

## IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH: 'E', NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
(THROUGH VIDEO CONFERENCE)

ITA NO. 6078/DEL/2016

A.Y. : 2011-12

ACIT, CENTRAL CIRCLE-8, ROOM NO. 333, ARA CENTRE, JHANDEWALAN EXTN., NEW DELHI	Vs	M/S MADHYAM CONSTRUCTION COMPANY PVT. LTD., B-2/6, PLOT NO. 2, ASHOK NAGAR, DB GUPTA ROAD, NEAR FAIZ CHOWK, KAROL BAGH, NEW DELHI – 5 (PAN: AADCM8688G)
(Appellant)		(Respondent)

Department by	Ms. Pratima M. Biswas, CIT(DR)
Assessee by	Sh. Shashwat Bajpai, Advocate & Sh. Sharad Agarwal, Adv.

**ORDER****PER H.S. SIDHU, JM:**

This appeal filed by the Revenue against the Order of Ld. CIT(A)-24, New Delhi for Assessment Year 2011-12 dated 23.09.2016 on the following grounds:-

1. The order of Ld. CITA() is not correct in law and on facts.
2. On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 2,06,42,177/-

made by AO on account of disallowance of bogus expenses by relying on the order of Hon'ble Delhi High in the case of Mr. Kabul Chawla.

3. On the facts and circumstances of the case, the Ld. CIT(A) has erred in relying on the order of Hon'ble Delhi High Court in the case of Kabul Chawla as Section 153A does not restrict the assessment to incriminating documents.
4. The appellant craves leave to add, amend any / all the ground of appeal before or during the course of hearing of the appeal.

2. At the time of hearing, Ld. Counsel for the assessee stated that similar issue has already been decided in favour of the assessee by the ITAT, 'A' Bench, New Delhi in the group case of assessee i.e. M/s Becon Constructions Pvt. Ltd. vs. ACIT, Central Circle-8, New Delhi in ITA No. 5034/Del/2016 (AY 2012-13) vide order dated 24.12.2020. He further stated that the Judicial Member was the Author of this order. He further stated that in the said case the gross profit rate of assessee was @9.25% and the Bench has directed the Assessing Officer to retain the addition @9.25% of the bogus purchases. He requested that the same direction may be issued in the present case of the assessee also. To support this averments, he has also filed the written synopsis dated 13.01.2021 alongwith the order dated 24.12.2020 passed in the case of M/s Becon Construction Pvt. Ltd. (Supra).

2.1 Ld. CIT(DR) relied upon the orders passed by the AO and has not raised any objection on the request of the Ld. Counsel for the assessee.

3. We have heard both the parties and perused the orders passed by the revenue authorities alongwith the written synopsis and order dated 24.12.2020 passed in ITA No. 5034/Del/2016 (AY 2012-13) in the case of M/s Becon Constructions Pvt. Ltd. vs. ACIT (Supra). For the sake of convenience, the relevant portion of the aforesaid case i.e. para no. 4.1 at page no. 14 of the Tribunal's order dated 24.12.2020 is reproduced as under:-

*"4.1 Coming to the alternative arguments of the Ld. AR that in the case of bogus purchases, if they are not written off or reduced from the closing stock then, necessarily in the sale price the same is included and therefore, only gross profit on the same can be added. We find that the above arguments also supported by relying on 356 ITR 451 in the case of CIT vs. Simit P. Sheth of the Hon'ble Gujarat High Court as well as the several judicial precedents of the Coordinate Benches. The assessee has shown that in the year ending March, 2012, the gross*

*profit ratio of the assessee is 9.25%. In view of this, we direct the Ld. Assessing Officer to retain the addition @9.25% of Rs. 2.44 crores of Rs. 22,57,000/- deserve to be retained and the balance addition of Rs. 2,21,43,000/- deserve to be deleted. The reasons being that once the bogus purchases have gone into the profit and loss account, and necessary sales have not been doubted, only option left with the revenue is to make the addition of the gross profit embedded in the bogus purchases. Accordingly, the ground no. 1 of the appeal is partly allowed.”*

3.1 Keeping in view of the facts and circumstances of the present case and the arguments advanced by the Ld. Counsel for the assessee as well as order dated 24.12.2020 of the Tribunal as reproduced above, we are of the considered view that this Bench has decided the exactly similar issue in the case of M/s Becon Constructions Pvt. Ltd. vs. ACIT in ITA No. 5034/Del/22016 (AY 2012-13), hence, we are of the view that Assessing Officer should retain the addition @ 9.25% of Rs. 2,06,42,177/- which comes to Rs. 19,09,401/- and balance addition of Rs. 1,87,32,776/- may be deleted, therefore, we

are directing the Assessing Officer to delete the addition of Rs. 1,87,32,776/-, by respectfully following the aforesaid Tribunal's order dated 24.12.2020 in the case of M/s Becon Construction Pvt. Ltd. (Supra).

4. In the result, the appeal of the Revenue is partly allowed.

The decision is pronounced in the Open Court on 14.01.2021 in the presence of both the parties upon conclusion of virtual hearing.

SD/-

**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

SD/-

**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

"SRB"

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi