

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**आ.अ.सं./I.T.A No.4804/Del/2017
निर्धारणवर्ष/Assessment Year:2011-12**

ACIT, Circle-26(1), New Delhi.	बनाम Vs.	Vadhra Builders Pvt. Ltd., 40, Defence Colony, New Delhi. PAN No.AAACV0694C
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

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**आ.अ.सं./I.T.A No.2394/Del/2017
निर्धारणवर्ष/Assessment Year:2011-12**

Vadhra Builders Pvt. Ltd., 40, Defence Colony, New Delhi. PAN No. AAACV0694C	बनाम Vs.	Addl. CIT, Range-17, C.R. Building, New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Dr. Rakesh Gupta, Adv. & Shri Deepesh Garg, Adv.
Revenue by	Shri Anuj Garg, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	31.10.2023
उद्घोषणाकीतारीख/Pronouncement on	25.01.2024

आदेश / O R D E R

PER C.N. PRASAD, J.M.

These two appeals are filed by the Revenue and Assessee against the order of the Ld.CIT(Appeals)-33, New Delhi dated 17.03.2017 for the AY 2011-12.

2. Revenue in its appeal raised the following grounds:

- I. *“On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs.2,62,74,248/- made by treating 75% of ‘work in progress’ as sales ignoring the fact that the assessee is in practice of issuing uncertified bills and crediting the same in the P&L A/c and when these bills receivable written of and debited to the P&L Account.*
- II. *On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in restricting the addition of Rs.5,54,45,938/- to Rs.17,63,289/- made by enhancing the value of raw materials and goods sold ignoring the fact that no details were provided by the assessee during the course of assessment proceedings.”*

3. Brief facts are that the Assessee which is engaged in the business of Civil Contractors for interior and Civil Works, dealings in paintings and manufacturing of furniture filed its return of income on 30.09.2011 declaring income of Rs.75,82,415/-. The assessment was completed u/s 143(3) of the Act on 10.03.2014 determining the income of the assessee at Rs.9,28,37,760/- in the course of assessment proceedings the Assessing Officer (for short the “AO”)

noticed that assessee has shown working progress at various sites amounting to Rs.18,89,55,400/- and has not raised any bills on the parties and not booked sales even in completion of 90% of work. The assessee was required to show cause as to why as per the agreement with the parties the billing should not be done for 75% of Work-in-Progress (WIP) and booked as sales by estimating GP at 18.54%. The assessee submitted that the consolidated gross profit comprising of gross profits of contract business and art gallery business is 18.54% gross profit of contract business is 8.19% and art gallery business is 25.34%. The assessee contended that it is not correct to say that as per agreements the billing is to be done at the completion of 50%. The assessee further contended that none of the agreements have the stipulation that the billing will be done at the completion of 50% of work. Therefore, the assessee contended that there is no basis for considering 75% of value of work in progress as sales and, therefore, there cannot be any estimation of GP on the unbilled work in progress. Not convinced with the submission of the assessee the Assessing Officer treated 75% of work in progress as sales of the assessee and estimated the gross profit from out of such estimated sales at 18.54% and added Rs.2,62,75,248/- as income of the assessee.

4. On appeal, the Ld.CIT(A) deleted the addition made by the AO.

5. Before us the Ld. DR strongly placing reliance on the order of the AO submitted that the AO has rightly treated 75% of work in progress as sales as the assessee did not declare any profit for the assessment year under consideration. Ld. Counsel placed reliance on the order of the Ld.CIT(Appeals).

6. Heard rival contentions, perused the orders of the authorities below.

7. According to the Assessing Officer the assessee should have shown profit from the business and since the assessee has shown work in progress without showing any sales he estimated 75% of work in progress as sales of the assessee and profit was estimated at 18.54%. The Ld.CIT(A) considering the submissions of the assessee and averments of the AO in the assessment order and after detailed analysis deleted the addition observing as under:

“4.3 I have considered the reasoning of the Assessing Officer and the submissions of the appellant. The Assessing Officer has observed that the work-in-progress as on 31.03.11 at various sites totals up to Rs. 18.0 crore. Alarmed by the value of work-in-progress as compared to the value of work done amounting to Rs. 33.93 crores, the Assessing Officer began to examine whether part of the work done has not been billed but shown as work-in-

progress by the assessee so as to suppress the turnover. As per the Assessing Officer, the contract agreements provide that billing should be done at the completion of 50% of the work. After considering the reply of the assessee, the Assessing Officer concluded that assessee has deliberately not billed the work done. In his wisdom, the Assessing Office treated 75% of the value of work-in-progress as sale and made an addition of Rs.2,62,74,248/- by applying GP rate of 18.54% on so designated sales.

4.4 I have also noted that during the assessment stage, the appellant had challenged the assertion of the Assessing Officer that as per the agreements the billing is to be done at the completion of 50% of work. In the assessment order the Assessing Officer has not recorded source of this information and has not controverted the challenge made by the Assessee in this respect. During the appellate proceedings also I am unable to corroborate the assertion of the Assessing Officer from the agreements made available to me.

4.5 During the appellate stage, the appellant has submitted the details of sales billed during the F.Y. 2010-11 and F.Y. 2011-12 in respect of parties whose work-in-progress remained unbilled on 31.03.11. The details are as under:-

VADEHRA BUILDERS PRIVATE LIMITED

D-40, Defense Colony,
New Delhi

SUMMARY OF WIP AS ON 31.03.2011 AND SALES IN NEXT YEAR

S.No.	Party Name	Project	Work in Progress	FY 2010-11	FY 2011-12
	WORKS TERMINATED				
1.	Assotech Realty Pvt.Ltd.	Civil Construction Work Assotech Spring Fieldat Gr. Noida, UP	30,000,000		
2.	Collage Estate Pvt. Ltd.	Civil & Interior Works of Collage Mall, Jalandhar	12,400,000		
3.	Dalmia Cement (Bharat) Limited		10,300,000		

WORKS SUSPENDED IN NEXT YEAR

4.	Boutique Hotels India Pvt. Ltd.		7,500,000	29,697,992	
5.	BSCPL Infrastructure Limited		11,300,000	30,119,087	5,407,457
6.	Emaar MGF Land Ltd., Gurgaon Project	Tower C & D	11,550,000	11,382,342	4,201,801
7.	M3M India Limited, Gurgaon, Haryana		8,500,000	17,172,396	

RUNNING WORKS

8.	HCL Technologies Ltd., Manesar, Haryana - (31/10/10)- Rs. 14,34,57,552/-, Revised- (21/02/11)- Rs. 13,37,28,058/-		36,700,000	65,798,361	29,887,158
9.	MGF Development Ltd. The vilas Gurgaon Haryana		11,800,000	6,529,867	28,237,768
10.	MAX Healthcare Limited, Shalimar Bagh		11,900,000	21,915,526	16,479,931
11.	<u>Global Health Pvt. Ltd.</u>		14,700,000	18,395,059	18,498,553
12.	<u>PVR Limited, Ambience Mall, Vasant Kunj, N.D.</u>		19,750,000	24,181,810	24,102,759
Grand Total			186,400,000	225,192,440	126,815,427

SUMMARY

A.	VALUE OF WIP BROUGHT FORWARD FROM EARLIER YEAR - TERMINATED WORKS	52,700,000
B.	VALUE OF WIP BROUGHT FORWARD FROM EARLIER YEAR - SUSPENDED WORKS	38,850,000
C.	VALUE OF WIP - RUNNING WORKS	94,850,000
TOTAL A+B+C		186,400,000

4.6 While furnishing this information the counsel of the appellant has submitted that a sum of Rs. 5.72 crores is work-in-progress in respect of 3 works which were terminated. The appellant has submitted as under:-

"Out of twelve parties, for three parties, no work was carried out due to disputes in earlier years

(value of brought forward WIP of earlier years-5.27 Crores), For the remaining nine parties, bills amounting to Rs. 22,51,92,440/- were raised and value included in sales. ”

4.6.1 It is noted from final accounts for A.Y. 10-11 that the work in progress in respect of these parties stood at the same figure as on 31.03.10. It, therefore, means that no work was done for these parties during the period from April 2010 to March 2011 and thereafter.

4.6.2 From the ledger of M/s Assotech Realty Pvt. Ltd., I have noted that from 01.04.06 till 31.03.09 the appellant has raised the bills and received payments during different years as under: -

F.Y.	Work Done	Amount Received	Closing Balance
2006-07	2,38,38,122/-	1,42,89,563/-	95,48,558/-
2007-08	10,97,80,008/-	1,14,69,871/-	78,58,695/-
2008-09	4,76,98,122/-	4,92,03,423/-	63,53,394/-

4.6.2.1 It is noted that in A.Y. 2010-11, the amount retained earlier by the client amounting to Rs. 83,93,563/- was debited to the account of M/s Assotech Realty Pvt. Ltd. Consequently the opening "balance in respect of the party stood at Rs. 1,46,46,967/- during A.Y. 2011-12.

4.6.2.2 On the basis of above observations, the contention of the appellant that the work done for M/s Assotech Realty Pvt. Ltd. could not be billed due to a dispute with them appears to be in order. Against the work done and billed amounting to Rs. 18.13 crore during the earlier years, the appellant had received payment of Rs. 16.62 crore. The balance work done amounted to loss incurred by the appellant. Further, the work done amounting to Rs. 3 crore which was not billed till 31.03.09 continued as work-in-progress in the book of the appellant and was finally written off during A.Y. 2013-14.

4.6.3 From the ledger of M/s Collage Estate Pvt. Ltd., I have noted that from 01.04.09 till 31.03.13, the

appellant has raised the bills and received payments during different years as under: -

Collage Estate Pvt. Ltd.

<i>F.Y.</i>	<i>Work Done</i>	<i>Amount Received</i>	<i>Closing Balance</i>
<i>2009-10</i>	<i>3,30,08,814</i>	<i>2,86,85,090</i>	<i>43,23,724</i>
<i>2010-11</i>	<i>0</i>	<i>16,68,807</i>	<i>26,54,917</i>
<i>2011-12</i>	<i>0</i>	<i>0</i>	<i>26,54,917</i>
<i>2012-13</i>	<i>0</i>	<i>0</i>	<i>26,54,917</i>

4.6.3.1 On the basis of above observations, the contention of the appellant that the work done :: - M/s Collage Estate Pvt. Ltd. could not billed due to a dispute with them appears to be in order. Against the work done and billed amounting to Rs.3.3 crore during the earlier years, vie appellant had received payment of Rs. 3.03 crores. The balance work done amounted to loss incurred by the appellant. The appellant still retains the claim in respect of the outstanding balance.

4.6.4 From the ledger of M/s Dalmia Cement (Bharat) Ltd., I have noted that from 01.04.08 till 31.03.11 the appellant has raised the bills and received payments during different years as under:-

Dalmia Cement Bharat Ltd.

<i>F.Y.</i>	<i>Work Done</i>	<i>Amount Received</i>	<i>Closing Balance</i>
<i>2008-09</i>	<i>7,29,36,416</i>	<i>6,91,05,950</i>	<i>38,30,466</i>
<i>2009-10</i>	<i>46,96,570</i>	<i>2,63,68,973</i>	<i>-1,81,41,937</i>
<i>2010-11</i>	<i>3,12,03,580</i>	<i>1,11,35,851</i>	<i>19,25,792</i>

4.6.4.1 During the F.Y. 2010-11, Appellant debited Rs. 30 lakhs towards bank charges, and Rs.14,47,145/- towards retention money in the ledger of the party. The amount of work in progress carried over was finally written off in A.Y. 13-14.

4.6.5 Based on above observations, I find that the work-in-progress shown above could not be billed by the appellant due to reasons beyond its own control and therefore the Assessing Officer's treatment of the same at sale cannot be justified. I am unable to sustain the

addition made by the Assessing Officer in respect of these three parties.

4.6.5.1 In respect of the work-in-progress related to the remaining nine parties amounting to 13.37 crores, I have noticed that the appellant has billed work done amounting to Rs.22.52 crore during the year. It works out that 37% of the entire work done for these parties during the year remained as work-in-progress and the remaining 63% was billed and included in the appellant's turnover. From the accounts, it is noted that during the subsequent year i.e. AY 2012-13 the appellant had billed work done amounting to Rs. 12.68 crores in respect of these parties. The work-in-progress of these parties reduced to Rs.5.77 crore as on 31.03.12 as against Rs.13.27 crore as on 31.03.11. It, therefore, is clear that part of the work-in-progress as on 31.03.11 was billed in the subsequent year."

8. On carefully going through the findings of the Ld.CIT(Appeals), we do not find any valid reason to interfere with the observation of the Ld.CIT(A). We observe that the Ld.CIT(A) after his detailed analysis came to the conclusion that no part of work in progress can be treated as sales and estimate the GP on such sales, thus, we sustain the order of the Ld.CIT(A). Ground no.1 of grounds of appeal of Revenue is dismissed.

9. Coming to ground no.2 of grounds of appeal, we noticed that the AO made addition of Rs.5,54,44,938/- towards Sales Tax and Service Tax. This addition was made by the AO for the reason that the assessee did not file requisite details/reconciliation of Sales Tax with sales and purchases, details on additional tax paid year wise,

assessee failed to furnish details of Sales Tax on purchases year wise the AO made the addition. Before the Ld.CIT(Appeals) the assessee furnished complete details. The assessee also contended before the Ld.CIT(A) that it had in fact filed all the details before the Assessing Officer. We observe that the Ld.CIT(A) called for the records from the AO and after analyzing the records submission restricted the addition of Rs.17,63,289/- observing as under:

“5.3 I have noted that the Assessing Officer has recorded that during the assessment proceedings the AR was asked to reconcile sales tax and sales and purchases but the same was not furnished. The A.O. has further recorded that the assessee was required to file sales tax input account of purchases and sales tax output account of sales and the proof of payment of the amount of difference. This reconciliation was not filed. The ledger of input of purchases and output of sales was also not filed. The A.O. has further recorded that the assessee was asked to furnish the details of such sales tax (related to year-wise purchases from unauthorized parties) but the same was not furnished.

5.3.1 On the contrary, the counsel of the appellant has asserted that these details were filed before the Assessing Officer.

5.3.2 In view of the contradictory assertions as narrated above, the Assessment Records have been called for and examined by me. My findings in this regard Recorded in subsequent paragraphs.

5.3.3 I have noted that vide letter dated 17.12.13 the appellant had submitted the details before the Assessing Officer. The A.O. has recorded in the order sheet as under:-

“Shri Y.S Bhartnagar, CA attended and filed details vide letter dated 17.12.13. Produced labour expenses bills & bills for closing rotation to file balance details. On 27.12.13 at 11:00 AM”

5.3.4 I have considered the reasoning of the Assessing Officer and the submissions of the appellant. I appreciate the observations and consequent notice given by the Assessing Officer asking the appellant to show cause why the sales tax pertaining to earlier years should not be disallowed and appellant's closing stocks should not be enhanced by the amount debited in profit & loss accounts.

5.3.5 I, however, do not agree with the numerical working of the Assessing Officer in as much as the total sales tax including the service tax on the entire sales made cannot be adopted for working out the calculation. The value of closing stock can be enhanced only by the amount of sales tax pertaining to the closing stock on a pro-rata-basis.

5.3.6 The closing stock of the appellant stands at Rs.1,66,80,664/-. The sales tax on purchases was only Rs.65,41,478/-. Material consumed during the year amounts to Rs.16,57,76,188/-. Sales tax on the material consumed come to 3.94%. The value of closing stock therefore is required to be enhanced by 3.94%. The amount of addition thus works out to Rs.6,56,280/-.

5.3.7 Accordingly, the addition of Rs.5,54,45,938/- is restricted to Rs. 17,63,289/- (Rs.6,56,218/- on account of enhancement on value of closing stock by 3.94% and Rs.11,07,071/- on account of additional sales tax pertaining to earlier years disallowed by the Assessing Officer).”

10. On careful consideration of the Ld.CIT(A) findings, we see no infirmity in the observations of the Ld.CIT(A). The Revenue could not rebut the findings. Ground no.2 of grounds of appeal of Revenue is dismissed.

11. Coming to appeal of the assessee the following grounds have been raised:

1. *“On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in law in sustaining addition of Rs.17,63,289/- to the total income on account of increase in closing stock, being proportionate sales tax on purchases, which was already claimed against sales tax liability.*
2. *On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in law in not accepting appellant’s claim for electricity expenses incurred at premises used for the purpose of appellant’s business.*
3. *On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in law in sustaining a disallowance of Rs.14,13,444/- out of business expenses paid through credit cards.”*

12. The Ld. Counsel for the assessee submits that ground no.2 and 3 are not pressed. In view of the submissions, ground no.2 & 3 of grounds of appeal of the assessee are dismissed as not pressed.

13. Ground no.1 of grounds of appeal of the assessee is in respect of sustaining the addition by the Ld.CIT(A) in respect of Sales Tax and Service Tax. The only submission of the Ld. Counsel for the assessee is that out of Rs.17,63,289/- sustained by the Ld.CIT(A) an amount of Rs.11,07,071/- represents additional Sales Tax pertaining to earlier years. This amount is to be allowed as deduction u/s 43B on payment basis.

14. On hearing both the sides and perusing the order of the Ld.CIT(A), we observe that the Ld.CIT(A) restricted the addition towards Sales Tax and Service Tax observing as under:

“5.3 I have noted that the Assessing Officer has recorded that during the assessment proceedings the AR was asked to reconcile sales tax and sales and purchases but the same was not furnished. The A.O. has further recorded that the assessee was required to file sales tax input account of purchases and sales tax output account of sales and the proof of payment of the amount of difference. This reconciliation was not filed. The ledger of input of purchases and output of sales was also not filed. The A.O. has further recorded that the assessee was asked to furnish the details of such sales tax (related to year-wise purchases from unauthorized parties) but the same was not furnished.

5.3.1 On the contrary, the counsel of the appellant has asserted that these details were filed before the Assessing Officer.

5.3.2 In view of the contradictory assertions as narrated above, the Assessment Records have been, called for and examined by me. My findings in this regard Recorded in subsequent paragraphs.

5.3.3 I have noted that vide letter dated 17.12.13 the appellant had submitted the details before the Assessing Officer. The A.O. has recorded in the order sheet as under:-

“Shri Y.S Bhartnagar, CA attended and filed details vide letter dated 17.12.13 produced labour expenses bills & bills for closing rotation to file balance details. On 27.12.13 at 11:00 A.M.”

5.3.4 I have considered the reasoning of the Assessing Officer and the submissions of the appellant. I appreciate the observations and consequent notice given by the Assessing Officer asking the appellant to show cause why the sales tax pertaining to earlier years

should not be disallowed and appellant's closing stocks should not be enhanced by the amount debited in profit & loss accounts.

5.3.5 I, however, do not agree with the numerical working of the Assessing Officer in as much as the total sales tax including the service tax on the entire sales made cannot be adopted for working out the calculation. The value of closing stock can be enhanced only by the amount of sales tax pertaining to the closing stock on a pro-rata-basis.

5.3.6 The closing stock of the appellant stands at Rs.1,66,80,664/-. The sales tax on purchases was only Rs.65,41,478/-. Material consumed during the year amounts to Rs.16,57,76,188/-. Sales tax on the material consumed come to 3.94%. The value of closing stock therefore is required to be enhanced by 3.94%. The amount of addition thus works out to Rs.6,56,280/-.

5.3.7 Accordingly, the addition of Rs.5,54,45,938/- is restricted to Rs.17,63,289/- (Rs.6,56,218/- on account of enhancement on value of closing stock by 3.94% and Rs.11,07,071/- on account of additional sales tax pertaining to earlier years disallowed by the Assessing Officer)."

15. As could be seen from the above, out of the addition of Rs.17,63,289/- restricted by the Ld.CIT(A) an amount of Rs.11,07,071/- represents additional Sales Tax pertaining to earlier years disallowed by the AO. The contention of the assessee is that this amount has to be allowed as deduction u/s 43B of the Act has some force. Thus, we direct the AO to consider for allowing deduction u/s 43B the additional Sales Tax of Rs.11,07,071/-

pertained to earlier years on payment basis. This ground of assessee is allowed for statistical purpose.

16. In the result, appeal of the Revenue is dismissed and appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 25/01/2024

**Sd/-
(G.S. PANNU)
VICE PRESIDENT**

**Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER**

Dated: 25/01/2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi