

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI A. D. JAIN, VICE PRESIDENT AND  
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.640/Lkw/2016  
Assessment Year:2012-13

Income Tax Officer-4(1), Lucknow.	Vs.	M/s K.V.A. Construction Co. Pvt. Ltd., E-4/103, Sector-M, Aliganj Housing Scheme, Lucknow. PAN:AACCK 9555 F
(Appellant)		(Respondent)

Appellant by	Shri C. K. Singh, D.R.
Respondent by	Shri S. C. Dixit, Advocate
Date of hearing	30/01/2019
Date of pronouncement	31/01/2019

**ORDER**

**PER T. S. KAPOOR, A.M.**

This is an appeal filed by the Revenue against the order of learned CIT(A)-II, Lucknow dated 23/08/2016 pertaining to assessment year 2012-2013. In this appeal the Revenue has taken the following grounds of appeal:

- "1. The Commissioner of Income tax (Appeals), Lucknow has erred in law and on facts in deleting the addition of Rs.75,37,384/- made on account of undisclosed investments in opening stock u/s 69 of the IT. Act,1961 without appreciating the fact that the assessee company was unable to reconcile the discrepancy showing closing stock at NIL in return for A.Y. 2011-12 and opening stock at Rs.75,37,384/- in return for A.Y. 2012-13, before the Assessing Officer, despite availing ample opportunities.*

2. *The Commissioner of Income tax (Appeals), Lucknow has erred in law and on facts in deleting the addition of Rs.11,90,000/- made on account of unexplained cash credit in the bank account u/s 69 of the I.T. Act,1961 and admitting fresh evidence without allowing the opportunity under Rule 46 A of the I.T. Rules, to examine the evidence or documents produced before him on which he placed reliance to hold that the transaction were genuine.*
3. *The Commissioner of Income tax (Appeals), Lucknow has erred in law and on facts in restricting the addition to Rs.50,000/- against the addition of Rs.3,23,540/- made on account of unexplained expenditure claimed without appreciating the fact that the assessee company was unable to prove the genuineness before the A.O. despite availing ample opportunities."*

2. At the outset, Learned D. R. submitted that assessee had not disclosed closing stock in the return for assessment year 2011-12 and had instead taken the opening stock at Rs.75,37,384/- in assessment year 2012-13 therefore, the Assessing Officer had rightly made the addition as undisclosed investment. Learned D. R. further submitted that during assessment proceedings the Assessing Officer observed that assessee had made cash deposit in the bank account amounting to Rs.11,90,000/- which remained unexplained therefore, the Assessing Officer had made the addition whereas learned CIT(A) has wrongly deleted the addition by admitting the fresh evidence in the form of cash book without allowing opportunity to the Assessing Officer. Learned D. R. further argued that in the absence of vouchers, the expenses claimed by the assessee in the profit & loss account remained unverified therefore, the Assessing Officer had rightly made the disallowance to the extent of 40% of the expenses which learned CIT(A) has wrongly reduced to Rs.50,000/-.

3. Learned A. R., on the other hand, invited our attention to the copy of income tax return for assessment year 2011-12 placed at pages 9 to 30 of the paper book and our specific attention was invited to page 12 where copy of return showing inventories under the head 'current assets' amounting to Rs.75,37,384/- was placed. Learned A. R. submitted that the assessee had duly disclosed the closing stock in the income tax return of earlier year, which was supported by figure in the balance sheet of assessment year 2011-12 wherein the same amount was reflected in the balance sheet, placed at page 55 of the paper book. Therefore, it was argued that the Assessing Officer had wrongly made this addition which learned CIT(A) has rightly deleted.

3.1 As regards the deletion of addition on account of deposits in bank account, Learned A. R. submitted that deposits were made out of cash balance available with the assessee and therefore, learned CIT(A) has rightly allowed the same.

3.2 As regards the third deletion out of expenses, Learned A. R. submitted that complete books of account along with vouchers were available for inspection before the Assessing Officer and Assessing Officer arbitrarily made the disallowance to the extent of 40%. It was submitted that expenses included telephone expenses, salary and wages, freight etc. which were duly verifiable and therefore, learned CIT(A) has rightly deleted a part of the addition.

4. We have heard the rival parties and have gone through the material placed on record. The first ground of appeal is against the action of learned CIT(A) by which he had deleted the addition of Rs.75,37,384/- which the Assessing Officer had made on account of non disclosure of closing stock in

the return for assessment year 2011-12. In this respect we find that assessee had duly disclosed the figure of stock in assessment year 2011-12 which is apparent from the copy of income tax return for that year, placed at pages 9 to 30 of the paper book. On page 12, under the heading 'current assets', the assessee had duly disclosed the closing stock as on 31/03/2011 to the extent of Rs.75,37,384/-. We further find that in the balance sheet for assessment year 2011-12, placed at pages 54-66 of the paper book, the assessee had duly disclosed the figure of closing stock in the balance sheet, placed at page 55 which matches with the figure in the return of income. The finding of the Assessing Officer is contrary to the facts available on record and therefore, learned CIT(A) has rightly appreciated the facts and has rightly deleted the addition as the figure of opening stock was very much available in the return. In view of the above, ground No. 1 is dismissed.

5. Now coming to ground No. 2, we find that Assessing Officer had made the addition on account of deposits in the bank account to the extent of Rs.11,90,000/-. The learned CIT(A) deleted the addition by holding that the deposits were made out of cash balance available in the cash book of the assessee. However, there is no extract of cash book available on record from where the learned CIT(A) arrived at the conclusion that the deposits were made out of cash balance. Learned A. R. was also not able to produce the same. Therefore, we deem it appropriate to remit this issue back to the file of Assessing Officer who should examine it from the cash book of the assessee. This will also satisfy the grievance of the Revenue regarding non confrontation of the additional evidence to the Assessing Officer. Here we add that the bank account referred to by the Assessing Officer, where the payments were made, is Punjab & Singh Bank from where the assessee had obtained cash credit limits and the closing balance as on 31/03/2012 in the

bank statement matches with that, balance reflected in the balance sheet as on 31/03/2012. In view of the above ground No. 2 is allowed for statistical purposes.

6. Now coming to ground No. 3, we find that assessee had claimed an expenditure of Rs.7,55,509/- in the profit & loss account which included expenses of salary and wages, telephone expenses, freight and other expenses. A part of the total expenses including salary and wages, telephone expenses and freight expenses were verifiable as these were made to employees of the company and to telephone company therefore, a flat disallowance of 40% out of expenses was not justified. Moreover, we find that the Assessing Officer had made the assessment u/s 143(3) of the Act and nowhere had rejected the books of account therefore, he could not have made the disallowance at all. The action of learned CIT(A) in restricting the disallowance to Rs.50,000/- is quite justified in these facts and circumstances of the case. Accordingly, ground No. 3 is dismissed.

7. In the result, the appeal of the Revenue is partly allowed for statistical purposes and partly dismissed.

(Order pronounced in the open court on 31/01/2019)

**Sd/.**  
**( A. D. JAIN )**  
**Vice President**

**Sd/.**  
**( T. S. KAPOOR )**  
**Accountant Member**

Dated:31/01/2019  
\*Singh

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Assistant Registrar