

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “ A ” BENCH: BANGALORE  
**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER  
AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.1313/Bang/2019  
(Assessment Year: 2015-16)

M/s. Valdel Infra India Pvt. Ltd.,  
No.2/1, Embassy Vogue, Palace Road,  
Vasanthnagar, Bangalore-560052  
PAN AADCV 5653J

....Appellant

Vs.

Dy. Commissioner of Income Tax,  
Circle 7(1)(2), Bangalore.

.....Respondent.

Assessee By:	Shri Narendra Sharma, Advocate.
Revenue By:	Shri A. Ramesh Kumar, JCIT (D.R)

Date of Hearing :	02.03.2020
Date of Pronouncement :	06.03.2020

**ORDER**

**PER SHRI PAVAN KUMAR GADALE, JM :**

The assessee has filed an appeal against the order of Commissioner of Income Tax (Appeals)-7, Bangalore passed under Section 143(3) and 250 of the Income Tax Act, 1961 ('the Act').

2. The assessee has raised the following grounds of appeal :

1. The order of the learned Commissioner of Income-tax [Appeals] passed under Section 250 of the Act in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.
2. The appellant denies itself liable to be assessed on total assessed income of Rs. 2,04,36,047/- as determined by the learned assessing officer and upheld by the learned CIT[A], as against the returned income by the appellant of Rs. 63,06,047/- under the facts and circumstances of the case.
3. The learned Commissioner of Income-tax [Appeals] was not justified in confirming the disallowance of sum of Rs.4,71,00,000/- u/s. 40(a)(ia) of the Act i.e., Rs. 1,41,30,000/- [Rs. 4,71,00,000/- X 30%] under the facts and circumstances of the act.
4. The learned Commissioner of Income-tax [Appeals] failed to appreciate the fact that the payments which have been paid by the appellant has been duly offered by the receiver of the payments in his return of income and thus once again taxing the same as income which is an outlay of expenditure amounts to unjust enrichment and not in accordance with the intention of the legislature under the facts and circumstances of the case.
5. The learned Commissioner of Income-tax [Appeals] was not justified in law in not appreciating that the deduction of tax is only one mode of recovery of tax and once the tax recovered by any other mode is not permissible to recover the same tax again by disallowing the same tax twice under the facts and circumstances of the case.
6. The learned Commissioner of Income-tax [Appeals] ought to have appreciated the fact that there is no loss of revenue to the government and all the legible taxes have been duly paid in accordance with law under the facts and circumstances of the case.

7. The learned Commissioner of Income-tax [Appeals] erred in not admitting the additional evidence furnished under Rule 46A of the Act being the copy of the ITR -V Acknowledgement and the Copy of the Chartered Accountant Certificate confirming that the payments were duly offered to tax in the return of the receiver of the payments for the impugned assessment year under the facts and circumstances of the case.
8. Without prejudice to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies itself liable to be charged to interest under section 234 B of the Income Tax Act under the facts and circumstances of the case.
9. The appellant contends that the levy of interest under section 234 B and 234 C of the Act is also bad in law as the period, rate, quantum and method of calculation adopted by the learned assessing officer on which interest is levied are not discernible and are wrong on the facts of the case.
10. The appellant craves leave to add, alter, amend, substitute or delete any or all of the grounds of appeal urged above.
11. For the above and other grounds to be urged during the course of hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice.

3. The Brief facts of the case are that the assessee company is engaged in the business of real estate, construction and infrastructure activities and filed the Return of Income on 30.10.2015 with total income of Rs.63,03,047/-. Subsequently, the case was selected for scrutiny under CASS and Notice under Section 143(2) and 142(1) were issued. In compliance, the learned Authorized Representative appeared from time to time and filed the relevant details. The Assessing Officer on perusal of the Profit and Loss Account found that the amount of Rs.4,71,00,000 was debited to Profit and Loss Account as warm shell charges

and details were called for. The Assessing Officer on perusal of details, find that the payments were made to contractors without deduction of TDS as per provisions of Section 194C of the Act. Hence disallowed the expenses for non-deduction of TDS under provisions of Section 40a (ia) of the Act of Rs.1,41,30,000/- and Assessed total income of Rs.2,04,36,047/- and passed order under Section 143(3) of the Act Dt.1.12.2017. Aggrieved by the order, the assessee has filed an appeal with the CIT(Appeals).The CIT(Appeals) in the course of hearing proceedings considered the submissions of the assessee in respect of deduction of tax under Section 194C of the Act. Whereas the assessee has filed additional evidence, which could not be filed before the Assessing Officer and the reasons were explained. But Appellate authority was not convinced with the explanations and dealt at Para 4.1 and 4.2 of the order and confirmed the disallowance under Section 40a(ia) of the Act and also rejected the additional evidence filed in the course of appellate proceedings and dismissed the assessee appeal. Aggrieved by the order of CIT(Appeals), the assessee has filed an appeal before the Tribunal.

4. At the time of hearing, the learned Authorized Representative submitted that the CIT (Appeals) has erred in confirming the action of the Assessing Officer and further rejected the additional evidences which are vital for the decision making in respect of payments made to contractors and on applicability of provisions of Section 194C of the Act, and prayed that the additional evidence be

admitted and provide an opportunity to substantiate the case and allow the appeal. Contra, the learned Departmental Representative supported the orders of CIT(Appeals).

5. We heard the rival contentions and perused the material on record. The learned Authorized Representative emphasized on admission of additional evidence filed, which was rejected by the CIT(Appeals) as the same was not filed before the assessing authority in the assessment proceedings, and these evidences are in respect of contracts entered with the sister concerns for the works executed with business participation and on commercial expediency and TDS provisions are not applicable. We considering the submissions of the LdAr and principles of natural justice are of the opinion that the assessee should not be deprived right of substantiating the disallowances made by the Assessing Officer with vital evidences available. Accordingly, we admit the additional evidences filed by the assessee and set aside the order of CIT(Appeals) and restore the entire disputed issue to the file of the CIT(Appeals) to consider the additional evidences filed and adjudicate a fresh and pass a speaking order. Further, the assessee should be provided adequate opportunity of hearing and shall co-operate in submitting the information for early disposal of appeal and allow the grounds of appeal of assessee for statistical purposes.

6. In the result, the assessee's appeal is allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

**(A.K. GARODIA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Dated: 06.03.2020.

\*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore