

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

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.2408/Del/2016  
Assessment Year: 2011-12

M/s. Dewan Chand S-11, Greater Kailash-II, New Delhi-110048 PAN NO. AAIFM0046J	Vs	JCIT Range-38,Civic Centre, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. T. P. S. Kang, Advocate Ms. Palak Nenwani, Advocate
Respondent by	Ms. Ashima Neb, Sr. DR

Date of hearing:	28/08/2019
Date of Pronouncement:	16/09/2019

**ORDER**

**PER R.K. PANDA, AM:**

This appeal filed by the assessee is directed against the order dated 09.03.2016 of the CIT(A)-20, New Delhi relating to A. Y. 2011-12.

2. The assessee in its various grounds of appeal has challenged the order of the CIT(A) in confirming the addition of Rs.90,90,120/- made by the Assessing officer being the difference in the contract receipts shown by the assessee in the profit and loss account and the contract receipt reflected in the

Form 26AS and the addition of Rs.2,14,769/- being interest earned from Canara Bank pertaining to A.Y.2011-12 which was not shown by the assessee.

3. Facts of the case, in brief are that the assessee is a partnership firm engaged in the business of construction contract. It filed its return of income on 30.09.2011 declaring total income of Rs.1,20,34,478/-. During the course of assessment proceedings the Assessing Officer observed from Form No.26AS that the receipt from the Executive Engineer, PWD Division B-231 is reflected at Rs.54,89,832/- whereas the assessee in the P& L account has shown receipt at Rs.34,99,712/-. Thus there is a difference of Rs.19,90,120/- which has not been offered for taxation. Similarly as per Form 26 AS the total interest received from Canara bank is appearing at Rs.14,65,532/- whereas the assessee has shown interest from Canara Bank at Rs.12,50,763/-. Thus assessee has not afford to tax the difference of Rs.2,14,769/-. The Assessing Officer, therefore, confronted the same to the assessee. It was submitted that the difference in the figures is due to revision of TDS refund filed by the deductors. However, according to the Assessing Officer the assessee has not offered both the amounts for taxation. The Assessing Officer accordingly made addition of Rs.22,04,889/- to the total income of the assessee which is the subject matter of appeal. In appeal the ld. CIT(A) confirmed the addition by observing as under :-

*“5.3 I have considered the submission of the appellant and the assessment order. The appellant is regularly following the merchants system of accounting. Therefore, whatever be the accrual of income the same is required to be declared accordingly in the books of accounts on accrual basis. Therefore, A. O. is justified adding the receipts as per Form 26 AS. However, the appellant has to be given the credit for the TDS as per section 199 of the Act. Therefore, the addition of Rs.19,19,120/- is confirmed by the A. O. is directed to give credit of the TDS as per Section 199 of the Act to be read with Rule 37 BA of Income Tax Rules, 1962.*

*6.3 I have considered the submission of the appellant and the assessment order. The appellant is regularly following the merchantile system of accounting. Therefore, whatever be the accrual of income the same is required to be declared accordingly in the books of accounts on accrual basis. Therefore, A. O. is justified in adding the accrued interest as per Form 26 AS. However, the appellant has to be given the credit for the TDS as per section 199 of the Act. Therefore, the addition of Rs.2,14,769/- is confirmed but A.O. is directed to give credit of the TDS as per section 19 of the Act to be read with Rule 27 BA of Income Tax Rules 1962.”*

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

5. The Ld. Counsel for the assessee submitted that the Assessing Officer has mentioned that there is difference in the

amount reflected in the P & L account and the Form No.26 AS. However, he has forgotten to consider the amount of work in progress shown by the assessee in the P & L account and balance sheet. He submitted that the assessee has accounted for such contract receipt in the subsequent year and has also paid tax thereon. Further the difference amount was cleared by the Executive Engineer only after the return was filed and, therefore, the assessee could not have considered the same in its books of account. He accordingly submitted that the addition sustained by the CIT(A) amounting to Rs.19,19,120/- on account of variation in contract receipt being purely on the basis of Form No.26 AS statement is uncalled for. Further the Id. CIT(A) also without considering the factual aspect has sustained the addition made by the Assessing Officer. Similarly the addition of Rs.2,14,769/- on account of variation in the interest receipt is being based purely on the basis of Form No.26AS statement is also uncalled for especially when the assessee, in the subsequent year, has offered such interest income to tax. He accordingly submitted that both the additions made by the Assessing Officer and sustained by the CIT(A) are not justified. He also relied on the decision of Hon'ble Kerala High Court in the case Janatha Contract Company Vs. CIT reported in 105 ITR 627, the decision of Hon'ble Delhi High Court in the case of PCIT Vs. Mehta Construction Company and others reported in 101 CCH 0066 and the decision of Hon'ble Allahabad High court in the case of Dr. Prabhu Dayal Yadav Vs. CIT.

6. Ld. DR on the other hand heavily relied on the order of the CIT(A).

7. We have considered the rival arguments made by both the sides, perused the orders of the Assessing officer and the Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer made addition of Rs.19,19,120/- on account of difference in the contract receipt shown in the P & L account and the form No.26 AS in respect of the receipt from Executive Engineer PWD Division B-231. Similarly, the Assessing Officer made addition of Rs.2,14,769/- being the difference in the interest income on the basis of Form No.26 AS filed by Canara Bank. We find the Ld. CIT(A) upheld both the additions, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the Ld. Counsel for the assessee that the assessee has shown the value of work-in-progress which was certified by the Executive Engineer subsequent to the close of accounts under the head work-in-progress. It is also his submission that the TDS certificate was obtained only after finalisation of accounts and such difference in contract receipt has been accounted for in the subsequent accounting year. The assessee has not shifted the profit to the next year since such profit has already been embedded in work-in-progress.

8. So far as the difference in the interest income is concerned it is the submission of the Ld. AR that such difference has been accounted for by the assessee in the subsequent assessment year since these were credited by the bank only after the finalization of the accounts. It is also his submission that there is no loss of revenue since the assessee has already offered the income to tax in the subsequent year. It is his alternate submission that since the lower authorities were silent on the issue of closing work-in-progress, therefore, he has no objection if the matter is restored to the file of the Assessing Officer for thorough verification. We find merit in the above argument of the Ld. Counsel for the assessee. In our opinion if the TDS certificate issued after the closing of accounts and finalization of accounts and if the assessee has shown work-in-progress which is equivalent or more than the amount certified by the contractee in a subsequent date but relating to this year then the revenue authorities can consider the argument of the assessee that the profit element is already embedded in the closing work in progress. However, this plea was neither argued before the lower authorities nor considered by them although the audited accounts were very much available before the lower authorities. Considering the totality of the facts of the case and in the interest of justice we deem it proper to restore the issue to the file of the AO with a direction to grant one more opportunity to the assessee to substantiate its case and decide the issue as per fact and law. Needless to say the Assessing Officer shall give due opportunity of being heard to the assessee.

We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purpose.

9. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 16.09.2019.

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

\*Neha\*

Date:- 16.09.2019

Copy forwarded to:

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

Sd/-  
**(R.K PANDA)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	29.08.2019
Date on which the typed draft is placed before the dictating Member	02.09.2018
Date on which the approved draft comes to the Sr.PS/PS	16.09.2019
Date on which the fair order is placed before the Dictating Member for Pronouncement	16.09.2019
Date on which the fair order comes back to the Sr. PS/ PS	16.09.2019
Date on which the final order is uploaded on the website of ITAT	16.09.2019
Date on which the file goes to the Bench Clerk	17.09.2019
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	