

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 7186/Del/2019 : Asstt. Year : 2014-15

Yala Construction Co. Pvt. Ltd., C/o Luthra & Luthra LLP, CA, A-16/9, Vasant Vihar, Delhi-110057	Vs	Addl. CIT, Special Range-9, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACY1167D		

**Assessee by : Sh. Atul Ninawat, CA &
Sh. Surender Singh, CA
Revenue by : Sh. Amit Katoch, Sr. DR**

Date of Hearing: 08.11.2023

Date of Pronouncement: 01.02.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-28, New Delhi dated 25.06.2019.

2. Following grounds have been raised by the assessee:

"1. The learned Commissioner of Income Tax (Appeals) [hereinafter referred as 'Ld. CIT(A)'] has grossly erred in law as well as facts of the case in confirming various disallowances made by the Learned Assessing Officer ('Ld. AO').

2. The Ld. CIT(A) has grossly erred in law as well as facts by confirming the disallowance of depreciation expense amounting to INR 19,72,999.

3. The Ld. AO/CIT(A) erred in law and facts by disallowing the interest on loan amounting to INR 6,40,796.

4. The Ld. CIT(A) has erred in law as well as facts of the case in confirming the disallowance of commission made by the Ld. AO, amounting to INR 15,79,568/-.

5. The Ld. CIT(A) has erred in law as well as facts of the case in confirming the disallowance of sponsorship fees amounting to INR 15,00,000 paid by appellant to Mehrangarh Museum Trust.

6. The Ld. CIT(A) has erred in law in ignoring the various submissions made and judicial pronouncements relied upon by the appellant."

3. The assessee, Yala Construction Co. Pvt. Ltd. carries out business of Micro surfacing of roads, highways and airports. The assessee filed return of income on 29.11.2014 declaring income of Rs.3,73,08,330/-.

Depreciation:

4. During the year, the assessee has imported slurry machine at a cost of Rs.2,63,06,650/-. The Assessing Officer held that the actual date of receipt of the machine has not been specifically mentioned to prove that the slurry machine was put to use on 27.03.2014. As per the invoices, the assessee has purchased truck on 13.03.2014 and fabricated the machine on the vehicle choice vide invoice dated 28.03.2014. The Assessing Officer held that since the invoice was dated 28.03.2014, the machine could not have put to use on 27.03.2014 and hence disallowed the depreciation claimed by the assessee. The Id. CIT(A) confirmed the addition made by the AO on the grounds that the technicians who had come from Germany to make the machine functional and ready to operate stayed in Delhi from 24.03.2014 to 30.03.2014 and hence, the machine could not have been put to use before the technician left the country.

5. Before us, the copies of invoices regarding purchase of slurry machine and other related cost, bill of entry regarding import of slurry machine, user Manual of slurry machine and Log book of slurry machine for the period March 27, 2014 to March 21, 2014 have been produced. After going through the documentary evidences, we hold that the observations of the Id. CIT(A) that the personnel from Germany stayed till 30th cannot be ground to derive the conclusion that the machine has been put to use only after 30th. The employees to come to India have every reason to stay a day or more after completion of the work in India. Hence, keeping in view the documentary evidences, we hold that the machine has been put to use even before 30.03.2014 and hence the depreciation claim is hereby allowed.

6. In the result, the appeal of the assessee on this ground is allowed.

Interest on Loan:

7. This ground has not been pressed even before the Id. CIT(A).

Commission:

8. During the assessment proceedings, the Assessing Officer found that the assessee has paid commission of Rs. 15,79,568/- to M/s. Ram Krishna Petro Services Pvt. Ltd. The AO sought to establish the nexus of this commission paid and services rendered by the commission agent and also to produce the copies of agreement/contract for any other document in respect of commission paid. The assessee furnished copy of invoices

raised by the commission agent and submitted that the commission was paid for obtaining micro surfacing work at Dhule Site, Maharashtra. The AO, after relying on the decision of Hon'ble High Court of Kerala in the case of CIT vs. Premier Breweries Ltd. 147 Taxmann 343, disallowed the aforesaid expenses of commission and added back to the income of assessee on the grounds that no agreement has been produced to substantiate the commission paid.

9. The Id. CIT(A) confirmed the addition holding that the total amount of contract received by the assessee was Rs.1,17,60,000/- and out of that Rs.15,79,568/- was provided for making payment towards commission which is a substantive part of total contract but failed to specify what the services has been rendered by the aforesaid party to the assessee instead a general reply has been given that it was provided for liasoning services. The Id. CIT(A) also held that there is no agreement or any type of correspondence to procure the services by the aforesaid commission agent or the services rendered by them.

10. Before us, the Id. AR relied on the submissions made before the revenue authorities and the Id. DR supported the order of the Id. CIT(A).

11. The factual details are as under:

"For Project receipt of assessee client's Sadbhav Engineering Ltd, commission/brokerage of Rs. 7/- per sqm was paid to Ramakrishna Petro Services (P) Ltd. for obtaining micro surfacing work at Dhule Site, Maharasthra. During year 2013- 14, total work of 2,30,597 5qm was done with Sadbhav Engineering Ltd and Rs. 3,87,40,296/- was declared as Income. Assesse company has paid commission on 2,00,830 Sqm work

done @ 71=- Rs. 14,05,810/- and service tax on it of Rs. 1,73,758/- (copy of invoice raised by Ramakrishna Petro Services (P) Ltd is attached as Annexure- 1). The company has accounted commission invoice raised by the party in his books of accounts and duly deducted TDS and same was deposit in to government account.

The major objection of Id. AO is that for getting work from Govt. Department, it is illegal to pay commission and thus not allowable u/s 37(1) of the Act. It is surprise to see here that the how Ld. AO himself assumed that work has been allotted from Govt. Department whereas he himself quoted in the same para that there is a project revenue of Rs. 3.87 Creres from Sadbhav engineering & Palesnar micro surfacing work has been sub-contracted from Dhule Sadbhav Engineering and not directly from government through bidding process.

Agreement between Sadbhay Engineering and the appellant is placed on record vide paper book dated 12" Feb, 2019, however the same could not to submitted during assessment proceeding due to relocation of its registered office and office of maintenance of books of account during assessment proceeding. However, the debit note and project-wise revenue details itself submitted during assessment proceeding 27.12.2016 and 19.12.2016 respectively exhibit that the commission has been paid for liasoning work of Dhule &Palesnar micro surfacing work, subcontracted by Sadbhav Engineering. The agreement clearly highlights & corroborates the fact that the appellant company is a sub-contractor.

The decision relied by the Ld. AO on Hon'ble kerala High Court in case of CIT v Premier Breweries Ltd 147 Taxmann 340is different from facts of the appellant as the appellant company during the assessment proceeding itself has adequately explained the commission paid to M/s Ramakrishna Petro Services (P) Ltd. for providing such liasoning services, which helped the appellant company to procure such contract:

12. Thus, on going through the business of the assessee, the work obtained, the works sub-contracted, the increase in the profits, the agreements executed, we hold that the commission

paid is allowable as business expenditure u/s 37 of the Income Tax Act, 1961.

13. In the result, the appeal of the assessee on this ground is allowed.

Sponsorship Fee:

14. The Assessing Officer disallowed Rs. 15,00,000/- paid by assessee to Mehrangarh Museum Trust for sponsoring cultural festival. During the assessment proceedings, the AO observed that the said payment was made for sponsorship of the Flamenco and Gypsy Festival at Jodhpur conducted by Mehrangarh Trust. The AO held that this expenditure was more of personal in nature which has nothing to do with the business of the company and the expenditure is more of personal obligation of the directors and disallowed the sponsorship fee expenditure.

15. The explanation of the assessee is as under:

"During the year under consideration, the appellant company was an associate sponsor at the Flamenco & Gypsy Festival, Jodhpur organized by the "Mehrangarh Museum Trust".

The main objective of Flamenco & Gypsy Festival is to promote the link between the Rajasthani folk musicians and the legendary Flamenco and gypsy artists that live around the world. JFG Festival will provide a meeting place for these musicians and dancers, and create a platform for their creative energy, which can be shared with the world.

The JFG festival is a global festival, which provides the appellant company a good opportunity of visibility and opportunity to generate business through new prospective clients around the globe."

16. The assessee argued that the revenue has to examine the commercial expediency for allowing the expenses but the purpose in reasonableness of the expenditure has to be examined from the point of view of the business perspective but not from the revenue side.

17. The Id. CIT(A) affirmed the action of the Assessing Officer holding that museum and festival has nothing to do or in no way connected with the business of assessee of micro surfacing of roads, highways and airports. The Id. CIT(A) held that it was solely personal in nature to fulfill the personal obligation of its Directors and the assessee has also failed to justify its claim with any relevant documents or details except the brochure of the festival wherein the assessee's name nowhere appears. Having heard the arguments and examined the facts on record, we hold that the assessee could not prove anything contrary to the adjudication of the Id. CIT(A) and hence decline to interfere with the order of the Id. CIT(A).

18. In the result, the appeal of the assessee on this ground is dismissed.

19. In the result, the appeal of the assessee is partly allowed.
Order Pronounced in the Open Court on 01/02/2024.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 01/02/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR