

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" NEW DELHI
BEFORE SHRI S.V. MEHROTRA : ACCOUNTANT MEMBER
AND
SMT. BEENA A. PILLAI: JUDICIAL MEMBER

ITA no. 2715/Del/2014

Asstt. Yr: 2005-06

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| <p>ADIT, Circle 1(2), (Intl. Tax), New Delhi</p> <p>(Appellant)</p> | <p>Vs.</p> | <p>Hyundai Engineering & Construction Co. Ltd., Room no. 576, Hotel Samrat, Chanakyapuri, New Delhi. PAN: AAACH 2622 L</p> <p>(Respondent)</p> |
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| Appellant | by | : | Shri Sanjay Kumar Yadav Sr. DR |
| Respondent | by | : | None |

Date of hearing : 13/06/2016.

Date of order : 15/06/2016.

ORDER

PER S.V. MEHROTRA, A.M:

This is revenue's appeal against the order dated 28.02.2014, passed by the Id. CIT(A)-XXIX, New Delhi, relating to AY 2005-06.

2. None put in appearance on behalf of the assessee. We proceed to dispose of the revenue's appeal, ex parte, qua the assessee and in that process we have heard Id. DR and perused the material available on record.

3. Effective grounds raised are as under:

1. *On the facts and the circumstance of the case, whether Ld. CIT(A) was correct in deleting the addition of Rs. 1,42,21,882/- and holding that freight expenses are allowable as business expenditure in reference to re-export of equipments.*

2. *On the facts and in the circumstances of the case, whether Ld. CIT (A) was correct in deleting the addition of Rs. 51,07,400/- and holding that these were in nature of deductible expenses and the assessee was correct in not classifying this sum as work-in-progress for the reason that the assessee was not to recover anything from the client in spite of the fact that in the light of the facts such expenditure should had been capitalized as work-in progress*

3. Brief facts of the case are that the assessee was having 7 business units and it was mainly in engineering and construction business. The assessee had filed return of income declaring loss of Rs. 3,33,86,099/-. The AO noticed from the computation of income that the loss/ profit of various projects during the year was as under:

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| (i) | Naptha Jhakari Power Project | (5,582,820) |
| (ii) | Car Project | (3,028,084) |
| (iii) | Naini Bridge | (31,470,784) |
| (iv) | Hydrogen Generation Unit | 648,347 |
| (v) | Tidel Power Project | 54,603 |
| (vi) | IT-500 Kolar | (5,107,401) |
| (vii) | Kayamkulam | 142,610 |

4. AO noticed that in the Naini Bridge project the receipts were of Rs. 64,037,288/-, which included construction income of Rs. 3,51,92,281/-. He further noticed that this project had a gross block of Rs. 118,840,919/- in respect of plant and machinery and on this depreciation of Rs. 52,909,739/- as per Companies Act was claimed. The whole block of plant and machinery had opening WDV as per the Act of Rs. 61,013,843. He noted that all the

machineries relating to Naini Bridge project had been re-exported by the assessee during the year and the closing WDV of plant and machinery had become Nil. In the transaction the assessee had shown the short term capital gain of Rs. 13,69,348/-. He further noticed that assessee had claimed expenses of Rs. 1,42,21,882/- for freight inwards. The AO disallowed the assessee's claim, inter alia, observing as under:

“As the assessee has not imported any equipment during the year, but has re-exported only and that too to its head office, at a value near to WDV. The assessee has not submitted the basis of valuation of assets. In the circumstances it should have also recovered the freight expenses relating to such re-export of assets. Considering these facts, the freight expenses claimed of Rs. 14,221,882/- is disallowed.”

5. As regards IT-500 Kolar project, the AO noticed that the income of the assessee was interest income on refunds from IT department and bank deposit interest income. He further noticed that expenses pertained to direct material of Rs. 35,95,180/-, subcontract expenses of Rs. 10,55,072/-. He pointed out that since the assessee was not earning any receipt from the project and it appeared that the project related to the supply and erection of Power Grid Corporation of India Ltd., therefore, if these expenses were incurred, the same should have been shown as work-in-progress. He, accordingly, concluded that either the work in progress was to be estimated at Rs. 70,28,511/- or the net of expenses of Rs. 51,07,400/- were to be disallowed. He, accordingly, determined the loss at Rs. 11,115,817/-, inter alia, making the aforementioned two disallowances.

6. Ld. CIT(A) deleted the disallowance in respect of Naini Bridge project observing as under:

“7.2 I have duly considered submissions of the appellant, details of freight expenses, TDS certificates and other materials furnished by the appellant. It has been noted that all the payments have been made by the account payee cheques and the appellant has complied with TDS obligation wherever applicable. It is also a fact that freight expenses have been incurred in reference to re-export of equipment used by the appellant in its business and hence these are in the nature of business expenditure. The AO has not given any cogent reason for disallowing these expenses. In view of above, I hold that freight expenses to the tune of Rs. 1,42,21,882/- are to be allowed as deduction. The ground of appeal is accordingly allowed”.

7. Having heard ld. DR, we do not find any reason to interfere with the order of ld. CIT(A) because he has, inter alia, pointed out that expenses had been incurred in reference to re-export of equipment used by the assessee in its business and hence these were in the nature of business expenditure. Nothing has been brought on record by the department to controvert these findings. Accordingly, order of ld. CIT(A) on the issue in question is upheld. Ground no. 1 is dismissed.

8. Apropos ground no. 2 in regard to IT-500 Kolar Project, we find that ld. CIT(A) in para 8.2 has observed as under:

“8.2. I have duly considered the submissions of the appellant and other materials placed on record. It has been noted that all the payments have been made by account payee cheques and the appellant has fulfilled TDS obligations wherever

applicable. The observation of the AO that payments should have been treated as work-in-progress is not correct because these are in the nature of expenses and cannot be recovered from the client. In view of discussion above, I hold that disallowance made by the AO in respect of this project is not correct. The AO is directed to grant the relief accordingly. The ground of appeal is allowed”.

9. After hearing the ld. DR we do not find any reason to interfere with the order of ld. CIT(A) on the issue in question, because the impugned amounts were clearly in the nature of business expenses. The AO had primarily disallowed these expenses because the assessee was not earning any receipt from the project. It is well settled law that it is not necessary that for allowability of expenses, there should be receipt also for justifying the assessee's claim regarding expenses. Accordingly, order of ld. CIT(A) on the issue in question is upheld. Ground is dismissed.

10. In the result, revenue's appeal is dismissed.

Order pronouncement in open court on 15/06/2016.

Sd/-
(BEENA A. PILLAI)
JUDICIAL MEMBER

Dated: 15/06/2016.

MP

Copy of order to:

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.

Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER