

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'I(2) + SMC' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER,  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 1724/DEL/2019 ( A.Y 2015-16)**

MBL MP Toll Road Company Ltd. Suite NO. 303, Baani Corporate One Tower, 3 <sup>rd</sup> Floor, PT No. Jasola, New Delhi PIN: 110025 PAN: AAHCM5400G <b>(APPELLANT)</b>	Vs	ITO Ward-16(3) New Delhi  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Ms. Himani Aggarwal, CA</b>
<b>Respondent by</b>	<b>Sh. Jagdish Singh, Sr. DR</b>

<b>Date of Hearing</b>	<b>24.02.2020</b>
<b>Date of Pronouncement</b>	<b>02.03.2020</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 18/12/2018 passed by CIT(A)-6, Delhi for Assessment Year 2015-16.

2. The grounds of appeal are as under:-

1. *“That the order passed by Ld. CIT (A) is bad in law.*
2. *That the Ld. CIT (A), while passing the Impugned order failed in providing an adequate opportunity of being heard to the Appellant.*
3. *That the Ld. CIT (A) dismissed the appeal and passed the impugned order on the erroneous premise that the appellant does not wish to pursue the appeal.*

4. *That the Ld. AO has made the addition amounting to Rs. 20, 78,996/- without considering the fact that this amount is in the nature of reimbursement of expense made by the appellant on behalf of M/s. Madhya Pradesh Road Development Corporation.*
5. *That the Ld. AO has erred in making the addition amounting to Rs. 20, 78,996/- on the basis of non-receipt of reply from M/s. Madhya Pradesh Road Development Corporation against the notice issued to it under sub section 6 of section 133 of the Income Tax Act, 1961.*
6. *That the Ld. AO has erred in rejecting books of the Appellant u/s 145(3) of the Act.*
7. *That the Ld. AO has erred in applying the provisions of Rule 37BA to the facts of the Appellant.”*

3. The return of income declaring nil income was filed on 27/09/2015. The case was subsequently selected for the limited scrutiny and notice under section 143(2) was issued on 30/01/2017 and was duly served upon the assessee. The Assessing Officer observed that during the year, the assessee had not filed any P & L account. The Assessing Officer further noted that the assessee submitted that it had not prepared the P & L account as assessee company was in the business of construction of road and thus building a state highway on DBFOT (design, build, finance, operate & transfer) project basis. The assessee further submitted before the Assessing Officer that the construction work was under progress during the relevant previous year and income under DBFOT project comes from toll charges once the project is completed. From the AIR, the Assessing Officer observed that the assessee had certain contractual receipts amounting to Rs. 20,78,996/- from Madhya Pradesh Road Development Corporation Ltd and the assessee was asked to reconcile the same and also explain why the said receipts were not disclosed in the return of income. The assessee submitted before the Assessing Officer that the amount of Rs. 20,78,996/- was received on which tax had been deducted at source but inadvertently the payer had reflected the TDS under the PAN of

its associate company. The Assessing Officer observed that the shifting of utilities was an independent activity and had no financial implication on the assessee's DBFOT project and that it has to be treated independently and cannot be considered as WIP. The Assessing Officer also examined the computation submitted by the assessee in which TDS had been claimed at Rs. 41,580/-. The Assessing Officer referred to the provisions of Rule 37BA of the Income Tax Rules, 1962 and held that it was proved beyond doubt that the income of Rs. 20,78,996/- pertained to the assessment year under consideration and had not been declared by the assessee. The Assessing Officer also noted that the assessee had to declare the income under the head in which it falls and cannot choose its own head. The Assessing Officer further held that the income was definitely a business income and had nothing to do with capital receipt as no capital asset was constructed by way of completing a standalone project. The Assessing Officer held that the assessee had deliberately concealed the receipts and not declared the same in the P & L account. The amount of Rs. 20, 78, 996/- was treated as undisclosed income of the assessee. Assessment was completed at an income of Rs. 20,79,000/-.

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

5. The Ld. AR submitted that since the National Company Law Tribunal suspended the Board of Directors and declared moratorium and also appointed interim resolution professional to look into the affairs of the Company within the process of the said resolution dated 18<sup>th</sup> April 2018, the representation of the assessee company was not possible before the CIT(A). Therefore, the Ld. AR submitted that the matter may be remanded back to the file of the CIT(A) for fresh adjudication on merit after giving proper opportunity of hearing to the assessee.

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

7. We have heard both the parties and perused all the relevant material available on record. It can be seen that due to Corporate Insolvency Resolution Proceedings, the National Company Law Tribunal suspended the Board of Directors and declared moratorium, the company was seeking adjournment before the CIT(A) as the company could not produce requisite documents before the CIT(A). The reason for non-appearance before the CIT(A) appears to be genuine, therefore, it will be appropriate to remand back this matter to the file of the CIT(A) for fresh adjudication on merit. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. The appeal of the assessee is partly allowed for statistical purpose.

8. In result, appeal of the assessee is partly allowed for statistical purpose.

**Order pronounced in the Open Court on 02<sup>nd</sup> March, 2020.**

**Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

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

Dated: 02/03/2020  
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	24.02.2020
Date on which the typed draft is placed before the dictating Member	25.02.2020
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	02.03.2020
Date on which the final order is uploaded on the website of ITAT	02.03.2020
Date on which the file goes to the Bench Clerk	02.03.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	