

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

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 5047/DEL/2015 (A.Y 2010-11)

I.T.A. No. 5048/DEL/2015 (A.Y 2011-12)

Vichitra Constructions Pvt. Ltd. A-1/31, Janakpuri New Delhi AAACV0836C (APPELLANT)	Vs	Addl. CIT Range-17, C. R. Building New Delhi (RESPONDENT)
--	----	--

Appellant by	Sh. Ved Jain, Adv, Sh. Ashish Goel, CA
Respondent by	Ms. Ashima Neb, Sr. DR

Date of Hearing	28.02.2019
Date of Pronouncement	27.05.2019

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee against the order dated 03/04/2015 passed by CIT(A)-IX, New Delhi for Assessment Year 2010-11.

2. The grounds of appeal are as under:- **I.T.A. No. 5047/DEL/2015**

1. “ On the facts and circumstances of the case and in the law, the Id. Commissioner (Appeal) erred in confirming the action of the Assessing Officer of labour charges of Rs. 48,82,520/- treated as unexplained expenses and adding back to the total income and, therefore, the addition of Rs. 48,82,520/- ought to be deleted.

2. On the facts and circumstances of the case and in law, the Id.

Commissioner (Appeal) erred in confirming the action of the Assessing Officer of making ad hoc disallowance of 10% of wages expense amounting to Rs. 47,61,266/-. This addition may kindly be deleted.

3. On the facts and circumstances of the case and in law, the Id. Commissioner (Appeal) erred in confirming the action of the Assessing Officer of making an ad hoc disallowance of 20% of machine running expense amounting to Rs. 42,25,120/-. This addition may kindly be deleted.

4. That the Commissioner (Appeal) erred in not disposing off the ground taken by the assessee before him with respect to addition of Rs. 79,25,891 on account of creditors and the Commissioner (Appeal) may kindly be directed to pass appropriate order to dispose off the ground.

a) That the Commissioner (Appeal) erred in not disposing off the ground taken by the assessee before him with respect to addition of Rs. 79,25,891 on account of creditors and the Commissioner (Appeal) may kindly be directed to pass appropriate order to dispose off the ground.

b) That the Assessing Officer erred in adding Rs. 79,25,891 on account of creditors although the post sent to the creditors was duly served upon them, all the creditors had submitted confirmation, the assessee had paid creditors through banking channel and the AO had added even opening balance of creditors outstanding as at the beginning of the year under consideration.

5. On the facts and circumstances of the case in the law, Id. Commissioner (Appeal) erred in confirming the action of the Assessing Officer of treating bills of machinery hire charges amounting to Rs. 1,16,000/- as bogus. This addition made to total income on such basis may kindly be deleted.

6. Without prejudice to above, gross profit ratio of the assessee after taking into consideration the additions made in the assessment order comes to 35.05%, which is exorbitantly high, particularly in view of the fact that the

gross profit ratio for the last preceding three years assessed by way of scrutiny assessment is never higher than 20.50%.”

I.T.A. No. 5048/DEL/2015

1. On the facts and circumstances of the case and in law, the ld. Commissioner (Appeal) erred in confirming the action of the Assessing Officer of addition of Rs. 1,11,37,516/- on account of difference between contract revenue as per 26AS and contract revenue credited to P&L A/c and, therefore, the addition of Rs. 1,11,37,516/- ought to be deleted.

2. On the facts and circumstances of the case and in law, the ld. Commissioner (Appeal) erred in confirming the action of the Assessing Officer of enhancing the value of closing work in progress by adding a sum of Rs. 13,12,441/- on account of service tax to be charged and Rs. 26,12,139/- on account of gross profit to be earned at the time of actual sales of finished work and, therefore, the addition of Rs. 39,24,580/- ought to be deleted.

3. On the facts and circumstances of the case and in law, the ld. Commissioner (Appeal) erred in confirming the action of the Assessing Officer of making an addition of Rs. 32,09,510/- by treating the purchase of machine spare parts as a capital expenditure instead of revenue expenditure as claimed by the appellant and, therefore, it is prayed that the additions of Rs. 32,09,510/- may kindly be deleted.

4. On the facts and circumstances of the case and in law, the ld. Commissioner (Appeal) erred in confirming the action of the Assessing Officer of making an ad hoc disallowance of 5% of labour charges paid and thereby making an addition of Rs. 16,76,565/- in the total income and, therefore, it is prayed that the additions of Rs. 16,76,565/- may kindly be deleted.

5. On the facts and circumstances of the case and in law, the ld. Commissioner (Appeal) erred in confirming the action of the Assessing Officer

of treating 50% of electricity expenses as personal expenses of directors. As the expenses have been incurred exclusively for the purpose of business, the addition of Rs. 87,640/- may kindly be deleted.

3. We are first taking up A.Y. 2010-11 being ITA No. 5047/Del/2015. The assessee company is a contractor company. The assessee filed the return of income on 11/1/2011 for Assessment Year 2010-11 declaring at income of Rs. 63,32,647/-. The case was processed u/s 143(1) of the Income Tax Act, 1961. Subsequently, the cases were taken up for scrutiny and notice u/s 143(2) was issued on 25/8/2011 and served upon the assessee. Thereafter, notices u/s 142(1) along with questionnaire was issued and duly served upon the assessee wherein certain specific details were called for. In response to these notices, CA/AR of the assessee attended the assessment proceedings from time to time and filed the necessary details which were taken on record by the Assessing Officer. The Assessing Officer made various additions thereby assessing the total income at Rs. 2,87,28,065/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT (A). The CIT (A) partly allowed the appeal of the assessee.

5. As relates to Ground No.1 regarding addition on account of Labour Charges of Rs. 48,82,520/- treated as unexplained expenses, the Ld. AR submitted that during the year under consideration, assessee made payment to the sub-contractors amounting to Rs. 2,93,43,526/- and deducted TDS thereon and also made the payment for labour charges amounting to Rs. 48,82,520/- on which TDS had not been deducted since the payments made by the assessee were below the threshold limit. The Assessee Company however mistakenly has taken the amount of Rs. 48,82,520/- under the head 'Sub-contractor' and shown the total payment to sub-contractor amounting to Rs. 3,42,26,046/-. During the assessment proceedings u/s 143(3) of the Act, the Assessing Officer asked the assessee

to furnish details in respect of labour charges of Rs.48,82,520/-. In response to the same, assessee filed Auditors certificate certifying that said mistake was that of wrong classification and also produced muster rolls of the labourers in photocopy as well as in original. Vide submission dated 18.03.2013, the assessee furnished copies of 'Muster Rolls' for Rs. 48,82,520/-, payment of which incurred through employees. Details are as follows.

Labour Payment	Site	Paid through Employees	Paper book Ref
Rs.24,13,204/-	Rewari	Hitesh Aggarwal	Pg. No. 49-79
Rs.24,69,316/-	Ambala	Amit Gupta	Pg. No. 80-129

The Assessing Officer however doubted the genuineness of the above documents on basis like, those documents were fresh looking documents with dust marks etc. and has also observed that alleged the dissimilarity in the signatures of various labourers and added the entire amount of Rs. 48,82,520/- in the hands of the assessee treating the same as unexplained. Aggrieved by order passed by the Assessing Officer, the Assessee filed an appeal before the CIT (A). The Ld. AR further submitted that the CIT(A) upheld the addition made by the Assessing Officer without appreciating the explanations and submissions made by the assessee during the appellate proceedings and also on the ground that the assessee failed to explain the reason for low net profit which was not the case of the Assessing Officer. The Ld. AR submitted that the Assessee is in the business of construction and the same has not been doubted by the Assessing Officer and the payments made to the labourers are part of the business activities which cannot be ignored. There is no allegation that the assessee had not made such payments to the labourers or there is no such construction work going on. The Ld. AR submitted that assessee has been maintaining regular books of accounts duly audited under Section 44AB of the Act which have not been rejected by the

Assessing Officer. The Ld. AR submitted that the addition has been made on flimsy grounds without there being any basis and completely ignoring the assessee's explanations in this regard. Further, the Assessing Officer had not raised any issue of low net profit while making addition on this count and therefore CIT(A) is not justified in confirming the addition on this ground although the assessee has fully explained the reason for decline in net profit to the Assessing Officer.

6. The Ld. DR relied upon the Assessment order and the order of the CIT(A). The Ld. DR further submitted that the genuineness of the muster rolls were doubted by the Assessing Officer and the same was not properly answered by the Assessee during the Assessment proceedings. Besides that the Ld. DR further submitted that the assessee has failed to explain the reason for low net profit.

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the genuineness of the muster rolls were though doubted, the books of accounts were never rejected by the Assessing Officer. Besides this the assessee explained the reason for decline in net profit during the Assessment Order which was never doubted by the Assessing Officer. The assessee filed Auditors certificate certifying that said mistake was that of wrong classification and also produced muster rolls of the labourers in photocopy as well as in original. This was never considered by the Assessing Officer as well as the CIT(A). Therefore, it will be appropriate to remand back this issue to the file of the Assessing Officer to verify the genuineness of the assessee's claim in light of the muster rolls and the auditor's certificate. Thus, Ground No. 1 is partly allowed for statistical purpose.

8. As relates to Ground No.2 regarding ad hoc disallowance of wages @ 10%

Rs. 47,61,266/- on account of Labour Expenses on the ground that there is an increase in the labour expenses in the month of February & March. The Ld. AR submitted that the Assessing Officer has disallowed 10% of the total expenditure of Rs.4,76,12,669/-. The CIT(A) further sustained ad hoc disallowance made by the Assessing Officer on the basis that ad hoc disallowance cannot be said to be unjustified. In this regard, the Ld. AR submitted that there is no allegation that these labour charges have not been paid by the assessee. The only allegation of the Assessing Officer is that the labour charges has suddenly increased to Rs. 75 lakhs in Feb and March from 28 lakhs in January. The Assessee has given month wise details of labour charges and the same is quoted by the Assessing Officer on Page 4 Para 15 of the Assessment Order. As per these month-wise details, it is evident that the Assessing Officer has ignored that there are payments amounting to Rs. 72,91,802/- in the month of November, Rs. 44,45,609/- in the month of May & Rs.. 47,40,014 in the month of January and therefore it cannot be said that there is sudden increase in the amount of labour charges. In this regard, the Ld. AR submitted that the company has been regularly maintaining books of accounts there are duly audited and the same has been accepted by the Assessing Officer there is no adverse finding of the Assessing Officer in relation to these documents. It is a well settled law that the adhoc additions cannot be made in the hands with the company. The Ld. AR relied upon the judgment of ACIT v. Modi Rubber Ltd. [ITA No. 1952/Del/2014] dated 15/5/2018 of the Tribunal and also relied upon the following judgments:

- Nitin Sales Corporation v. ITO in ITA No.1809/Del/2005 dated 11.07.2008 Delhi High Court.
- Sh. Devender Kumar v. ITO in ITA No. 3239/Del/2014 dated 30.08.2016 ITAT Delhi.
- ACIT v. Amtek Auto Ltd. [2006] 112 TTJ 455 ITAT Delhi.

- Sh. Gagan Goyal v. JCIT in ITA No. 1514/Del/2015 dated 02.08.2016 ITAT Delhi.

Therefore, the Ld. AR submitted that in view of the above judicial pronouncements, the ad hoc additions made by the Assessing Officer and sustained by the CIT(A) without any basis are bad in law and liable to be deleted.

9. The Ld. DR relied upon the Assessment order and the order of the CIT(A). The Ld. DR further submitted that there is sudden increase in labour charges which was not properly explained by the assessee. Therefore, the Assessing Officer rightly made additions.

10. We have heard both the parties and perused the material available on record. The Assessing Officer has not made any allegation that these labour charges have not been paid by the assessee. The only allegation of the Assessing Officer is that the labour charges has suddenly increased to Rs. 75 lakhs in Feb and March from 28 lakhs in January but that cannot be sole criteria for making addition. The Assessee has given month wise details of labour charges and the same is quoted by the Assessing Officer on Page 4 Para 15 of the Assessment Order. As per these month-wise details, it is evident that the Assessing Officer has ignored that there are payments amounting to Rs. 72,91,802/- in the month of November, Rs. 44,45,609/- in the month of May & Rs.. 47,40,014 in the month of January and therefore it cannot be said that there is sudden increase in the amount of labour charges. Besides this, the Assessing Officer also ignored that the company has been regularly maintaining books of accounts which are duly audited and the same has been accepted by the Assessing Officer. There is no adverse finding of the Assessing Officer in relation to these documents. It is a well settled law that the ad hoc additions cannot be made in the hands with the company. Therefore, the Assessing Officer as well as the CIT(A) was not correct in making this addition.

Ground No. 2 is allowed.

11. As relates to Ground No.3 regarding ad hoc disallowance of 20% of Machine Running Expense of Rs.42,25,120/- made by the Assessing Officer on account of Machinery Running Expenses which was on the following grounds:

- There is increase in the expenses in the month of March.
- These expenses are high considering the size of operation of the company.
- Assessee has purchased 'valve manifold' however could not provide any detail or explanation to explain the nature of the item

12. The Ld. AR submitted that the Assessing Officer has disallowed 20% of the total expenditure of Rs.2,11,25,602/ which comes to Rs. 42,25,120/-. The CIT (A) has further confirmed the allegations of the Assessing Officer and sustained the ad hoc disallowance made by him. In this regard, the Ld. AR submitted that there is increase in expense in the month of March. The Assessee has given month wise details of Machine Running Expenses and the same is quoted by the Assessing Officer on Page 5 Para C of the Assessment Order. As per these month-wise details, it is evident that the Assessing Officer has ignored that there are payments amounting to Rs. 24,64,963/- in the month of May, Rs. 19,64,043/- in the month of January and therefore it cannot be said that highest expenditure in the month of March. These expenses are high considering the size of operation of the company. The Assessing Officer has completely ignored the fact that turnover of the company is Rs. 17,94,72,968/- and gross value of fixed assets amounting to Rs. 174,374,389/- as on 31.3.2010. The Assessee is in the business of construction and due to heavy use of the machinery, the normal replacement of the spare parts cannot be ignored. Further the Assessing Officer has made this allegation by indulging in surmises without giving any justification for the

same. The Assessee has purchased 'valve manifold' however could not provide any detail or explanation to explain the nature of the item. The Ld. AR submitted that the Assessing Officer completely ignored the fact that assessee has submitted copy of bill of Valve Manifold Machine' Rs. 619,645/-. The assessee also submitted the Parts wise structure of 'Hydraulic Assembly' in which 'Valve Manifold' used as only a 'Part'. The Ld. AR pointed out that the said parts are used in Hydraulic Assembly. Part at Serial no.3 is 'Valve Manifold' which can also be verified from structural diagram of 'Hydraulic Assembly'. From the details fixed by the assessee. Therefore, from the above observations, the Ld. AR pointed that 'Valve Manifold' is a part which is used in running of Machine. In this regard, the Ld. AR submitted that the company has been regularly maintaining books of accounts there are duly audited and the same has been accepted by the Assessing Officer there is no adverse finding of the Assessing Officer in relation to these documents. It is a well settled law that ad hoc addition cannot be made in the hands with the company. The Ld. AR relied upon the judgment of ACIT v. Modi Rubber Ltd. [ITA No. 1952/Del/2014] dated 15.05.2018 (ITAT Delhi) and also the following judgments:

1. Nitin Sales Corporation v. ITO in ITA No.1809/Del/2005 dated 11.07.2008 Delhi High Court.
2. Sh. Devender Kumar v. ITO in ITA No. 3239/Del/2014 dated 30.08.2016 ITAT Delhi.
3. ACIT v. Amtek Auto Ltd. [2006] 112 TTJ 455 ITAT Delhi.
4. Sh. Gagan Goyal v. JCIT in ITA No. 1514/Del/2015 dated 02.08.2016 ITAT Delhi.

Therefore, the Ld. AR submitted that in view of the above judicial pronouncements, the adhoc additions made by the Assessing Officer and sustained by the CIT(A) without any basis are bad in law and liable to be

deleted.

13. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

14. We have heard both the parties and perused the material available on record. It is pertinent to note that the Assessing Officer completely ignored the fact that assessee has submitted copy of bill of Valve Manifold Machine' Rs. 619,645/-. The assessee also submitted the Parts wise structure of 'Hydraulic Assembly' in which 'Valve Manifold' used as only a 'Part'. The Ld. AR pointed out that the said parts are used in Hydraulic Assembly. Part at Serial no.3 is 'Valve Manifold' which can also be verified from structural diagram of 'Hydraulic Assembly. From the details fixed by the assessee. Therefore, from the above observations, the Ld. AR pointed that 'Valve Manifold' is a part which is used in running of Machine. From the perusal of records it can be seen that the company has been regularly maintaining books of accounts there are duly audited and the same has been accepted by the Assessing Officer there is no adverse finding of the Assessing Officer in relation to these documents. Therefore, the Assessing Officer as well as the CIT(A) was not correct in making this addition. Ground No. 3 is allowed.

15. As relates to Ground No.4, the Ld. AR submitted that addition in respect of non-reconciliation of balance of Creditors amounting to Rs. 79,25,891/-, the Assessing Officer has ignored and overlooked the necessary documents filed.

16. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

17. We have heard both the parties and perused the material available on record. The documents submitted by the Assessee during the assessment proceedings were not at all considered by the Assessing Officer as well as by

the CIT(A). Therefore, it will be appropriate to remand back this issue to the file of the Assessing Officer and decide it a fresh. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Ground No. 4 is partly allowed for statistical purpose.

18. As relates to Ground No.5, the Ld. AR submitted that regarding disallowance of Machinery Hire Charges-DG Sets Hire charges as bogus and making addition of Rs.1,16,000/-, the Assessing Officer observed that these charges are bogus as there is no detail of service tax, telephone number and there is no entry for TDS. The CIT (A) also sustained disallowance made by the Assessing Officer on the basis that assessee failed to furnish any evidence in support of the claim that payment were made by A/c Payee Cheque. The Ld. AR submitted that the allegation of non- mentioning of Service tax, entry for TDS and Telephone no. has been made despite checking whether the vendor who gives on hire this machinery is subject to service tax or not. Further, there is no provision to show details of TDS deducted is not required to be mentioned on the bills by the vendor as it is the customer who is to deduct TDS. Further, there is name, address of the vendor on the bill and merely that telephone number is not mentioned, cannot be reason for treating the invoice as bogus. With regards to the allegation of the payments made by the assessee, the Ld. AR submitted that the Assessing Officer and the CIT (A) has not appreciated the fact that in the confirmation given by Creditor i.e. Chaudhary Generator and Elec. Services the same is duly signed. Thus, it is clearly evident that payment has been made through A/c Payee Cheque, number of which is also shown in confirmation.

19. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

20. We have heard both the parties and perused the material available on record. From the perusal of records it can be seen that there is name, address

of the vendor mentioned on the bill and merely not mentioning telephone number cannot be reason for treating the invoice as bogus. The the Assessing Officer and the CIT (A) has not at all considered the aspect that in the confirmation given by Creditor i.e. Chaudhary Generator and Elec. Services the same is duly signed. Thus, it is evident that payment was made through A/c Payee Cheque, and the details of cheque was also shown in confirmation. Thus, Ground No. 5 is allowed.

21. In result, ITA No. 5047/Del/2015 for A.Y. 2010-11 is partly allowed for statistical purpose.

22. Now we are taking up appeal for A.Y. 2011-12 being I.T.A. No. 5048/DEL/2015. The brief facts are that assessee filed return declaring income of Rs. 90,98,304/- on 30/09/2011. Return was processed u/s 143(1) of I.T Act, 1961. Subsequently, the case was taken up for compulsory scrutiny and notice u/s 143(2) was issued on 4/9/2012 and served upon the assessee. Thereafter, notices u/s 142(1) along with questionnaire was issued and duly served upon the assessee wherein certain specific details were called for. In response to these notices, C.A/AR attended the assessment proceedings from time to time and filed necessary details which were taken on record by the Assessing Officer. The Assessing Officer computed the total taxable income at RS. 2,91,34,120/- by making various additions and disallowances.

22. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

23. As relates to Ground No.1, the Ld. AR submitted that addition made by the Assessing Officer of Rs. 1,11,37,516/- on account of difference between contract revenue as per 26AS and Contract revenue credited to profit and loss account was in two parts:

- i. Addition on account of reconciliation of Form 26AS

- and Contract receipts shown in P & L Account Rs.73,73,696/-
- ii Addition on account of undervaluation of WIP Rs.37,63,820/-

As regards to addition of Rs. 73,73,696/-, the Ld. AR submitted that during assessment proceedings u/s 143(3) of the Act, the Assessing Officer asked the assessee to reconcile the difference in the contract receipts as per 26AS with the receipts shown in Profit & Loss Account. The Assessing Officer identified that there is a difference of Rs. 2,14,28,277/- after making party wise analysis of the entries appearing in Form 26AS and the amount of contract receipt of that party declared by the assessee. The Assessee before the Assessing Officer submitted that the difference of Rs. 2,14,28,277/- was on account of Service Tax, Work-in-progress and retention Money, details are as follows:

Work in Progress (Including Service Tax)	Rs.1,40,54,583
Service Tax (Parties have deducted TDS amount inclusive of Service Tax and Assessee is showing Receipt in P/L Account exclusive in Service Tax)	Rs.72,75,803
Retention Money	Rs.97,978
Total	Rs.2,14,28,277

The Assessee submitted following documents to justify its case:

- * Reconciliation of party wise giving separately the amount included in Turnover, Service Tax and Retention money along with following Supporting documents which are place at PB Pg. No.237-297.
- * Copy of ledger A/c of Party
- * Copy of relevant page of 26AS for reconciliation
- * Copy of Form 16A
- * Copy of Service Tax Output ledger along with copy of challans.

The Ld. AR submitted that all the differences were duly explained along with all necessary supporting evidences. However, the Assessing Officer allowed credit of work-in-progress of Rs. 1,40,54,583/- only. The Assessing Officer added the balance amount of Rs. 73,73,696/- which represents service tax of Rs. 72,75,803/- and retention money of Rs. 97,978/-. The CIT(A) confirmed the addition by giving incorrect findings that the assessee has not filed any evidence in relation to service tax and the retention money despite the Assessing Officer himself stating that the assessee has filed the above details in respect of the same.

24. As regards to addition of Rs. 37,63,820/-, the Ld. AR submitted that the Assessing Officer observed that assessee has valued Closing stock of WIP at Rs. 1,01,30,003/- excluding Service Tax and Gross Profit as against the amount of Rs. 1,40,54,583/- appearing in Form 26AS and asked the assessee the reason for not valuing the WIP including Gross profit at Rs. 1,40,54,583/-. In this regard, assessee submitted that Closing Stock is valued at cost or market value whichever is lower as per AS-2, valuation of inventories. The Ld. AR also submitted that the valuation method is the prescribed method and is consistently following the same. However, the Assessing Officer ignoring the contention of the assessee added the amount of Gross Profit @ 26.78% as declared in Tax Audit report on WIP of Rs. 1,40,54,583/- which comes to Rs. 37,63,820/-. The CIT(A) only confirmed the addition without considering the submissions and evidences placed on record. Since the method followed by the assessee is well accepted method of accounting, the closing stock of WIP is to be valued at Rs. 1,01,30,003/- at the cost or market value whichever is less. Therefore, the Ld. AR submitted that in view of the above, the additions made by the Assessing Officer and sustained by the CIT(A) without any basis are bad in law and liable to be deleted.

25. The Ld. DR relied upon the Assessment Order and order of the CIT(A).

26. We have heard both the parties and perused the material available on record. From the records it can be seen that the Assessee submitted before the Assessing Officer the difference of Rs. 2,14,28,277/- which was on account of Service Tax, Work-in-progress and retention Money. All the differences were duly explained along with all necessary supporting evidences. However, the Assessing Officer allowed credit of work-in-progress of Rs. 1,40,54,583/- only and added the balance amount of Rs. 73,73,696/- which represents service tax of Rs. 72,75,803/- and retention money of Rs. 97,978/- without taking into cognizance of the evidences produced by the Assessee. Besides this, assessee has valued Closing stock of WIP at Rs. 1,01,30,003/- excluding Service Tax and Gross Profit as against the amount of Rs. 1,40,54,583/- appearing in Form 26AS. This aspect was also ignored by the Assessing Officer. The CIT(A) also has not taken into consideration these evidences and simply confirmed the additions. Therefore, Ground No. 1 is allowed.

27. As relates to Ground No.2, the Ld. AR submitted that the Assessing Officer while enhancing the value of closing WIP by Rs. 39,24,580/- and adding sum of Rs.13,12,441/- on account of Service Tax and Rs.26,12,139/- on account of gross profit to be earned was not correct. The Assessing Officer in this issue has added the difference of Rs. 1,40,54,583/- of WIP as per Form 26AS and the amount of WIP of Rs. 1,01,30,003/- declared by the assessee in its books which comes to Rs. 39,24,580/-. The Ld. AR submitted that this tantamount to double addition since the amount of Rs. 37,63,820/- has already been added by him in previous issue. The Ld. AR submitted that the CIT(A) also agreed with the contention of Assessee and directed the Assessing Officer to examine his record and if there is a doubt, addition of the same amount which has already been added in Para 1.5 of the assessment order (Rs. 1,11,37,516/-), then the addition would stand deleted. Both the addition need to be deleted. The Ld. AR submitted that the CIT(A) has gone wrong in holding

that one addition will be sustained.

28. The Ld. DR relied upon Assessment Order and the order of the CIT(A).

29. We have heard both the parties and perused the material available on record. The Assessing Officer in this issue has added the difference of Rs. 1,40,54,583/- of WIP as per Form 26AS and the amount of WIP of Rs. 1,01,30,003/- declared by the assessee in its books which comes to Rs. 39,24,580/- which amount to double addition since the amount of Rs. 37,63,820/- has already been added by him in previous issue. But we have taken a view in the previous issue that this amount cannot be added for the reasons set out therein, therefore, Ground No. 2 is allowed.

30. As relates to Ground No.3, the Ld. AR submitted that addition of Rs. 32,09,510/- by treating the purchase of machine spare parts as a capital expenditure instead of revenue expenditure is not correct. The Ld. AR submitted that during the year under consideration, assessee claimed sum of Rs.99,70,862/- on account of purchase of machine parts for day to day requirement. The assessee is a contractor and deals in taking contract for laying of pipeline for Sewer and Cables etc. in various parts of the country. In laying pipeline, number of parts are broken and therefore the assessee has to purchase new parts for carrying out the work. The Ld. AR submitted that details of Machinery parts/ attachments etc. used in repairing of machinery above Rs. 1 lakh along with copy of bill was already submitted before the Assessing Officer. However, the Assessing Officer identified five bills amounting to Rs. 37,72,886/- and asked the assessee to show cause why the same be not capitalized. In respect of the same assessee submitted a detailed reply dated 05.03.2014. However, the Assessing Officer treated the purchase of machine spare parts as a capital expenditure instead of revenue expenditure on the basis that these are heavy parts of machine and added the amount of Rs. 32,09,510/- after deducting depreciation @15% on the value of

Rs. 37,72,886/-. Aggrieved by the same, assessee preferred an appeal before the CIT(A) and the CIT(A) endorsed the allegations made by the Assessing Officer. In this regard, the Ld. AR submitted that it is not disputed by the Assessing Officer that the assessee is holding heavy machinery in its construction business and considering the nature of assessee's business frequent use of the spare parts of the machinery cannot be doubted. Further, assessee in his reply has given justification for each item purchased and the Assessing Officer as well as the CIT(A) has not controverted the same. Further it is not the case of the Assessing Officer as well as the CIT(A) that there is any enduring benefit to the assessee. The Ld. AR relied upon the decision in case of CIT v. Super Cassettes Industries Ltd. (ITA 171/2010, ITA No. 197/2010, ITA 626/2010 dated 17/10/2011 of the Hon'ble Delhi High Court Delhi and the decision in case of CIT v. Mahalaxmi Textiles Mills Ltd. [1965] 56 ITR 556 of the Hon'ble Madras High Court. The Ld. AR also relied upon the following judgments:-

1. CIT v. Cellulose Products of India Ltd. [1985] 151 ITR 499- Gujarat High Court
2. CIT v. Malhotra Industrial Corporation [2002] 254 ITR 635- Punjab & Haryana High Court
3. CIT v. M/s Malerkotla Steels and Alloys Pvt. Ltd.[2011] 336 ITR 49-- Punjab & Haryana High Court

Therefore, in view of the above, the Ld. AR submitted that the additions made by the Assessing Officer with respect to treating the purchase of machine spare parts as a capital expenditure instead of revenue expenditure without any basis are bad in law and liable to be deleted.

31. The Ld. DR relied upon Assessment Order and the order of the CIT(A).

32. We have heard both the parties and perused the material available on record. From the records it can be seen that there is no dispute by the Assessing Officer that the assessee is holding heavy machinery in its construction business and considering the nature of assessee's business frequent use of the spare parts of the machinery. Thus, it is an admitted fact. The assessee in his reply filed before the Assessing Officer has given justification for each item purchased during the Assessment Proceedings and the Assessing Officer as well as the CIT(A) did not point out any contradictory records to that effect. Details of Machinery parts/ attachments etc. used in repairing of machinery above Rs. 1 lakh along with copy of bill was submitted before the Assessing Officer. However, the Assessing Officer identified five bills amounting to Rs. 37,72,886/- and asked the assessee to show cause why the same be not capitalized for which the assessee filed the reply. Being a contractor who deals in laying of pipelines for sewer and cables, it is necessity to replace the broken parts which are damaged in transportation and has to purchase the new parts for carrying out the work. However, the Assessing Officer treated the purchase of machine spare parts as a capital expenditure instead of revenue expenditure on the basis that these are heavy parts of machine and added the amount of Rs. 32,09,510/- after deducting depreciation @15% on the value of Rs. 37,72,886/- which is not correct as it is an integral part of the business of the assessee. Therefore, Ground No. 3 is allowed.

33. As relates to Ground No.4, the Ld. AR submitted that ad hoc disallowance of 5% of Labour Charges paid of Rs.16,76,565/- made by the Assessing Officer is not correct. The Assessing Officer disallowed 5% of the total expenditure of Rs.3,35,31,286/- on the basis that the copies of vouchers produced were unsigned and thus assessee failed to prove genuineness. The CIT (A) further sustained ad hoc disallowance made by the Assessing Officer on the basis that the assessee failed to produce the required details. In this regard, it is submitted that there is no allegation that these labour charges have not been

paid by the assessee and vouchers of the same has been produced before the Assessing Officer. The Ld. AR submitted that copy of ledger A/c of 'Labour Expenses were submitted before the Assessing Officer. The Ld. AR submitted that only allegation of the Assessing Officer is that the copies of vouchers were unsigned for which he submitted that the company has been regularly maintaining books of accounts which are duly audited and the same has been accepted by the Assessing Officer. The Ld. AR further submitted that there is no adverse finding of the Assessing Officer in relation to these documents. It is a well set law that the ad hoc addition cannot be made in the hands with the company. The Ld. AR relied upon the decision of ACIT v. Modi Rubber Ltd. [ITA No. 1952/Del/2014] dated 15.05.2018 (ITAT Delhi) and also relied upon the following judgments.

- ❖ Sh. Devender Kumar v. ITO in ITA No. 3239/Del/2014 order dated 30.08.2016 ITAT Delhi
- ❖ ACIT v. Amtek Auto Ltd. [2006] 112 TTJ 455 ITAT Delhi
- ❖ Sh. Gagan Goyal v. JCIT in ITA No.1514/Del/2015 dated 02.08.2016 ITAT Delhi
- ❖ Nitin Sales Corporation v. ITO in ITA No.1809/Del/2005 dated 11.07.2008 Delhi High Court.

Therefore, in view of the above judicial pronouncements, the Ld. AR submitted that the ad hoc additions made by the Assessing Officer and sustained by the CIT(A) without any basis are bad in law and liable to be deleted.

34. The Ld. DR relied upon Assessment Order and the order of the CIT(A).

35. We have heard both the parties and perused the material available on record. The Assessing Officer disallowed 5% of the total expenditure of Rs.3,35,31,286/- on the basis that the copies of vouchers produced were

unsigned and thus assessee failed to prove genuineness which was confirmed by the CIT (A). From the perusal of records it can be seen that there is no doubt raised by the Assessing Officer that these labour charges have not been paid by the assessee and vouchers of the same has been produced before the Assessing Officer. The copy of ledger A/c of Labour Expenses were submitted before the Assessing Officer which was ignored by the Assessing Officer as well as by the CIT(A). The fact remains that the company has been regularly maintaining books of accounts which are duly audited and the same has been accepted by the Assessing Officer. Therefore, it will be appropriate to remand back this issue to the file of the Assessing Officer for fresh adjudication. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Ground No. 4 is partly allowed for statistical purpose.

36. As relates to Ground No.5, the Ld. AR submitted that this ground deals with the action of the CIT(A) in confirming the action of the Assessing Officer of treating 50% of electricity expenses as personal expenses of directors. The Ld. AR submitted that during the year under consideration, registered office of the company is in the residence of the directors at A1/31, Janakpuri, New Delhi. No Electricity expenses for this office has been charged during the year. In addition to registered office, A1/B-6, Local Shopping Complex, Janakpuri is the administrative office of the Company for which Assessee Company has claimed electricity expenses of Rs. 175,258/- during the year under consideration. The assessee submitted vide submission dated 05.03.2014 before the Assessing Officer that all the work is done from the administrative office so no disallowance should be made out of electricity expense as expense claimed pertains to only administrative office of the company. The Assessing Officer has disallowed 50% of expenses on the premise that the electricity bills pertains to Regd. Office located at A1/31, Janakpuri, New Delhi which is also the residence of the directors. Therefore, he has treated 50% expenses as personal expenses and accordingly disallowed the same. Before CIT (A), assessee submitted that the Assessing Officer has disallowed expenses on the

basis of earlier year's disallowance. The Ld. AR submitted that in A.Y. 2009-10, the Assessing Officer also disallowed the Electricity Expenses on account of common expenses as residence and the office are in the same premises. However, for the year under consideration, facts are different as assessee has suo-motto not claimed Electricity Expenses for the premises at A1/31, Janakpuri, New Delhi, the registered office of the company. The assessee has claimed Electricity Expenses only with respect to administrative office of the company at A1/B-6, Local Shopping Complex, Janakpuri, New Delhi where directors not reside. Therefore, Electricity Expenses disallowed by the Assessing Officer solely on the basis that electricity expenses are common expenses for the residence of directors and office premise ignored the fact that Assessee has not claimed any expense for the residence where registered office is situated and the same is upheld by the CIT(A) is bad in law and liable to be deleted. The Ld. AR further submitted that without prejudice, in case of a company no disallowance can be made on account of personal expenditure. The Ld. AR relied upon the following judgments:

- CIT v Sayaji Iron & Steel Co. 253 ITR 749 (Guj)
- Coca Cola India Ltd. vs. JCIT (2006) 102 ITD 134 (Pune)
- LavridsKnudsanMaskinfabrik (India) Ltd. vs. Addl. CIT (2006) 102 TTJ (Pune) 882
- DCIT VS Haryana Oxygen Ltd. (1999) 76 ITD (Del) 32
- Dinesh Mills Ltd. v. CIT (2002) 254 ITR 673 (Guj)
- CIT vs. S.S.P. (P) Ltd. (2011) 202 Taxman 386 (P&H)
- Friends Clearing Agency (P) Ld. Vs. CIT (2011) 332 ITR 269 (Del))

37. The Ld. DR relied upon Assessment Order and the order of the CIT(A).

38. We have heard both the parties and perused the material available on record. The basis for this addition made by the Assessing Officer was in respect of addition made in A.Y. 2009-10. But the Assessing Officer failed to appreciate

the changing scenario in present Assessment Year. In A.Y. 2009-10, the premises used for company was residence of the Directors. However, for the year under consideration, facts are different as assessee has suo-motto not claimed Electricity Expenses for the premises at A1/31, Janakpuri, New Delhi, the registered office of the company. The assessee has claimed Electricity Expenses only with respect to administrative office of the company at A1/B-6, Local Shopping Complex, Janakpuri, New Delhi where directors are not reside. Therefore, Electricity Expenses disallowed by the Assessing Officer entirely on the basis that electricity expenses are common expenses for the residence of directors and office premise while ignoring the fact that Assessee has not claimed any expense for the residence where registered office is situated and the same is upheld by the CIT(A) is not correct. Thus, Ground No. 5 is allowed.

39. In result, ITA No. 5048/Del/2015 for A.Y. 2011-12 is partly allowed for statistical purpose.

Order pronounced in the Open Court on 27th MAY, 2019.

**Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 27/05/2019
*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	01.03.2019
Date on which the typed draft is placed before the dictating Member	01.03.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	29 .05.2019
Date on which the final order is uploaded on the website of ITAT	30 .05.2019
Date on which the file goes to the Bench Clerk	30.05.2019
Date on which the file goes to the Head Clerk	