

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'H' : NEW DELHI)
BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 2404/Del/2022, A.Y. 2016-17
ITA No. 2405/Del/2022, A.Y. 2017-18

Dy. Commissioner of Income Tax, Central Circle-15, Room No. 245, E-2, ARA Centre, Jhandewalan Extension, New Delhi-110055	Vs.	M/s. B.L.Kashyap & Sons Ltd., 409, 4 th Floor, DLF Tower-A, Jasola, New Delhi- 110025 PAN : AAACB0205F
Appellant		Respondent

C.O. No. 168 & 169/Del/2022

(Arising out of ITA No. 2404 & 2405/Del/2022, A.Y. 2016-17 & 2017-18)

M/s. B.L.Kashyap & Sons Ltd., 409, 4 th Floor, DLF Tower-A, Jasola, New Delhi- 110025 PAN : AAACB0205F	Vs.	Dy. Commissioner of Income Tax, Central Circle-15, Room No. 245, E-2, ARA Centre, Jhandewalan Extension, New Delhi-110055
Appellant		Respondent

Assessee by	Sh. Deepesh Jain, CA & Sh. Rohit Jain, CA
Revenue by	Ms. Sapna Bhatia, CIT-DR

Date of hearing:	27.04.2023
Date of Pronouncement:	29 th .05.2023

ORDER

Per Anubhav Sharma, JM :

Both appeals have been preferred by the Revenue against the order dated 18.07.2022 & 28/07/2022 respectively of CIT(A)-28, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No. 28/10393/2019-20 & 26/10205/2019-20 respectively arising out of an appeal before it against the orders dated 31.12.2018 & 31.12.2019 respectively for the AY 2016-17 and 2017-18, passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, Central Circle-15, New Delhi (hereinafter referred as the Ld. AO). And the Cross Objections have been raised by assessee. Grounds of ITA No. 2404/Del/2022, A.Y. 2016-17 are being taken up to dispose both the appeals.

2. Assessee is a company engaged in the business of construction and allied services. For the relevant assessment years with respect to appeals before the Tribunal, the return of assessee was taken for scrutiny assessment and adhoc addition of 20% of mobilization advance u/s 68 r.w.s. 115BBE of the Act. Addition of TDS on mobilization advances and adhoc addition of 5% of expenses comprising of salary & wages, spares and power & fuels was made alleging that the same is not forming part of Work in Progress (WIP) resulting in adjustment as undisclosed income of the assessee. In appeal the Ld. CIT(A) had deleted the additions on account of mobilization advance and disallowance of salary and wages. The issue with regard to TDS on mobilization advance was decided in favour of the assessee. Therefore, the Revenue is in appeal for A.Y. 2016-17 raising following grounds :-

1. *“Whether Id. CIT(A) has erred on the facts and in law in deleting the addition of Rs. 31,54,11,352/- made by AO on account of disallowance of Mobilization Advances ignoring the fact the assessee did not provide project wise details of mobilization advances adjusted and outstanding during the course of assessment proceedings.*
2. *Whether Id. CIT(A) has erred on the facts and in law in*

allowing the appeal of the assessee ignoring the fact that assessee did not provide any calculation of revenue recognised during the year which can prove that the mobilisation advances adjusted during the year have been considered in the income of the assessee.

3. Whether Id. CIT(A) has erred on the facts and in law in allowing the TDS credit to the extent of Rs. 47,37,190/- (Rs. 2,52,32,908 less 2,04,95,718/-) ignoring the fact that corresponding income of mobilisation advances was not offered to taxation by the Assessee during the year.

4. Whether Id. CIT(A) has erred on the facts and in law in deleting the addition of Rs. 8,70,00,000/- made by AO on account of disallowance of salary and wages ignoring the fact that assessee has violated matching principle of accounting by claiming excess expenditure in proportion to the revenue offered to taxation.

5. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.

2.1 And the assessee has raised following cross objections :-

1. "That the additions/disallowance made by the Assessing Officer by passing the assessment order under Section 143(3) are illegal, bad in law & without jurisdiction.

Re: Disallowance of credit of tax deducted at source

2. That the CIT(A)/ assessing officer erred on facts and in law in not allowing credit of Rs.2,04,95,718/- being tax deducted at source on the mobilization advances received by the appellant on the ground that income in respect of which aforesaid tax was deducted had not been offered to tax by the appellant during the year under consideration.

2.1. The CIT(A)/ assessing officer failed to appreciate that the advances in respect of which aforesaid tax was deducted was duly offered to tax in form of work in progress credited to the profit and loss account.

Re: Interest under section 234D of the Act

3. That the assessing officer erred on facts and in law in charging/ computing interest under sections 234D of the Act.

The respondent craves leave to add, alter, amend or vary the above grounds of cross objection at or of hearing.

3. Heard and perused the record.

4. **Ground no 1 and 2 of Revenue's appeal.** In regard to addition of mobilization advances it can be observed that during the year under consideration the assessee had received advance amount from clients / customers at the beginning of project to enable the assessee to deploy machinery and manpower in sufficient quantity at work site awarded to the assessee. The assessee has claimed that the mobilization advance is initially recognized as a liability by the assessee and based on the work done and approved by the client, the amount is billed to the customer and mobilization advance is adjusted as part of revenue/ billing and recognized as income over the period of project. It is claimed that this is the consistent accounting method followed by the assessee in line with recognized Percentage Of Completion Method (POCM) followed in terms of Accounting Standards-7. The Assessing Officer had noticed a difference in the receipt reflected in Form 26AS and that credited to the profit and loss account. Assessee claimed that the same was primarily on account of mobilization advances received by the assessee and initially recognized as liability by the assessee. However, the Ld. AO was not satisfied and made an addition of 20% of the Mobilization, advances as undisclosed income u/s 68 r.w.s. 155BBE of the Act.

5. Ld. CIT(A) after analyzing all the material placed on record before the AO deleted the addition observing that details regarding mobilization advances were fully filed before the assessing officer and thus the conclusion of Ld. AO of absence of the evidences was factually incorrect. It was observed by Ld. CIT(A) that there was no basis for addition without pointing out any defect in the books or vouchers. Ld. CIT(A) also took into consideration the fact that Ld. AO has overlooked the reconciliation filed by the assessee.

6. The Bench is of considered opinion that the genuineness, identity and creditworthiness of the parties making mobilization advances was never questioned so no addition could have been made by Ld. AO by invoking provisions of section 68 of the Act. Further there seems to be no justification to make an adhoc disallowance u/s 68 of the Act. Ld. AO was suppose to either accept mobilization advance as a whole on the basis of running account or to a disbelieve the whole. Ad hoc disallowance without pointing out any shortcoming in accounting method or books is not sustainable. On this account alone the ground deserves to be dismissed.

7. Furthermore the assessee has brought before the Id. AO following relevant piece of evidence and all the detailed facts and documents relating to mobilization advances which were not duly considered and have been relied by the Ld. CIT(A);

1. Audited income and expenditure account and balance sheet for the relevant assessment year;
2. Complete details of mobilization advances as on 31.03.2016.
3. List of current liabilities with reference to the relevant notes of audited financial statements.
4. Reconciliation of 26AS and receipts shown in P&L a/c.
5. Details of Project advances during the AY and the income earned from the same projects during the AY.
6. Intent Letters/ Notice of Awards of the 7 projects to whom project advances relate to.
7. Breakup of mobilization advances i.e., amount receipt, amount recognized in P&L and amount shown as liability.

8. Ld. AO has also failed to appreciate that although initially mobilization advance is recognized as liability ultimately over the period of project the same is recognized as revenue and the entire mobilization advance is offered to tax over the life of project. This is the consistent accounting practice of assessee which has been questioned for the first time in A.Y. 2016-17. Ld. CIT(A) has duly taken into consideration the information provided and observed in regard to A.Y. 2016-17 :-

“From the perusal of information and evidences filed on

assessment records, it is seen that appellant has received project mobilization advances of Rs. 157.70 Crs during the year itself. The total closing outstanding mobilization advances as on 31.03.2016 were Rs. 172.17 Crs. Including unadjusted mobilization advances received during the year of Rs. 157.70 Crs. Out of which Rs. 102.48 Crs is carried forward as on 31.03.2016 and brought forward mobilization advances from previous tax periods of Rs. 69.69 Crs. These details were duly filed by the appellant and were also appearing in Audited financial accounts as on 31.03.2016 in Note No. 7 and 11 of the same. Appellant has shown Rs. 114.25 Crs. As long-term mobilization advances outstanding as on 31.03.2016 and Rs. 57.92 Crs as short term mobilization advances outstanding as on 31.03.2016. Thus, the observation of the AO that the appellant has not filed complete details of the same seems to be factually incorrect in view of information, facts and details available on records in the assessment folder.”

9. Ld. AO failed to take into consideration the details of mobilization advances in the form of short term and long term mobilization advances duly matched with the total outstanding mobilization advances i.e. Rs. 172.17 Crs. Thus, the Bench is not inclined to interfere in the findings of Ld. CIT(A) deleting the addition. **Accordingly ground no. 1 and 2 deserves to be allowed.**

10. In regard to **ground no. 3** it can be observed that the claim of assessee was that mobilization advances received during the year on which TDS gets deducted stands offered as income of the same year and stand offered in the form of WIP. Ld. CIT(A) has duly taken into consideration the position of mobilization advances received during the year and the fact that when the Ld. AO has given TDS credit in ITNS 150 and therein had disallowed TDS credit to the extent Rs. 2,52,32,908/-. The TDS credit cannot be added as income of the assessee as the same leads to double taxation. The cross objection of the assessee claiming TDS of the entire amount 2,52,32,908 /- instead of proportionate credit given by Ld. CIT(A) was not pressed. Accordingly ground

raised by Revenue has no substance while of assessee in CO is decided not pressed.

11. **Ground no. 4** : In regard to this grounds it can be observed that Ld. AO observed that major expenses on account of wages, salary spares etc. are directly debited to the profit and loss account in totality and have not been included as part of WIP credited to the P & L Account. Ld. CIT(A) has rightly concluded that Ld. AO has mistaken in referring to note 23 of the P & L account which only reflected the position of opening materials, purchases and closing materials. The position of WIP is not shown in this note but part of Note 24. The method of valuation of WIP has been consistently followed by the assessee over years and has been accepted in preceding as well as succeeding years. The same is also in accordance with accounting standards. Thus, the disallowance on adhoc basis without any rational has been rightly deleted by Ld. CIT(A) and no interference is called for. The ground is decided against the Revenue.

12. As grounds in the subsequent A.Y. 2017-18 for ITA no. 2405/Del/2022 are similar, except to the ground of TDS credit raised in A.Y. 2016-17. Aforesaid observations are applicable mutatis mutandis to AY 2017-18.

13. **Consequently, the both appeals of Revenue are dismissed on merits and cross objections are dismissed not pressed.**

Order pronounced in the open court on 29th May, 2023.

Sd/-

(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Date:-29th.05.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI