

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.408/Viz/2016
(निर्धारण वर्ष/Assessment Year:2011-12)

Sri Vijaya Durga Engineering
Constructions ,
D.No.4-74, Main Road
R.S.Peta
Biccavolu
[PAN :ABBFS3663D]

Vs. Income Tax Officer
Ward-1
Kakinada

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से/ Respondent by

: Shri G.V.N.Hari, AR
: Shri V.Appala Raju, DR

सुनवाई की तारीख / Date of Hearing

: 25.07.2018

घोषणा की तारीख/Date of Pronouncement

: 08.08.2018

आदेश /ORDER

PER D.S. SUNDER SINGH, Accountant Member:

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-2, Guntur vide I.T.A.No.94/14-15 dated 18.07.2016 for the assessment year 2011-12.

2. All the ground of appeal are related to the addition made by the Assessing Officer(AO) towards the difference between the receipts admitted by the assessee in the Profit & Loss Account and the receipts as per Form 26AS, (Annual Tax Statement under Section 203A of the Income Tax Act, 1961. (hereinafter called as 'Act').

3. During the assessment proceedings, the Assessing Officer (AO) found that the assessee has admitted the contract receipts of Rs.3,48,52,270/- against the receipts shown in Form 26AS at Rs.3,64,86,110/- resulting in difference of Rs.32,22,700/-. The assessee has claimed the credit for TDS on the entire amount of TDS as per Form 26AS. Therefore, the AO requested the assessee to reconcile the receipts of Form 26AS with that of the Income Tax return and the assessee explained that it had executed the contract of M/s Srinivasa Civil Works Pvt. Ltd. and raised the bill of Rs.75,22,700/- and recognized the income of Rs.43,00,000/- on cash basis, keeping in view of the financial condition of the contractee. The balance amount of Rs.32,22,700/- was admitted in the subsequent financial year. The assessee further submitted before the AO that the financial position of M/s Srinivasa Civil Works Pvt. Ltd. was in very bad shape, hence, they have

recognized the income on the basis of actual receipt, but not on accrual basis. The AO observed that the assessee is following mercantile system of accounting and as per the system of accounting the assessee must admit the income on accrual basis but not on cash basis. The AO further observed that the assessee has neither shown the balance receivables in the balance sheet nor furnished the confirmation from M/s Srinivasa Civil Works and failed to produce the books of accounts, therefore treated the sum of Rs.32,22,700/- as undisclosed income of the assessee and brought to tax.

4. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) dismissed the appeal of the assessee and confirmed the addition made by the AO.

5. We have heard both the parties and perused the material placed on record. In this case, the assessee admitted contract receipts of Rs.3,48,52,270/- against the receipts reported in Form No.26AS at Rs.3,64,86,110/-. Thus, a sum of Rs.32,22,700/- short admission made by the assessee. The assessee also claimed the entire TDS as per Form 26AS in the Return of Income. The reason for difference was explained by the

assessee stating that it had raised the contract work bill from Srinivasa Civil Works Pvt. Ltd for a sum of Rs.75,22,700/- but received a sum of Rs.43,00,000/- and offered the said amount as income on receipt basis. On the other hand M/s Srinivasa civil works has accounted the entire bill amount as expenditure in their books of accounts and deducted the TDS. Since the balance amount of Rs.32,22,700/- was not received in the impugned assessment year, the assessee did not recognize the income keeping in view of the bad financial position of M/s Srinivasa Civil Works Pvt. Ltd. It was also submitted by the Ld.AR that due to bad financial position of M/s Srinivasa Civil Works Pvt. Ltd., they have defaulted the payments to the creditors, hence, there was no certainty of recovering the dues from M/s Srinivasa Civil Works Pvt. Ltd. The Ld. AR further argued that in view of the stringent financial position of M/s Srinivasa Civil Works Pvt. Ltd, the assessee has rightly recognized the income on cash basis and offered the balance amount in the subsequent assessment year.

The assessee is following mercantile system of accounting and the assessee is bound to recognize the income on accrual basis. In the peculiar circumstances, the assessee has recognized the income on cash basis since there was no certainty of the receipt from the payer. However, it is not

clear from the assessment order, or order of the Ld.CIT(A), whether the assessee has booked expenditure relating to the bills raised in the case of M/s Srinivasa Civil Works Pvt. Ltd., in the year under consideration or postponed the expenditure also for the subsequent year. During the appeal hearing, the Ld.AR also did not furnish the facts. In case, the assessee accounts the entire expenditure in the year under consideration, the AO is justified in recognizing the balance amount of Rs.32,22,700/- also in the impugned assessment year. If the assessee postpones both the expenditure as well as the receipt to the subsequent assessment year, there is no case for making the addition on account of the unrecognized income, since the assessee followed cash system in respect of his client due to adverse financial conditions. Therefore, we are of the view that the issue needs a detailed examination of the books of accounts to ascertain the method of accounting adopted by the assessee in respect of its client M/s Srinivasa Civil works with regard to income as well as expenditure and decide the issue afresh on merits. Therefore, we set aside the orders of the lower authorities and remit the matter back to the file of the AO to re do the assessment afresh denovo.

6. In the result, appeal of the assessee is allowed for statistical purpose.

The above order was pronounced in the open court on 8th Aug, 2018.

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER** लेखा सदस्य/**ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam

दिनांक /Dated :08.08.2018

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

न्यायिक सदस्य/**JUDICIAL MEMBER** लेखा सदस्य/**ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam

दिनांक /Dated :08.08.2018

L.Rama, SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee -Sri Vijaya Durga Engineering Constructions ,
D.No.4-74, Main Road, R.S.Peta, Biccavolu
2. राजस्व/ The Revenue –Income Tax Officer, Ward-1, Kakinada
3. The Pr.Commissioner of Income Tax-2, Visakhapatnam
4. The Commissioner of Income Tax(Appeals)-2, Guntur
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM