

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 1974/H/2018 & CO. No. 3/Hyd/2019 Assessment Year: 2014-15		
Dy. Commissioner of Income-tax, Circle - 17(2), Hyderabad.	Vs.	VRVS India Pvt. Ltd., Hyderabad. PAN - AABCV 1653Q
(Appellant)		(Respondent)
Revenue by:		Smt. M. Narmada
Assessee by:		Shri Sanjay Mutha
Date of hearing:		22/06/2021
Date of pronouncement:		23/08/2021

ORDER

PER L.P. SAHU, A.M.:

This appeal filed by the Revenue is directed against CIT(A) - 5, Hyderabad's order dated 26/07/2018 for AY 2014-15 involving proceedings u/s 143(3) of the Income-Tax Act, 1961; in short "the Act" on the following grounds of appeal:

"1. The learned CIT(A) has' erred both in law and on facts of the case.

2. The learned CIT(A) erred in granting relief to the extent of Rs.2,61,23,937/without appreciating the facts of the case.

3. The learned CIT(A) erred in allowing relief without calling for evidences and relied only on the submissions of the assessee.

4. Any other ground(s) that may be urged at the time of hearing.

2. The assessee also filed CO against the order of CIT(A) and the objections raised in CO are as under:

"a. The learned CIT (A) erred in not granting relief with respect to Rs. 5,00,000/- added to the income of the assessee inspite of evidence of the advance being returned back by the assessee in the subsequent year.

b. The learned CIT (A) erred in not granting relief with respect to Rs. 11,97,608/- being added to income in the assessment under Sec 143(2) inspite of evidence for the same being available that such amount has been included in the income of the assessee in the subsequent year upon completion of the works resulting in such income being taxed twice. The learned CIT (A) ought to have directed that the above referred amount should be deleted from the income of the subsequent year.

c. The learned CIT (A) ought to have granted relief with respect to Rs 1,10,853/- being amount received from the assessee's sister enterprise being in the nature of a running account.

d. Any other ground as may be pleaded.

2.1 We notice at the outset that assessee's instant C.O. suffers from 48 days delay in filing. To this effect, the

assessee filed an affidavit wherein it was affirmed that due to certain medical exigencies in the family (copies of the hospital reports have been filed on record) caused the impugned delay in filing of the instant appeal. Case law Collector Land Acquisition vs Mst. Katiji & Ors, 1987 AIR 1353 (SC) and University of Delhi Vs. Union of India, Civil Appeal No. 9488 & 9489/2019 dated 17 December, 2019, hold that such a delay; supported by cogent reasons, deserves to be condoned so as to make way for the cause of substantial justice. We accordingly hold that revenue's impugned delay of 48 days is neither intentional nor deliberate but due to the circumstances beyond its control. The same stands condoned. Case is now taken up for adjudication on merits.

3. Briefly the facts of the case are that the assessee company, engaged in the business of trading in electrical equipment filed its return of income for the AY 2014-15 on 27/10/2014 admitting total taxable income of Rs. 53,90,050/- and claimed a refund of Rs. 29,80,420/-. Subsequently, the case was selected for scrutiny under CASS and accordingly, statutory notices were issued and served on the assessee. In response to the AR of the assessee furnished the information as called for.

3.1 From the Form 26AS, the AO observed that the total gross receipts of services received by the assessee were

shown at Rs. 15,57,39,023/-, whereas, the assessee offered receipts in P&L Account at Rs. 12,78,06,625/- only for the services and, thus, there was a difference of Rs. 2,79,32,398/- short admitted in the P&L Account. When pointed out the difference, the AR of the assessee stated that the difference of Rs. 2,79,32,398/- was mobilization advances received. When the AO asked the assessee to furnish Form 16A, the assessee failed to produce the same. Therefore, the AO held that in the absence of Form 16A certificates it was not conclusively proved that the receipts were mobilization advances and the other papers/confirmation filed by the assessee did not serve the purpose. He, therefore, treated the difference in receipts of Rs. 2,79,32,398/- as business income of the assessee and brought the same to tax.

4. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A).

5. The CIT(A) after considering the submissions of the assessee and the statements submitted by the before him, which were extracted in his order, namely, i) Reconciliation of 26AS with turnover and remarks, ii) service turnover reconciliation for the AY 2013-14 and statement of advances from customers along with corresponding work in progress/stock at customer site as on 31/03/2014, partly allowed the appeal of the assessee by observing as under:

Thus, the appellant gave a proper reconciliation of the statement of affairs vis-a-vis TDS of the appellant and the turnover accounted to the assessing officer. The AO merely took the difference of 26AS turnover with the reported turnover and made the addition, ignoring the fact that the appellant had reported certain turnover for which the TPS was deducted subsequently or in the previous year. Therefore, the addition made by the AO with regards to quantum was prima facie not in order.

However, it remains to be seen as to whether the advance reflected in the balance sheet should be accounted as turnover for the year under consideration. The appellant gave the reconciliation with remarks of the advances outstanding in the balance sheet. The same along with the adjudication is discussed as under:

The appellant had a total of advances from customer of Rs. 5,35,29,895/-, which need to be examined for the purpose of turnover for the year under consideration and not by the method adopted by the A.O. of the difference between the turnover reported and 26AS. The appellant gave the statement of advances with corresponding work in progress, wherein the quantum of Rs. 1,29,07,840/-, Rs.3,76,19,027/ - and Rs.30,03,028/- totaling to Rs. 5,35,29,895/- was explained item-wise with the chart as brought out at pages 11 and 12.

Thus, from the above chart of advances reflected in the balance sheet, the appellant has not proved the basis of the advances outstanding to the extent of Rs. 1808461/- in the books and not accounted for the same as turnover, therefore the same needs to be taxed as income accordingly and the corresponding TDS to the extent of the same may be allowed accordingly.

The advances of Rs. 1,29,07,480/- received in February, 2014 from GMA is considered as mobilization advance and not part of turnover for the current year, similarly

the sum of Rs. 3,76,19,027/- being duly reflected by the corresponding WIP and stock in the P & L account, is to be taxed once ,the due sale bill is raised and recognized accordingly after giving due deduction of the corresponding WIP, stock and expenses etc. and not considered as part of turnover for the year under consideration.

In view of the above the appellant gets part relief on ground no. 1 and ground no.2 accordingly."

6. Aggrieved by the order of CIT(A), the Revenue is in appeal before the ITAT.

7. Before us, the ld. DR filed written submissions wherein, inter-alia, it was stated as under:

"As submitted during the course of hearing that CIT(A) has granted relief to assessee basing on submissions made by the assessee that income either already had been admitted in A.yr 2013-14 or will be admitted in A.yr 2015-16 without verifying underlying material and accounts of assessee company for concerned years, the following is brought to your kind consideration.

As per department paper book page number 10 which is Reconciliation statement of 26AS receipts vis a vis Amount admitted in books for A.yr 2013-14, assessee company claimed that-it has admitted Rs 12,56,93,769/- in profit and loss account whereas total 26AS receipts for that year are Rs 14,6459,414/-. The difference amount of Rs 2,0765,645/- is available in books of company as 'advance received from customers' as on 31-03-2013. It is stated that out of that difference amount only Rs 1,84,16,550/- has been offered as turnover during A.yr 2014-15.

But if we see page 21 of department paper book (P&L Account of assessee company for A.yr 201314) shows that assessee company admitted 'contract receipts turnover' which is subjected to TDS only to the extent of Rs 10,52,35,555 (Service AMC Rs 5,07,80,117 + Services projects Rs 4,87,82,036 + Trading & services Rs 56,73,402) Against claim made by the assessee company in reconciliation statement filed before department (page 10 of department paper book) that Rs 12,56,93,769/- has been admitted. This discrepancy was not noticed by CIT(A) as submissions of company have been accepted without cross verifying with accounts of company."

8. The ld. AR, on the other hand, relied on the order of CIT(A) and submitted that the mobilization advance has been offered as income when it was adjusted with the gross contract receipts in subsequent year.

9. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. As observed by the AO the gross receipts of services received by the assessee were shown at Rs. 15,57,39,023/-, whereas, the assessee offered receipts in P&L Account at Rs. 12,78,06,625/- only for the services and, thus, there was a difference of Rs. 2,79,32,398/- short admitted in the P&L Account. When questioned, the AR of the assessee stated that the difference of Rs. 2,79,32,398/- was mobilization advances received, which was not proved by way of documentary evidence before the AO. The contention of the ld. DR before us is that without cross verifying with the accounts of the

company, the CIT(A) accepted the submissions of the assessee company. Therefore, on considering the totality of the facts of the case, we set aside the order of the CIT(A) and remit the issue in disputed difference amount of Rs. 2,79,32,398/- to the file of the AO with a direction re-decide the impugned issue that when the assessee has offered as part of turnover. If the AO found that the it has been offered as turnover in subsequent year, there will be no disallowance. If it is found, otherwise, the AO can decide the issue as per law after providing reasonable opportunity of being heard to the assessee in the matter. The assessee is directed to substantiate its claim by way documentary evidence and proper explanation.

10. As regards the Cross objections raised by the Assessee in its CO, the CO is also remitted to the file of the AO with a direction to address the objections raised by the assessee in its CO.

11. In the result, appeal of the revenue and CO of the assessee are treated as allowed for statistical purposes in above terms. A copy of this common order be placed in the respective case files.

Pronounced in the open court on 23rd August, 2021.

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER

Hyderabad, Dated: 23rd August, 2021.

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Copy to :

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<i>2</i>	<i>M/s VRVS India Pvt. Ltd., 1-3-183/40/46/5, Gandhi Nagar, Hyderabad - 500 080</i>
<i>3</i>	<i>CIT(A) -5, Hyderabad.</i>
<i>4</i>	<i>Pr. CIT - 5, Hyderabad.</i>
<i>5</i>	<i>ITAT, DR, Hyderabad.</i>
<i>6</i>	<i>Guard File.</i>