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IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH "G" DELHI)

BEFORE SHRI A.D. JAIN AND SHRI SHAMIM YAHYA

ITA NO. 1014(Del)2011  
Assessment year:2006-07

Sukumar Buildwell Pvt. Limited,  
B-5/263, Sect.3, Rohini.

V.

Income Tax Officer,  
Ward 9(3), New Delhi.

(Appellant)

(Respondent)

Appellant by: Shri Ved Jain, CA & Ms. Rano Jain, CA  
Respondent by: Shri Gajanand Meena, CIT/DR

ORDER

PER A.D. JAIN, J.M.

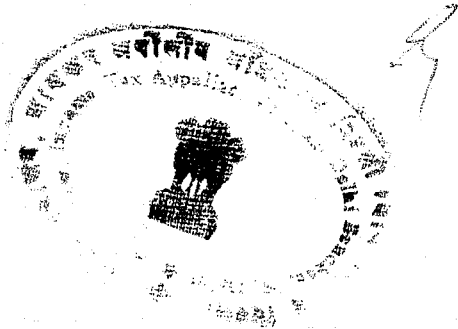
This is assessee's appeal for the assessment year 2006-07, taking the following grounds:-

"1. On the facts and circumstances of the case, order passed by Id. CIT(A) is bad both in the eye of law and on facts.

2. (i) On the facts and circumstances of the case, CIT(A) has erred both on facts and in law in enhancing the income of the assessee to ₹ 2,20,89,000/- as against ₹ 2,18,51,070/- assessed by the AO and ₹ 66,074/- declared by the assessee.

(ii) That the above said enhancement has been made on account of expenses incurred by the assessee ignoring the explanation and evidences provided by the assessee.

3.(i) On the facts and circumstances of the case, CIT(A) has erred both on facts and in law in confirming the disallowance of expenses amounting to ₹ 2,17,85,000/- as made by the AO.



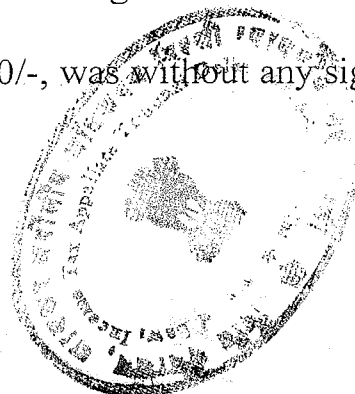
*(ii) That the said disallowance has been confirmed ignoring the evidences and explanation brought on record by the assessee.*

*(iii) That the above disallowance is being confirmed despite the same being incurred wholly and exclusively by the assessee."*

2. The assessee had received an amount of ₹ 2,20,89,000/- from PACL Ltd. on the basis of work order issued by M/s.PACL. The AO observed that the assessee had debited an amount of ₹ 2,17,85,000/- on account of payment for wages; that however, even despite having been asked to do so, the assessee did not produce cash vouchers for wages. The AO, accordingly, disallowed the entire amount on account of payment of wages and determined the assessee's income at ₹ 2,18,51,070/-, against the returned income of ₹ 66,074/-.

3. Before the Id. CIT(A), the assessee submitted the wage register on account of payment of wages. The Id. CIT(A) remanded the matter to the AO. The AO analyzed the evidence submitted by the assessee pertaining to wages. In his remand report, the AO submitted that the details of the expenses month-wise, mentioning the names of labourers to whom the alleged payments were statedly made, were not sufficient evidence in support of the high expenses claimed; that the alleged muster roll of the workers/labourers for expenses of ₹ 31,22,140/-, was without any signature

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of any recipient, as evident from the list for the months of August and October, 2005 and February, 2006; that all the other payments were in cash and most of such payments remained payable at the end of each month and at the end of the financial year ending on 31.3.2006; that the labourers were not in a position to afford and receive the payment less than the actual; that the balance payable amounts for the months of April, May and November, 2005 and January, 2006 were more than 60% of the total wages of these months; and that the payable wages of ₹ 70,61,620/-, as on 31.3.2006, had been adjusted by way of cash payment on different dates, which too, was without any evidence.

4. The Id. CIT(A) observed that as such, despite having been afforded a second opportunity, the assessee could not furnish any evidence regarding payment of ₹ 31,22,140/- on account of wages; that the wages amounting to ₹ 70,61,620/-, which were outstanding, had been adjusted by way of cash payments on different dates and without any evidence; that therefore, out of the total amount of wages amounting to ₹ 2,17,85,000/-, the assessee had remained unable to furnish any evidence regarding payment of ₹ 31,22,140/-; and that regarding the remaining payments, the only evidence submitted by the assessee was by way of some signatures of unidentified persons placed against the alleged payments. Accordingly, the Id. CIT(A)

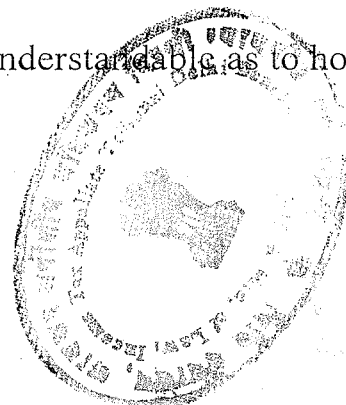


required the assessee to produce copies of electricity bills, the number of employees other than the Directors with evidence, material showing as to when the loans advanced by the assessee to various companies were returned by them, the details of administrative and other expenses, a copy of agreement, if any, with PACL India Ltd., with PAN number of PACL and latest address of the assessee, since all the letters sent at the registered address of the company had returned unserved. The assessee was queried that since it seemed that it had not carried out any business, as to why all the expenses be not added back to the assessee's income. The assessee was informed that the said communication be treated as a notice of enhancement.

5. In response, the assessee submitted that a copy of agreement with PACL India Ltd. had already been submitted along with the submissions filed earlier. However, the assessee filed a copy of work order dated 24.3.05, whereby PACL India Ltd. had required the assessee to undertake the work of jungle cutting/land leveling @ 1000 per truck with labour, in Tamil Nadu.

6. The Id. CIT(A) observed that the profit and loss account of the assessee showed that no travelling had been undertaken by the Directors of the assessee company and so, it was not understandable as to how the work

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was executed in Tamil Nadu, when no expenditure had been debited under the head of travelling.

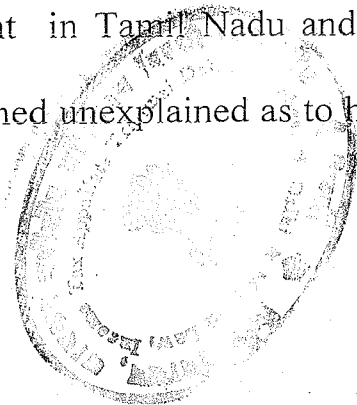
7. The assessee was asked if it was having any employee other than the Directors. In reply, the assessee submitted that it was in the business of executing contracts in remote areas across the country; that it did not have any employee other than the Directors, who worked full time and looked after the complete administration, financial and operational aspects; that since the Directors were fully involved in the business, there was no need of any clerical staff; that besides this, the assessee got its complete work done through labourers, who were engaged in the respective places where various contracts were executed by it; and that the wage sheets depicting the payment made to them had been produced in the assessee's earlier submissions.

8. The Id. CIT(A) observed that the submissions of the assessee showed that it was a bogus company where only two Directors were there and no other staff was employed; that still, an amount of ₹ 35,456/- had been debited under the head of staff welfare expenses; that the assessee had also debited water and electricity expenses amounting to ₹ 28,700/-; that the assessee had failed to produce electricity bills, inspite of having been asked to do so; that besides, no expenditure had been incurred on account of



telephone; that the Directors not having undertaken any traveling, nor any expenditure having been incurred on account of telephone, it was not understandable as to how the Directors communicated with people in Tamil Nadu to execute the work; that the work order produced by the assessee showed that the assessee was to be paid @ 1,000/- per truck with labour; that however, no expenditure pertaining to truck had been debited in the profit and loss account; that further, though the area mentioned in the work order was shown at 22089.50, no unit had been mentioned there-against; that this again went to show that the work order was an unreliable piece of paper; that as per the terms and conditions mentioned in the work order, the rates were inclusive of cartage and labour and all materials were to be provided by the contractors; that however, neither had any payment been made on account of cartage, nor had any material been purchased by the assessee; that the assessee had given details of its bank account; that as per these details, the bank from which the assessee operated its account, was situated in Pitam Pura, CD Block, HDFC Bank, New Delhi; that the assessee had not given details of any other bank account in Tamil Nadu; that the bank statements issued from the Pitam Pura branch of HDFC bank showed withdrawals in cash; that when once there was no bank account in Tamil Nadu and no expense had been incurred on travelling, it remained unexplained as to how

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the cash was transferred to Tamil Nadu; that the assessee also could not produce any agreement or contract with PACL, rather it produced only a work order ; that this work order was dated 24.3.05 and stated that the work should be over within one year, i.e., by 23.4.06; that this implied that wages should have been paid by March 2006; that however, the outstanding wages as at the end of March, 2006 were of ₹ 70,61,620/-; that as per the Schedule of payment of wages filed by the assessee, the total outstanding wages as shown by the assessee as on 31.3.06, were of ₹ 70,61,620/- and the sum total of the wages debited in the profit and loss account from August, 2005 to March, 2006 was of ₹ 78,42,905/-; that this showed that the assessee had not paid the wages for the last 8 months and still the workers were doing work for the assessee; that as per the balance sheet of the assessee, the assessee did not have any fixed assets, yet no amount had been debited in the profit and loss account on account of rent; that the assessee did not own any building, nor had it paid rent either in Delhi or in Tamil Nadu, raising questions as to from where it carried on its operations; that the assessee had been asked to furnish complete details of administrative and other expenses; that in response, the assessee had merely submitted a copy of its profit and loss account, but no details of various expenses incurred, had been filed; that it was thus clear that the assessee had not carried out any business and the

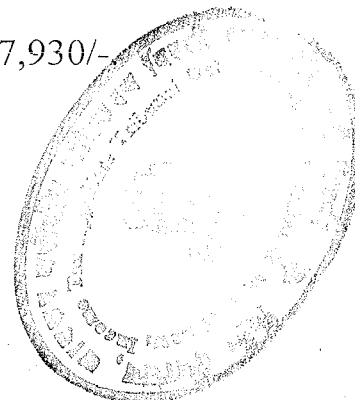


entire expenditure debited in the profit and loss account needed to be disallowed and the total receipts shown by the assessee were to be taxed as the assessee's income; that it was a ploy of M/s. PACL India Ltd. to divert its profit to another concern and to thereby reduce its income; that the assessee had not carried out any work and it was just a sham agreement by M/s. PACL India Ltd. to divert its income to the assessee company and then to withdraw the entire amount in cash; that in response to a query as to why all the expenses debited in the profit and loss account be not disallowed and the income be enhanced accordingly, the assessee had submitted that if the action of the AO were to be considered, it would mean that the gross profit rate in the case of the assessee would be one hundred percent; that this was practically impossible to achieve in any business; and that this reply of the assessee was not found convincing because of the discrepancies discussed by the Id. CIT(A) and because of the failure of the assessee to establish that it had carried out any work in Tamil Nadu.

9. In this manner, the Id. CIT(A) determined the income of the assessee at ₹ 2,20,89,000/- as against that of ₹ 2,18,51,070/-, as determined by the AO, thereby enhancing the assessee's income by ₹ 2,37,930/-.

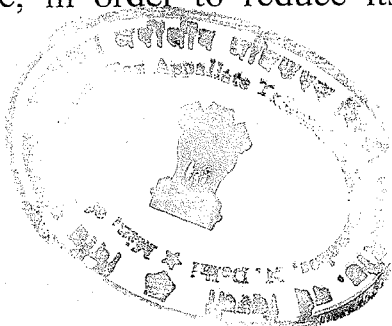
10. Aggrieved, the assessee has filed this appeal.

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11. Challenging the impugned order, the learned counsel for the assessee has contended that the Id. CIT(A) has erred in enhancing the income of the assessee from ₹ 66,074/- as declared by the assessee and ₹ 2,18,51,070/-, as assessed by the A O, to ₹ 2,20,89,000/-; that in doing so, the Id. CIT(A) erroneously ignored the explanation and evidence provided by the assessee; that whereas the AO had accepted that the work was actually carried out by the assessee, but no evidence had been produced in support of the expenses claimed to have been incurred on account of wages paid, the CIT(A) found the agreement to be sham and as such, no work to have been carried out by the assessee; that the findings of neither of the authorities below are valid in law; that once the AO found the work to have been in fact carried out, in the absence of evidence, the recourse left to him was to reject the books of account and the results declared by the assessee and thereafter compute the income which would clearly have been earned in the assessee's nature of business, by applying the percentage rate of profit on the contract amount; that so far as regards the CIT(A), once it was held that the transaction was a sham transaction and no work was executed, it needed to be held that the amount paid by PACL was not the income of the assessee, since the assessee was only a facilitator for helping PACL in diverting its profit to the assessee, in order to reduce its income; and that as such, going by the

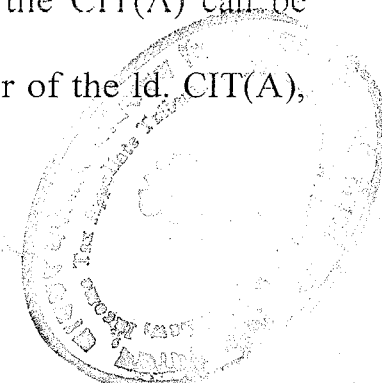


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CIT(A)'s findings, at best, only a percentage of the payment allegedly to have been paid by the assessee to the PACL ought to have been added in the hands of the assessee.

12. The Id. DR, on the other hand, has strongly supported the impugned order. It was submitted that the CIT(A) had duly considered the facts and evidence brought on record and had, by a reasoned speaking order, arrived at a conclusion that the alleged agreement between PACL and the assessee company was a sham arrangement, entered into in order to enable PACL to divert its income to the assessee and then to withdraw the entire amount in cash; that as discussed elaborately by the CIT(A), the assessee had miserably failed to prove the claim of payment of wages; that it stood admitted that the assessee did not have any employees other than its Directors; that these Directors did not travel to Tamil Nadu; that no premises was taken on rent; that the vouchers regarding payment of wages were unsigned; that substantial amounts of wages remained unpayable and the workers were still doing the work for the assessee; that no telephone expenses were shown to have been incurred; that no electricity bills were produced; that in these facts, no conclusion other than the one arrived at by the CIT(A) can be envisaged; that as such, there being no error in the order of the Id. CIT(A),

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the same be confirmed by dismissing the assessee's appeal, which is utterly shorn of merit.

13. We have heard the parties and have perused the material on record. The AO, as discussed hereinabove, completed the assessment, making the addition of ₹ 2,17,85,000/- to the income of the assessee, holding that the expenditure was unverifiable and was being, accordingly, disallowed. Evidently, the AO did not hold the entire transaction to be a sham transaction. It was not held that no such work, as claimed by the assessee, was executed. The Id. CIT(A), on the other hand, held the transaction to be a sham one and held that the entire exercise was to divert the profit of PACL India Ltd. to the assessee concern and to later withdraw the same in cash. The AO disallowed the expenses claimed, on the basis that the assessee had failed to produce vouchers and bills in respect of such payment. The Id. CIT(A) enhanced the income of the assessee.

14. Neither of the orders of the authorities below, meets the requirement of law of assessing/determining the correct income of the assessee. As for the AO, once the agreement was not held to be ingenuine, and the expenditure claimed was disallowed, in the absence of evidence, he ought to have computed the income of the assessee on the basis of estimation, referring to income normally earned in the line of business carried on by the



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assessee and applying a percentage rate of profit on the contract amount.

This, evidently, was not done.

15. The Id. CIT(A) too, did not carry his conclusion to its logical end. Once the transaction was held to be sham, it was not appropriate, much less in accordance with law, to tax the entire amount as the income of the assessee. Obviously, in such a situation, at best, when the assessee was held to be a facilitator of the alleged design of PACL to divert its profit to the assessee and later to withdraw it, a percentage thereof, on account of the assessee having given such accommodation to PACL, needed to have been added in the hands of the assessee, and no more.

16. Further, in such a case, only the service charges could be added as the income of the assessee, as having been charged for providing the accommodation to PACL. This has not been done by either of the authorities below.

17. In the above view of the matter, we remit this issue to the file of the AO, to be decided, by determining the service charges earned by the assessee for providing the accommodation to PACL India Ltd. and to add the same in the hands of the assessee.



18. In the result, for statistical purposes, the appeal of the assessee is treated as allowed.

Order pronounced in the open court on ...../05.2011.

(Shamim Yahya)  
Accountant Member

(A.D. Jain)  
Judicial Member

Dated: 10.05.2011

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

True copy

By order

Deputy Registrar  
Assistant Registrar  
आयकर अपीलिय अधिकरण  
Income Tax Appellate Tribunal  
नई दिल्ली/ New Delhi

