

**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. 1237/H/2019 Assessment Year: 2008-09		
Dy. Commissioner of Income-tax, Circle - 17(1), Hyderabad.	Vs.	Deepika Infratech Pvt. Ltd., Hyderabad. PAN - AABCD 9818R
(Appellant)		(Respondent)
Revenue by:		Shri Rajendra Kumar
Assessee by:		Shri A.V. Raghuram
Date of hearing:		11/01/2022
Date of pronouncement:		13/01/2022

ORDER

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

This appeal filed by the Revenue is directed against CIT(A) - 5, Hyderabad's order dated 10/06/2019 for AY 2008-09 involving proceedings u/s 143(3) r.w.s. 144 r.w.s. 254 of the Income Tax Act, 1961 ; in short "the Act on the following grounds of appeal:

"1. Whether in the facts and circumstances, the Id. CIT(A) is correct in deleting the addition made by Assessing Officer as per order of Hon'ble ITAT dated

28.04.2017 in ITA No.7 49/Hyd/2013 wherein it directed the assessee to submit list of reconciled sundry creditors as on 31.03.2008 to the tune of Rs.42.32Crores without considering the mobilization advance(which should be additional).

2. The Ld. CIT(A) erred in not appreciating the fact that the assessee submitted a list of 41 parties containing closing balances of sundry creditors as on 31.03.2008 at Rs. 27,74,20,20,898/- which included mobilisation advances of Rs. 14,82,83,269/-, which was not in line with the directions of Hon'ble ITAT.

3. The Ld. CIT(A) erred in deleting the addition of Rs. 14,82,93,269/- being mobilization advances which were included in the list of sundry creditors as on 31-03-2008 in contradiction to the directions of the Hon'ble ITA T in its Order in ITA No. 749/Hyd/2013 dt. 28-04-2017.

4. Any other ground that may be urged during appeal proceedings.”

2. Brief Facts of the Case are that the Appellant had filed its return of income for the Assessment Year 2008-09 on 13.04.2009 declaring total income of Rs. 1,30,40,019/-. The case was selected for scrutiny under CASS and the Assessment was completed under section 144 of the Income Tax Act, 1961 with total assessed income of Rs. 121,34,09,569/-. On an appeal, the CIT(A) gave relief on certain additions and thereafter Revenue preferred an appeal with the ITAT. The Hon'ble ITAT vide order in ITA No. 749/Hyd/2013 dated 28.04.2017 remitted back certain issues to the AO. The A.O. passed order u/s. 143(3) r.w.s.

144 r.w.s. 254 on 30.12.2018 determining total income at Rs. 34,92,23,720/- by making the following additions in respect of sundry creditors:

1. Rs. 18,00,88,299/-
2. Rs. 1,99,04,454/-
3. 10,05,88,166/-

3. When the assessee preferred an appeal before the CIT(A), the CIT(A) partly allowed the appeal of the assessee by observing in his order as under:

Submission of the Appellant: During the course of appellate proceedings, the appellant's AR filed following submissions:-

"Deepika Infratech Private Limited ("the Appellant" or "the Company") is engaged in the activity of civil constructions, road works, irrigation works and railway works across the India. The business of the company was commenced from 1st march'2008 upon taking over the assets and liabilities of partnership firm namely M/s Deepika Constructions. The partners in the firm are appointed as directors in the company. All the assets & liabilities, and pending work orders as on 28th Feb'2008 was carried forward to company and company continued the business of the firm. For the FY 2007-08, partnership firm filed income tax return for the period of 11 months (01.04.2007 to 28.02.2008) and company filed for a period of one month (01.03.2008 to 31.03.2008). The copies of balance sheet of M/s Deepika Constructions and M/s Deepika Infratech Private limited are enclosed.

For the Assessment Year ('AY') 2008-09 relevant to Financial Year ('FY') 2007-08, the Appellant filed its return of income on 13th April'2009 declaring total income of Rs. 1,30,40,019/.

The Deputy Commissioner of Income Tax, Circle 1(2), Hyderabad (Ld. AO) has completed the assessment proceedings on 31 December 2010. In the said assessment proceedings, the Ld. AO has made additions for Rs. 120,85,14,569/- with the net demand for Rs. 57,61,51,085/-.

The Appellant has preferred an appeal against the additions made in the assessment order before the Hon'ble Commissioner of Income Tax (Appeal) - V. The Hon'ble CIT(A) has directed to examine the additions made in the assessment order and issue a remand report. During the remand proceedings, the Company submitted the relevant information called upon by the Ld. AO. The Ld. AO has issued her remand report to the Hon'ble CIT(A). Accordingly, the Hon'ble CIT(A) has passed his order dated 24 January 2013 by making the following additions:

	-	Rs. 38,71,422/-
Disallowance under 40A (3) cash payments	-	Rs. 2,68,36,360/-
i. Disallowance under 68, Sundry creditors	-	Rs. 48,95,000/-
ii. Other sources u/s 194 H		

Based on the above order of Hon'ble CIT(A), Ld. AO has passed consequential order with the demand payable for Rs. 71.94 lacs vide dated 16 April 2013. However, the Ld. AO has filed an appeal before Honorable Income Tax Appellate Tribunal ("ITAT"), Hyderabad against the order of Hon'ble CIT(A).

The Hon'ble ITAT has passed its order dated 27 April 2017 by remitting the following issues to the file of the Assessing Officer with a direction to verify:

- iii. Sundry creditors balances as on 31.03.2008 - Rs 27.74 Crs
- iv. Debit balances of Sundry creditors as on 31.03.2008 - Rs. 15.22 Crs
- v. Disallowance for non-payment of TDS on Loans & Advances balances as on 31.03.2008 - Rs. 10.05 Crs

Based on the above directions of Hon'ble ITAT, the Deputy Commissioner of Income Tax, 17(1) (Ld. AO) has issued fresh assessment notice for submission of information pertaining to the sundry creditors, Sec 40 (a)(ia) and other debit balances of sundry creditors.

During the fresh assessment proceedings, the Appellant has submitted certain information and requested additional time for submission of further information. However, Ld. AO has passed his assessment order under section 143(2) read with section 144 read with section

254 of the Act by making the following additions:

- vi. Unconfirmed credit balances for Rs 18.00 crs,
- vii. Debit balances of sundry creditors for Rs. 1.99 Crs, and
- Disallowance under section 40(a)(ia) for non-deduction of TDS on loans and advances of Rs 10.05 crs.

Hence, in this regard we have preferred appeal against the above order of Ld. AO before your Honour.

The submissions of the Appellant are as follows:

I. Sundry creditors of Rs.27.74 Crs: -

The Appellant has shown an outstanding balance of sundry creditors including mobilization advances of Rs.27.74 crores in the liabilities side of its balance sheet as on 31 March 2008. The following is the break up of the sundry creditors.

SI. NO.	Particulars	Amount in Rs.
1	Creditors for supply of material and other goods/ services	12,91,27,628
2	Mobilization advances received from various government agencies	14,82,93,269
3	Total	27,74,20,897

In this regard, the list of sundry creditors including mobilizations advances as on 31 March 2008 is enclosed as **Enclosure 1**. Further, we submit before your Honours the ledger accounts of outstanding creditors of Rs.12.91 crores for FY 2007-08 and FY 2008-09. The Appellant submits that the subsequent payments made to creditors are mostly through account payee cheques only.

Regarding mobilization advances, detailed list of mobilization advances received is included in the statement of sundry creditors enclosed above. Mobilization advances are received in form of work advances from the government agencies for regular work progress and same were deducted in next work bills. Major of these



advances are carried from the partnership firm to the company on 28.02.2008. The bill copies, ledgers and other supporting certificates for mobilization advance are annexed for your kind perusal in **Enclosure-1A**.

From the above submissions, it is prayed before your Honour that the case of the Company has no intention to evade any taxes and all the transactions are genuine business activities carried on in the normal course of business. The Appellant prays to consider the above submissions and provide relief with regard to the additions made in the assessment order.

II. Debit balances of Sundry creditors of Rs.15.22 Crs: -

The Appellant submit that the debit balances of sundry creditors are shown in asset side of the balance sheet. These amounts are given as advances to various suppliers and services towards procurement materials and services in the next year. All these advances are adjusted in the next year after supply of material and rendering services.

To prove the genuineness and authenticity of transactions, we are submitting the statement of debit balances of sundry creditors along with ledger copies for 2007-08 and confirmations from the respective parties in **enclosure-II**

Hence, it is humbly prayed before your Honour to kindly delete the said addition in the interest of law and justice.

III. Disallowance of Loans & Advances for Rs 10.05Crs: -

The loans & Advances shown in the balance sheet in schedule no.6 for Rs 28,46,83,075/. These advances were given to Suppliers, Sub-contractors, PRW Labor and employees of the company. Out of this Rs. 10.05 crs were given to sub-contractors of the company for executing the work.

However, due to various technical issues like non acceptance of bill, and uncertified work in progress these amounts are not accounted as expenses in the FY 2007-08 and shown as advances for the sub-contractors. Further, we submit before your Honour that the said amounts are adjusted to subcontract expenses in next financial year 2008-09 after deducting TDS and remitting TDS to government. The ledger accounts of all subcontractors along with TDS remittance details for the FY 07-08 & 08-09 are given in **enclosure- III**

We submit before your Honours that the said advances of Rs. 10.05 crores are not debited to Profit & Loss account for FY 2007-08. Therefore, the disallowance of the said expenses under section 40(a)(ia) is not warranted. Hence, it is prayed that, kindly delete the said addition as it was against law and justice

Prayer

Basis the above submissions, the Appellant submits that the adjustments made to the total income of the Appellant are bad in law, void ab-initio and cannot be upheld under law, the Appellant prays your honour may be pleased to delete the said adjustments.

We request your honour to take the above submissions on record and acknowledge the same. We would be glad to provide any further information/clarification that your honor may require in the above matter.”

6. The Decision:

Before adjudicating the issue it will be very important to note that the appellant entity was in active business operation pertaining to the additions made, only for a period of 1 month, as the business of M/s Deepika Constructions was taken over by the appellant entity on 29.02.2008.

The para 7 of the notes to accounts states the same.

*"7. The Company was incorporated to take over the assets and liabilities of M/s Deepika Constructions a partnership firm in which the promoters of the Company are partners. The credit balance of partners in the firm were transferred to Share Application money in the company for allotment of shares at cost. **The entire operations of Deepika Constructions were taken over by the Company with effect from 29th February, 2008 as a going concern.** Pending clearance from Government of Andhra Pradesh regarding transfer of name, license and the irrigation project contracts to the Company, certain bank accounts are continued in the name of the firm but accounted in the books of the company. Similarly certain tax deducted at source certificates issued and or received are in the name of the firm and accounted for in the books of the company."*

The above states that the accounts of the present company effectively reflects business operations from 29.02.2008, as evident from the balance sheet of the appellant entity as on 31.03.2007 reflects negligible operations in the books of the company. Therefore the present entity needs to be looked at from the perspective of only one month.

The original assessment order was passed on 31.12.2010 u/s. 144 of the Act by assessing income at Rs. 1,21,34,09,569/- against the return income of Rs. 1,30,40,019/-. The appellant filed an appeal with the CIT(A) along with many additional evidences and the order pursuant to the same was passed vide order dated 24.01.2013, wherein sizable additions were

Sl. No	Section	Addition made originally in Asst. Order	Re-quantified in Remand Report	Decision taken in this order
1	Disallowance u/s 69	8,06,40,000	8,06,40,000	Rs.8,06,40,000/- is deleted.
2	Disallowance u/s 69 & 28	10,10,87,355	10,10,87,355	Rs.10,10,87,355/- is deleted
3	Disallowance u/s 40A(3)	1,76,98,695 + 9,14,78,159 = 10,91,76,854	38,71,422	Rs.38,71,422/- Is added/confirmed
4	Disallowance u/s 58	12,40,000	12,40,000	Deleted from the appellant company to be examined in the hands of Sri Subramanyam.
5	Disallowance u/s 28	5,36,855	5,36,855	Deleted from the appellant company to be examined in the hands of Sri Subramanyam.
6	- do -	2,14,00,000	2,14,00,000	Deleted from the appellant company to be examined in the hands of Upendar Reddy.
7	Disallowance u/s 69	5,44,50,000	5,44,50,000	Deleted from the appellant company to be examined in the hands of Upendar Reddy.

Sl. No	Section	Addition made originally in Asst. Order	Re-quantified in Remand Report	Decision taken in this order
8	Disallowance u/s 68	27,10,43,771	25,24,82,662	Rs.2,68,36,360/- is added/confirmed.
9	Disallowance u/s 40(a)(ia)	28,16,79,775	10,05,88,166	Rs.10,05,88,166/-is deleted u/s 40(a)(ia) but to be examined for the purpose of 201 & 201(1A).
10	Disallowance u/s 68	27,42,19,940	76,07,900	Rs.76,07,900/- is deleted
11	Other sources	48,95,000	48,95,000	Rs.48,95,000/- is added/confirmed.

The appellant accepted the order of the CIT(A), while the department filed an appeal on various grounds, the Hon'ble ITAT on the issue of the disallowance u/s. 68 which was confirmed by the CIT(A) only to the extent of Rs. 2,68,36,360/- in the para 18 of the order observed as under:

"18. Considered the rival submissions and perused the material facts on record. We observe that AO has made addition u/s 68 of Rs. 27,10,43,771/-. In the remand report AO has submitted the details for Rs. Rs. 25,24,82,662/- with detailed annexures - III to VI. CIT(A) after analyzing the creditors in detail has confirmed the disallowance as under:

1.	Annexure-III	Rs. 33,76,499/-
2.	For Verification by the AO	Rs. 1,06,47,003/-
3.	Annexure-IV	Rs. 1,28,12,858/-
4.	Annexure-V	Rs. Nil (due to repetition entries)
5.	Annexure-VI	Rs. Nil (due to debit balances & confirmations)

18.1 Even though the CIT(A) has dealt with the sundry creditors exhaustively in dealing with Annexure - III, wherever he has found that the confirmations from parties which is **more** than closing balance as per books of assessee, the excess amounts were added as undisclosed income in the hands of assessee. We are not in a position to appreciate the above findings of CIT(A), in our opinion, the balances as per closing balance in the books of assessee has to be reconciled with confirmations and, if there is any difference, it may be due to various factors like the other party needs his accounts be reconciled. Mistake of other parties cannot be added in the hands of assessee. Similarly, there is a shortage in the confirmation balances which were V observing that there is a repetition of creditors. We observe that all the creditors are not repetitive.

18.2 We further observe that CIT(A) and the AO has already confirmed that sundry creditors outstanding balances include debit balances to the extent of Rs. 15.22 crores. In our opinion, sundry creditors balances include these debit balances, which means the sundry creditors should be as below:

As per the balance sheet creditors outstanding	Rs. 27.10 crores
Debit balances as above	<u>Rs. 15.22 crores</u>
Total creditors	Rs. 42.32 crores

18.3. Hence, the assessee has to submit the details of sundry creditors of Rs. 42.32 crores without considering the mobilization advances (which should be additional) and the party wise reconciliation has to be done as on 31/03/2008. We are in agreement with CIT(A) that debit-balances has to be accepted, but, the assessee has to account for Rs. 42.32 crores of sundry creditors and needs to be reconciled. In our considered view, the exercise done by various parties involved are not proper and a fresh reconciliation and confirmation needs to be done. Hence, we remit this issue back to the file of the AO with a direction to reconcile the whole sundry creditors as discussed above. Accordingly, this ground is treated as allowed for statistical purposes."



The present order under appeal has been passed pursuant to the directions of the Hon'ble ITAT in ITA No. 749/Hyd/2013 for A.Y. 2008-09 vide order dated 28.04.2017. Pursuant to the above directions, while passing the assessment order, the AO made a net addition of Rs. 18,00,88,299/- (Sundry Creditors), as can be seen from the para 5 of the AO's order, the AO has made various additions under the above Head including mobilization advances as under.

Mobilization advances included by the assessee	:	Rs. 14,82,93,269/-
Misc. sundry creditors for which no details provided by the assessee	:	Rs. 2,31,99,251/-
Total amount in respect of parties included by the assessee but not having closing balance as per books of the assessee as verified by the then ACIT, Circle-1 (2), Hyd.	:	Rs. 2,69,20,320/-
Excess closing balance shown in list in respect of parties having closing balance as per books	:	Rs. 41,70,905/-
Less amount of confirmation provided by the assessee	:	Rs. 43,40,914/-

The appellant has the mobilization advance of Rs. 14,82,93,269/- as on 31.03.2018 included in the sundry creditors. The breakup of the same is as under:

SITE WISE SUNDRY CREDITORS AS ON 31.03.2008					
S.No.	Name of the Party	Closing Balance as on 31.03.2008	Confirmations		Difference
			Submitted in Assessment proceedings	Submitted in Appeal proceedings	
1	MGKLIS-III, Kalwakurthy	69,047,550		69,047,550	-
2	Kelo Project	57,845,252		57,845,252	-
3	Narsapur- West Godavari	13,000,467		13,000,467	-
4	Bobbili-Srikakulam work	8,400,000		8,400,000	-
Total		148,293,269		148,293,269	-

The mobilization advance as stated above pertains to the Government entities, the same was received in the F.Y. 2006-07 and F.Y. 2007-08 either by the firm M/s Deepika Constructions or the present appellant. The total mobilization advance as per the balance sheet of the appellant was as under:

Schedules forming part of Accounts As At	31-Mar-2008 Rs	31-Mar-2007 Rs
Schedule No : 7		
Current Liabilities & Provisions		
[A] Liabilities		
Sundry Creditors		
[1] Dues to SSI Units	Nil	Nil
[2] Dues to Others	19,65,10,750	16,000
Other Outstanding Payments and Expenses	8,09,10,148	
Mobilisation Advances & FSD's	27,84,59,866	Nil
Outstanding Expenses	7,50,190	Nil
Bank Balances - Book Overdraft	1,11,02,136	Nil
Total	56,77,24,090	16,000

The appellant has stated that the mobilization advance was shown separately under two heads mobilization advance and sundry creditors dues to others. The breakup for the said amounts is as under:

SITE WISE SUNDRY CREDITORS AS ON 31.03.2008					
S.No.	Name of the Party	Closing Balance as on 31.03.2008	Confirmations		Difference
			Submitted in Assessment proceedings	Submitted in earlier Appeal proceedings and remanded	
1	SRI SRI SRI PARAMESWARA SERVICE STATION (H.S.D.)	31,731,485	31,731,485	-	-
2	Ashoka Builders	27,500,000	27,996,825	-	(496,825)
3	Sri Sai Enterprises Ammonia	9,129,721	9,129,721	-	-
4	Vertex Engineers	7,763,830	-	7,763,830	-
5	Ambica Steels	7,272,459	7,272,459	-	-
6	Shiv Steel Agency	4,102,925	4,102,925	-	-
7	Salvo Explosives	4,084,625	4,084,625	-	-

8	Sri Sai Enterprises (LC)	3,572,021	3,572,021		-
9	Motor & General Traders	2,833,639	2,833,639		(0)
10	PEC Electricals	2,667,316	2,667,316		-
11	Shreya Enterprises	1,519,900	1,519,900		-
12	Pioneer Tubes	642,303	642,303		-
13	Aishu Castings Ltd.,	368,344	-	368,344	-
14	Standard Tyre Retraders	280,000	-	-	280,000
15	ABB Ltd.,	272,835	217,000		55,835
16	Cynergy Engineerings & Constructions	235,000	235,000		-
17	Automotive Manufacturers (PVT) Limited A/C	220,895			220,895
18	Prefab Gratings Ltd.,	179,269	179,269	-	-
19	R R & Co.,	141,194	-	141,194	(1)
20	Teja Drilling & Machine Tools	126,620	-	155,688	(29,068)
21	Andhra Engineering Works. Nellore	119,600			119,600
22	SPEAGKVEN Telecom System	115,000			115,000
23	Sri Durga Engineering Works A/C	109,051		109,051	-
24	Motor & General Traders	108,720		108,720	-
25	MD.Khadhir Tyre Works A/C	103,484			103,484
26	M.Sudharshan	101,115			101,115
27	Akarapu Siva Prasad A/C	81,235			81,235
28	Venkatrayulu Chetty.M & Sons	80,850			80,850
29	Manikanta Automobiles A/C	66,986			66,986
30	Vijay Engineering Equipment	63,352	63,352		0
31	Sri Srinivasa Engineering Agencies A/C	61,875			61,875
32	Sree Spares	60,000			60,000
33	Sri Srinivasa Reddy (P.M) A/C	58,900			58,900
34	Vijay Industries	44,077			44,077
35	Usha Engineers	38,198	37,998		200
36	Goutham Engineerings A/C	27,852			27,852
37	Mithra Earth Movers	15,807			15,807
38	Secundrabad Engg. Corp.	14,479			14,479
39	Shree Jagadamba Earthmovers	13,416	13,416		-
40	O.F.K Co. Operative Society (HSD) A/c	3,004,499	-		3,004,499
41	R K Projects Ammonia	2,861,334	-		2,861,334

42	Venkatesh Udyog	2,021,455	-	2,021,455
43	OFK Co-Operative Socite	1,674,667	-	1,674,667
44	Steel Exchange India Ltd.,	1,547,546	-	1,547,546
45	Vishal Stone Crusher(Metal) A/c	1,005,218	-	1,005,218
46	TANUJA CONSTRUCTIONS	802,509	-	802,509
47	Ram Gopal Agarwal A\c	800,000	-	800,000
48	Sai Krishna Enterprises A/C	782,515	-	782,515
49	Sahara India TV Network	561,800	-	561,800
50	Muneer Old Tyres.M.D.	533,900	-	533,900
51	Rajeev Tivari(Metal & Sand) A/c	450,556	-	450,556
52	Paras Agencies (Cement)A/c	441,600	-	441,600
53	Punam Agencies A/c	428,416	-	428,416
54	Salary Payble A/c	418,240	-	418,240
55	RAMA KRISHNA (MESS)	396,743	-	396,743
56	Vishal Stone Crusher(Metal) A/c	376,182	-	376,182
57	Berger Paints India Ltd.,	365,556	-	365,556
58	VENKATA SUBBA REDDY Hitachi -200	364,402	-	364,402
59	Prasiddh Kumar Singh A/c	361,941	-	361,941
60	Prashanth Treders(Cement) A/c	353,290	-	353,290
61	STC Transport Pvt. Ltd.,	266,270	-	266,270
62	D.M. Sales (LDPE) A/c	227,487	-	227,487
63	D Raja Mohan Reddy	200,000	-	200,000
64	Sri Chandra Tyre Retreaders	200,000	-	200,000
65	Bharat Wire Ropes Pvt. Ltd.,	152,613	-	152,613
66	S.S.Eng Works	146,000	-	146,000
67	Paresh Agencies(Cement) A/c	132,480	-	132,480
68	Sai Krishna Tyre Works A/C	128,000	-	128,000
69	Contec Design&Engg.Solutions	120,788	-	120,788
70	Rishi Traders (Mess) A/c	118,274	-	118,274
71	MD.Munner Old Tyres A/C	115,000	-	115,000
72	Sambasiva Tyre Works A/C	113,120	-	113,120
73	B. Venkat Reddy (Compressor)	112,861	-	112,861
74	Kurnool Gas Agencies A/C	106,850	-	106,850
75	Khadir.M.D. Tyre Works	100,000	-	100,000

76	Jagannath Parasram Hardware Merchants	92,899	-	92,899
77	DAWOOD RAHIMAN(Generator)	90,800	-	90,800
78	Sri Venkateswara Automobiles A/C	79,155	-	79,155
79	Vasavi Cycle Stores & Electrical Spares A/C	73,085	-	73,085
80	DM Sales(L.D. Film) A/c	67,431	-	67,431
81	APEX Encon Projects Pvt. Ltd.,	65,475	-	65,475
82	Y.K.Enterpises A/c	65,000	-	65,000
83	Ashish Steel	63,842	-	63,842
84	Hire Charges Payble	61,226	-	61,226
85	Madhavulu(Revitment)	54,859	-	54,859
86	Ratan Marketing (Bamboos) A/c	54,000	-	54,000
87	Tractor (M.Sudharshan) A/C	46,400	-	46,400
88	Mess Paybles	46,183	-	46,183
89	Paresh Electrical A/c	41,628	-	41,628
90	SAHALAN CUT TYRE WORKS	37,500	-	37,500
91	Sree Srinivasa Spun Pipes Co.	36,096	-	36,096
92	Tracotr (AP-24D 9907) A/C	36,000	-	36,000
93	Tractor (ADH 1149) A/C	36,000	-	36,000
94	Tractor (AP-21D 0758) A/C	36,000	-	36,000
95	Samtel Technologies	28,860	-	28,860
96	Raton Marketing	26,000	-	26,000
97	UP. Welding Works	24,540	-	24,540
98	Akram Sero Stock Indu.(LUB'S)	22,000	-	22,000
99	Harson Automobiles (Oil&Lub) A/c	20,259	-	20,259
100	Maa Shyama Auto Electrical Work Shop	20,164	-	20,164
101	Labour Charges Payble A/c	22,597	-	22,597
102	Gulhi Auto Mobiles	17,530	-	17,530
103	Sandeep Garments(L.D. Film) A/c	17,375	-	17,375
104	Nagarjuna Agencies	16,640	-	16,640
105	M.Venkatrayulu Chetty & Sons A/C	16,256	-	16,256
106	Kurmool Gas Agencies	13,325	-	13,325
107	Kondalu (Construction Mastry) A/C	11,814	-	11,814
108	Venkata Reddy Tanker Ap 7w 2736	10,987	-	10,987

109	Indrajeeth(Labour Mastry) A/c	9,085	-		9,085
110	Sree Varsh H/ W	8,600	-		8,600
111	Vinod Patel(Labour Mastry) A/c	8,509	-		8,509
112	Mulayam Prasad Yadav(Labour Mastry) A/c	7,509	-		7,509
113	U.P. Welding (Welding) A/c	6,960	-		6,960
114	Sree Ramgopal Printing & Binding Works	6,720	-		6,720
115	Unique Ascessories	3,300	-		3,300
116	J D .Hose Co A/c	2,080	-		2,080
117	Qurach Tiles & Marbles	1,250	-		1,250
118	Super Baatteries A/c	1,200	-		1,200
Sub Total - 1		129,127,628	96,299,254	8,646,827	24,181,547
Mobilization Advance					
119	MGKLIS-III, Kalwakurthy	69,047,550		69,047,550	-
120	Kelo Project	57,845,252		57,845,252	-
121	Narsapur- West Godavari	13,000,467		13,000,467	-
122	Bobbili- Srikakulam work	8,400,000		8,400,000	-
Sub Total - 2		148,293,269	-	148,293,269	-
Grand Total of Sundry Creditors (1+2)		277,420,897	96,299,254	156,940,096	24,181,547 accepted by the appellent)

Statement of Mobilization advance as on 31-03-2008				
Name of the work	Opening Balance as on 01-04-2007 of M/s Deepika Constructions	Additions during the year (incl. before and after 29.02.2008)	Recovery from the work bills 2007-08	Closing Balance
MGKLIS-III, Kalwakurthy	510,571,425	-	163,054,009	347,517,416
Kelo Project- Raigarh	36,644,996	21,200,256	-	57,845,252
Narsapur- West Godavari	-	13,000,467		13,000,467
Bobbili- Srikakulam work	9,000,000	6,000,000	6,600,000	8,400,000
Total	556,216,421	40,200,723	169,654,009	426,763,135

Summary :-

Particulars	Amount in Rs
Amounts shown as Mobilization advance	278,469,866
Amounts included in sundry creditors	148,293,269
Total	426,763,135

Thus from the above it is clear that the mobilization advance as on 31.03.2008 was Rs. 42,67,63,135/-.

The opening balance of the mobilization advance as on 01.04.2007 was Rs. 55,62,16,421/-, which was pertaining to the earlier entity M/s Deepika Constructions and the same was settled during the year, therefore, the said mobilization advance pertaining to MGKLIS- 3 was much more as on 01.04.2007 and the balance has been reduced on account of the recovery of the bills for which the chart is as under:

KALWAKURTY SITE MOBILIZATION ADVANCE DETAILS 2007-08				
S.No	Bill No	Date	Receipts	Recoveries
Opening Balance			510,571,425	
1	14	28-04-2007		16,561,699
2	15	29-05-2007		11,124,310
3	17	20-07-2007		8,649,994
4	18	04-08-2010		8,196,267
5	20	01-09-2007		8,403,142
6	22	05-10-2007		12,184,801
7	23	27-10-2007		17,673,566
8	24	29-11-2007		15,787,475
9	25	01-01-2008		8,315,288
10	26	04-02-2008		22,943,845
11	28	05-03-2008 pertaining to appellant		19,323,933
12	29	25-03-2008 pertaining to appellant		13,889,689

TOTAL	510,571,425	163,054,009
Closing Balance		347,517,416

The last two entries at Sl.No. 11 and 12 pertain to the present appellant, which are recorded as sales by the appellant. Therefore there has been no addition of mobilization advance in the above case.

From the above charts it is clear that the only addition of mobilization advances during the year in the books has taken place is with regard to Narsapur- West Godavari, Kelo Project- Raigarh and Bobbili.

The ledger accounts of the same are reproduced as under:

NARSAPUR SITE MOBILIZATION ADVANCE DETAILS 2007-08				
S.NO	Bill No.	DATE	RECEIPTS	PAYMENTS
1		05-02-08	1 30 00 467 (inclusive of TDS)	
TOTAL			1 30 00 467	
Closing Balance				1 30 00 467(received by M/s Deepika Constructions before taking over by the appellant firm)

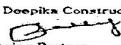


RAIGHAR SITE MOBILIZATION ADVANCE DETAILS 2007-08				
S.NO		DATE	RECEIPTS	Comments
1		31-1-2008	36644996	Net of TDS actual accounted as an opening balance as on 29.02.2008 by the appellant
2		04-03-2008	855000	TDS Credit
2		31-3-2008	2 03 45 256	
TOTAL			57845252	
Closing Balance				57845252

BOBBILI SITE MOBILIZATION ADVANCE DETAILS 2007-08				
S.NO	Bill No	DATE	RECEIPTS	PAYMENTS
Opening Balance			90 00 000	
1		07-10-07		26 88 552
2		02-07-07		33 11 448

3		26-02-2008	60 00 000	
4		31-03-2008		6 00 000
		The above transactions pertain to M/s. Deepika Constructions and the same was carried forwarded to the company.		
Total			1 50 00 000	66 00 000
Closing Balance				84 00 000

Thus, the above indicate that the mobilization advances has been taken over by the appellatant entity from the erstwhile Deepika Constructions. The appellatant has accounted for the same by taking over, these are advances for which TDS has been accounted accordingly by the appellatant entity and also there is no dispute regarding the credit of the same.

The balance sheet of Deepika Constructions, which is drawn as on 29.02.2008 is as under:

Deepika Constructions Banjara Hills, Hyderabad	
Balance Sheet as at	29 February 2008 Rs.
Liabilities	
Capital Accounts	18 26 21 991
Secured Loans	
Working Capital Loans	15 08 28 431
Vehicle Loans	10 80 92 850
Unsecured Loans	1 07 80 000
Current Liabilities & Provisions	
Sundry Creditors	16 66 48 123
F S D - Sub Contractors	1 44 88 240
Mobilisation Advances Received	26 72 57 343
Other Liabilities	1 59 99 940
Outstanding Expenses	75 26 889
Total Liabilities	92 44 13 816
Assets	
Fixed Assets	31 59 13 361
Closing Work in Progress	14 85 92 900
Sundry Debtors	9 30 38 912
Cash in Hand	31 43 663
Bank Balances	66 77 521
Tax Deducted At source - 07-08	2 18 77 850
Tax Deducted At source - 06-07	2 69 83 141
Advances Paid	15 79 23 602
Deposits	15 05 82 367
Interest Suspense	7 78 510
Total Assets	92 44 13 816
For Deepika Constructions	
 Managing Partner Place : Hyderabad Date : 04th September 2008	
Vide our report of Even Date For Mahesh Virender & Sriram Chartered Accountants  B R Mahesh Partner 	

ITA No.10282/2018-19/CIT(A)-5 Deepika Infratech Pvt. Ltd., A.Y.2008-09

It is seen that the appellant has taken over from Deepika Constructions and the order for M/s Deepika constructions for A.Y. 2008-09 was passed by ACIT Circle-6(1) who has accepted the balance sheet of M/s Deepika Construction and no adverse inference has been drawn in that assessment order u/s. 143(3) but for disallowance u/s. 40A(3). The appellant has merely taken over the liability of mobilization advance from M/s Deepika Constructions and therefore the same cannot be considered as unexplained and also no adverse inference has been drawn ever regarding the above items at any point of time during the earlier appeal proceedings and remand report.

In the subsequent years, the mobilization advance has been accounted for as sales and duly accepted by the Department, moreover these advances are from Government organizations and there is no apparent basis to doubt the same vis-a-vis the sundry credit and also there is no history to doubt the timing of accounting of income of these parties by the A.O.

In view of the above discussions, the addition of Rs. 14,82,93,269/- is hereby deleted accordingly and the balance quantum of Rs. 18,00,88,299/- (-) Rs. 14,82,93,269/- = Rs. 3,17,95,030/- is hereby confirmed. The ground no.2 is partly allowed.

The second issue is regarding the debit balances of Rs. 1,99,04,454/- it is seen that the appellant had debit balances pertaining to certain sundry creditors for which the table is as under:

S. No	Particulars	Closing Balance as on 31.03.2008
1	B H E L	132,343,385
2	N.S.R.CONSTRUCTIONS	9,437,232
3	Sagar Cement	4,018,151
4	WMI Cranes	3,831,000
5	Vijai Electricals Ltd	1,391,466
6	Subba Rao	614,753
7	S.S. Constructions	309,090
8	Vertex Projects- PRW	154,534
9	K. Dinakar Reddy	130,525
10	Mithra Earth Movers	15,807
11	Vibromax Engineering Corp	1,896
Total		152,247,839

The AO has made an addition of the amounts pertaining to sl.no. 2 to sl. No. 11 quantifying to Rs. 1,99,04,454/-. It is seen that while passing the order u/s. 144 and the enquiries made regarding sundry creditors and the same is discussed in the para 5 to 9 of the assessment order and the parties balance has been mentioned in the assessment order as per the balances as on 31.03.2009.

It is important to note that certain parties were also examined in the subsequent year for A.,Y. 2009-10 and accepted by the A.O.

S. No	Particulars	Closing Balance as on 31.03.2008	Closing balance as on 31.03.2009	Remarks
1	B H E L	132,343,385	(153,124,391)	(not added by the A.O.)
2	N.S.R.CONSTRUCTIONS	9,437,232	(2,361,898)	Confirmation filed in AY 2009-10 and accepted by the A.O. item no.37 of the letter dt. 22.11.2011.
3	Sagar Cement	4,018,151	(3,251,350)	Item no.16 as above

4	WMI Cranes	3,831,000	(3,144,000)	Item no.24 as above
5	Vijai Electricals Ltd	1,391,466	(19,402,485)	Item no.14 as above.
6	Subba Rao	614,753	15,013	(not available)
7	S.S. Constructions	309,090	(272,749)	(not available)
8	Vertex Projects- PRW	154,534	(646)	(not available)
9	K. Dinakar Reddy	130,525	(87,837)	(not available)
10	Mithra Earth Movers	15,807	(26,894)	Not available
11	Vibromax Engineering Corp	1,896	-	Not available
Total		152,247,839	(181,657,237)	

The above shows that the transactions pertaining to Sl No. 1 to 5 have been accepted in the subsequent year of the assessment proceedings are genuine and the balance of Sl. No. 6 to 11 quantifying to Rs. 12,26,605/- is hereby confirmed accordingly and the balance of Rs. 1,86,77,849/- is deleted. The Ground no.3 is partly allowed accordingly.

The third addition pertains to sum of Rs. 10,05,88,166/- being considered as disallowance u/s. 40(a)(ia) for non deduction of TDS. The same was discussed in the para 19 to para 23 and the directions were given as under:

"19. As regards ground No. 6 relating to disallowance u/s 40(a)(ia) of Rs. 28,16,79,775, it is observed that in the assessment proceedings, the AO had asked the assessee to produce TDS details in respect of following payments:

Sub-contract expenses	Rs. 26,75,89,977
Department Labour	Rs. 1,38,39,778
Audit fees	Rs. 50,000
Advertisement	Rs. 2,00,000
Total	Rs. 28,16,79,775

In the absence of TDS details, AO has disallowed the entire amount u/s. 40(a)(ia) of the Act.

20. In the appellate proceedings, the assessee has submitted written submissions along with the paper book claiming that the entire amount of sub-contract receipts has already suffered TDS, which was not considered by the AO. Further, AO has disallowed the department labour of Rs. 1.38 crores for which TDS provisions are not



applicable and the payments were made for more than 1000 members who are involved in the projects. Similarly, with the other allowances of Rs. 2 lakh towards advertisement was already allowed by the assessee and with regard to audit fees, it was only a provision and TDS will be deducted as and when the payment is made. The assessee further claimed that in the month of March, gross receipts were Rs. 26,75,89,977/- and total TDS deducted was Rs. 30,31,794/-. This amount of Rs. 30,31,794/- was included in the consolidated challan for Rs. 88,47,037/-, which was paid through Andhra Bank, Somajiguda Branch, Hyderabad on 29/03/08.

20.1. The CIT(A) forwarded the paper book of assessee to AO for remand report. Initially, AO rejected the submissions of the assessee. However, while submitting consolidated remand report on various issues, AO finally quantified the amount at Rs. 10,05,88,166/- since the assessee failed to submit reconciliation of TDS paid in the hands of firm with that of assessee company. With regard to TDS made on sub-contracts, AO recommended for disallowance u/s 40(a)(ia) as noted in the ledger account of advances for suppliers and subcontractors and enclosed annexure - III to remand report (consisting of 45 parties). The above remand report was forwarded to assesses for its comments.

20.2. Assessee submitted that since the amounts are standing in the balance sheet, as advances and are not debited to P&L A/c, no expenditure has claimed. The advance payments, even though, subject to TDS provisions, do not fall under the ambit of section 40(a)(ia) for the purpose of disallowance. As the company was formed by taking work of partnership firm with effect from 01/03/08, TDS made by firm on two contract payments are to be considered only for limited purpose of TDS compliance and hence, addition made u/s 40(a)(ia) amounting to Rs. 10,05,88,166/- is not sustainable.

20.3. After considering the submissions of the assessee as well as the remand report of AO, the CIT(A) observed as under:

11.10 in the case of the appellant, it is seen that no expenditure is [Claimed as the amount is lying in the balance sheet as advances and is not debited to P&L A/c, so as to attract the - provisions of Section 40(a)(ia). Hence, the contention of the Assessing Officer that it is in violation of Section 40(a)(ia) is not tenable and is not sustainable for the A Y 2008-09. In the year, in which such amounts are actually debited to profit and loss account, the disallowance u/s 40(a)(ia) is attracted, provided, if tax has been deducted during the year and the same is NOT deposited before the due date of filing of return of income. However, for this AY 2008-09, I am of the opinion that the provisions of section 201(1) and 201 (1A) are attracted on the amount of Rs. 10,05,88,166/-, as the assessee has not deducted TDS, though it is not debited to P&L A/c. Penalty u/s 221, for violating TDS provisions may also be imposed on the assessee. In other words 40 a ia is not attracted. But basic levy of interest u/s 201/201(i) is to be charged as per law."

21. Ld. DR submitted that AO has not verified whether the advances were charged to P&L A/c. As per the remand report, AO has verified TDS deduction and compliance with the firm i.e. Deepika Constructions. He submitted that from the record, it clearly shows that AO has no occasion to verify the payments which are charged to P&L A/c and some of the payments kept as advances. He prayed that the issue may be remitted to AO for further verification. With regard to advertisement and audit fees, Id. DR submitted that these expenditures are already debited to P&L A/c and addition on these accounts should be sustained.

22. *Ld. AR submitted that payments were kept in the balance sheet as advances and not charged to P&L A/c He submitted that the provisions of section 40(a)(ia) are not applicable to the case of assessee.*

23. *Considered the rival submissions and perused the material facts on record. We have noticed that originally AO has made addition of Rs. 28,16,79,775/-. In the remand report, AO has quantified the disallowance u/s. 40(a)(ia) at Rs. 10,05,88,166/-. He has verified the TDS compliances with the details submitted by the assessee which includes TDS compliances by the assessee as well as the firm i.e. Deepika Constructions. We are not sure the extent of verification done by the AO. We find in the balance sheet that advances to suppliers and for expenses the outstanding at the balance sheet date are Rs. 28,46,83,075/-. At the same time, the assessee has charged to P&L A/c sub-contract expenses to the extent of Rs. 26,75,89,977/-. In fact, assessee has charged to P&L a/c certain expenses. For the sake of clarity and justice, we remit this issue also back to the file of the AO with a direction to verify the compliances of TDS with regard to the expenditure charged to P&L A/c and advances kept in balance sheet. **We direct the AO to bring to tax u/s 40(a)(ia) only to the extent of expenses charged to P&L A/c, like, advertisement, subcontract expenses and audit fees.** Needless to mention that assessee may be given proper opportunity of being heard in the matter. This ground is allowed for statistical purposes.”*

It is seen that the ITAT has directed to note that the advance which was given by the appellant as per balance sheet is Rs. 28,46,83,075/-, where as the amount charged to the P & L account was Rs. 26,75,89,977/-, the Hon'ble ITAT observed that there could be certain items of advance which have been charged to the P & L account.

The amount of expenditure charged of Rs. 26,75,89,977/- is as under along with the TDS deducted and deposited which is as under:

M/S. DEEPIKA INFRATECH PRIVATE LIMITED						
Statement of Sub Contract Expenses for the year 2007-08						
S.No	Name of the party	PAN No.	Section	Amount Debited to Profit & loss Account	TDS Deducted	TDS Deposited
1	ADB Limited	AAECA4442R	194C	52,120,245	590,522	590,522
2	Sri Laxmi Constructions	ABEFS5547B	194C	39,561,532	448,232	448,232
3	Shiva Constructions	AAMPU4182B	194C	35,317,440	400,147	400,147
4	A R Constructions	AALFA7577R	194C	27,546,500	312,102	312,102

5	Multiplex Constructions	AAMFM1205F	194C	21,252,400	240,790	240,790
6	B.V. Prabhujee	AAIFB3323M	194C	20,039,894	227,052	227,052
7	RAS Infrastructure	AACCR4257P	194C	12,708,995	143,993	143,993
8	Placebo Engineering	AAOFM1527C	194C	10,113,300	114,584	114,584
9	Pallavi Constructions	AACFP1600M	194C	9,641,521	109,238	109,238
10	L.N. Constructions	AACEL4104C	194C	8,503,743	96,347	96,347
11	Jai Ganesh Constructions	AAFFJ7635R	194C	6,026,540	68,281	68,281
12	K. Sridhar Naidu	AFSPN7800A	194C	5,810,500	65,833	65,833
13	Aarvee Infra Projects	AALFA3598G	194C	5,596,295	63,406	63,406
14	Shiri Sai Constructions	AABCM9590M	194C	3,850,000	43,621	43,621
15	Srinivasa Infrastructure	ABJFS9824N	194C	2,419,417	27,412	27,412
16	K. Purushotham Reddy	APKPK8317F	194C	2,250,000	25,493	25,493
17	Radiant Engineers	ABUPN1948B	194C	2,000,000	22,660	22,660
18	K. Ramakrishna Reddy	APAPK0303B	194C	1,279,652	14,498	14,498
19	Reddy Constructions	AAJFR2117A	194C	917,850	10,399	10,399
20	Umamaheswara Rao	AAJFM1005E	194C	634,153	7,185	7,185
Total				267,589,977	3,031,794	3,031,794

In view of the above, the amount charged in the P & L account is not liable for disallowance u/s. 40(a)(ia). The AO has also not made any disallowance on account of the same. The directions of the ITAT was limited to the above, however the A.O. has transgressed its jurisdiction to advances and disallowed the same, without even realizing that the advances have not been charged as an expenditure in the P&L account and thus, the advance cannot be disallowed u/s. 40(a)(ia) as the same have not been claimed u/s. 37(1) itself.

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On going through the para 11.5 to 11.7 of page no. 36 of the CIT(A) order dated 24.01.2013 and the para 8 of the remand report of the AO, it is seen that the quantification of Rs. 10,05,88,166/- has been made on account of advance for suppliers and sub-contractors, which was part of the remand report as Annexure-2 consisting of 45 parties. The said advance has already given a finding in para 11.8 that these are advances and not charge to P & L account, therefore there is no question of invoking 40(a)(ia). The analogy therefore remains the same. The AO in the assessment order itself has mentioned the sum of Rs. 10,05,88,166/- as advances to contractors, which very clearly implies that the same has not been charged to P & L account. Therefore the question of invocation of 40(a)(ia) does not arise as the expenditure has not been claimed u/s. 37(1) of IT Act, 1961.

In view of the above, the addition of Rs. 10,05,88,166/- is hereby deleted. Hence, the ground no 4 is allowed accordingly.

The Ground nos. 1 & 5 are general in nature. Hence need no adjudication.

To sum up, the appeal is partly allowed.

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

5. Before us, the ld. DR besides relying on the order of the AO submitted that the CIT(A) has wrongly decided the appeal of the assessee without following the directions of the ITAT. Further, he submitted that in the earlier proceedings, the assessee could not substantiate its claim

before the AO. He, therefore, prayed that the order of the CIT(A) may be set aside and that of the AO be restored.

6. The Id. AR of the assessee, on the other hand, reiterated the submissions made before the revenue authorities and submitted that in the earlier proceedings due to lack of proper representation before the Tribunal, the decision was not in favour of the assessee, whereas, in the present proceedings, the discrepancies were explained before the CIT(A) and the same were accepted by the CIT(A) and partly allowed the appeal of the assessee. The assessee filed a paper book containing pages 1 to 166 of its paper book, which are placed on record in support of its case. The Id. AR further filed written submissions in support of assessee's case, which are reproduced below:

"1. This is the second round of appeal before the Hon'ble Tribunal for the asst. year 2008-09. The only issue in the Revenue's appeal is the relief granted by the Id. CIT(A) deleting addition of Rs.14,82,93,269 out of addition made by the AO in respect of sundry creditors at Rs.18,00,88,299.

2. The case of the Assessee right from the inception is that the sundry creditors amounting to Rs.27,74,20,898 (Rs.19,65,10,750 plus Rs.8,09, 10,148) appearing in the liabilities side of balance sheet includes mobilisation advance of Rs.14,82,93,269. The balance of Rs.12,91,27,628 pertained to sundry creditors. Apart from this, the Assessee had debit balances in sundry creditors (advances given to parties) to an extent of Rs.15,22,47,839. The details of the sundry creditors and mobilisation advance party wise are given at pages 132 to 136 (Vol -3 of paper book).

3. Similarly, details of sundry creditors of Rs.15,22,47,839 (debit balance) were produced before the authorities below and also discussed by the Hon'ble Tribunal in the earlier round at pages 27-29 of its order (running page 121-123 (Vol 2 of paper book). There is absolutely no dispute about this amount.

4. At this stage it is pertinent to notice the observation of the Hon'ble Tribunal at para 18.2 of its order in the earlier round (running page 124 vol -2). The Hon'ble Tribunal by inadvertence has observed that total sundry creditors including debit balance of Rs.15.22 crores should be Rs.42.32 crores. This observation has apparent mistake because as per balance sheet, the sundry creditors including mobilisation advance of Rs.14.82 crores was Rs.27.74 crores. Further, though it was contended throughout by submitting details that Sundry creditors include mobilisation advance, and that the amount of Rs.27,74,20,898 includes mobilisation advance of Rs.14,82,93,269. The submission of the assessee was that leaving aside mobilisation advance as mentioned above, sundry creditors in liabilities is Rs.12,91,27,628 for which statement and ledger accounts were filed before authorities below. Further, the assessee also has given complete details of debit balances in sundry creditors of Rs.15,22,47,839 which was accepted earlier.

5. The Hon'ble Tribunal though observed as above, has remitted back the issue (among other) to the file of AO with following direction:

"Para 18.3 Hence, the assessee has to submit the details of sundry creditors of Rs.42.32 crores without considering the mobilization advances (which should be additional) and the party wise reconciliation has to be done as on 31.03.2008. we are in agreement with CIT(A) that debit balances has to be accepted, but, the assessee has to account for Rs.42.32 crores of sundry

creditors and needs to be reconciled. In our considered view, the exercise done by various parties involved are not proper and a fresh reconciliation and confirmation needs to be done. Hence. we remit this issue back to the file of the AD with a direction to reconcile the whole sundry creditors as discussed above. Accordingly, this ground is treated as allowed for statistical purposes.”

6. It is submitted that though Hon 'ble Tribunal made observations (which apparently had some clerical errors), ultimately, the direction to the AO was to reconcile sundry creditors.

7. In the remand proceedings before AO, as could be seen from the reply dated 25.10.2018 filed before AO (Page 4-5 of Vol-I of paper book) the Assessee furnished party wise statement of sundry creditors along with ledger copies for the year ended 31.03.2008, including few of the confirmation letters. The Assessee also brought to the notice of the AO the inadvertent mistake in the order of Hon'ble ITAT. In spite of the complete details made available, the AO instead of reconciling the sundry creditors has sat on the observation of the Hon'ble Tribunal which was subject to reconciliation. The AO made addition of Rs.18,00,88,299 after considering the information submitted before him.

8. The Assessee carried the matter in appeal to ld. CIT(A). The ld. CIT(A) has carried out detailed analysis and the facts emanating from record has granted partial relief. The ld. CIT(A) deleted addition of Rs.14,82,93,269 out of addition made by the AO in respect of sundry creditors at Rs.18,00,88,299.

9. It is submitted that the ld. CIT(A) passed a detailed order carrying out the reconciliation of sundry creditors and as well as mobilisation advances as on 31.03.2008. It is respectfully submitted that on facts, there is no second opinion on the same. The AO in the present appeal does not dispute the factual findings of

the ld. CIT(A) but relies on the observations made by the Hon'ble Tribunal which were not final but were subject to reconciliation.

For all the aforesaid reason, it is prayed that the order of the ld. CIT(A) may be upheld.”

7. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. It is observed that from the paper books filed by the assessee in which from the orders of the lower authorities, we find that the assessee has taken over the business of M/s Deepika Constructions on 29/02/2008 as a going concern and the assessment was made by the AO in respect of the erstwhile Deepika Constructions u/s 143(3) of the Act for the AY 2008-09 on 31/12/2010, the order of which is placed on record in the paper book at pages 147-151. Thereafter, another order was passed by the AO u/s 143(3) rws 254 and 263 of the Act, which is placed at pages 152-155 of the paper book, wherein the addition was made u/s 40A(3) of Rs. 43,62,329/- and disallowance u/s 40(a)(ia) of Rs. 2,50,000/- only. Therefore, the impugned assessee has taken over the erstwhile assessee's assets and liabilities on 29/02/2008 and the details of which are available in the balance sheet a page nos. 141&142 of the paper book placed on record, in which, there are sundry creditors of Rs. 16.66 crores and mobilisation advances of Rs. 25.73 crores. In the second round of proceedings, the ld. CIT(A) has

examined the facts in detail. In view of our above observations, we find no infirmity in the order of the CIT(A) and upholding the same, we dismiss the grounds raised by the revenue.

8. In the result, appeal of the revenue is dismissed in above terms.

Pronounced in the open court on 13th January, 2022.

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

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

Hyderabad, Dated: 13th January, 2022.

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1	<i>DCIT, Circle - 17(1), 9th Floor, Signature Towers, Kothaguda, Kondapur, Hyderabad - 500 084.</i>
2	<i>M/s Deepika Infratech Pvt. Ltd., 8-2- 686/C/D/5, 2nd floor, Road No. 12, Banjara Hills, Hyderabad.</i>
3	<i>CIT(A) - 5, Hyd.</i>
4	<i>Pr. CIT - 5, Hyderabad.</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>