

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH: 'E' NEW DELHI**

**BEFORE SHRI G.D. AGARWAL, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.2562/Del/2016
Assessment Year: 2011-12**

Income-tax Officer, Ward-1(3), Dehradun.	vs	M/s I.C. Verma Construction, IB, Shivalik Puram, Dehradun. PAN: AACFI6367A
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C.O. No.219/Del/2016

**(In ITA No.2562/Del/2016)
Assessment Year: 2011-12**

M/s I.C. Verma Construction, 1B, Shivalik Puram, Dehradun. PAN: AACFI6367A	vs	Income-tax Officer, Ward-1(3), Dehradun.
Appellant		Respondent

Assessee by	Shri Kapil Goel, Advocate
Revenue by	Ms Rinku Singh, Sr. DR

Date of Hearing	18.12.201
Date of Pronouncement	10.01.2019

ORDER

PER BENCH

Challenging the order dated 29.2.2016 in Appeal No.66/14-15 passed by the Learned Commissioner of Income-tax(Appeals), Dehradun, (hereinafter referred to as "CIT(A)"), Revenue preferred Appeal No.2562/Del/2016 and

challenging the assessment order in support of the impugned order, assessee preferred Cross Objection No.219/Del/2016.

2. Brief facts of the case are that the assessee is a partnership firm doing the business of civil contractors and during the financial year relevant to the Asstt. Year 2011-12, they get from the Public Works Department, Uttarakhand and in turn awarded sub contract to certain parties against the said contract. For the Asstt. Year 2011-12, they filed their income of return on 23.9.2011 declaring total taxable income at Rs.3,21,240/-. Assessment was, however, complete by way of order dated 12.3.2014 u/s 143(3) of the Income-tax Act, 1961 (“the Act”) at Rs.84,96,800/- by making four additions, viz. Rs.3,52,720/- on account of tax liability shown in the name of M/s Kishan Chand & Sons; Rs.77,05,823/- on account of payments made to certain parties allegedly from whom the purchases were made other than by way of crossed cheques in violation of the provisions of Section 40A(3) of the Act; Rs.1220/- on account of undisclosed interest on FDRs; and Rs. 1,15,800/- on account of the excessive interest debited to the accounts of the partners.

3. When the assessee preferred appeal, Id. CIT(A) by way of impugned order deleted the addition u/s 40A(3) to the tune of Rs.74,19,388/-. Challenging the same, revenue preferred this appeal. Assessee, however, filed Cross Objection challenging the action of the learned AO in not following the ratio of the Hon’ble Supreme Court in the case of State of AP vs. Larsen & Toubro, SLP No. 12482 of 2007.

4. It is the submission of the learned DR that it could be seen from the orders of the authorities below that the assessee had taken shelter of Rule 6DD(j) of the Income-tax Rules, 1962 (for short “the Rules”) in so far as the payments made to one Shri V.K. Aggarwal and Shri Gaurav Aggarwal, which was negated by the AO, but before the learned CIT(A), the assessee while

producing some documents had taken shelter under the provisions of Rule 6DD(j) of the Act, and the learned CIT(A) without giving an opportunity to the learned AO proceeded to decide the issue on the basis of presumptions and deleted the major portion of the addition i.e. the payments made to Shri V.K. Aggarwal and Shri Gaurav Aggarwal. Learned DR, therefore, prays that the order of the AO may be restored on this issue. In respect of Cross Objection, she submitted that inasmuch as the ratio of the judgments relied upon by the assessee is not applicable to the facts of the case, learned AO rightly justified in making the additions.

5. Per contra, it is the submission of the learned AR that in view of the binding precedence by way of decisions in CIT vs. Balaji Engineering & Construction Works Ltd. (2010) 323 ITR 351 (Kar) and the decision of the Hon'ble Andhra Pradesh High Court in the case of State of AP vs. Larsen & Toubro, SLP No. 12482 of 2007, learned CIT(A) is justified in deleting the additions, as such, it is not open for the revenue to dispute the same.

6. We have carefully gone through the record. Assessment order speaks that when learned AO required the assessee to show cause as to why an amount of Rs.77,61,223/- not be disallowed in view of the provisions of Section 40A(3) read with Section 6DD of the Rules, clearly the assessee had taken the plea that as per the circumstances under which the payments were made, they satisfy the provisions under Rule 6DD(j) in view of the fact that sellers Mr. V.K. Aggarwal and Mr. Gaurav Aggarwal refused to accept the payments by way of crossed cheques.

7. Learned CIT(A) recorded that inasmuch as the assessee deducted TDS on the payments u/s 194C, it could safely be inferred that there was no sale or purchase involved in the dealings with Mr. V.K. Aggarwal and Mr. Gaurav Aggarwal and it indicates the contractual payments as supported by Form 26AS.

Further, it could be seen from the submissions made before the learned CIT(A) by way of supplementary submissions that the assessee had taken the plea that in execution of the contract work they got from the Govt, of Uttarakhand, they sub contracted a portion of work to Mr. V.K. Aggarwal and Mr. Gaurav Aggarwal and payments were made to them in cash only because they refused to receive the crossed cheques. Further, it was submitted before the learned CIT(A) that there is evidence that they got the contract in their names which they sub contracted to those two persons justifying the TDS and the payments in cash.

8. Learned CIT(A) granted time to the assessee to enable him to furnish the details of squaring off of liability and proof of the recipients of payments actually being contractors. Impugned order further shows that the assessee submitted certain proofs before the learned CIT(A) and the order does not show that the learned CIT(A) had afforded any opportunity to the AO on this aspect more particularly when there was shift of stand taken, by the assessee during the assessment proceedings and first appellate proceedings. In the assessment proceedings, it was recorded that the assessee had taken shelter u/s 6DD(j) and such a plea was rejected by the AO on the ground that the bank statements produced by the assessee clearly show that the payments were made in cash, that though the cheques were issued but they were not crossed but were only bearer cheques and the case of the assessee was not covered by Rule 6DD(j).

9. In his order, learned CIT(A) clearly observed that in the new set of facts pleaded by the assessee, Rule 6DD(j) has no application but on the other hnd 6DD(k) applies. However, when there is a confusion in regard to the actual nature of payment in the assessment order as recorded by the learned CIT(A) in his order vide para 10, learned CIT(A) should have sought the remand report by giving an opportunity to the learned AO to find out which version of the assessee, viz., whether as recorded by the AO or as submitted before him, was

correct. In these circumstances, we find force in the argument of the learned DR that not affording an opportunity to the AO violated the principle of natural justice, as such, the impugned order cannot be sustained. However, we are of the considered opinion that having regard to the facts and circumstances of the case, it is in the fitness of the things that the matter be remanded to the file of the AO for verification of this fact and for a fresh look at the assessment. We accordingly set aside the impugned order and remand the issue to this limited extent to the file of the learned AO for verification of record in the light of the submissions made by the assessee and to decide the assessable income.

10. In the result, appeal of the revenue and cross objection of the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 10th January, 2019.

**(G.D. AGARWAL)
VICE PRESIDENT**

**(K.NARASIMHA CHARY)
JUDICIALMEMBER**

Dated: 10th January, 2019
VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI