

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "ई" मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI**

**सर्वश्री राजेन्द्र, लेखा सदस्य, एवं संदीप गोसाई, न्यायिक सदस्य के समक्ष**  
**BEFORE S/SHRI RAJENDRA, ACCOUNTANT MEMBER AND**  
**SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.4388/Mum/2011  
(निर्धारण वर्ष / Assessment Year : 2008-09)

Asstt. Commissioner of Income Tax-25(2), C-11, 1st floor, Room No.108, Pratyakshakar Bhavan, Bandra-Kurla Complex, Bandra (E), Mumbai-400051.	<b>बनाम/</b> Vs.	Shri Sandeep Suresh Vaidya, 5/2, Akshata, Off, Aarey road, Next to Sanmitra School, Goregaon (E), Mumbai-400063
स्थायी लेखा सं./PAN :		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

स्थायी लेखा सं./जीआइआर सं./PAN. :AADPV5530D

अपीलार्थी की ओर से / Appellant by :	Shri Pramod Nikalje
प्रत्यर्थी की ओर से/ Respondent by :	Shri Prakash Pandit

सुनवाई की तारीख / **Date of Hearing** : **24.11.2015**  
घोषणा की तारीख / **Date of Pronouncement** : **28.1.2016**

**ORDER**

**PER SANDEEP GOSAIN, JM**

This is an appeal filed by the revenue challenging the order dated 15.3.2011 passed by the Id. CIT(A)-35, Mumbai for the assessment year 2008-09.

2. The facts of the case leading to the dispute are that the assessee filed return of income declaring total income of Rs.1,05,67,630/- on

6.10.2008. The assessee is involved in the turnkey project in Maharashtra and other States for Corporate Houses. During the year under consideration, the assessee shown receipts of Rs.9,59,71,106/- in the profit and loss account against the name of M/s Design Plus Project and the assessee claimed TDS on the amount of Rs.10,83,93,396/-. Therefore, the AO was of the view that the assessee has shown less contract receipt by Rs.1,24,22,290/- when compared to TDS certificates. The AO called for the assessee to show the reasons for this difference. The assessee explained that in the business carrying out by the assessee, it received advance amount first and reconciliation is being done after completion of work on verification by the project authorities. Therefore, this amount has been shown in the receipt but actual work is less by Rs.1,24,22,290/-. The AO also asked the assessee that why the total TDS amount shown by the assessee should not be treated as actual receipt. Therefore, the actual total receipt accounted by the assessee is Rs.4,19,89,249/- but TDS credit shown was only on Rs.1,77,47,025/-. The explanation tendered by the assessee did not find convincing by the assessing officer and therefore he added the sum of Rs.2,42,42,224/- to the total contract receipt. Aggrieved by this decision, the assessee filed appeal before the Id.CIT(A), who deleted the addition made by the AO.

3. Before us, the Id.AR submitted that the assessee is in the same business from 2.2.2006 and it undertakes various types of contracts. To undertake the contract, it receives some portion of contract amount as an advance and after completion of particular work it reconciles amount and work performed. During the process, TDS shown on advance amount received from different parties and after completion of work actual receipt shown in the profit and loss account would be settled. This explanation was tendered before the AO but the AO did not accept the same. He also drawn support from the order of Id. CIT(A) and submitted that the

Id.CIT(A) has made detailed discussion in the order. The Id. AR further submitted that TDS is to be deducted only on the actual basis and not on presumptions and assumptions. In assessee's case the assessee has followed the previous methods as has been followed by him from inception. The AO has also not pointed out any defect in the books of accounts maintained by the assessee. The Id. AR submitted that the Id.CIT(A) while adjudicating the issue in favour of the assessee has drawn support from the from the case of Smt.Varsha G Salunke V/s DCIT (281 ITR 55)(AT). This decision has not been appealed before the higher forum by the revenue and has reached finality. In the said order the Id.CIT(A) has also discussed the provisions of section 199 of the Act and the power of the assessing officer.

4. On the contrary, the Id.DR reiterated the facts of the case as referred before the authorities below and strongly relied on the order of AO.

5. We have heard both the parties and perused the record available before us. We find that during the year under consideration, the assessee shown receipts of Rs.9,59,71,106/- in the profit and loss account against the name of M/s Design Plus Project and the assessee claimed TDS on the amount of Rs.10,83,93,396/-. Therefore, the AO was of the view that the assessee has shown less contract receipt by Rs.1,24,22,290/- when compared TDS certificates. We find that assessee receives advance amount of contracted amount and adjust the same after completion of work. Therefore, it is bound to be a difference in the actual work done and contract receipt. Before us also the Id. DR did not bring any material to show that the decision of the Id. CIT(A) is contrary to the provisions of accounting standard as well as the provisions of Income Tax Act. Therefore, we are of the view the Id. CIT(A) is correct in his opinion and

hence, there is no need to interfere with the judicious order passed by Id.CIT(A). Therefore, we confirm his order.

6. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court 28th,JAN, 2016.

Sd  
(राजेन्द्र, लेखा सदस्य /**RAJENDRA**)  
लेखा सदस्य /**Accountant Member**

sd  
(संदीप गोसाई/**SANDEEP GOSAIN**)  
न्यायिक सदस्य/**Judicial Member**

मुंबई Mumbai; दिनांक Dated.28th Jan,2016

व.नि.स./ **SRL, Sr. PS**

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True copy

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai