

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “D” BENCH

**(BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT
MEMBER & SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 569/AHD/2015
(Assessment Year: 2011-12)**

J V of P.E.C. And S.C.C. 9, 10, 1st Floor, Jay Complex, Parulnagar, Bhuyangdev, Ghatlodia, Ahmedabad- 380063	V/S	The DCIT, Circle-9, Ahmedabad
(Appellant)		(Respondent)

PAN: AAGFJ0136Q

**Appellant by : Shri P.D. Shah, AR
Respondent by : Shri Vinod Tanwani, Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 25 -03-2019

Date of Pronouncement : 26 -04-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal filed by the Assessee is directed against the order of the Ld. CIT(A)-4, Ahmedabad dated 07.01.2015 pertaining to A.Y. 2011-12 and following grounds have been taken:

1.1 The order passed u/s.250 on 07-01-2015 for A.Y.2011-12 by CIT(A)-4, Abad upholding the addition of Rs.29,71,059/- as accrued income is wholly illegal, unlawful and against the principles of natural justice.

1.2 The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned addition.

2.1 The Ld.CIT(A) has grievously erred in law and on facts in confirming the addition of Rs.2971,059/- as income accruing or arising in the year under appeal being part of the RA Bill for the month of March 2011.

2.2 That in the facts and circumstances of the case as well as in law, the Ld.CIT(A) ought not to have upheld the addition of Rs.2971,059/- as income accruing or arising in the year under appeal being part of the RA Bill for the month of March 2011.

2.3 Without prejudice to above, in case the impugned addition of Rs.29,71,059/- is upheld in A.Y.2011-12, the lower authority may be directed to exclude the same from the total income for A.Y. 2012-13 since it is already included in the said year.

It is therefore, prayed that the additions of Rs. 29,71,059/- upheld by the CIT(A) may kindly be deleted.

2. The appellant is a joint venture of Perennial Edifice Co. and Subham Construction Co. It derives income by way of labour contract and civil construction. It had filed its return of income for A.Y.2011-12 on 30-09-2011 declaring total income of Rs.29,94,640/-
3. During the course of asstt. proceedings, the AO noticed that the appellant had shown total receipt of Rs.5,52,83,241/- as per P & L account whereas total receipts as per 26AS statement was Rs.6,25,64,637/- and thus, there was a difference of Rs.72,81,368/-. Hence, the appellant was asked to explain the

- same. The appellant furnished a detailed reply dated 10-02-2014 giving reconciliation in respect of the difference as alleged. However, the AO concluded that on verifying the contra account received from M/s. Ganon Dunkerley and Co. Ltd., Mumbai received in response to notice u/s. 133(6), it was found that still there was difference of Rs. 29,71,059/- due to retention money which was not reconciled by the appellant. Hence, the addition of Rs.29,71,059/- was made.
4. Being aggrieved, the appellant preferred appeal to CIT(A) wherein reliance was placed on the letter dated 17-02-2014 given to AO. In other words, the appellant had explained that GIDC may have revised Form-26AS in respect of entry of Rs.29,96,162/- on 18-05-2011 relevant to A.Y.2012-13. However, the CIT(A) has rejected the same for the reason stated in para 6 of the impugned order. It is observed that in view of the mercantile system of accounting employed by the appellant, the payment of Rs.29,71,059/- shown on 31-03-2011 by M/s. Ganon dunkerley and Co. Ltd. could not be credited on 15.05.2011. During the year total of receipts as per 26AS statement is seen to Rs. 6,25,64,637/-whereas as per P&L Account total receipts shown by the assessee are Rs. 5,52,83,241/-. Also as per 26AS statement the TDS deducted is Rs. 12,51,293/- whereas TDS claimed by assessee in the return of income Rs. 12,66,428/-. M/s. Gannon Dunkerley & Co. Ltd. has taken contract of AUDA or Gujarat Development Corporation for civil work. And assessee is a sub contractor who is working for AUDA and GDC but on behalf of Gannon Dunkerley & Co. Ltd. In order to find out the real factual aspect, A.O. issued notice u/s. 133(6) of the Act on 18.10.2013 for furnishing the details in connection with payment made to assessee during the year. In reply to the notice M/s. Gannon Dunkerley & Co. Ltd. vide letter dated 29.10.2013

informed that there was some mistake in the TDS shown in the name of assessee and subsequently they failed correction statement for the TDS return. However, the receipt were shown as Rs. 6,25,64,637/- in place of Rs. 6,17,41,317/- shown earlier. Thereafter, assessee was again asked to reconcile the difference is due to total retention amount of Rs. 32,65,406/- and balance is Rs. 29,71,059/-.

5. Now by way of second appeal, assessee/ appellant has come before us.
6. In support of its contention, assessee stated that it follows accrual basis, the income is claimed to be accrued in F.Y. 2011-12 (A.Y. 2012-13). In support of its contention, assessee has filed copy of Cheque No. 829912 dated 18.05.2011 in Rs. 2996112/- in favour of J.V OF PEC & SEC.
7. Thus, we see merit in the plea of the assessee. In view of the above, we allow appeal of the assessee.
8. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in Open Court on	26 - 04- 2019
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Sd/-

(PRADIP KUMAR KEDIA) True Copy
ACCOUNTANT MEMBER

Ahmedabad: Dated 26 /04/2019

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER