

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH : KOLKATA

[Before Hon’ble Shri Aby. T. Varkey, JM & Shri M.Balaganesh, AM]

I.T.A No. 531/Kol/2016

Assessment Year : 2011-12

Sun Steel Industries (P) Ltd.

-vs-

DCIT, Circle-5, Kolkata

[PAN: AADCS 5916 M]

(Appellant)

(Respondent)

For the Appellant : Shri A.K. Tibrewal, FCA

For the Respondent : Shri Sallong Yaden, Addl. CIT

Date of Hearing : 12.02.2018

Date of Pronouncement : 19.02.2018

ORDER

Per M.Balaganesh, AM

1. This appeal by the Assessee arises out of the order of the Learned Commissioner of Income Tax(Appeals)-2, Kolkata [in short the Id CIT(A)] in Appeal No.1783/CIT(A)-2/14-15 dated 22.01.2016 against the order passed by the DCIT, Circle-5, Kolkata [in short the Id AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 30.03.2014 for the Assessment Year 2011-12.

2. The only issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in confirming the disallowance of Rs. 37 lacs claimed by the assessee on account of expenses incurred through sub-contractors, in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee is engaged in the business of fabrication and galvanizing of steel structures and erection of transmission towers. The return of income for the assessment year 2011-12 was filed by the assessee on

29.09.2011 declaring total income of Rs. 69,22,768/- under the normal provision of the Act and book loss of Rs. 72,68,669/- u/s 115JB of the Act. During the course of scrutiny proceedings, the Id. AO observed that the assessee has made following payments to the following sub-contractors as foundation expenses:

Sl. No	Name of the Company	Amount in Rs.
1	Sungrow Mercantile Pvt. Ltd.	7.20 lakhs
2	Lovely Dealer Pvt. Ltd.	7.50 lakhs
3	Jagprem Commercial Pvt. Ltd.	7.20 lakhs
4	Goodview Dealer Pvt. Ltd.	3.60 lakhs
5	Rootstar Dealer Pvt. Ltd.	4.00 lakhs
6	Subhrashi Marketing Pvt. Ltd.	7.50 lakhs
	Total	37 lakhs

The Id. AO in order to verify these parties issued summons u/s 131 of the Act through departmental Inspector. These summons could not be served as these companies were found to be non-existing in their addresses. Subsequently the summons were issued to all the directors of the companies for their personal appearances. However, the said summons returned unserved with the postal comment 'not known', 'left'. By order sheet noting dated 18.03.2014, the director of the assessee company was asked to produce these parties or else the subject mentioned payment to sub-contractors would be treated as bogus payments. In response, the said director appeared on 30.03.2014 and stated that he will not be in a position to produce the parties at present. The Id. AO observed that the business activity of the assessee was carried out in Shillong, but the payments were made to aforesaid six parties which are based in Kolkata. The Id. AO downloaded the data base of registrar of companies (ROC in short) and found that all these companies were incorporated in July, 2010 and that they were in the business of trading in shares and investment in various unquoted companies. The only contract job done by most of them were only with the assessee. The Id. AO from the balance sheet downloaded from the ROC observed that, these companies are not in the business of doing these kind of services i.e. foundation services nor does have the infrastructure to

render those services. He further observed that all these companies are declaring negligible income in their returns and the tax deducted by the assessee company is claimed as refund by the respective companies. The Id. AO observed that these companies have no means to render any kind of alleged foundation services that could be rendered to the assessee. Accordingly, he observed that even though the payments were made to those parties by the assessee by way of account payee cheques and even though they had disclosed the contractor's income in their respective returns, still the genuinity of the transactions were not proved by the assessee. Even the services rendered by those parties for and on behalf of the assessee were not proved inasmuch as from the perusal of the profit and loss account of the respective companies, the meager labour charges amount of around eighty thousand to ninety thousand along were incurred by each of those companies and salary debited was also only to the tune of Rs. 6 lacs. approximately. It is not clear from the balance sheet of these respective companies as to whether they have any branch in Shillong to carry out the necessary technical services for and on behalf of the assessee. Accordingly, the Id. AO observed that these are merely paper company operated by the entry operator for the purpose of providing accommodation entries. In view of these aforesaid facts the genuineness of the payment of foundation expenses by the assessee to the aforesaid six sub-contractors does not stand proved and accordingly the Id. AO disallowed the same as bogus expenditure in the assessment.

4. The assessee pleaded before the Ld. CIT(A) that for proving the genuineness of the expenditure incurred by the assessee, the following documents with sub-contractors were furnished:

- i) Xerox Copy of acknowledgment for filing the return of income;
- ii) Computation of total income for the assessment year 2011-12;
- iii) Audited accounts for the year under 31.03.2011;
- iv) Confirmation of accounts for the year under 31.03.2011;

v) Bank statement of the payment from where the amount paid was clear;

vi) Xerox Copy of the bank statement of the sub-contractor wherein the receipt of payment is recorded;

The assessee pleaded that all the payments towards sub-contract charges were paid by the assessee through account payee cheques after due deduction of tax at source and that those companies in turn had disclosed the receipts from the assessee as their income in their respective income tax returns. Merely because the parties did not appear before the Id. AO would not make the transaction as bogus. In support of this proposition, the assessee placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of M/s Diagnostics vs. CIT in I.T.A. No. 153 of 2004 dated 04.03.2011. The Ld. CIT(A) observed that the decision relied upon by the assessee was distinguishable on facts as there was no doubt about existence and expertise of recipient party. He observed that the assessee had merely inflated the expenses of fabrication work by taking entries from paper companies. The Ld. CIT(A) further observed that the assessee could not explain as to how the this six companies stationed at Kolkata are doing business in shillong and especially when they had no expertise in infrastructure in the specialized job of steel fabrication etc. and as to how they had been helping the assessee in doing foundation jobs in Shillong. He further observed that why the companies and the directors could not be traced in given addresses and as to why the assessee could not produce any document before the Id. AO, were not explained by the assessee. Accordingly, he upheld the action of the Id. AO by treating the subject mentioned payments as bogus and confirmed the disallowance thereon. Aggrieved the assessee is in appeal before us on the following grounds:

- 1. That on the facts and in the circumstances of the case, the Id. Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Rs. 37,00,000 claimed by the Appellant company on account of expenses incurred through sub contractors on the alleged ground that the said expenses are bogus.*

2. *That on the facts and in the circumstances of the case, the ld. Commissioner of Income Tax (Appeals) failed to appreciate that all these payments were subjected to tax deducted at source (TDS) and the amount of TDS on such expenses were deposited to the credit of Central Government and that the said expenses were duly declared by the recipient sub contractor as their income in their Income Tax Returns and credit of TDS was allowed to them.*
3. *That on the facts and in the circumstances of the case, the ld. Commissioner of Income Tax (Appeals) erred in alleging that the aforesaid expenses incurred by the Appellant company were bogus simply on the ground that the said parties were not traceable at the addresses and that the Appellant company could not produce the Directors of those companies within the very short period allowed by the Assessing Officer.*
4. *That the payments were made to the Contractors by account payee cheques issued in favour of the sub-contractor and were cleared in the bank accounts of those sub-contractors, ld. Commissioner of Income Tax (A) was not justified in disallowing those expenses in view of the decision of Hon'ble Calcutta High Court in the case of M/s Diagnostics vs. CIT, Kolkata-XX & anr. In I.T.A. No. 153 of 2004.*

5. The ld. AR placed reliance on the paper book containing the entire details, ITR acknowledgment, audited financial statements, computation of total income, bank statement and confirmation of account in respect of each of the six parties. Based on these documents he argued that the existing of these six companies are proved beyond doubt and hence the same cannot be treated as paper book with non-existent companies. He also argued that all the six companies have duly accounted the subject mentioned contract in their profit and loss account as income he placed reliance on the decision of the Hon'ble Jurisdictional High Court supra to support his arguments.

6. In response to this, the ld. DR argued the existence of the parties were not in dispute. It is not in dispute that the payments were made by account payee cheques with due deduction of tax at source and all the parties have duly disclosed the subject mentioned contract amount as income in their returns but the assessee could not produce any of the

parties before the Id. AO and had not proved that those parties possess necessary infrastructure to render the specialized job of foundation services to the assessee, that too in Shillong, when they are stationed in Kolkata. Accordingly, he placed heavy reliance on the orders of the lower authorities and prayed for non-interference of the same in the facts and circumstances of the case.

7. We have heard the rival submissions and perused the materials available on record. It is not in dispute that the payments to sub-contractors were indeed made by the assessee through account payee cheques after deduction of tax at source. It is not in dispute that those recipients have duly disclosed the same in their respective IT returns and had also filed their returns of income showing meager figure. The tax deducted by the assessee predominantly forms part of claim of refund made by these parties in their return of income. Even though the existence of these companies are proved beyond doubt, with proper paper work carried out, we find that the assessee had not proved the actual rendering of services by these parties to the assessee by way of rendering the foundation services. Admittedly, all these six alleged sub-contractors were only trading in shares and investment companies. The assessee was not able to prove with cogent material as to whether these companies possess necessary expertise and infrastructure to render the foundation services to the assessee. More importantly these services were alleged to have been rendered in Shillong whereas, these parties are located in Kolkata. From the perusal of their balance sheet, it is evident that they do not have any branch in Shillong or any other infrastructure to render foundation services/specialized services to the assessee. Their profit and loss account contains payment of labour charges to the tune Rs 80000/- to Rs 90000/- and payment of salary of Rs. 6 lacs approximately. Hence, it is proved beyond doubt that those parties had not rendered any services to the assessee even by way of outsourcing of the said jobs to outsiders who are stationed in Shillong. All the six companies had similar types of income and similarly types of expenses reflected in their profit and loss account. None of the companies have sufficient fixed

assets to prove the existence of necessary infrastructure for rendering such technical services. From the aforesaid facts, it is made very clear that these parties had merely acted as a conduit to reduce the profits of the assessee company and show meager income in their returns and claim refund of TDS. We are satisfied in the instant case, that these companies are merely paper companies, having complied with proper paper work, but not possessing necessary expertise to render technical services to the assessee. Hence, we hold that the factum of services rendered by those parties to the assessee has not been proved by the assessee in the instant case and hence the disallowance has been rightly made by the revenue in the facts and circumstances of the case . Accordingly grounds raised by the assessee are dismissed.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Court on 19.02.2018

Sd/-
[A.T. Varkey]
Judicial Member

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 19.02.2018
SB, Sr. PS

Copy of the order forwarded to:

1. Sun Steel Industries (P) Ltd., 22, Strand Road, Kolkata-700001.
2. DCIT, Circle-5, Kolkata
3. C.I.T(A)- , Kolkata
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches

