

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA

Before: **Shri P.M. Jagtap, Accountant Member** and
Shri S.S. Viswanethra Ravi, Judicial Member

I.T.A No. 1980/Kol/2014 A.Y: 2003-04

I.T.O. Ward 4(3), Kolkata Vs. **M/s. Allied Technipack
P.Ltd. PAN: AAECA 0431E**
[Appellant] [Respondent]

For the Appellant : Shri Satyajit Mondal, Addl.CIT, Id.Sr.DR
For the Respondent : Shri Somnath Ghosh, Advocate, Id.AR

Date of hearing : 30-08-2017
Date of pronouncement : 03-11-2017

ORDER

Shri S.S.Viswanethra Ravi, JM:

This appeal by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals), IV, Kolkata dt. 25-08-2014 for the A.Y 2003-04.

2. The only issue is to be decided as to whether the CIT-A justified in passing the impugned order violating Rule 46A of the IT Rules 1962 in the facts and circumstances of the case.

3. The AO during the reopening proceedings u/s. 147 of the Act found that the total receipts as per TDS details is of Rs.2,85,02,936/-. For which, the assessee explained that it received advance (Rs.39,44,685/-) from M/s. Hind Lever Chemicals (presently known as M/s. Tata Chemicals Ltd). The AO sought details from M/s. Tata Chemicals Ltd. From which, the AO found that an amount of Rs.39,44,685/- not reflected as receipt of advance for the year under consideration. Accordingly, the AO show caused the assessee why the said amount should not be added to the income of the assessee for non explanation. The AO added the said amount to the total income of the assessee.

4. In challenge, before the CIT-A the assessee produced evidence to establish that work to the extent impugned amount was actually completed during F.Y 2003-04 and the said amount was included in the turnover for the A.Y 2004-05.

5. The CIT-A directed the AO to work out relatable TDS to the amount of advance received during A.Y 2003-04 and reduce this amount from the total claim of TDS made by the assessee. On noticing that the assessee claimed full TDS credit on the said advances, which was reduced from the turnover. Relevant portion of CIT-A order is reproduced herein below:-

4.5 From the above illustration which is duly supported by bills, it is clear that certain part of the contractual work which was pending during the A.Y. 2003-04 was completed during A.Y. 2004-05. This happens in the normal course of execution of contracts. All the work under taken during a particular financial year and which cannot be completed during that financial year are spilled over to the subsequent years. In the case of the appellant, the spillover work was completed by 19/05/2003 when the last bill pertaining to advance of Rs. 39,44,685/- was raised. This is a normal business practice in any contractual work and there is also nothing in the Income Tax Act which compels an appellant to complete all the contractual work under taken during a particular financial year within that financial year. Hence, I find no justification in the Assessment Order for treating an amount of Rs.39,88,685/- received as advance as part of turnover of the appellant. Further, the intention of the appellant was very clear because this amount has actually been reflected as advance in Schedule-D of the Balance Sheet. However, I am also aware that the appellant has claimed full credit of the TDS deducted by M/s. Tata Chemicals during the A.Y. 2003-04. I am of the view that this claim of the appellant is not fully justified and credit for TDS deducted must be limited to the relatable receipts shown by the appellant. In case of the appellant, full claim of TDS has been made but advances have been reduced from the turnover. Accordingly, the A.D. is directed to work out relatable TDS to the amount of advance received during A.Y. 2003-04 and reduce this amount from the total claim of TDS made by the appellant."

6. The Id.DR submits that the CIT-A was right in directing the AO to examine the said facts reflected in the impugned order i.e bills and vouchers. He also submits that the bills and vouchers was submitted first time before the CIT-A and based on which he directed the AO to work out the TDS involved in the said advance amount.

7. On the other hand, the Id.AR objected to the same as submitted by the Id.AR.

8. Heard both the parties and perused the record. We find that the CIT-A considering the balance sheet and submission of the assessee asked the assessee to produce evidence to establish the actual work completed for the FY 2003-04 and to show that the

impugned amount was included in the turnover for the FY 2004-05. The assessee produced bills and vouchers first time before the CIT-A and the CIT-A directed to work out relatable TDS to the amount of advance received during the A.Y under consideration only on the basis of said new evidence as filed before him. Admittedly, these new evidences were not before the AO and there was no opportunity to verify and cross examine the same by the AO and is violation of Rule 46A of the IT Rules 1962. Therefore, we set aside the order of CIT-A and restore the matter to the file of AO for deciding the issues afresh after verifying the additional evidence. Thus, the ground(s) raised by the revenue are allowed.

9. In the result, the appeal of the revenue is treated as allowed for statistical purpose.

Order pronounced in the open court on 03-11-2017

Sd/-
P.M. Jagtap
Accountant Member

Sd/-
S.S. Viswanethra Ravi
Judicial Member

Dated : 03-11-2017

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant/Department: I.T.O, Ward 4(3),Kolkata, Aaykar Bhawan, 5th Floor, P-7, Chowringhee Sq., Kol-69.
2. Respondent /Assessee: Director, M/s. Allied Technipack Pvt. Ltd, 14 Hare Street, 1st Floor, Kolkata-700001.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata True Copy, By order,
Sr.PS/H.O.O,ITAT,Kol