assessee is treated as partly allowed for statistical purposes.

Order has been pronounced in the Court on 17.5.2017.

Sd/-  
(RAMLAL NEGI)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 17/5/2017

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT

5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai