

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI N.K. PRADHAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO.2415/MUM/2017 (A.Y: 2010-11)**

M/s. Krishna Enterprises C/o. Bharat K. Patel & Co. 402, Rishikesh Apt. Opp. N.L. High School, S.V. Road, Malad (West), Mumbai – 400 064  <b>PAN: AAEFK 6063 H</b>	v.	DCIT – 24(2) C-13, 6 <sup>th</sup> Floor, Pratyakshkar Bhavan, Bandra Kurla Complex, Mumbai – 400 051
<b>(Appellant)</b>		<b>(Respondent)</b>

**Assessee by** : **Shri Bharat K. Patel**  
**Department by** : **Shri Manoj Kumar Singh**  
  
**Date of Hearing** : **09.08.2018**  
**Date of Pronouncement** : **28.09.2018**

**ORDER**

**PER C.N. PRASAD (JM)**

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals)-41, Mumbai dated 19.01.2017 for the Assessment Year 2010-11.
2. The only grievance of the assessee in the appeal is that the Ld. CIT(A) erred in sustaining the addition on account of mismatch in Contract Receipts as per P&L Account and Form 26AS in the case of M/s. Vinayak Builders & Developers.

3. Ld. Counsel for the assessee submitted that assessee disclosed contract receipts of ₹.60,23,086/- and credited to P&L Account as against Contract Receipts of ₹.77,46,466/- disclosed in Form 26AS and this is resulted in mismatch of ₹.17,23,380/-. Ld. Counsel for the assessee submitted that, before the Ld.CIT(A) assessee has made submissions and furnished following relevant documents to substantiate its claim: -

- “i) Reconciliation Statement of Contract Receipts showing the reasons for mismatch. (Pg. 7 & 8)
- ii) Copy of Audited Financial Statements for the year ended 31/03/2010. (Pg. 9 to 15) and Form 26AS (Pg. 15A & 15B)
- iii) Copy of confirmation from M/s Vinayak Builders & Developers evidencing & substantiating that your appellant earned contract charges of Rs. 60,23,086/- during the year. (Pg. 16 & 17)
- iv) TDS details deductible & actually deducted during F.Y. 2009-10 as received from M/s Vinayak Builders & Developers dt. 06/12/2016 (Pg.18) admitting the mistake that crept in TDS deductions.
- v) A letter dt. 23/12/2016 from M/s Vinayak Builders & Developers addressed to your appellant explaining in detail the mistakes / errors inadvertently made by them while deducting TDS of your appellant (Pg. 19 to 21).”

4. The Ld. Counsel for the assessee submitted that, Ld.CIT(A) erroneously concluded that there is no conformity in the amounts paid / credited to the account of the assessee as per Form 26AS and as per copy of confirmation & no explanation was furnished by the payer nor assessee for the difference. The Ld. Counsel for the assessee submitted that as per provisions of Section 194C the payer is required to deduct tax at source from the contract charges payable to contractor on accrual basis or payment basis whichever is earlier and in the present case the payer

M/s. Vinayak Builders & Developers have not followed the above principle and committed mistake not deducting TDS u/s. 194C which they have confirmed vide letter dated 06.12.2016 and 23.12.2016. It is submitted that the contract charges to the assessee during the Financial Year 2009-10 is ₹.60.23 Lakhs comprising in four bills and this fact is confirmed by the reconciliation statement and also by the M/s. Vinayak Builders & Developers vide letter dated 23.12.2016 and also from the confirmations furnished by them. It is also further submitted that even in the confirmations the payer M/s. Vinayak Builders & Developers stated that they never paid advance amount before the submission of contract bills. The opening balance receivable as on 01.04.2009 was ₹.27.56 Lakhs and closing balance receivable as on 31.03.2010 is ₹.30.67 lakhs and in the circumstances TDS u/s.194C is applicable only when the contract bill is entered into in the books of accounts which is earlier event. No TDS is deductible subsequently on payment basis otherwise it will amount to duplication of TDS. Therefore, it is submitted that the Ld.CIT(A) ought to have considered these basic facts which are evidenced from the reconciliation statement confirmation of account from the payer and letter dated 23.12.2016 which assessee filed before confirming the addition made. It is also further submitted that the Ld.CIT(A) failed to consider the fact that the payer committed error while deducting TDS and uploading the figures of TDS returns on the Website which is the only cause for

mismatch in contract charges/receipts as per P&L account and Form 26AS. It is submitted that for proper reconciliation and appreciation of the submissions, the matter may be restored to the file of the Assessing Officer for verification.

5. Ld. DR has no serious objection in restoring the matter to the file of the Assessing Officer.

6. Having heard both the parties and perusing the orders of the Authorities below, we are of the considered view that this issue should go back to the file of assessing Officer for verification and for adjudication in the light of the submissions made by the assessee. It is open to the assessee to furnish necessary evidences to substantiate its claims. Assessing Officer shall provide all necessary information for completing the reconciliation and decide in accordance with law.

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

Order pronounced in the open court on the 28<sup>th</sup> September, 2018

Sd/-  
**(N.K. PRADHAN)**  
**ACCOUNTANT MEMBER**  
Mumbai / Dated 28/09/2018  
Giridhar, Sr.PS

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**