

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "D", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6686/DEL/2013

A.Y. 2006-07

DCIT-14(1),
ROOM NO. 221, 2ND FLOOR,
C.R. BUILDING,
I.P. ESTATE,
NEW DELHI

VS.

M/S PACIFIC PROJECTS LTD.,
SAFEWAY HOUSE, D-4,
COMMERCIAL COMPLEX,
PRASHANT VIHAR,
NEW DELHI – 110065
(PAN: AADCP5269R)

(APPELLANT)

(RESPONDENT)

Department by : Sh. Shravan Gotru, Sr. DR

Assessee by : None

ORDER

PER H.S. SIDHU, JM :

This appeal by the Revenue is directed against the Order of the Ld. Commissioner of Income Tax (Appeals)-XVII, New Delhi dated 04.9.2013 pertaining to Assessment Year 2006-07 on the following grounds:-

- 1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,03,00,000/- made by the AO on account of Sundry creditors on the basis of additional evidence produced during the appellate proceedings without*

recording in writing the reasons for the admission of the additional evidence.

1.1 On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in admitting the additional evidence filed before her as the assessee did not satisfy the conditions laid down in rule 46A of the Income Tax Rules.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,60,00,000/- made by the AO on account of low gross profit (gp) rate in the absence of production of book of account and bills/ vouchers during the assessment proceedings.

3. The appellant craves to be allowed to add any fresh grounds of appeal and / or delete or amend any of the ground of appeal.

2. The brief facts of the case are that the assessee filed its return of income on 25.11.2006 at a total income of Rs. 39,46,300/-. The return of the assessee was processed u/s. 143(1) of the Income Tax Act, 1961 (hereinafter in referred as the Act) on 11.1.2008. The case was picked up for scrutiny and a notice u/s. 143(2) of the Act was sent to the assessee on 11.10.2007. In response to the same, the AR of the assessee appeared for the assessee from time to time. Assessee is engaged in the construction activities and has carried out major

construction work for Abhinav CGHS Ltd., Rohini Educational Society, HPCL and India Oil Corpn. The total turnover has increased from Rs. 12.64 crore to Rs. 20.03 crores. The AO vide questionnaire dated 27.5.2008 and further order sheet entries has asked the assessee to file various details and assessee filed some of the details and failed to file the rest. Again vide order sheet entry dated 5.9.2008 and later on vide show cause notice u/s. 144 dated 18.11.2008 assessee was given final opportunity to explain as to why best judgment assessment u/s. 144 not be made and the hearing was fixed on 28.11.2008. Nobody appeared nor any detail was filed. In the light of the same, AO decided the case on merits on the basis of information available on record and made various additions by completing the assessment at Rs. 387.56 lacs vide exparte assessment order dated 2.12.2008 passed u/s. 144 of the Act. Against the assessment order, the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 4.9.2013 has deleted part additions by partly allowing the appeal of the assessee. Aggrieved with the impugned order passed by the Ld. CIT(A), Revenue is in appeal before the Tribunal.

3. Ld. DR relied upon the order of the AO and reiterated the contentions raised in the grounds of appeal. He stated that Ld. CIT(A) has erred in deleting the addition of Rs. 1,03,00,000/- made by the AO on account of Sundry creditors on the basis of additional evidence produced during the appellate proceedings without recording in writing the reasons for the admission of the additional evidence. He further stated that Ld. CIT(A) has erred in admitting the additional evidence filed before her as

the assessee did not satisfy the conditions laid down in rule 46A of the Income Tax Rules. It was also submitted by the Ld. DR that Ld. CIT(A) has erred in deleting the addition of Rs. 1,60,00,000/- made by the AO on account of low gross profit (gp) rate in the absence of production of book of account and bills/ vouchers during the assessment proceedings.

4. In this case, Notice of hearing to the assessee was sent by the Registered AD post, in spite of the same, assessee, nor his authorized representative appeared to prosecute the matter in dispute, nor filed any application for adjournment. Keeping in view the facts and circumstances of the present case and the issue involved in the present Appeal, we are of the view that no useful purpose would be served to issue notice again and again to the assessee, therefore, we are deciding the present appeal *ex parte qua assessee*, after hearing the Ld. DR and perusing the records.

5. We have heard the Ld. DR and perused the records, especially the order of the Ld. CIT(A) as well as AO. We find that AO has passed the assessment order 2.12.2008 u/s. 144 of the Income Tax Act, 1961 i.e. *ex parte qua assessee*. The AO vide questionnaire dated 27.5.2008 and further order sheet entries has asked the assessee to file various details and assessee filed some of the details and failed to file the rest. Again vide order sheet entry dated 5.9.2008 and later on vide show cause notice u/s. 144 dated 18.11.2008 assessee was given final opportunity to explain as to why best judgment assessment u/s. 144 not be made and

the hearing was fixed on 28.11.2008. Nobody appeared nor any detail was filed. In the light of the same, AO decided the case on merits on the basis of information available on record and made various additions by completing the assessment at Rs. 387.56 lacs vide exparte assessment order dated 2.12.2008 passed u/s. 144 of the Act. However, we find that Ld. CIT(A) in his impugned order has deleted the addition of Rs. 1,03,00,000/- made by the AO on account sundry creditors on the basis of additional evidence produced during the appellate proceedings without recording in writing the reasons for the admission of the additional evidence. We further find that the assessee did not satisfy the conditions as laid down in Rule 46A of the Income Tax Rules and despite that Ld. CIT(A) admitted the additional evidence. We further note that addition of Rs. 1,60,00,000/- was also deleted by the Ld. CIT(A) on account of low gross profit rate in the absence of production of book of account and bills/ vouchers during the assessment proceedings. In view of aforesaid discussions, we are of the considered view that these additional evidences needs to be examined thoroughly at the level of the AO and alongwith books of accounts and bills/ vouchers etc. Therefore, in the interest of justice, we think it proper to set aside the issues in dispute to the file of the AO to decide the same afresh, after examining all the documents, including the additional evidences as well as books of accounts, bills and vouchers etc. However, the Assessee is also directed to submit all the necessary documents including the additional evidence filed before the Ld. CIT(A) and books of accounts and bills/ vouchers etc.

to substantiate its case before the AO and assessee is also directed to fully cooperate with the AO and did not take any unnecessary adjournment. Accordingly, the issues in dispute are set aside to the file of the AO with the aforesaid directions.

8. In the result, the Appeal filed by the Revenue stands allowed for statistical purposes.

Order pronounced on 01/09/2017.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(H.S. SIDHU]
JUDICIAL MEMBER

Date:01/09/2017

"SRBHATNAGAR"

Copy forwarded to: -

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

TRUE COPY
By Order,

Assistant Registrar,
ITAT, Delhi Benches