

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI  
BEFORE SRI PRASHANT MAHARISHI, AM and SRI PAVAN KUMAR GADALE, JM**

**ITA No. 1631/mum/2020**

(A.Y. 2008-09)

Panchganga Ispat Pvt. Ltd. F-6/2, F-Type Building, Sector-3EB, Above Post Office, Kalamboli Raigadh, Navi Mumbai-410 218	Vs.	The Asst. Commissioner of Income Tax, Panvel Circle, Mumbai-410 206
<b>Appellant</b>	..	<b>Respondent</b>
<b>PAN No. AADCP8093Q</b>		

**Assessee by** : Shri Dharmesh Shah, AR

**Revenue by** : Shri R A Dhyani, DR

<b>Date of hearing :</b>	04.01.2022
<b>Date of Pronouncement:</b>	11.01.2022

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by Panchganga Ispat Pvt. Ltd. (assessee) against the order of the Commissioner of Income Tax (Appeals)-2 [in short CIT(A)] Thane, dated 17.02.20 for Assessment Year 2008-09. By this order, the appeal of the assessee filed against the assessment order passed on 26.11.2010 under section 144 of the Income-tax Act by the Asst. Commissioner of Income tax, Panvel Circle, Panvel (the learned Assessing Officer) was dismissed. Thus, aggrieved assessee has raised the solitary ground of appeal against confirmation of addition of ₹72,78,238/- estimating the profit rate of 7.5% on the total contract value of ₹9,70,43,181/-.



02. The facts of the case show that assessee is engaged in the business of contract execution. It filed its return of income on 30<sup>th</sup> September 2008 at a loss of ₹5,57,328/-. During the course of assessment proceedings, assessee remained non-compliant and therefore, Assessing Officer passed order under section 144 of the Act on 26<sup>th</sup> November, 2020 by making addition of ₹72,78,238/-.
03. Genesis of the addition shows that Assessing Officer noted that the gross receipts as per Form No.26AS with respect to the contract work of Billpower Limited is shown of ₹9,70,43,181/- whereas, the gross receipts credited in the profit and loss account of the assessee is merely 41,47,577/-. Further, the assessee company has claimed the TDS credit of ₹21,96,868/-. In absence of any explanation learned Assessing Officer estimated the profit rate at the rate of 7.5% on the contract value shown in Form No.26As at ₹9,70,43,181/- and estimated the business income at ₹72,78,238/-.
04. Aggrieved with that assessee preferred the appeal before the learned CIT (A). The assessee submitted several details before the learned CIT (A), who admitted the additional evidences filed by the assessee and after obtaining, the remand report from the Assessing Officer and rejoinder of assessee thereon confirmed the addition. Therefore, the assessee is aggrieved and has preferred this appeal before us.



05. The learned Authorized Representative referred to paper book containing 84 pages. He referred to the audited accounts showing that sales for the year ended in 31<sup>st</sup> March, 2008 is shown of ₹41,47,577/- and also referred to Schedule E where the construction work-in-progress of ₹8,80,30,238/- is shown. He submitted that assessee is a contractor and follows 'completed contract method' and therefore, the revenue from the contract would be shown as income of the assessee in the year in which the contract is completed. He submitted that the accounting methodology employed by the assessee is in line with Accounting Standards 9 (AS 9) issued by the Institute of Chartered Accountants of India. Accordingly, all contract costs are shown under the head work-in-progress until its completion. He also referred to the details of the construction work-in-progress as well as the advances received from the debtor. He further submitted that statement-showing reconciliation of gross receipts as per Form No. 26AS with the entries in the books of account. He submitted that on completion of the contract the income credited and offered to taxation by the assessee is ₹9,94,46,049/- whereas the credit in the Form No. 26AS is only 9,69,49,181/-. Therefore, the assessee has offered higher income on completion of the contract. He also referred to the contract dated 15<sup>th</sup> January, 2007 with Bill power Limited and stated that according to Para No.14 (i)of contract, contract was to be completed by 16<sup>th</sup> June, 2007, however, it got competed in subsequent years without any escalation clause. He further referred to the

annual accounts of the assessee for the year ended on 31<sup>st</sup>, March 2009, where on completion of the contract the assessee has shown sales of ₹16,61,17,729/-. Thus, according to him, assessee has shown the income on completion of the contract, which is far higher than the sum stated in Form no 26AS. Therefore, the addition made by the learned Assessing Officer and confirmed by the learned CIT (A) is not correct. He extensively referred his submission before the learned CIT (A), which are enclosed in the paper book from page No. 74 to 84. In view of this, his submission was that assessee has followed a completed contract method in accordance with AS 9, offered higher income than what is shown in Form No.26 AS and each and every item of Form No. 26AS is reconciled with the entry in the books of account for the duration of the contract. Hence, addition is deserves to be deleted.

06. The Ld DR Submitted that assessee has not at all co-operated with the Assessing Officer, therefore, LD CIT (A) has confirmed the addition, and therefore, the matter is to be restored back for verification to the file of the lower authorities.
07. We have carefully considered the rival contentions. The facts are in a narrow compass that assessee is a company who is a contractor following completed contract method as its accounting policy for recognizing revenue. This method is permitted as per AS 9 issued by the Institute of Chartered Accountants of India. In case of the completed

contract method, the revenue is recognized in the year in which the contract is completed. Therefore, it is important to see that during the course of the continuation of contract all the receipts received from the Principal are considered by assessee in its books of account or not. It may overflow in more than one accounting period. The Principal is required to be deducted tax at source under section 194C of the Act as and when the payments are made to the contractor. As soon as the tax is deducted by the principal on payment made to the contractor assessee, naturally it would be reflected in the Form No. 26AS of the assessee. The assessee will recognize the revenue, in each case according to the method of accounting followed by it. Therefore, there may be chances that there may be recognition of Revenue in another year where tax deducted at source is shown in earlier years. Even otherwise, Form No.26AS is an annual tax statement under section 203AA of the Act and it is not a statement of income chargeable to tax in the hands of the assessee. Of course, both need to be reconciled and if there is mismatch, the fact needs to be investigated. However, merely difference between the income booked in books of account of the assessee and Form No.26AS, the addition cannot be made. Because the purpose of both the statements is altogether different. Form No.26 AS is a statement of tax and annual accounts of the company shows the true and fair the result for that financial year.

08. Coming to the facts in the present case,



- i. the assessee, a contractor, followed completed contract method
- ii. Contract continued in more than one year, till its completion assessee continued to show expenditure in work in progress account.
- iii. Gross receipt shown in form no 26 AS of the assessee in the year in which sum is received is reconciled with the gross receipts recorded in the books of accounts for two accounting periods
- iv. Annual accounts of both the accounting periods produced i.e. for FY 2007-08, FY 2008-09, which are audited, follows same accounting policy, and total turnover shown in both the period exceeds sum shown in form no 26 AS for F Y 2007-08.
- v. Each and every entry in Form No.26AS has been shown to be recorded in the books of account and gross receipt during the continuation of the contract,
- vi. Bills and copy of account of principal shows that all sums received are accounted for in the account of principal

Thus, we do not find any reason to uphold the orders of the lower authorities. Assessee has submitted details before the lower authorities i.e. Commissioner of Income Tax (Appeals), the statement showing reconciliation was also before the learned CIT (A) and before the learned



Assessing Officer during the remand proceedings. The reconciliation submitted by the assessee, which is placed before us at page Nos. 17, and 18 of the paper book is so evident that no further clarification is required there from. There is no allegation that the books of accounts of the assessee do not comply with the respective accounting standards which has a mandate of law in view of the Provisions of section 211 of the Companies Act. Further, as the complete details were filed before the learned CIT (A) and where the annual accounts for two years filed before him clearly shows the higher income offered by the assessee from the impugned contract, we do not find any reason to set aside this issue back to the file of the learned Assessing Officer. Furthermore, the appeal before the learned CIT (A) is also a continuation of assessment proceedings only. The learned CIT (A) confirmed addition merely harping on non-compliance by assessee before the Assessing Officer and not applying his mind to the merits of the addition, such order is also not in accordance with the law. If the assessee is non-compliant before Assessing Officer that could not be the reason to brush aside the merits of the case and confirm addition in the hands of the assessee when complete details are available before the Commissioner of Income Tax (Appeals). In view of this, we reverse orders of the lower authorities and allow the solitary grounds of appeal and direct the Assessing Officer to delete the addition of Rs ₹72,78,238/-. Accordingly, the ground No. 2 of the appeal of the assessee is allowed.



09. Ground no 1 is against violation of principles of natural justice, no arguments were advanced and hence dismissed.

010. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 11.01.2022

Sd/-  
(PAVAN KUMAR GADALE)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated:11.01.2022

*Sudip Sarkar, Sr.PS*

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

Assistant Registrar  
**ITAT, MUMBAI**