

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'D', New Delhi**

**Before : Shri Amit Shukla , Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 2255/Del/2012
Assessment Year: 2008-09**

ACIT, Circle 17(1), New Delhi. (Appellant)	vs.	Vishwa Shanti Builders India Pvt. Ltd., 88, Desh Bandhu Apartments, Kalkaji, New Delhi. (PAN- AABCV 4420B) (Respondent)
---	------------	---

Revenue by	Shri Amit Jha, Sr. DR
Assessee by	None

Date of Hearing	08.08.2018
Date of Pronouncement	17.08.2018

ORDER

Per L.P. Sahu, A.M. :

This is an appeal filed by the Revenue against the order of Id. CIT(A)-19, New Delhi dated 26.03.2012 for the assessment year 2008-09 on the following grounds :

1. *"On the facts and in the circumstances of the case and in law the learned CIT(A) erred in deleting an addition of Rs.3,27,485/- made u/s 40A(3) as the assessee could not adduce evidence of payment of this sum by way of a crossed cheque/ bank draft during the course of assessment proceedings.*

2. *On the facts and in the circumstances of the case and in law the learned CIT(A) erred in admitting fresh evidence without any verification.*

3. On the facts and in the circumstances of the case and in law the learned CIT(A) erred in deleting an addition of Rs.11,50,000/- even though the assessee had not adduced evidence for payment of TDS on this amount of Rs.12,908/- in financial year 2007-08.

4. On the facts and in the circumstances of the case and in law the learned CIT(A) erred in deleting an addition of Rs.50,70,695/- made on account of advance received from DG MAP treating it as revenue receipt without appreciating the facts of the case brought out by the AO in his assessment order.

2. The brief facts of the case re that the assessee filed return of income on 30.09.2008 declaring total income of Rs.35,807/-. The case was selected for scrutiny and statutory notices were issued to the assessee. In the assessment proceedings, the AO observed from the copy of account of M/s. Syntex Industries Ltd. That the assessee has made a cash payment of Rs.3,27,485/- on 31.03.2008 against purchases made from the said party. The assessee submitted that the recipient has been paid through demand drafts. The Assessing Officer was not satisfied and treated it as violation of section 40A(3) of the IT Act. Therefore, he made addition of Rs.3,27,485/-.

3. On scrutiny of accounts, the Assessing Officer further observed that while preparing the computation of income, the assessee had reduced the taxable income of the year under consideration by a sum of Rs.11,50,000/- claimed as TDS of contractor of earlier years. The tax auditor has not pointed out that there was a pre-existed liability as on 01.04.2007. The Assessing Officer did not accept the submissions of the assessee and also observed that the assessee was unable to furnish any documentary evidence to prove the nature or allowability of the same. He, therefore, made the above addition.

4. Further, the AO also noticed that there was a credit balance of Rs.54,96,911/- as advance from DG Map from whom the assessee received contract receipts. The assessee was required to explain the nature of the said receipts with supporting documents. The assessee in response, replied that the said amount is appearing after completion of project of DCI Map. Payment has been received as advance for maintenance of handed over the projects from 01.04.2008. The AO contended that the assessee had admitted that the project stood completed on 31.03.2008 and nothing was pending for completion. Therefore, the credit is liable to be treated as income. The AO also issued notice u/s. 133(6), reply of which was also received. After considering the reply of the assessee and information received through reply to notice u/s. 133(6), the AO found that the project stood completed on 31.03.2008. Therefore, he made the addition on account of credit balance of Rs.50,70,695/- . Aggrieved by the assessment order, the assessee appealed before the Id. CIT(A). He also filed additional evidence. Remand report was called from the Assessing Officer, which was submitted by the AO on 15.03.2012 and rejoinder thereof was given by the assessee on 22.03.2012. After considering all the above records, the Id. CIT(A) deleted all the additions, as noted above. Aggrieved, the Revenue is in appeal before the Tribunal.

5. The Id. DR relied on the order of the AO and submitted that the assessment order is a reasoned order and the same should be restored. None is present on behalf of the assessee.

6. On perusal of the materials available on record, we find that the Id. CIT(A) has done a good reasoned order, which needs no interference. The findings recorded by him after considering the submissions of the assessee, remand report and its rejoinder, read as under :

“5. I have gone through the assessment order and the submissions of the AR in this regard.

The AO noticed a payment of Rs. 3,27,485 to Sintex Industries Ltd., and the narration was cash payment. The AO invoked provisions of 40A(3) since there was no proof that the payment was by way of cheque or DD -though there was such claim - and disallowed the payment. In these proceedings, the AR has brought on record the certificate dated 28.12.2010 issued by Punjab National Bank confirming the payment in fact by a banker cheque. This document is admitted as additional evidence. After careful consideration of the facts of the case, there is no case for invoking provisions of 40A(3).”

“11. I have gone through the assessment order and the detailed written submissions filed by the AR in this regard.

12. It is seen from the assessment order dated 13.12.2011 for A.Y. 2006-07 that there was disallowance of Rs.11,50,000 since there was no deduction of TDS. The appellant has claimed the same as deduction since TDS amounting to Rs.12,903 (Rs. 11,730 on 19.11.2007 and Rs.1,173 on 23.11.07) was paid in the F.Y. 2007-08 relevant for the impugned A.Y. 2008-09. These facts were brought to the notice of the AO by its letter dated 27.12.2010. After careful consideration of the facts of the case, no disallowance is called for on this count.

Relief: Rs. 11,50,000/-.”

“15. I have gone through the assessment order and the detailed written submissions filed by the AR in this regard.

16. The appellant has shown receipt of Rs.54,96,911 from DG MAP towards maintenance of the project from 01.04.2008 which was already completed. The said receipt was shown as liability in the books of the

account since no maintenance work has begun. In the course of assessment proceedings, the AO conducted enquiries and Project Manager vide letter dated 22.12.2010 furnished the details. The AR in the course of these proceedings has brought on record the letter dated 28.12.2010 issued by Project Manager confirming the advance of Rs. 54,96,911 which is admitted as additional evidence.”

On perusal of the order of Id. CIT(A) in respect of deletion of Rs.3,27,485/- added by the AO u/s. 40A(3), we find that PNB has confirmed that the said payment was made by the bankers cheque and the bankers cheque is also deemed to be an account payee cheque which is encashed by crediting the cheque into the account of the receiver. Therefore, it cannot be said that the payment has been made through cash. Hence, section 40A(3) is not applicable. Further in respect of Rs.11,50,000/-, this issue was examined by the AO in the assessment year 2006-07 by reopening the case in assessment u/s. 143(3)/148 regarding the payment made to Surya Construction. Therefore, the assessee has rightly deducted it from the computation of income. We, therefore, find no infirmity in the impugned order on this score.

7. In respect of addition of Rs.50,70,695/- on account of advance for the maintenance of project, the assessee has submitted before the Id. CIT(A) permission from DG Map for start of maintenance job and the impugned amount has been considered as a turnover in F.Y. 2010-11. The assessee has also enclosed the documentary evidence relating to DVAT. Therefore, being satisfied with the documentary evidences filed, the Id. CIT(A) has rightly deleted the addition for want of any contrary material on record. Accordingly, we do not find any good reason to interfere with the order of the Id. CIT(A) on

this count too. Accordingly, the appeal of the Revenue is found to have no merits and deserves to fail.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 17th August, 2018.

Sd/-

(Amit Shukla)
Judicial member

Sd/-

(L.P. Sahu)
Accountant Member

Dated: 17th August, 2018

aks

Copy of order forwarded to:

<i>(1) The appellant</i>	<i>(2) The respondent</i>
<i>(3) Commissioner</i>	<i>(4) CIT(A)</i>
<i>(5) Departmental Representative</i>	<i>(6) Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi