

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 125/MUM/2012
Assessment Year: 2007-08**

Mehta Jaising Builders 398, Kirti Kunj, 14 th Road, Khar (W) Mumbai-400052.	Vs.	DCIT- Circle -19(1) Piramal Chambers, Lalbaug, Mumbai-400012.
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PAN No. AABTM7681C

Appellant

Respondent

Assessee by	:	Mr. Sameer G. Dalal, AR
Revenue by	:	Mr. M.C. Omi Ningshen, DR

Date of Hearing	:	02/02/2018
Date of pronouncement	:	28/03/2018

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2007-08. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-22, Mumbai [hereinafter 'CIT(A)'] and arises out of the assessment order u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds raised by the assessee/appellant in this appeal are that the Ld. CIT(A) erred in upholding the action of the Assessing Officer(AO) to make an addition of Rs.13,17,545/- to the total income being 8% of receipt stated in TDS Certificates less shown accrued and by considering advance receipt against purchase of fixed assets and material as income accrued.

3. The assessee is a Civil Contractor and builder. During the course of assessment proceedings, the AO observed that the assessee had received an amount of Rs.4,06,10,460/- showing TDS of Rs.9,20,443/-. The assessee filed before the AO Form No. 16A(certificate of deduction of tax at source u/s 203) for the said amount issued by Kohinoor CTNL Infrastructure Company Ltd. u/s 194 C dated 15.06.2007 pertaining to the financial year 2006-07 relevant to the assessment year 2007-08. The said certificate shows the following information:

Sr. No.	Date	Amount	TDS	Remarks
01.	16.11.2006	1500000	33660	The amount is not reflected in receipts
02.	07.02.2007	10000000	224400	The amount is not reflected in receipts
03.	07.02.2007	8494881	199769	The amount is reflected in receipts
04.	31.03.2007	13848908	310770	The amount is reflected in receipts
05.	31.03.2007	6766671	151844	An amount of Rs.1797361 is reflected in receipts and the remaining amount is not reflected.

3.1 The assessee reflected the receipts shown at serial no. 3 and 4. It had also shown an amount of Rs.17,97,361/- out of total amount of Rs.67,66,671/- shown in serial no. 5. Thus the AO came to a finding that the assessee failed to include receipt of Rs.1,64,69,310/-. As per the accounting system consistently followed, the assessee had been declaring 8% profits on receipts for ongoing projects and on completion of the project, income has been declared as difference of income and expenditure. In view of the system of accounting consistently followed by the assessee, the AO estimated the income @

8% on the receipts of Rs.1,64,69,310/- and brought Rs.13,17,545/- to tax.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) held:

“During appellate proceedings before me it was stated that the advances have been received but was re-adjusted against future bills which is against purchase of machinery, etc. However, from the copy of bills filed and the TDS details furnished it is noted that there is no such narration that this is an advance receipt or it is for the purpose of machinery. In fact in all bills produced before me, cumulative work done is shown which the assessee says to be an advance. Had this been so, there was no requirement of making any TDS. Accordingly, I do not find any force in the contention of the appellant. The assessee is following mercantile system of accounting where the income is to be offered at the earliest point of time. In this case, the income has already been received and hence the AO has taxed it during the year. In view of the above, I am of the considered opinion that the AO has rightly made addition of Rs.13,17,545/-, which is upheld.”

5. Before us, the Ld. counsel of the appellant files a Paper Book containing (i) letter to the AO dated 24.11.2009 along with relevant annexure, (ii) details of income offered for taxation for AY 2007-08 and (iii) TDS certificate dated 15.06.2007.

The Ld. counsel submits that the appellant had received advance for purchase of machinery as per agreement. This advance was to be adjusted against future bills. The contratee i.e. M/s Kohinoor CNTL Infra Co. Ltd. has deducted tax at source from payment made towards contract receipt as well as advance against purchase of machinery.

It is submitted by him that the appellant follows mercantile method of accounting. During the year, it has raised bills after approval

of architect and same were considered as revenue receipts. The appellant has considered the same receipt for levy of VAT and service tax. It has taken to credit for TDS of Rs.5,50,181/- only on account of revenue receipts of Rs.2,41,41,150/-.

The Ld. counsel submits that the balance amount of TDS of Rs.3,70,260/- and receipt of Rs.1,64,69,310/- as per certificate dated 16.06.2007 was claimed in the subsequent period i.e. AY 2008-09. Reliance is placed by him on Rule 37BA of the Income Tax Rules, 1962.

6. On the other hand, the Ld. DR supports the order passed by the Ld. CIT(A).

7. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

The appellant follows mercantile method of accounting. The Hon'ble Bombay High Court in the case of *Taparia Tools Ltd. v. JCIT* [2003] 260 ITR 102 has described the mercantile system of accounting as follows:

"The mercantile system of accounting is based on accrual. Basically, it is a Double Entry System of accounting. Under the mercantile system of accounting, profits arising or accruing at the date of the transaction are liable to be taxed notwithstanding the fact that they are not actually received or deemed to be received under the Act. Under the mercantile system of accounting, therefore, book profits are liable to be taxed. The profits earned and credited in the books of account constitute the basis of computation of income. The system postulates the existence of tax in so far as monies due and payable by the parties to whom they are debited [see *Keshav Mills Ltd. v. CIT* (1953) 23 ITR 230, 239 (SC)]. Therefore, under the Mercantile System of Accounting, in order to determine the net income of an accounting year, the revenue and other incomes are matched with the

cost of resources consumed [expenses]. Under the mercantile system of accounting, this matching is required to be done on accrual basis. Under this matching concept, revenue and income earned during an accounting period, irrespective of actual cash in-flow, is required to be compared with expenses incurred during the same period, irrespective of actual outflow of cash.”

7.1 At this moment, we examine the TDS certificate (Form No. 16A) filed by the appellant before the AO which has been extracted at para 3 hereinbefore. The appellant has taken into account for the impugned assessment year a portion of the bills and simultaneously left out the remaining portion of the bills.

Let us look into section 199 of the Act. It reads as under :

“(1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.

(2) Any sum referred to in sub-section (1A) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income such payment of tax has been made.

(3) The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rule for the purposes of giving credit to a person other than those referred to in such-section (1) and sub-section (2) and also the assessment year for which such credit may be given.”

In *CIT. v Eli Lily & Co.* (2009) 312 ITR 225 (SC), the Hon’ble Supreme

Court has held that “Consequently, it cannot be said that the TDS provisions which are in the nature of machinery provisions to enable collection and recovery of tax are independent of the charging provisions which determine the assessability in the hands of the employee.” Also it has been held therein that “Sec. 4 is the charging section. Under s. 4(1), total income for the previous year is chargeable to tax. Section 4(2) *inter alia* provides that in respect of income chargeable under sub-s (1), income tax shall be deducted at source where it is so deductible under any provision of the 1961 Act, which *inter alia* brings in the TDS provisions contained in Chapter XVII-B. In fact, if a particular income falls outside s. 4(1) then TDS provisions cannot come in.” In *CIT v. B.C. Srinivasa Setty* (1981) 128 ITR 294(SC), the Hon’ble Supreme Court has held that the charging section and the computation provisions together constitute an integrated code.

7.2 The TDS Certificate depicts receipts of Rs.4,06,10,460/- and TDS of Rs.9,20,443/- for the financial year 2006-07.

In view of the above position of law, the AO has rightly brought to tax an amount of Rs.13,17,545/- in the AY 2007-08.

8. In the result, the appeal is dismissed.

Order pronounced in the open Court on 28/03/2018.

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 28/03/2018

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai