

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: 'F', NEW DELHI**

**BEFORE SHRI SMT. BEENA A PILLAI, JUDICIAL MEMBER  
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 4873/Del/2015  
AY: 2009-10**

ACIT Circle 6(1), Room No. 390 C.R. Building, New Delhi.	<b>vs.</b>	Chemitech Engineers P. Ltd. 104, Roof Tower, Plot No. 7, Laxmi Nagar, Distt. Center, Delhi. <b>AAACC8828P</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**Department by :** Sh. Surender Pal, Sr. DR

**Assessee by :** Sh. Rajesh Jain, CA

**Date of Hearing :** 05/11/2018

**Date of Pronouncement:** 16/11/2018

**ORDER**

**PER BEENA A PILLAI, JUDICIAL MEMBER**

Present appeal has been filed by Revenue against order dated 30/03/15 passed by Ld. CIT (A)-2, New Delhi for assessment year 2009-10 on following grounds of appeal:

1. *“On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs. 98,28,965/- on account of difference between receipts as per form 26AS and the amount declared by the assessee ignoring the fact that the assessee company had violated the provisions of section 199 of the Income Tax Act, 1961.*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 13,49,305/- made u/s 40A(3) of the Income Tax Act, 1961.*
3. *The appellant craves leave for reserving the right to amend, modify, alter, add or forego any grounds of appeal at any time before or during the hearing of this appeal.”*

2. Brief facts of the case are as under:

Assessee filed its return of income on 29/09/09 declaring income of Rs.71,43,050/-. Subsequently, return was processed under section 143(1) of the Act, and notice under section 143(2) along with questionnaire and notice under section 142(1) was issued to assessee. In response to statutory notices, representative of assessee appeared before Ld.AO and filed necessary details.

3. Ld.AO observed that assessee is engaged in business of trading in chemicals, manufacturing of mineral water and contract work. He observed that assessee during the year shown gross receipts from contract work amounting to Rs.12,63,76,901/- in profit and loss account. The receipts shown by assessee were examined with respect to TDS certificate, and it was found that, as per TDS certificate gross receipts of assessee was at Rs.13,62,05,866/-. Assessee claimed TDS at Rs.3,30,86,675/-. Ld.AO was of the opinion that assessee has disclosed alleged receipts in contract account and accordingly, called upon assessee for reconciliation of contract receipts with TDS receipts. In compliance to notice issued, assessee filed reconciliation chart and, as per the chart cross receipts were worth Rs.13,62,05,866/-, but while arriving at amount of Rs.12,63,76,901/-, assessee deducted following amounts being other services amounting to Rs.84,05,649/- and difference of Rs.4,19,014/-.

4. Assessee was required to explain exclusion of these two items. In compliance thereto, assessee submitted that, other recoveries are amounts, which Revenue did not pay, and regarding difference of amount, assessee did not furnish any explanation.

5. Ld.AO, thus, was of the view that assessee short declared contract receipts and thus, added difference amounting to Rs.98,28,965/-.

6. Further, Ld.AO observed that assessee incurred some expenses in cash exceeding Rs.20,000/- on perusal of details, Ld.AO was of opinion that assessee failed to justify, why payment has to be made in cash and he invoked provisions of section 40A(3) read with Rule 6DD of the Act. Ld. AO, thus, made addition of Rs.13,49,305/- in hands of assessee.

7. Aggrieved by addition made by Ld.AO, assessee preferred appeal before Ld.CIT (A), who allowed appeal filed by assessee.

8. **Ground No. 1:** is in respect of difference between receipt as per 26A-S and amount declared by assessee.

9. Ld.AR submitted that Form No. 26A-S is statement generated at end of Department, and assessee cannot be in any manner held responsible for any discrepancy therein. It was submitted that for year under consideration, assessee filed reconciliation statement, which has not been considered by Ld. AO in right perspective.

10. On the contrary, Ld. Sr. DR submitted that issue may be set-aside to Ld. AO for verification once again, on the basis of reconciliation filed by assessee.

11. We have perused the submissions advanced by both sides in the light of records placed before us.

12. It has been argued by Ld. Counsel that income has to be assessed on the basis of system of accounting followed by assessee consistently, and not merely with reference to amount on which deduction at source has been made as TDS is made on payments made in advance also and that, assessee need not declare income on basis of TDS deducted rather on basis of accrual of income. It has been submitted before Ld. CIT(A) that contractor by name M/s National Building Construction Corporation Ltd. wrongly credited amount of running bills of Rs.3,34,07,386/- pertaining to financial year 2009-10 during year under consideration, whereas, these bills were certified in month of April/May 2009. Admittedly, assessee submitted detailed reconciliation chart pertaining to assessment years 2008-09, 2009-10 and 2010-11 for supporting that there is no suppression of contract receipts during year under consideration and difference is reason only due to difference in method of accounting followed by contractor and assessee. We have observed that Ld. CIT(A) has considered chart at page 9 of his order.

12.1 Therefore, contentions of assessee are sufficient for purpose of restoring issue back to file of Ld.AO to afford opportunity of being heard to assessee.

13. We, accordingly, set aside this issue back to Ld.AO for verification on basis of reconciliation statement filed by assessee, and to allow claim as per law. Needless to say that proper opportunity may be granted to assessee of being heard.

**Accordingly, this ground raised by Revenue stands allowed for statistical purposes.**

14. **Ground No. 2:** is in respect of addition amounting to Rs.13,49,305/- made under section 40A(3) of the Act, having deleted by Ld. CIT (A).

14.1 It has been submitted that payments reflected in Ledger Account is not single payment made on date but, payments made to several persons on account of salary and payments made on account of several expenses incurred in cash on various sites of assessee, wherein different contracts were being carried out. Assessee submitted copy of master role in support of its contention as regards to salary is concerned and for expenses incurred under the head "site expenses" assessee submitted photocopy of vouchers to prove each expenses incurred in cash was less than Rs.20,000/-. Ld.AR submitted that before Ld.CIT (A) assessee also filed additional evidences which were forwarded to Ld.AO for examination of the same, in respect of which remand report was not received by Ld.CIT (A). He thus, submitted that there was no justification of Ld.AO for invoking provisions of section 40A(3) of the Act.

15. On the contrary, Ld. Sr. DR placed reliance upon orders of Ld.AO.

16. We have perused the submissions advanced by both sides in the light of records placed before us.

17. Is observed that Ld.AO has tabulated 39 items of expenditure totalling to Rs.13,49,305/-, giving date of amount and vouchers number of each expenses. It was contention of Ld.AO that as assessee did not file any justification for incurring

cash expenditure exceeding Rs.20,000/-, Ld.AO invoked provisions of section 40A(3) of the Act.

18. Ld. CIT (A) while deciding the issue observed that Ld.AO has not doubted genuineness of expenditure and disallowed it only due to contravention of provisions of section 40A(3) of the Act. However, assessee contended that these expenses were incurred on different dates and payments made to each person was less than Rs.20,000/- which is verifiable from vouchers filed before Ld. CIT (A). It has been submitted that these are indirect expenses. Further, it is observed that Ld. CIT (A) verified vouchers and supporting evidences and found contention of assessee to be correct.

19. Under such circumstances, we do not find any infirmity in observations of Ld. CIT (A) and we uphold the same.

Accordingly this ground raised by revenue stands dismissed.

20. **Ground No. 3** is general in nature and therefore do not require any adjudication.

**In the result appeal filed by revenue stands partly allowed.**

Order pronounced in the open court on 16/11/2018

Sd/-

**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Dt. 16<sup>th</sup> November,2018

\*Kavita Arora

Sd/-

**(BEENA A PILLAI)**  
**JUDICIAL MEMBER**

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

**ASSISTANT REGISTRAR**  
ITAT Delhi Benches

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