

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ “ए” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “A”, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री प्रदीप कुमार केडिया, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI PRADIP KUMAR KEDIA, AM

ITA No.1146/PN/2014
Assessment Year : 2010-11

B. G. Shirke Construction
Technology Pvt. Ltd.,
72-76, Mundhwa Industrial Estate,
Mundhwa, Pune – 411 036.
PAN : AAACB7293D

.... Appellant

Vs.

The Dy. Commissioner of Income Tax,
Circle 1(1), Pune.

.... Respondent

ITA No.1175/PN/2014
Assessment Year : 2010-11

The Dy. Commissioner of Income Tax,
Circle 1(1), Pune.

.... Appellant

Vs.

B. G. Shirke Construction
Technology Pvt. Ltd.,
72-76, Mundhwa Industrial Estate,
Mundhwa, Pune – 411 036.
PAN : AAACB7293D

.... Respondent

Assessee by : Shri Sunil Pathak &
Shri Nikhil Pathak
Department by : Shri Dheeraj Kumar Jain

सुनवाई की तारीख / Date of Hearing : 13.01.2016	घोषणा की तारीख / Date of Pronouncement: 15.01.2016
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आदेश / ORDER

PER PRADIP KUMAR KEDIA, AM :

The cross appeals filed by the assessee and the Revenue are against the order of CIT(A)-I, Pune, dated 29.11.2013 relating to assessment year

2010-11 passed under section 143(3) of the Income Tax Act, 1961 (in short “the Act”).

2. The cross appeals filed by the assessee and the Revenue were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. First, we shall take-up the appeal of the assessee in ITA No.1146/PN/2014. The assessee has raised the following Grounds of Appeal :-

“The following grounds are taken without prejudice to each other -

On facts and in law,

1.1 The learned CIT(A) erred in confirming the disallowance of Rs.41,30,146/- being prior period expenses.

1.2 The learned CIT(A) erred in not appreciating that the Appellant Company had earned net prior period income of Rs.66,06,253/- (comprises of prior period income of Rs.1,07,36,399/- and prior period expenses of Rs.41,30,146/-) and the net amount of Rs.66,06,253/- had already been offered to tax and that disallowance of Rs.41,30,146/- was not warranted on facts and in law.

1.3 The learned CIT(A) erred in not appreciating that the expenses of Rs.41,30,146/- were not prior period expenses and hence, there was no reason to disallow the same.

1.4 The learned CIT(A) erred in not appreciating that -

a. The oil and gas division expenses of Rs.19,61,825/- were incurred in preceding financial years and were initially capitalized and in the year under appeal, the said expenses were de-capitalized and expensed out as they were not directly attributable to exploration activity and therefore, the same should have been allowed as a deduction in the current year.

b. The freight charges of Rs.21,42,434/- were in the nature of reversal of income booked in earlier years and the said reversal of income was allowable as bad debts u/s 36(1)(vii) r.w.s. 36(2) and /or as a business loss u/s 29 / 37(1) of the Income Tax Act, 1961.

1.5 Without prejudice to above, the learned CIT(A) erred in not appreciating that the prior period income of Rs.1,07,36,399/- ought to have excluded while assessing the total income of the appellant company.

2. The appellant Company craves leave to add to, alter, amend, modify and / or delete any or all of the above Grounds of Appeal.”

4. In this appeal, the assessee has raised various Grounds of Appeal but at the time of hearing of this appeal, the Ld. Authorized Representative for the assessee has not pressed any of the aforestated Grounds of Appeal. Thus, all

the aforestated Grounds of Appeal raised by the assessee are dismissed as not pressed.

5. In the result, the appeal of the assessee in ITA No.1146/PN/2014 is dismissed.

6. Now, we may take-up the appeal of the Revenue in ITA No.1175/PN/2014. The Revenue has raised the following Grounds of Appeal:-

“1. The order of the learned Commissioner of Income-tax(Appeals) is contrary to law and to the facts and circumstances of the case.

2. The learned Commissioner of Income-tax(Appeals) erred in failing to appreciate that the claim of assessee for exclusion of income on retention money withheld by contractees was rejected as any such income offered in the return of income originally filed u/s 139(1) of the Act could not be excluded in proceedings finalized u/s.143(3) of the Act?

3. The learned Commissioner of Income-tax(Appeals) erred in not considering the judgment of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. Vs. CIT (2006) 284 ITR 323 (SC) wherein it has been held that such claim for deduction can only be made by way of a revised return.

4. The learned Commissioner of Income-tax(Appeals) erred in not considering the judgment of Hon'ble Supreme Court in the case of CIT Vs. Sun Engineering Works Pvt. Ltd. (1992) 198 ITR 297 wherein it has been held that the income for purposes of "assessment" cannot be reduced beyond the income originally assessed u/s.143(1).

5. The appellant craves leave to add, alter or amend any or all the grounds of appeal.”

7. At the time of hearing of appeal of the Revenue, the Ld. Authorized Representative for the assessee submitted that the business of the assessee is to execute construction contracts. In respect of some of the contracts executed by the company, there is a clause in the contract which enables the customer to retain between 5% to 10% of contract value till the completion of the defect liability period contained in the contract, which is generally between 12 to 24 months after execution of the work. The Ld. Authorized Representative on behalf of the assessee submitted that the retention money withheld/deducted by the customers accrues as income to the assessee only on expiry of defect liability period prescribed in the construction contracts and hence amount retained towards incremental retention money was inadvertently offered to tax in the original return filed by the assessee company. This entitlement was

rightly granted to the assessee by the CIT(A). The Ld. Authorized Representative for the assessee filed a copy of the order of the ITAT in ITA Nos.727 to 730/PN/2012, order dated 31.10.2013 in assessee's own case for assessment years 2003-04, 2006-07, 2007-08 & 2008-09 and submitted that the issue relating to the exclusion of the retention money is decided by the Tribunal in favour of the assessee. It was thus urged that in view of the decision of Pune Bench of the Tribunal, the issue is covered in favour of the assessee. He also filed a copy of the order of the ITAT in ITA No.1055/PN/2012 and CO No.34/PN/2013 pertaining to assessment year 2009-10; order dated 30.09.2014 in its own case of the assessee, wherein the Tribunal has followed the decision rendered in the earlier years. The relevant extract of the order of the Tribunal's order in ITA No.1055/PN/2012 and CO No.34/PN/2013 (supra) as recorded by the Co-ordinate Bench of the Tribunal is reproduced hereunder :-

"15. After hearing both the sides, we find an identical issue had come up before the Tribunal in assessee's own case for A.Yrs. 2003-04 and 2006-07 to 2008-09. We find the Tribunal from Para 22 onwards has discussed the issue and has allowed the claim of the assessee which was made by way of a letter during the course of assessment and not in the return of income. However, the Tribunal has restored the issue to the file of the Assessing Officer for verification of the working of the claim made by the assessee. The relevant observation of the Tribunal from para 22 onwards read as under :

"22. Thus, considered in the aforesaid light, we find no justification for the Revenue to reject assessee's impugned claim for assessment years 2007-08 and 2008-09 on the ground that the claim was made by way of a letter during the course of assessments and not in the return of income.

23. The third objection which has been raised by the Revenue is in terms of a discussion made by the CIT(A) in para 3.6 of the impugned order. According to the CIT(A), if the claim for excluding retention money was entertained and allowed, it would result in the determination of total income at a figure below the income originally returned/assessed and thus the same was not permissible. This objection of the Revenue, in our view is no bar to entertain the aforesaid claim, keeping in mind the ratio of the judgement of the Hon'ble Supreme Court in the case of CIT vs. Shelly Products & Anr., (2003) 261 ITR 367 (SC) and also the judgement of the Hon'ble Gujarat High Court in the case of Gujarat Gas Co. Ltd. vs. CIT, 245 ITR 54 (Guj).

24. On the basis of the aforesaid discussion, in conclusion we hold that in so far as the assessment years 2007-08 and 2008-09 are concerned, the claim of the assessee for exclusion of income on account retention money withheld by contractees/customers has been wrongly rejected by the lower authorities.

25. In so far as the merits of the claim is concerned, no doubt in principle the same is covered by the ratio of the judgement of the Hon'ble Bombay

High Court in the case of Associated Cables P. Ltd. (supra). The assessee has also furnished the year-wise working of the claim of excluding income on account of retention money for the assessment years in question. Such details are placed in the Paper Book filed before us and it has been asserted that the same was also available on the record of the authorities below. Ostensibly, the Assessing Officer as well the CIT(A) have not examined the merits of the claim because the same was rejected at the threshold itself. At the time of hearing, the appellant has preferred Additional Grounds of Appeal re-quantifying the claim for assessment years 2007-08 and 2008-09 in the event of similar claims not being found exigible for assessment years 2003-04 and 2006-07. In order to enable the Assessing Officer to verify the workings of the claim for assessment years 2007-08 and 2008-09, we restore the matter back to the file of the Assessing Officer. The Assessing Officer shall examine the working of the claim made by the assessee, including the revised workings consequent to non-admission of similar claim for assessment years 2003-04 and 2006-07, and thereafter allow the appropriate claim as per law. Needless to say, the Assessing Officer shall allow the assessee a reasonable opportunity of furnishing appropriate details in support of the claim and only thereafter the Assessing Officer shall adjudicate it as per law and re-compute the total income accordingly for the assessment years 2007-08 and 2008-09.

26. In the result, in so far as the appeals for assessment years 2003-04 and 2006-07 are concerned the same are dismissed; whereas, the appeals for assessment years 2007-08 and 2008-09 are allowed, as above."

8. The Ld. Departmental Representative for the Revenue, on the other hand, contended that the assessee had not claimed the impugned deduction in the return of income and therefore the income of the assessee as assessed ought not to be reduced by the CIT(A) lower to the income returned in the light of the decision of the Hon'ble Supreme Court in the case of CIT vs. Sun Engineering Works Pvt. Ltd., (1992) 198 ITR 297 (SC). He also relied on the order of the Assessing Officer. In rejoinder, the Ld. Authorized Representative for the assessee submitted that the aforesaid decision in Sun Engineering Works Pvt. Ltd. (supra) is applicable only in respect of proceedings under section 147/148 of the Act and not in respect of regular assessment. The Hon'ble Supreme Court in the aforesaid decision held that the reopening is carried out for the benefit of revenue only. The income for the purposes of the re-assessment cannot be reduced beyond income originally assessed. Therefore, the scope of the aforesaid decision is limited to re-assessment proceedings alone.

9. We find that the decision of the Pune Bench of the Tribunal in ITA Nos.727 to 730/PN/2012 (supra) in assessee own case, the Co-ordinate Bench

of the Tribunal has negated the contention of the Revenue that claim for deduction can be made only by way of revised return after considering the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. vs. CIT, (2006) 284 ITR 323 (SC). We also find that ratio of decision in Sun Engineering Works Pvt. Ltd. (supra) relied upon by the Revenue is not applicable in the facts of the case. Respectfully following the decision of the Tribunal in assessee's own case for the preceding assessment years, we restore the issue back to the file of the Assessing Officer with a direction to verify the working of quantum of retention money to be allowed during this year in the light of the decision of the Tribunal in assessee's own case for the preceding assessment years.

10. In the result, the appeal of the Revenue in ITA No.1175/PN/2014 is dismissed.

11. Resultantly, respective appeals of the assessee as well as Revenue are dismissed.

Order pronounced on this 15th day of January, 2016.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / **JUDICIAL MEMBER**

Sd/-
(PRADIP KUMAR KEDIA)
लेखा सदस्य / **ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 15th January, 2016.

सुजीत

आदेश की प्रतिलिपि अग्रेषित/Copy of the order is forwarded to :

- 1) The Assessee;
- 2) The Department;
- 3) The CIT(A)-I, Pune;
- 4) The CIT-I, Pune;
- 5) The DR "A" Bench, I.T.A.T., Pune;
- 6) Guard File.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune