



ITA No.4995/M/2014
Siddharth Tanks & Vessels Private Limited
Assessment Year-2010-11

आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI**

श्री महावीर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।

**BEFORE SHRI MAHAVIR SINGH, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No. 4995/Mum/2014
(निर्धारण वर्ष / Assessment Year: 2010-11)

Income Tax Officer 8(3)(2) Room No. 201, Aaykar Bhavan M.K.Road Mumbai – 400 020	बनाम/ Vs.	Siddharth Tanks and Vessels Private Limited 2 nd floor Ajanta Hotel Complex 8, Juhu Tara Road Santacruz(West) Mumbai-400 049
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAECS-6170-L		
(अपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Ajay Singh, Ld. AR
Revenue by	:	Naveen Gupta, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	04/05/2017
घोषणा की तारीख / Date of Pronouncement	:	12/05/2017



आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by revenue for Assessment Year [AY] 2010-11 assails the order of Ld. Commissioner of Income Tax (Appeals)-18 [CIT(A)], Mumbai dated 21/05/2014 *qua* deletion of certain advances of Rs.50.00 Lacs received by the assessee from an entity namely *Gammon India Limited* particularly when the assessee debited expenses of Rs.30,16,721/- against the same.
2. Facts leading to the dispute are that the assessee, being *resident corporate assessee* engaged in the business of *manufacturing / supply of equipment to sugar industries*, was assessed u/s 143(3) at Rs.99,96,900/- after certain additions / disallowances vide Assessing Officer [AO] order dated 25/03/2013 as against 'Nil' return filed by the assessee on 28/09/2010. During Assessment proceedings, it was noticed that the assessee received certain advances of Rs.50.00 Lacs & Rs.91,83,673/- on 12/01/2010 & 31/03/2010 respectively from an entity namely *Gammon India Limited* against which TDS was deducted by the payer u/s 194C, however, the same was not offered to tax. The assessee explained that the said advances were received by the assessee pursuant to an agreement with the payer for certain construction project at *Pravaranagar* and since the same were mere advances in nature, the income thereon did not accrue to the assessee during impugned AY and therefore, not offered to tax by the assessee. However, the AO noted that the assessee debited expenses of Rs.30.16



Lacs as *Site expenses* for this project but did not offered / credited the receipts in Profit & Loss Account and reflected the same as mere advances and therefore, the same called for an addition to the extent of Rs.50.00 Lacs, being amount received by the assessee during the impugned AY on 12/01/2010. Finally, AO treated the advance of Rs.50 Lacs received by the assessee as receipt of revenue in nature and added the same to the income of the assessee.

3. The assessee contested the same with success before Ld. CIT(A) vide impugned order dated 21/05/2014 where the assessee contended that the project work against this advance was completed in Financial Year 2013-14 and the invoices were raised during that year and therefore, following mercantile system of accounting, offered to tax in that year and hence addition of mere advance amount in the impugned AY was not justified and would lead to double taxation. The Ld. CIT(A) after considering the various submissions made by the assessee and factual matrix of the case came to the conclusion that a mere advance do not give rise to accrual of income particularly when the assessee offered the income in various AYs as per the invoices raised by the assessee against the project. Further, the assessee following consistent method of accounting offered the income whenever the same accrued to the assessee and mere deduction of TDS against advance payment *per-se* did not make them liable to tax in the impugned AY. Aggrieved, the revenue is in appeal before us.

4. The Ld. Departmental representative contended that since the assessee availed the benefit of TDS in the impugned AY, he was liable to offer the advances as income in the impugned AY particularly when it



debited expenditure of Rs.30.16 Lacs against the project in the Profit & Loss Account as it violated the matching principle of accounting.

5. Per *contra*, the Ld. AR explained that the assessee got a sub-contract for certain construction work at *Pravaranagar* from the main contractor namely *Gammon India Ltd.* and received certain advances against the same in impugned AY. However, the project got delayed for want of approvals and could be started only in December, 2013. The Ld. AO erred in noting that the assessee debited expenses of Rs.30.16 Lacs against the same whereas those expenses were not related with this project. Merely because TDS was deducted on the impugned payment, the same *per-se* do not make the said advances taxable in the hands of the assessee as the income thereupon never got accrued during impugned AY. The assessee completed the project in various stages / phases and raised invoices as per the agreement and offered the income as per the invoices raised by the assessee in various AYs. The work against this particular advance was completed in FY 2013-14 when the assessee raised a bill of Rs.52.91 Lacs and offered the same to tax in that year. The assessee followed consistent method of accounting and following the same recognized the revenue as per the accounting principles and therefore, the additions were unwarranted and the same amounts to double taxation. The details of site expenses, details of year wise invoices raised against *Pravaranagar* project along with copies of the invoices, financial statements for AY 2014-15, copies of agreement, ledger extract, VAT returns etc. have been placed in the *paper-book* in support of various contentions.



6. We have heard rival contentions and perused relevant material on record. The short dispute before us is whether the assessee was liable to offer the advances to tax merely because TDS was deducted thereupon particularly when the assessee, following mercantile system of accounting, recognized the revenue from the project in AY 2014-15 when the invoices were raised. There is no dispute that the assessee received two advances of Rs.50.00 Lacs & Rs.91.83 Lacs during impugned AY, against which TDS was deducted. However, the Ld. AO treated both the advances differently and added only Rs.50.00 Lakhs to the income of the assessee, which, in our opinion, was not correct approach. We further find that the assessee has recognized the revenue in the books of accounts, by following consistent method of accounting and offered the same to tax whenever the invoices were raised by him and the same is not in dispute. At this juncture, it would be prudent to reproduce the findings of Ld. CIT(A) made in the impugned order:

"From the perusal of the submissions and facts of the case, it is clear that the assessee has received a sum of Rs.50,00,000/- on 12.01.2010 and Rs.91,83,673/- on 31.03.2010 from M/s Gammon India Ltd. on which TDS u/s 194I was deducted. The assessee has treated this amount as advance and not shown as income in the year under consideration, but the A.O. has held that since the TDS has been deducted and the amount of Rs.50,00,000/- was received on 12.01.2010, it was a revenue receipt and added back to the taxable income. However, the amount of Rs.91,83,673/- which was received on 31.03.2010 and TDS was also deducted on this amount was accepted by the A.O. Now, the question arises whether the advance received by the assessee on which TDS was deducted has to be treated as income of the appellant for the year under consideration or it will have to be treated as income when the bills have been raised against this amount. From the perusal of the submissions and the copy of the invoices and the financial statements for the year F.Y.2008-09 to 2013-14, it is noticed that the assessee company is following mercantile system of accounting regularly and there is no change in the accounting method in the year under consideration. The company is showing income on accrual basis irrespective of receipt of payment as per accounting principle. The amount of Rs.50,00,000/- was received on 12.01.2010 was treated by the appellant as advance received against which the bills were raised amounting to



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Rs.52.91 Lakhs. In the F.Y.2013-14 this amount has been adjusted against the invoices raised as per the balance sheet and profit & loss account on provisional basis submitted for F.Y.2013-14. Thus, there is no dispute that the assessee has not declared the amount of Rs.50,00,000/- as receipt from M/s Gammon India Ltd. The dispute is only whether it is to be taxed in the year under consideration or in F.Y.2013-14. As per the documentary evidences submitted, it is clear that the bills have been raised against the contract work on completion method in the F.Y.2013-14 and this amount of Rs.50,00,000/- has been adjusted against these bills. Although TDS was deducted in the year under consideration, but it was an advance receipt against which the bills were raised in F.Y.2013-14, therefore, it cannot be treated as income of the assessee for A.Y.2010-11. Moreover, the assessee company has received Rs.91,83,673/- on 31.03.2010 & Rs.50,00,000/- on 12.01.2010 as advance from M/s Gammon India Ltd. and TDS was deducted on both amounts, however, the A.O. has accepted Rs.91,83,673/- as advance but added back Rs.50,00,000/- as income, which is contradictory stand of the A.O. Since both the amounts are advance money against the contract work, therefore, it cannot be said that one amount is advance and the other is an income. It is also not a case that the A.O. has pointed out any discrepancy in the books of accounts or change in method of accounting. The assessee is following the same method of accounting every year, the income accrued has been taken as per accounting principle. The system is followed regularly and consistently by the company which is clear from the statement of work done and invoices raised from the year F.Y.2008-09 to 2013-14. In view of these facts & circumstances, it is held that the assessee has received advance of Rs.50,00,000/- from M/s Gammon India Ltd. against which bills were raised in the F.Y.2013-14 and duly reflected in the receipts for F.Y. 2013-14, therefore, only on the basis of TDS deducted, it cannot be treated as income of the company which is added back by the A.O. In totality of the facts and circumstances, it is held that the amount of Rs.50,00,000/- received by the assessee company and shown in the books of account as advances from M/s Gammon India Ltd., cannot be treated as income of the assessee, the A.O. is directed to delete the addition. The A.O. is also directed to allow the credit of TDS deducted on Rs.50,00,000/- in the A.Y.2014-15 when the assessee has declared the income. Ground of appeal is allowed."

A perusal of the above findings reveals that the Ld. CIT(A) clinched the issue in the right perspective and we see no reason to deviate from the same, this being the correct legal approach. In principle, we concur with the same and uphold the finding of Ld. CIT(A) subject to certain verification as enumerated in succeeding paragraph.

7. We find that the Ld. AO proceeded in the matter on the assumption that since assessee claimed expenses against the said project and



therefore, was obliged to offer the said advances to tax. The revenue has raised a specific ground in the appeal that Ld. CIT(A) erred in not appreciating the fact that the assessee debited expenses of Rs.30.16 Lacs during impugned AY without offering corresponding receipts to tax. This fact has been controverted by the Ld. AR by contending that the same was factually incorrect as whatever expenses were incurred by the assessee towards this project were shown as *closing stock / work-in-progress* in the impugned AY and the expense of Rs.30.16 Lacs debited in the profit & Loss Account were incurred in relation to other projects, which may be verified by the lower authorities. Therefore, for the limited purpose of verification of this fact, we deem it fit to restore the matter back to the file of Ld. AO. The assessee is directed to substantiate this fact with necessary evidences failing which the AO shall be at liberty to decide the same as per law on the basis of material available on record. The Ld. AO is also directed to re-compute book profits u/s 115JB, carry forward / set off of losses in the light of the final outcome.

8. Resultantly, the revenue's appeal stand allowed for statistical purposes.

Order pronounced in the open court on 12th May, 2017.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 12.05.2017

Sr.PS:- Thirumalesh

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**