
(2024) 05 ITAT CK 0080

Income Tax Appellate Tribunal (Delhi F Bench)

Case No: Income Tax Appeal No. 216/DEL/2015

Paragon XT

APPELLANT

Vs

Income-tax Officer

RESPONDENT

Date of Decision: May 31, 2024

Acts Referred:

- Income Tax Act, 1961 - Section 143(3), 145(3)

Hon'ble Judges: G.S. Pannu, (VP); Anubhav Sharma, J

Bench: Division Bench

Advocate: Vinay Bahl, P.N. Barnwal

Final Decision: Partly Allowed

Judgement

1. The assessee has come in appeal against the order dated 28.03.2023 passed by the Commissioner of Income Tax (Appeals)-29, New Delhi (hereinafter referred as "learned First Appellate Authority" or in short "FAA"), in Appeal no. CIT(A), Delhi-4/10399/2018-19 for the assessment year 2011-12, arising out of the order dated 29.12.2018, u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred as the "Act"), passed by the Dy. Commissioner of Income-tax, Circle 11(1), New Delhi (hereinafter referred in short as "Ld. AO").

2. Heard and perused the record. At the outset it is pertinent to mention that vide ITA no. 363/Del/2015 the Revenue had also challenged the impugned order dated 29.10.2014 of CIT(A) and vide order dated 14.03.2019, the Revenue's appeal stands dismissed on merit. The appeal of the assessee was also dismissed on 18.02.2019 for non appearance but stands recalled vide order dated 09.09.2022 vide M.A. No. 403/Del/2019.

3. The Assessing Officer had made disallowance on account of creditors on cash basis; expenses payable; mobilization advances from Hooghly Holding TDS; accounting charges; donation; purchases of TMT Bar from Ravi Iron Store; and TDS Dyna Aircon, out of which additiona of Hooghly Holding, and purchases of TMT Bar were sustained by CIT(A) and other disallowances were deleted by CIT(A) for which, as observed earlier, the appeal of Revenue stands dismissed.

4. Learned AR has primarily relied the order dated 14.03.2019 in ITA no. 363/Del/2015, whereby the appeal of the Revenue was dismissed. It is contended that by this order one thing stands established that assessee had recorded the expenses/ revenue on mercantile basis. We consider it appropriate to reproduce para 5 of the order dated 14.03.2019 (supra), as follows:

“5. From the above order of the Ld. CIT(A) we notice that Ld. CIT(A) has discussed all issues in detail as noted above and we find no infirmity in the order of the ed. CIT(A). The assessee has produced credible evidence before the Ld. CIT(A) that he had maintained regular books of accounts on mercantile basis for the accounting purpose, as is clear from the tax audit report submitted before CIT(A) which could not be controverted by the Ld. DR. From the above finding it is also clear that assessee has recorded the expenses / revenue on mercantile basis therefore the AO is not justified to make additions regarding creditors for expenses (63, 97, 422 + 4, 11, 324) . Further we notice that the payment to accountant has been explained by the assessee before the Ld. CIT(A) that it is in the nature of salary and therefore, the payment of Rs. 81000 /- is under the limit for deducting TDS on the salary. In respect of donation also, the Id. CIT(A) has rightly sustained the disallowance of donation to the extent of Rs.5000/- out of Rs.8,000/- for want of evidence. We, therefore, find no infirmity in the impugned order on this score. Further in respect of Rs. 15,450/ on account of difference in Form No. 26AS. The assessee has rightly explained by the Id. CIT(A) and Rs.15,450 was a service tax on account of supply of labour to M / s Dyna Aircon Pvt. Ltd. which has been separately accounted for. Therefore, we do not find any justification to interfere with the order of Id. CIT(A) on this issue.”

5. The assessee is in appeal raising following grounds:

“1. That the order passed u/s.143(3) of the Act dated 26.02.2013 by the Income Tax Officer, Ward 32(2), New Delhi and the orders passed by the CIT(A)- XXVI, New Delhi dated 29.10.2014 are bad in law and against the facts of the case.

2. That the Assessing Officer and the CIT(A) were both wrong in making the following additions/disallowances:-

a. Mobilization advance from Hoogly Holdings Rs.28,17,320/-

b. Purchases from Ravi Iron Store Rs. 4,74,818/-

3. That the Assessing Officer and the CIT(A) both went against the facts of the case and passed orders contrary to the evidences on record.

4. That the Ld. CIT(A) has confirmed the additions/disallowances against his own observations and contrary to the orders passed by him.

5. That the disallowances/additions of Rs * 0.32 ,92,138/- (as mentioned above) deserve to be deleted.

6. That the statement of facts shall be filed at the time of hearing.

7. That the appellant craves to add, amend, alter, withdraw any ground of appeal.”

6. As we go through the impugned order of CIT(A) it comes up that in para 5.5 the CIT(A) has mentioned that it is a fit case for invoking section 145(3) of the Act and thus rejected the assessee's books of account.

6.1 Learned DR heavily relied that once books of account stand rejected then CIT(A) was justified to sustain the additions, which are challenged here.

6.2 In regard to the mobilization advance from Hoogly Holdings amounting to Rs. 28,17,320/-, the claim of assessee was as follows;

“14. That similarly for the assessment year 2010-11, the appellant enclosed a chart of TDS as per 26AS. In this year M / s Hoogly Holding has credited the following sums:-

Date	Amount	TDS
08.01.2010	14,08,660	28,173
03.02.2010	14,08,660	28,173
31.03.2010	35,00,000	70,000
Total	63,17,320	1,26,346

a. Rs. 14,08,660/- X 2 = Rs.28,17,320/-:- This amount represents mobilisation advance by M/s . Hoogly Holdings (P) Ltd received by the appellant on 04.02.2010. Copy of the evidence (email) is enclosed herewith. This amount has been duly reflected as "Hoogly Holding Mobilisation" in - the list of sundry creditors, copy of list of sundry creditors has already been filed above. This means that the amount has been received in the year under assessment only.

b. Rs. 35,00,000/-: This amount had been credited by Hoogly holding (P) Ltd on 31.03.2010 and had been received by the appellant on 03.04.2010. Copy of account for the FY 2010-11 and copy of the cheque received is enclosed herewith. This amount has been accounted for in the next AY i.e. AY 2011- 12, according the accepted accounting policy adopted by the appellant."

6.3 However, learned CIT(A) has not accepted the plea with following finding in para 5.14 of his order:

"5.14 In view of above, it is held that the advance contract receipts of Rs.28,17,320/- is taxable in the relevant AY even though the appellant's method of accounting is followed as it has been actually received in the relevant AY as per the terms and conditions of the contract which got adjusted from the future bills and thus the same is revenue receipts received in advance. The appellant, by following mixed system of accounting, has neither offered advance contract receipts of Rs.28,17,320/- in the relevant AY nor in the subsequent year as the appellant was offering contract receipts in the year of receipt. Here, I am of the view that the advance contract receipts of Rs.28,17,320/- has not only accrued in the relevant AY as per the terms and conditions of the contract but also received in the relevant AY. Therefore, the advance contract receipts of Rs.28,17,320/-taxed in the relevant AY by the AO is sustained holding the year of receipt as the year of accrual in view of above finding. Since this sum is not offered for tax in the subsequent years; therefore, the question of its allowance thereafter herein, in any year, does not arise."

6.4 As with regard to disallowance of purchase of iron of Rs. 4,78,818/-, the issue is decided against the assessee by the CIT(A) as per following findings:

"8. The next issue is regarding disallowance of purchase of iron of Rs.4,78,818/-. The AO disallowed it holding that the appellant has neither consumed this material nor shown it in its closing stock as on 31.03.2010. The Ld. Counsel argued this issue by reiterating the content of his submission. The relevant portion thereof is reproduced here under:

a. "That it is correct that the material was purchased on 31.03.2010, the payment was also made on the same day.

b. As per the accepted accounting policy adopted (mercantile), the purchase was correctly recorded in the books of accounts.

c. Even though, not admitted, but going by the AO's contention of cash accounting policy, since the payment was made on 31.03.2010, the expense/purchase is allowable.

d. That the AO's confusion is evident here. On side she adopts cash basis of accounting and on the other side she treats this item on mercantile basis. We would like to re-iterate that if, although not admitted, cash system is adopted then on making payment and on receipt of bill before the close of the year, the entry is to be treated in the same year and the addition is unjustified.

e. That otherwise, the item was purchased, bill raised and payment made in the same year i.e. FY 2009-10. Only the goods have been received by the appellant on the site on 1.04 * 0.201 which is of no consequence to the assessment proceedings. The delay is only on account of transportation, as the heavy vehicles are not allowed within the city limits in the day time."

8.1 I have carefully considered the facts of the case, submission of the appellant and perused material on the record. Admittedly, the iron of Rs.4,78,818/- bought on 31.03.2010 was not in physical possession of the appellant for consumption on or before as on 31.03.2010. Therefore, irrespective of method of accounting followed by the appellant; the same is bound to be reflected in the closing stock which has not been done by the appellant. Therefore, I find merit in the AO's finding. Accordingly. the addition of Rs.4,78,818/- is sustained holding it as undisclosed closing stock."

6.5 After taking into consideration the Coordinate Bench order dated 14.03.2019 (supra), we are of the considered view that once the dispute between the tax payer and the Revenue, as to applicability of mercantile system or cash system of accounting is settled and mercantile system of accounting is accepted, then the certainly interest free mobilization expenses are supposed to be adjusted against running bills raised by the assessee. The learned AR has submitted that final adjustment of the mobilization expenses was depended on the settlement of the bill after adjustment.

6.6 As per learned AR the final date of bill is dated 26.07.2012 . Learned AR has also submitted that the assessee has done more work than agreed contract amount and for A.Y. 2011-12 the work done was Rs. 1,39,92,462/-; for A.Y. 2012-13 work done was Rs. 1,09,39,751/-; and for A.Y. 2013-14 work done was Rs. 1,16,18,221/-. Learned AR has also filed the relevant detailed chart in respect of running bills and adjustments given therein.

6.7 Thus, we consider it appropriate to restore the issue on merits to the file of AO to consider the mercantile system of accounting as applicable in case of assessee and after taking response of assessee on the issue, pass order afresh.

7. As with regard to the additions sustained by the CIT(A) on account of purchase of iron purchased, again once it is established that assessee was following mercantile system of accounting, then irrespective of fact that stock was received in the next

financial year, while payment was made before 31.03.2010, the disallowance cannot be sustained. Accordingly, we sustain ground nos. 2 & 5 partly in favour of the assessee.

8. Consequently appeal of assessee is allowed partly with consequences to follow as above.