

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

I.T.A. Nos. 1766 & 1767/HYD/2017

Assessment Years: 2010-11 & 2011-12

TCI Constructions Limited, HYDERABAD [PAN: AADCT1002H]	Vs	Deputy Commissioner of Income Tax, Circle-2(3) HYDERABAD
(Appellant)		(Respondent)

For Assessee : Shri P.Murali Mohana Rao, AR
For Revenue : Shri Ashok Kumar Kardam, DR

Date of Hearing : 18-01-2021
Date of Pronouncement : 06-04-2021

ORDER

PER S.S.GODARA, J.M. :

These two assessee's appeals for AYs.2010-11 & 2011-12 arise against the CIT(A)-9, Hyderabad's separate orders both dated 31-07-2017 passed in case Nos.0371 & 0421 / DCIT-2(3) / 2015-16; respectively, in proceedings u/s. 143(3) of the Income Tax Act, 1961 [in short, 'the Act']; respectively.

Heard both parties. Case files perused.

2. The assessee has raised its 18 and 37 substantive grounds; assessment year-wise, respectively in seeking to reverse both the lower authorities' findings making various

disallowances/additions. It has also filed identical petition(s), seeking admission of its additional grounds.

3. Learned CIT-DR vehemently objected to admission thereof at this alleged belated stage by way reasons of its act and conduct throughout. We find no merit in Revenue's technical stand going by the hon'ble apex court's landmark decision in National Thermal Power Co. Ltd., Vs., CIT [229 ITR 383] (SC) considered in All Cargo Global Logistics Ltd., Vs. DCIT (2012) [137 ITD 217](SB) (Mumbai) that any of the party(ies) in Section 254 proceedings could raise an additional ground so as to determine the correct tax liability of a taxpayer provided that all the relevant facts form part of records. We further notice that the revenue authorities have already filed their remand reports dt.25-07-2018 and 19-11-2018 to assessee's additional submissions as well. We thus accept the assessee's foregoing petition seeking to raise its additional grounds in both these assessment years.

Now comes our issue-wise detailed adjudication on merits.

4. The assessee's first identical substantive grievance in both these appeals challenges correctness of the learned lower authorities' action estimating 8% profit element of its gross contractual receipts followed by an ancillary issue in latter substantive grounds *qua* treatment on scrap sales income under the head 'business'/ an 'other' sources. We note that the assessee's scrap sales income read assessment year-wise sums Rs.23,71,836/- and Rs.7,13,373/-; respectively. This latter

figure has been wrongly taken as Rs.23,71,836/- in AY.2011-12 in its pleadings.

5. The assessee's first and foremost plea in view of the preceding facts is that both the lower authorities have *inter alia* adopted incorrect turnover figures of Rs.41,08,85,846/- in AY.2010-11 instead of the correct sum of Rs.40,42,82,012/- as per its duly audited books of account. The Assessing Officer's remand report dt.25-07-2018 as already accepted the assessee's stand *qua* its actual turnover figures as per the books of account. That being the case, we observe that the learned lower authorities' impugned action assessing 8% profit element on both contractual as well as sub-contractual receipts of Rs.6,43,12,692/- (involving GHMC, Rail Wheel Factory, Karnataka Milk Federation and South Central Railway having corresponding sums) and sub-contract receipts of Rs.33,99,69,320/- derived during the relevant previous year from M/s.VVDPL, Variegate Projects Private Limited, Sri Amar Constructions and Patel Engineering (as per pg.39 to 77 in the paper book) in identical lines is not sustainable. We thus affirm the learned lower authorities' action only *qua* contractual receipts assessment @8% at this stage.

6. Learned CIT-DR vehemently argued the fact that the Assessing Officer's remand report(s) have declined the assessee's sub-contract receipts plea for want of original documents along with registration thereof. We see no reason to accept this mutually contradictory stand on the very books maintained and sub-contract receipts in furtherance to the

corresponding contracts entered in the relevant previous year. And more particularly in view of the fact that the Assessing Officer has himself accepted the gross turnover figures in above terms. This tribunal's co-ordinate bench's decision in M/s.Maa highways, ITA No.761/Hyd/2020 holds that sub-contract receipts assessment @5% on lumpsum basis in the very business is just and proper. We thus direct the Assessing Officer to assess the assessee's sub-contract receipts of Rs.33,99,69,320/- @5% income element only.

7. Next yet another equally significant aspect of assessment on assessee's 'other' income of Rs.23,71,836/- in AY.2010-11. Its case is that the same has been derived from scrap sales only constituting business income as against the Revenue's stand that there is no substantiation thereof by way of filing of cogent evidence. There is hardly any dispute that such scrap sales emanates in the ordinary course of civil constructions and contractor business amounts to business income as per DCIT Vs.Harjivandas Juthabhai Zaveri 258 ITR 785 (Gujarat) and ITA No.1404/Hyd/2017 M/s.J.V.K. Infra Pvt. Ltd. holding the very view.

8. Learned CIT-DR further fails to dispute clinching fact that the assessee's books have indicated the impugned receipts from scrap sales than any 'other' source inviting application of Section 57 of the Act. We conclude in this factual backdrop that the assessee's scrap sales income of Rs.23,71,836/- deserves to be treated under the regular business head followed by assessment thereof @8%. We order

accordingly. The Assessee's substantive ground Nos.3 to 6 and 14 to 16 in AY.2010-11 ITA No.1766/Hyd/2017 are partly accepted in above terms.

8.1. Same order to follow in assessee's corresponding ground Nos.3 to 7 and additional ground No.41 in AY.2011-12 involving contractual, sub-contractual and scrap receipts of Rs.5,02,19,281/-, Rs.36,55,40,382/- and Rs.7,13,373/-; respectively in absence of any distinction of facts and law therein. Necessary computation to follow as per law.

9. Next comes the third and last issue of un-explained cash credits of Rs.5,53,66,019/- in AY.2010-11. There is no dispute that the same involves four investors viz. Mr.Venkatesh (assessee's Managing Director), S/Shri B.Pravin, T.C.Ramaiah and G.Ravi Kumar having corresponding investments of Rs.5,01,00,019/-, Rs.35 lakhs, Rs.14 lakhs and Rs.3.66 lakhs; followed by allotment of shares on 29-03-2010 in first and 29-06-2016 in the remaining three investors' cases; respectively. Both the learned lower authorities as well as the Revenue's stand before us is that the assessee has failed to prove the genuineness thereof in all proceedings throughout.

10. We have given our thoughtful consideration to rival pleadings against and in support of the impugned addition. We come to the first investor party herein, assessee's Managing Director Shri M.Venkatesh, who has duly filed his confirmation and all supportive documents. He continues to be assessed in the same range jurisdiction as well. Hon'ble

Gujarat high court decision in PCIT Vs. Gyscoal Alloys Ltd. 2018 (10) TMI 1725 (Guj) holds that the impugned section 68 addition on explained cash credits involving such related parties does not deserve to be treated as 'un-explained' as follows:

"I have carefully considered the facts of the case, the assessment order and the written submission of the appellant. The appellant has received an amount of Rs. 9,99,99,900/- on account of share capital and share premium from M/s.General Capital and Holding Co. Pvt. Ltd, Ahmedabad during the year. The AO held that the creditworthiness and the genuineness of the transaction were not proved by the appellant and accordingly made the addition under Section 68 of the Act for the above amount. The appellant has submitted that all three ingredients such as, credit worthiness, genuineness and the identity of the share applicant have been proved and therefore, the addition should not have been made by the AO. During the course of appellate proceedings, the assessment records were also obtained from AO and the same have also been examined by me to ascertain the facts correctly. The share applicant company M/s.General Capital has been duly confirmed the fact of making investment in the appellate company. The amounts have been received through banking channel. The same are duly reflected in the annual accounts of that company. The extracts of the bank statement which have been filed before me during the course of appellate proceedings as well as before the AO clearly show that there are no cash deposits as mentioned by the AO in the assessment order. The observation of the AO that the cash has been deposited and subsequently cheques were issued is factually incorrect. The director of the company also attended before AO and confirmed the fact. It is also noted that both the companies, that is the appellant company as well as the share applicant are managed by the same group of persons. Honourable High Court of Gujarat has consistently held that if the assessee has given sufficient proof in respect of the share application, no addition can be made in the hands of the assessee. If the AO has any doubt about the source of the share applicant further investigation can be made in the hands of the share applicant, but not in the case of the appellant. It can thus be seen that the entire issue is based on appreciation of material on record. CIT [A] and the Tribunal concurrently came to the conclusion that the assessee had discharges its basic onus. The investors have confirmed the transactions. Such transactions were carried out through the banking channel. The director of the investing company had also appeared

before the Assessing Officer and also confirmed the transactions. The CIT [A] and the Tribunal also did not confirm the Assessing Officer's finding that the assessee failed to establish the creditworthiness or genuineness of the transactions. No question of law arises. Tax Appeal is dismissed”.

11. We further wish to emphasise here that the assessee's first investor is none other than its Managing Director; taking all key decisions could not be treated as a bogus entity in other words. We thus direct the Assessing Officer to delete the impugned addition.

12. Next comes the latter three investor parties (supra) who have not filed confirmations all along but they have also been allotted the assessee's shares (supra). The Revenue also fails to dispute that neither the Assessing Officer never found fault with all this evidence of filing of confirmations followed by assessment records and payments made through banking channels but also he has not indicated any cash deposits or withdrawals so as to raise any suspicion *qua* all of them. We held in this factual backdrop that the assessee has duly discharged his burden of proving identity, genuineness and creditworthiness of the impugned share application money of Rs.55,36,609/- on facts in other words. We make it clear that although both the parties have sought to rely on a catena of case law, the same does not need a detailed discussion as the assessee has very well proved its genuineness of the investor parties on facts.

13. Learned CIT-DR still quoted hon'ble apex court's recent decision in PCIT Vs. NRA Iron and Steel Pvt. Ltd., (2019) [103

taxmann.com 48] / [412 ITR 161] (SC) that the impugned unexplained cash credits ought to be upheld before the tribunal. The said decision is found distinguishable on facts since the investors therein were not the concerned taxpayers Managing Director as per the clinching circumstances before us. We therefore accept the assessee's instant third substantive grievance in foregoing terms. Its former appeal ITA No.1766/Hyd/2017 is partly accepted.

14. We next advert to AY.2011-12 involving ITA No.1767/Hyd/2017. The assessee's former twin substantive grievances involving contractual and sub-contractual receipts as well as scrap sales' incomes (supra) have already been accepted in part in view of our detailed discussion in AY.2010-11. We therefore direct the Assessing Officer to act accordingly in above terms.

15. Next comes the second issue of assessee's share application money of Rs.40 lakhs out of Rs.1 crore treated as unexplained cash credits in the CIT(A)'s order. We note that the relevant facts herein are no different than those in AY.2010-11 wherein all these parties have filed confirmations and detailed evidence followed by allotment of shares without involving any cash deposits or withdrawals or any other suspicious circumstances.

16. Ld.CIT-DR's case in tune with the CIT(A)'s detailed discussion is that some of the investors herein have failed to prove the impugned sums' genuineness. The fact also remains that most of investor parties have made investments of less

than Rs. 2 to 5 lakhs which cannot be altogether ruled out as the cash in their hands *per se*. We thus adopt the very detailed reasoning as in AY.2010-11 to delete the impugned addition of Rs.40 lakhs.

17. The assessee's next substantive grievance is yet another issue of unsecured loan(s) of Rs.50 lakhs treated as 'un-explained cash credits' in case of M/s.NMR Constructions. There is no denial of fact herein as well that the impugned sum has come by way of banking channels only the Assessing Officer's remand report dt.25-07-2018 has accepted the fact that the said party has verified the same as performance deposit as against assessee's stand treating it as 'un-secured loan'. Be that as it may, all this sufficiently proves that the assessee has discharged its burden of proving genuineness of the impugned sum *per se* as the third party concerned has owned up the same in remand report resulting in due reconciliation. We therefore direct the Assessing Officer to delete the impugned addition of Rs.50 lakhs as well.

17.1. Learned counsel lastly submitted that the assessee's next twin substantive grounds involving not granting of TDS credit as per books and form-26AS and difference in contracts receipts require the Assessing Officer's afresh factual verification and therefore, the same may be restored to him. The Revenue is equally fair on this reconciliation aspect. We thus restore the instant twin issues back to the Assessing Officer for his necessary verification as per law within three effective opportunities of hearing. This latter appeal ITA

No.1767/Hyd/2017 is also accepted in part. Necessary computation shall follow as per law in both cases.

No other ground has been pressed before us.

18. These assessee's appeals are partly allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 06-04-2021

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Hyderabad,
Dated: 06-04-2021

TNMM

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Copy to :

1.TCI Constructions Limited, Hyderabad. C/o. P.Murali & Co., Chartered Accountants, 6-3-655/2/3, 1stFloor, Somajiguda, Hyderabad.

2.The Deputy Commissioner of Income Tax, Circle-2(3), Hyderabad.

3.CIT(Appeals)-9, Hyderabad.

4.Pr.CIT-2, Hyderabad.

5.D.R. ITAT, Hyderabad.

6.Guard File.