

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

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA.No.4149/Del./2019  
Assessment Year 2015-16

The DCIT, Circle-22(2), New Delhi 110002	vs.	M/s. S.T Constructions Pvt. Ltd., G-102, Road No. 13A, Opp. Shaheen Bagh, Jasola, Delhi 110025 <b>PAN AAJSC7934B</b>
(Appellant)		(Respondent)

For Revenue :	Shri Amaresh Singh, Sr. DR
For Assessee :	Shri M.P Rastogi, Advocate Shri P. N Shastry, CA

Date of Hearing :	21.12.2022
Date of Pronouncement :	20.01.2023

**ORDER**

**PER ANIL CHATURVEDI, A.M. :**

This appeal filed by the Revenue has been directed against the order of the Ld. CIT(A)-8, New Delhi in Appeal No. 10505/17-18 dated 14.02.2019 relating to the A.Y. 2015-16.

2. The relevant facts as culled out from the material on record are as under :

2.1. The assessee is a company stated to be engaged in the business of civil contractor work of road and building. The assessee electronically filed its return of income for A.Y 2015-16 on 12.10.2015 declaring total of income at Rs. 3,62,62,910/-. The case of the assessee was selected for scrutiny and thereafter assessment was framed u/s. 143(3) vide order dated 26.12.2017, and the total income was determined at Rs. 33,42,62,910/-.

2.2. Aggrieved by the order of the AO, assessee carried the matter before the Ld. CIT(A) who vide order dated 14.02.2019 in appeal no. 10505/17-18 allowed the appeal of the assessee.

3. Aggrieved by the order of the Ld. CIT(A), the Revenue is now in appeal and has raised the following grounds:-

1 *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is right in deleting the addition made by the AO u/s 37 of the Income Tax Act, 1961 without proper consideration of AOs findings in the assessment order'*

2 *"Whether on the facts and circumstances of the case and in law, the LD. CIT(A) is right in accepting the claim of the assessee company of credit entries of Rs.29.80 Crores to P & L account is balanced by the contra debit P & L account of Rs. 29.80 Crores on account of "claims/bills submitted but not acknowledged" while deleting addition of Rs. 29.80 Crores.*

4. Before us, learned DR submitted that both the grounds of the Revenue are interconnected. During the course of assessment proceedings and on perusing the details of "other expense", AO noted that assessee has claimed expenditure of Rs. 29,80,00,000/- on account of "claims/bills submitted but not acknowledged". The assessee was asked to furnish the details and supporting

documents and justify the expenses. Before AO, assessee *inter alia* submitted that these expenses were just a reflection of the claim lodged to various authorities but not acknowledged by them. It was further stated that the same amount was shown in the P & L account to nullify the turnover. Assessee also furnished the details of the claims lodged which are tabulated by AO at page 3 of the assessment order. The submissions of the assessee was not found acceptable to AO. AO was of the view the since the expenditure of Rs. 29.80 crores have not been actually incurred by the assessee and the assessee has not been able to demonstrate that the expenses was incurred wholly and exclusively for the purpose of business, the amount of Rs. 29.80 crore cannot be allowed as deduction. He accordingly, denied the claim of expenses of Rs. 29.80 crores and made its addition.

5. Aggrieved by the order of AO assessee carried the matter before Ld. CIT(A). CIT(A) deleted the addition by observing as under:

4. *DECISION: It is seen that the assessee is a civil construction contractor. It had executed contracts and shown the revenue from operations at Rs. 104.86 crores, the details whereof are in Note No. 15 of the profit & loss account and it included a separate figure of Rs. 29.80 crores on account of the claims lodged with various clients. The amount Rs. 29.80 crore disputed pertains to various Govt. departments, with whom the arbitration proceedings are continuing as per the details submitted by the assessee. During the remand proceedings through Notice dated 09/10/2018, the assessee has also submitted current status of such claims which reveals that the arbitration /court proceedings are going on and on a scrutiny of the documents pertaining to the claims, it appears that the amount of claims of Rs. 29.80 crore lodged with such departments appears to be uncertain as for instance in the case of BHEL arbitration, the amount of claim has been reduced.*

4.1 *As per AO, the claim lodged of Rs. 29.80 crores and credited to the P & L account were income accrued as it was following mercantile system of accounting, and disallowed the debit of Rs. 29.80 cr as "Claims/Bills submitted but not acknowledged" on the ground that the same has not been expended wholly and exclusively for the purpose of business.*

4.2 According to the appellant, since the claims of Rs 29.80 crores lodged were not accepted but were to be referred for arbitration there was no certainty of its ultimate collection on account of which income on account of the claims of Rs 29.80 crores did not accrue and thus were not needed be recognized as income in terms of paragraph 9 of IDS III, and they have reversed - by debiting it in the P & L account separately as "Claims/Bills submitted but not acknowledged" for complying paragraph 11 of ICDS III. Further that without prejudice to the above contentions, that even as per paragraph 5 of ICDS IV of Revenue Recognition it does not become income.

4.3 The contention of the Appellant has been considered and the order of AO has also been perused. Since the three grounds are interlinked same are being disposed off in a consolidated manner. The appellant is a contractor and during the course of its business activities had executed various contracts and had shown the revenue from operations at Rs. 104,85,73,341/-, the details whereof had been given in Note No. 15 attached to the profit and loss account of the appellant. Such Revenue from operations also include an amount of Rs.29,80,00,000/- which comprises of the various claims lodged by the appellant with various persons as additional claims. However such claims were not accepted by the clients till the end

*of the relevant financial /previous year. In order to adequately disclose the "Claims lodged but not accepted till the year end, it debited a contra amount of Rs 29.80 crores in the Profit and Loss Account on matching principle as "Claims/Bills submitted but not acknowledged" under "Other Expenses". In short the effect of it is that the claims income had not accrued to the assessee. It is also to be noted that the fact of none of the clients accepting /crediting the claims to the appellant is borne out by the fact that such amounts do not appear in the Form No. 26AS statement for the year also. Thus it is evident the Contractees / Employers have not accepted the claim amounts, since they would have otherwise deducted TDS, if accepted and credited to the appellant, even if not paid.*

*It is a settled law that Contractors are not assessed on "Mercantile basis of accounting" but they are assessed in accordance to Accounting Standards AS 7 -which was accepted by the Department for assessment. The principles of accounting income by Contractors has adopted by the Income Tax Authorities in ICDS III (which were published by then but its application deferred) -which is similar to Accounting Standard AS 7. A separate Accounting Standard AS 7 (ICDS III) is there for Contractors instead of the normal Accounting Standard AS 9 (ICDS IV) for Revenue recognition. As per*

*paragraphs 9 and 11 of IDS III, which is reproduced hereunder:*

*"9. Contract revenue shall be recognized when there is reasonable certainty of its ultimate collection."*

*"11. Where contract revenue already recognized as income is subsequently written off in the books of accounts as uncollectible, the same shall be recognised as an expense and not as an adjustment of the amount of contract revenue"*

*Similarly, paragraph 5 of ICDS IV of normal Revenue Recognition - which also has the same position regarding claims made, and it is reproduced hereunder:*

*"5. Where the ability of assessee to the ultimate collection with reasonable certainty is lacking at the time of raising any claim for escalation of price and export incentives, revenue recognition in respect of such claim shall be postponed to the extent of uncertainty involved"*

*It is the claim of the appellant that since the claims lodged were not accepted and they were to be referred for arbitration there was no certainty of its ultimate collection. Accordingly the claims were not needed be recognized as Revenue in terms of paragraph 9 of ICDS III. Hence, they were excluded from Revenue on credit side of the Profit & Loss account. However, account of paragraph 11 of ICDS III, it was 'Reserved' by debiting*

*those in the P & L account separately as “Claim/Bills submitted but not acknowledged”.*

6. Learned CIT thereafter relied on the various decisions cited therein and thereafter observed as under:-

*4.5 In the instant case, the additional claims lodged by the appellant with various parties have not been admitted by the aforesaid parties and in relation thereto, the arbitration proceedings are going on. So unless and until those very parties accept the claim of the appellant, no income can be said to have accrued to the appellant, no right can be said to have vested in the appellant to recover the said amount and accordingly under the law no debt can be said to have created in favour of the appellant by somebody. Therefore, such entries as made by the appellant in the books of account remain only a hypothetical income and not real income.*

*In view of such legal and factual position, the appellant, while crediting such disputed hypothetical claim of Rs.29.80 crores in the books of account, also made a corresponding debit entry of Rs.29.80 crores in the profit & loss account in order to nullify the effect of book entries made by the appellant in relation to disputed additional claims for the purpose of working out the real income accrued under the law which is*

*chargeable to tax u/s 4 of the Act, as explained by Supreme Court in the case of Shoorji Vallabhdas (supra). The debit entry of an amount of Rs.29.80 crore is basically not the expenditure claimed by the appellant as inferred by the Assessing Officer, but such entries have been made to nullify and to balance the effect of credit entries made by the appellant in books of account.*

*It is not the case of the Assessing Officer that the additional claims as lodged by the appellant with the respective principals have been finalized during the year under appeal. Therefore, after considering the legal position discussed above, it is seen that the amount of Rs.29.80 crores being the additional claims lodged with the principals but not finalized and ascertained during the year and no debt has been created in favour of the appellant by those principals and remains a hypothetical income not liable to tax. No such entries are appearing in form No. 26AS of the appellant for the year under consideration. Hence in view of such position of law, both the credit and debit entries of Rs.29.80 crores, being contra entries only and are to be discarded while computing the taxable income otherwise it would give a distorted picture not permissible under law.*

*Therefore, considering the facts and circumstances of the case and the legal position discussed above, the addition of Rs 29.80 crores made by the AO to the*

*income is hereby deleted, as no income has accrued on account of the claims lodged but not accepted -which was countered by a contra entry as "Claims/Bills submitted but not acknowledged".*

7. Aggrieved by the order of Ld. CIT(A), Revenue is now before us.

8. Before us learned DR supported the order of A.O. Learned AR on the other hand reiterated the submissions made before AO and CIT(A) and supported the order of Ld. CIT(A).

9. We have heard the rival submissions and perused the materials available on record. The issue in present ground is with respect to the disallowance expenditure of Rs. 29.80 crores made by AO but deleted by Ld. CIT(A). Ld. CIT(A) while deciding the issue in favour of the assessee has given a finding that the additional claims lodged by the assessee with various parties were not admitted by those parties and therefore no income can be said to have accrued to the assessee as no right have been vested in the assessee to recover the amount and accordingly under the law no

debt can be said to have created in favour of the assessee.

He therefore held that the entries made by the assessee was only a hypothetical income and not a real income.

10. Before us Revenue has not pointed to any fallacy in the finding of the Ld. CIT(A) nor has placed on record any contrary binding decision in its support. We therefore find no reason to interfere with the order of Ld. CIT(A) and thus **the grounds of Revenue are dismissed.**

11. **In the result, appeal of the Revenue is dismissed.**

Order pronounced in the open Court on 20.01.2023.

Sd/-  
(C.M GARG)  
JUDICIAL MEMBER

Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER

Delhi, Dated 20<sup>th</sup> January, 2023

NV/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'B' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.