

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "B" : DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
MS ASTHA CHANDRA, JUDICIAL MEMBER

ITA.No.4738/Del./2019  
Assessment Year : 2014-15

Addl. CIT,  
Special Range-03,  
New Delhi.

Vs. Engineering Projects India Ltd.,  
Core-3, Scope Complex,  
7, Institutional Area,  
Lodhi Road,  
New Delhi.

PAN: AAACE0061C

(Appellant)

(Respondent)

For Revenue : Shri Gurpreet Shah, Sr. DR  
For Assessee : Shri Tarandeep Singh, Advocate

Date of Hearing : 09.01.2023  
Date of Pronouncement : 11.01.2023

**ORDER**

**PER SHAMIM YAHYA, A.M.:**

This appeal filed by Revenue is directed against the Order of the  
Ld. CIT(A)-3, New Delhi, dated 12.03.2019 and pertains to A.Y. 2014-15.

2. The grounds of appeal read as under:-

"1. Whether on the facts and in circumstances of the case and in law the Id.CIT(A) has erred in directing to allow the TDS of Rs.99,32,850/- which was disallowed by the Assessing Officer in view of section 199 of the IT Act read with IT Rule 37BA(3).

2. The appellant craves leave, modify, add or forego in any ground(s) of appeal at any time before or during the hearing of this appeal.”

3. Earlier, this appeal was disposed of by the ITAT, vide order dated 23.08.2019. Subsequently, the same was recalled in MA order M.A. No.60/Del/2020, order dated 24.06.2022. Pursuant to the recall, this appeal has been heard by us.

4. Brief facts of the case are that the assessee is a construction company engaged primarily in executing projects in India and abroad. The AO observed that the assessee has received advances from customers for Rs. 436.91 crores and TDS has been deducted on these advances. The AO asked the assessee to reconcile the receipts shown in the P&L account and those reflected in the TDS certificates/Form 26AS and also asked to explain as to why TDS on advances received from customers should not be disallowed u/s 199 of the Act. It was submitted by the AR that the assessee is engaged in multiple projects which take long time of 4 to 5 years to be completed and it was difficult to reconcile the figures for all the projects in short time. It was submitted by the AR that the assessee is being allowed TDS on advances in all the earlier years. However, the AO was not satisfied and therefore, he has disallowed the TDS credit of Rs. 99,32,850/-.

5. Upon the assessee's appeal, Id.CIT(A) elaborately noted the submissions of the assessee. Thereafter, he held as under:-

*"4.2. I have considered the facts of the case and the submission made by the AR. It has been contended that the appellant is following percentage of completion method (POCM) to recognize revenue and the appellant is receiving mobilization advances from its customers and the bills or invoices are raised depending upon the terms & conditions of each project and the amount of work completed. In view of this, it is not possible to correlate the advances with the invoices raised and the revenue recognized by the appellant in each year. It is further submitted that the appellant is consistently being allowed credit for TDS on mobilization advances and the same has also been allowed in the subsequent years i.e. AY 2015-16 & 2016-17. The AR has relied upon various judgments on the issues which are found to be applicable to the facts of the case."*

6. Further, the Id.CIT(A) referred to the decision of *Bikramjit Ahluwalia vs. JCIT in ITA No.5842/Del/2013* and, thereafter, he held that in view of the facts of the case and the legal position as discussed, there is no double claim of TDS credit by the assessee. Hence he opined that the assessee is entitled to claim TDS as per TDS certificates and the AO was directed accordingly.

7. Aggrieved, the Revenue is in appeal before us.

8. The Id. Sr. DR relied upon the order of the AO and further referred to Rule 37BA with regard to credit for tax deducted at source for the purpose of section 199 of the Act. Placing reliance thereon, he submitted that credit can be given only for amounts which have been offered as income and since, in the present case, the amount involved is only an advance, the AO is correct in not allowing TDS credit.

9. *Per contra*, the Id. Counsel of the assessee relied upon the order of the CIT(A). He submitted that the assessee has been consistently following 'percentage of completion method' to recognize the revenue and this has been done in a number of previous years and never the Revenue has disallowed the assessee's claim. He submitted that without any change in the facts and circumstances the AO has haphazardly disallowed the credit of TDS. He submitted that the assessee is following consistent method of accounting and Id.CIT(A) has correctly given a finding that the assessee, on the facts and circumstances of the case, is eligible for TDS credit.

10. Upon careful consideration, we find ourselves in agreement with the finding of the Id.CIT(A) and the pleading of the Id. Counsel of the assessee. Hence, we uphold the order of the Id.CIT(A).

11. In the result, this appeal by the Revenue stands dismissed.

Order pronounced in the open court on 11.01.2023.

Sd/-

[ASTHA CHANDRA]  
JUDICIAL MEMBER

Sd/-

[SHAMIM YAHYA]  
ACCOUNTANT MEMBER

Dated, 11<sup>th</sup> January, 2023

dk

Copy to:

1. The appellant
2. The respondent
3. Ld. CIT(A) concerned
4. CIT concerned
5. DR ITAT "A" Bench, Delhi
6. Guard File

//By Order//

Assistant Registrar, ITAT, Delhi Benches,  
Delhi.