

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI**

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

**ITA No. 45/DEL/2017
[Assessment Year: 2009-10]**

ACIT, Circle-62(1), New Delhi	M/s Brij Gopal Construction Co. (not known as M/s Brij Gopal Construction Company Pvt. Ltd.), A-7/2, Shivaji Apartment, Sec-14, Rohini New Delhi-110085
	PAN-AADFB4527A
Revenue	Assessee

**CO No.38/Del/2017
(Arising out of ITA No. 45/DEL/2017)
[Assessment Year: 2009-10]**

M/s Brij Gopal Construction Co. (not known as M/s Brij Gopal Construction Company Pvt. Ltd.), A-7/2, Shivaji Apartment, Sec-14, Rohini New Delhi-110085	ACIT, Circle-62(1), New Delhi
PAN-AADFB4527A	
Assessee	Revenue

Revenue by	Smt. Rinku Singh
Assessee by	Shri Gautam Jain & Shri Lali Mohan

Date of Hearing	01/08/2019
Date of Pronouncement	02/08/2019

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the Revenue and cross objection of the assessee are preferred against the order of the Ld. CIT(A)-2, New Delhi, dated 30/09/2016 pertaining to Assessment Year 2009-10.

2. The solitary grievance of the Revenue is that the Id. CIT(A) erred in deleting the additions of Rs.2,07,84,177/- made by the AO on account of provisions of Sales Tax. In its Cross Objection, the assessee has challenged the validity of the order dated 11/08/2015 framed u/s 154 of the Act.

3. Briefly stated the facts of the case are that the original assessment was framed u/s 143(3) of the Act vide order dated 01/12/2011. The income of Rs.1,37,16,810/- was assessed against returned income of Rs.98,69,500/-. Audit scrutiny revealed that the assessee had been making provisions for Sales Tax each and every year without making actual payment and debiting the same in the trading and Profit & Loss account. During the financial year under consideration, the assessee has debited Rs.2,07,84,177/- on account of provisions for sales tax in the trading account and shown as liability in the balance sheet.

4. On these facts, the AO issued notice u/s 154 of the Act calling for explanation as to why the aforesaid provision should not be disallowed. On receiving no plausible reply, the AO rectified his assessment order and made the disallowance on account of provisions of sales tax and added a sum of Rs.2,07,84,177/-.

5. Before the Id. CIT(A), it was strongly contended that the sales tax/works contracts tax @4% was deducted at source by its customers at the time of payment and the assessee had VAT input credit available also on inputs utilised in its construction activities reflected as asset in the balance sheet. It was further explained that the assessee has sufficient credit against sales tax provisions made during the year under

consideration, therefore, the action of the AO is uncalled for and disallowance made should be deleted.

6. The Ld. CIT(A) after considering the facts and the submission held as under:-

“3.4.4. Further the appellant vide its submissions dated 28.08.2016 also stated that Assessing Officer under VAT Act, 2003 had computed the sales tax liability of the appellant at Rs.1,77,77,218/- as against a provisions of Rs.2,07,84,177/-. As a result there was a difference of Rs.30,06,969/- in respect of the provision made by the appellant during the financial year 2008-09 relevant to assessment year 2009-10 and actual liability computed by the assessing authority under VAT Act, 2003. Also, the Assessing Officer under VAT Act, 2003 had restricted the input tax credit to Rs.2,56,16,785/- as against claim of Rs.2,64,24,058/- outstanding in books of accounts of the appellant. Thus there was net restriction of input tax credit by Rs.8,07,273/-. In a nutshell, the provision for liability of sales tax made by the appellant was net excessive by Rs.21,99,686/- (Rs.30,06,959/- Rs.8,07,273). This sum of Rs.21,99,686 stands duly offered as income in the financial year 2011-12 relevant to assessment year 2012-13 by the appellant, which was duly assessed and accepted in the order dated 12/12/2014 u/s 143(3) of the Act.”

7. Before us, the Ld. DR could not point out any factual error in the findings of the Ld. CIT(A). On the contrary, we find that the Ld.CIT(A) has given categorical findings that a sum of Rs.21,99,686/- which was found to be net excessive, has been duly offered as income in Financial Year 2011-12 relevant to AY 2012-13, which was duly assessed and accepted in the order dated 12/12/2014 framed u/s 143(3) of the Act.

8. The facts relating to the computation of net excessive in respect of provision for liability of sales tax has been discussed elsewhere and as no factual error has been pointed out, we do not find any reason to interfere with the findings of the Ld. CIT(A). Appeal filed by the Revenue is dismissed.

9. The counsel did not pressed the cross objection and the same is dismissed as not pressed.

10. Finally, the appeal of the Revenue as well as the Cross Objection of the assessee is dismissed.

The order is pronounced in the open court on 02/08/2019

Sd/-

[SUCHITRA KAMBLE]
JUDICIAL MEMBER
Delhi; Dated: 02/08/2019.

Shekhar, Sr. P.S

Copy forwarded to:

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

Sd

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi