



ITA No.6568/Del/2015  
Velcon Projects (P) Ltd.  
Assessment Year-2011-12

**आयकर अपीलीय अधिकरण "ई" न्यायपीठ, नई दिल्ली में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"E" BENCH, NEW DELHI**

**श्री डी. मनमोहन, उपाध्यक्ष एवा**

**श्री मनोज कुमार अग्रवाल, लखा सदस्य कासमक्ष ।**  
**BEFORE SHRI D. MANMOHAN, VP AND**  
**SHRI MANOJ KUMAR AGGARWAL, AM**

**आयकर अपील सा।T.A. No.6568/Del/2015**  
**(निर्धारण वर्ष / Assessment Year: 2011-12)**

ITO, Ward- 26(2), New Delhi.	<b>बनाम/</b> Vs.	Velcon Projects (P) Ltd., 12/4, 1 <sup>st</sup> Floor, East Patel Nagar, New Delhi.
स्थायी लखा सा./जीआइआर सा./PAN/GIR No. <b>AADCV-4445-L</b>		
<b>(अपीलार्थी /Appellant)</b>	:	<b>(प्रत्यर्थी / Respondent)</b>

<b>Revenue by</b>	:	Shri Parnav Kumar, Ld. Sr.DR
<b>Assessee by</b>	:	Shri S. K. Chaturvedi, CA

<b>सुनवाई की तारीख /</b> <b>Date of Hearing</b>	:	13/11/2017
<b>घोषणा की तारीख /</b> <b>Date of Pronouncement</b>	:	15/11/2017

**आदश / O R D E R**

**Per Manoj Kumar Aggarwal (Accountant Member)**

1. The captioned appeal by revenue for Assessment Year [AY] 2011-12 assails the order of the Ld. Commissioner of Income-Tax (Appeals)-9 [CIT(A)], New Delhi, *Appeal No.111/14-15* dated 28/09/2015 by raising the following effective grounds of appeal :-



- "1. On the facts and circumstances of the case and in law, the order passed by the Ld. CIT(A) is erroneous and the learned CIT(A):
- i) has erred in deleting the additions of Rs.36,30,000/- made by AO on account of discrepancy in the figures of gross receipts as per form 26AS and P&L A/c.
  - ii) has erred in deleting the additions of Rs.36,372/- made by AO account of 15% out of total expenses totaling to Rs.2,42,482/-.

The assessment for impugned AY was framed by *Ld. Income Tax Officer, Ward 17(2), New Delhi u/s 143(3) on 20/03/2014.*

2.1 Facts leading to the same are that the assessee being *resident corporate assessee* engaged in the business of *civil construction* was assessed for impugned AY at Rs.50,23,630/- as against returned income of Rs.13,57,260/- filed by the assessee on 30/09/2011. The assessee suffered additions of Rs.36.30 Lacs on account of amount received from an entity namely *Era Infra Engineering Ltd.* and another *adhoc* addition of Rs.36,372/- against certain expenses claimed by the assessee. Both these additions are the subject matter of this appeal.

2.2 During assessment proceedings, it was noticed that the assessee reflected Gross Receipt of Rs.2,05,01,790/- as against Rs.2,35,18,470/- reflected in *Form 26AS*. Further, the assessee claimed full credit of Tax deducted at source [TDS] as reflected in *Form 26AS* in the impugned AY. Upon being confronted, the assessee pointed out that the differential amount of Rs.36.30 Lacs represented bill raised against the said entity in the next AY whereas that entity made provision of these expenses in his books in AY 2011-12 and deducted TDS thereupon. It was further contended that the uncompleted work was shown as closing stock as on 31.03.2011 and the receipts were recognized as income upon



completion in the next AY. However, not convinced, Ld. AO applying the provisions of Section 199 *read with Rule 37BA* concluded that since full TDS credit was claimed in the current year, the receipts was also assessable in the impugned AY. The Ld. AO made another *adhoc* addition of 15% against aggregate expenses of Rs.2,42,482/- claimed by the assessee on the premises that the same were not properly vouched for and personal elements in the same could not be ruled out.

3. Aggrieved, the assessee contested the same with success before Ld.CIT(A) vide impugned order dated 28/09/2015 where Ld. CIT(A) concurred with assessee's submission and decided the issue in the following manner:-

*"3.2 I have considered the submissions of the appellant and order of the A.O. and details filed by the appellant. It is seen during the course of assessment proceedings, the A.O. asked the clarification regarding discrepancy of amounting to Rs.36,30,000/-. The A.O. observed that gross receipt as per 26AS was Rs.2,35,18,470/- whereas, the assessee had declared of Rs.2,05,01,790/-.*

*The appellant has submitted its explanation before the A.O. that regarding difference in receipt as per Form 26AS and receipts as per profit & loss account. The contractee, M/s Era Infra Engineering Limited has deducted TDS on provision for work done by the assessee company for which bills has not been raised by the company as on 31.03.2011 of amounting to Rs.36,30,000/- due to non completion of work. The assessee company has shown the value of uncompleted work as closing stock. Since the work was not completed and revenue has been recognized in subsequent financial year on the basis of bills raised.*

*After considering the submissions of the appellant, the A.O. concluded that section 199 of the income tax act read with rule 37BA of the IT act provides that credit of TDS shall be allowed in the year to which the income on which tax has been deducted is assessable. The A.O. concluded that the assessee itself has claimed credit of TDS which established that the income of Rs.36,30,000/- is assessable in the year under consideration. As against, the appellant has submitted that dispute is regarding the bills of amounting to Rs.36,30,000/- which was raised by the appellant on 6.4.2011 and duly acknowledged by M/s Era Infra Engineering Ltd. On 7.4.2011 which was accounted for F.Y. 2011-12. The appellant further submitted that the A.O. has taken the argument that on this bill, TDS was claimed by the appellant. The appellant has submitted that the provision of section 199 read with Rule 37BA are relating to allowability of credit of TDS. If the A.O. is satisfied that TDS is not pertained to this year, then the A.O. should give the credit of TDS in*



subsequent year and not the income should be added in this year on the basis of TDS. The appellant has also submitted the copy of the bills raised. The bill was raised on 6.4.2011 which was also acknowledged by the other party. The appellant has also submitted the copy of ledger for A.Y. 2011-12 and copy of return of income. From the above details, it is very clear that above receipt has been included in the subsequent return of income. The receipt shown in the P&L account are duly tallied with the ledger. The appellant has taken same argument before the A.O. Since, the receipt is shown, in subsequent year i.e. in 2012-13, the same is not required to be taxed again in this year. On the identical issue, the appellant has relied the decision of Hon'ble ITAT in the case of Lloyd Insulation Ltd. In ITA No. 2400/DEL/11 in any case before the assessee to be assessed where the Hon'ble ITAT held that

"Section 199 is not only to answer the question as to the year in which the credit for TDS shall be given. It links up the credit with assessment year in which such income is assessable. In other words, the Assessing Officer is bound to give credit in the year in which the income is offered to tax. This section 199 does not empower the Assessing Officer to determine the year of assessability of the income itself but it only mandates the year in which the credit is to be given on the basis of the certificate furnished."

From the above facts, it is clear that the bill was raised of amounting to Rs.36,30,000/- on 6.4.2011 which pertains to F.Y. 2011-12 i.e. A.Y. 2012-13 and same has been offered for year i.e. in A.Y. 2012-13. Since the above receipt has already been shown in subsequent year i.e. in A.Y. 2012-13, so same is not required to be taxed again. Therefore, the addition of amount to Rs.36,30,000/- is hereby deleted.

4. In Ground no. 3, the appellant has objected regarding adhoc estimate addition made by the AO out of various expenses. The appellant has debited the various expenses in the head of miscellaneous expenses, conveyance and travelling expenses, telephone expenses, of his total comes to Rs.2,42,482/-. The A.O. made an adhoc addition of Rs.36,302/- at the rate of 15%, by stating that assessee could not prove the nexus that the expenses were wholly and exclusively for the business purpose. Further, it is also mentioned that personal elements of the director and the employees of the company also cannot be allowed. As against, the appellant has submitted that A.O. has made addition without discussion. It is also submitted that the appellant being a corporate entity, there can be no element of personal use. The appellant has also relied the decision of ITAT in the case of Ashoka Betelnut Co (India) Pvt Ltd. Vs. ITO reported in 10 ITD 788.

4.1 Considering the above submissions, I find that the A.O. as made adhoc addition. The A.O. has not pointed out any specific mistakes and further, he has not given any instances which proves the expenses as personal in nature. The A.O. has made the addition without assigning any reason, which is not sustainable in law. Therefore, in view of the above facts, the addition made by the A.O. is hereby deleted. Hence, the Ground of Appeal is allowed. "

Aggrieved, the revenue is in further appeal before us.



4. The Ld. Departmental Representative [DR] contested the relief granted by Ld. CIT(A) on the ground that since assessee claimed full credit of TDS, the concerned receipts were also liable to be assessed in the same period. Per *Contra*, Ld. AR submitted that the stand of Ld. CIT(A) was fair & reasonable.

5. We have heard the rival contentions and perused relevant material on record. Upon perusal of records and orders of lower authorities, the undisputed fact is that the assessee has recognized revenue of Rs.36.30 Lacs in immediately succeeding AY i.e. 2012-13. The bill against the same has been raised on 06/04/2011 and the assessee has shown certain closing stock as on 31/03/2011. The revenue has nowhere disputed that the work was not completed in the impugned AY. Hence, on factual matrix, we find that Ld. CIT(A) has clinched the issue in proper perspective since the assessee was bound to recognize only those incomes / receipts which had accrued to him in the impugned AY. The Ld. AO made the addition solely on the premises that since full TDS credit has been claimed, the concerned receipts were also liable to be assessed in the same period, which was not correct approach since under mercantile system of accounting, the assessee was required to recognize only those incomes which actually crystallized and accrued to him in the impugned AY. We find that the assessee had offered the impugned income in the next AY and hence, in terms of statutory provisions, the credit of TDS was also to be granted to the assessee in that year only. However, we see no fruitful reason to disturb the already concluded assessment since the exercise would be revenue neutral.



Regarding *ad hoc* disallowance, the same could not be made by Ld. AO merely on the basis of doubts or general perception. Hence, finding the order of Ld. CIT(A) quite fair and reasoned one, we see no reason to disturb the same.

6. Resultantly, the revenue's appeal stands dismissed.

*Order pronounced in the open court on 15<sup>th</sup> November, 2017.*

Sd/-  
**(D. Manmohan)**  
उपाध्यक्ष / Vice President

Sd/-  
**(Manoj Kumar Aggarwal)**  
लक्षा सदस्य / Accountant Member

नई दिल्ली / New Delhi; दिनांक Dated : 15.11.2017

Sr.PS:- Sujeet

**आदशा की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नई दिल्ली / DR, ITAT, New Delhi
6. गार्ड फाईल / Guard File

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आदशानुसार/ BY ORDER,

सहायक पञ्जीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, नई दिल्ली / ITAT, New Delhi