

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 1388/Del/2022
(Assessment Year: 2017-18)

DCIT,
Central Circle,
Ghaziabad

Vs. PKS Infra Engineers Pvt. Ltd,
J-288, Saket, New Delhi

(Appellant)

(Respondent)

PAN: AAACP6740M

Assessee by :
Revenue by :

Shri Sanjeev Jain, CA
Ms. Harpreet Kaur, Sr. DR

Date of Hearing
Date of pronouncement

22/11/2023
20/02/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.1388/Del/2022 for AY 2017-18, arises out of the order of the Commissioner of Income Tax (Appeals)-4, Kanpur [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. CIT(A)-IV/KNP/10411/2019-20 dated 04.04.2022 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 23.11.2019 by the Assessing Officer, DCIT, Central Circle, Ghaziabad (hereinafter referred to as 'ld. AO').
2. The only effect issue to be decided in this appeal is as to whether the ld CIT(A) was justified in deleting the addition made by the ld AO partially on account of difference in gross receipts figures reflecting in Form 26AS and the books of account of the assessee, in the facts and circumstances of the instant case.
3. We have heard the rival submissions and perused the material available on record. The assessee company is engaged in civil engineering consultancy providing competitive and innovative solutions to engineering projects. During the course of assessment proceedings, the entire books of account together with bills and

vouchers were duly produced by the assessee before the Id AO and same were duly examined on test check basis. As per the audited balance sheet and Profit and Loss Account, the assessee has shown gross receipts from revenue of Rs. 5,36,28,713/- and other income of Rs. 19,34,272/-. The Id AO compared this gross receipt figures with the gross receipts figures reflected in Form 26AS of Rs. 7,17,70,636/-. The Id AO observed that the cash book of the assessee was not properly maintained and assessee was following both mercantile and cash system of accounting. The Id AO proceeded to reject the books of account u/s 145(3) of the Act.

4. It was explained by the assessee by way of detailed reconciliation that some parties had deducted tax at source (TDS) on bill amount inclusive of service tax portion whereas the assessee had taken the revenue exclusive of service tax on the ground that service tax is collected and paid to the account of the central govt and hence, it cannot be treated as revenue of the assessee. It was clarified that the assessee has been following only mercantile system of accounting. It was also clarified that all the payers are govt parties and some parties deducted TDS on bills including service tax portion and some parties deducted TDS on actual value of bill alone excluding service tax portion. However, consistently the assessee has been considering the gross receipts only exclusive of service tax portion as its revenue. The Id AO did not heed to this contention and proceeded to add Rs. 1,81,41,923/- as undisclosed contractual receipts.

5. During the course of appellate proceedings, the assessee submitted that the payers had modified/ rectified their respective TDS returns and if the revised Form 26AS is considered, then there would be no difference in the gross receipts at all. The assessee also placed on record revised Form 26AS before the Id CIT(A). The assessee in respect of certain parties duly proved the fact that the difference in gross receipts had arose due to inclusion of service tax/ GST portion in the gross bills of certain parties whereas the assessee had shown only the actual contractual receipts as its income in its books of account and service tax portion is shown separately. Accordingly, it was pleaded that there was no difference at all.

6. The Id CIT(A) duly verified the same and found in respect of receipts from Executive Engineer, ICD-I, Lalitpur, originally the payer had reflected the gross figures of Rs. 3,13,95,000/- and the same was duly corrected by the said party at Rs. 2,09,30,000/- inclusive of GST of Rs. 27,30,000/-. The revised figure of Rs. 2,09,30,000/- was duly reflected in the revised Form 26AS of the assessee. Similarly, in the matter of receipt of Rs. 20 lakhs from Executive Engineer, Investigation and Planning Division, Banda, the assessee submitted that Rs. 20 lakhs had already been accounted by it in AY 2016-17 by following mercantile system of accounting, whereas, the payer had considered the same as their expenditure only in AY 2017-18. This aspect was duly examined by the Id CIT(A) and found to be correct. Further, in respect of receipts from M/s. WAPCOS Ltd, there was difference of Rs. 24,58,879/- between receipts reflected in profit and loss account and Form 26AS. The assessee clarified that the total contract value for the period 01.04.2015 to 31.03.2017 was Rs. 4,25,19,173/-. Out of this, a sum of Rs. 2,82,21,069/- was recognized as receipts in AY 2016-17 and balance amount of Rs. 1,42,98,104/- was recognized as receipts in AY 2017-18. This aspect has been duly examined by the Id CIT(A) and found to be correct. The Id CIT(A) duly tabulated the difference in figures between audited profit and loss account and Form 26AS in respect of aforesaid three parties namely Executive Engineer, ICD-1, Lalitpur; Executive Engineer, Investigation and Planning Division, Banda; and WAPCOS Ltd and observed that the assessee was duly able to reconcile the difference up to Rs. 1,76,53,879/- and sustained the balance addition of Rs. 4,88,044/- (Rs. 18141923-17653879). Against this order of the Id CIT(A), the assessee has not preferred any appeal and only revenue is in appeal before us.

7. The Id DR vehemently argued that the assessee did not maintain books of account properly which forced the Id AO to reject the same u/s 145(3) of the Act. The party-wise figures mentioned in Form 26AS matched with those reflected in the books of account of the assessee without including the portion of service tax/ GST except in respect of aforesaid three parties. He argued that when the figures are matching with other parties, it is improbable to accept the contention of the

assessee that only in respect of the aforesaid three parties, the payer had included the GST/ service tax portion also in the gross receipts.

8. Per contra, the Id AR argued that according to Id AO, cash book was not properly maintained by the assessee. The Id AO had not brought any basis for making this statement. He further argued that despite rejection of books u/s 145(3) of the Act, the Id AO did not resort to determination of profits on estimated basis by bringing in any comparable instances. Hence, there is absolutely no impact that was created on the total income due to rejection of books of account u/s 145(3) of the Act. The entire addition has been made by the Id AO by considering the figures reflected in original Form 26AS as sacrosanct without considering revised Form 26AS that was placed on record.

9. It is fact on record pursuant to revised Form 26AS placed on record, the assessee was able to explain the discrepancy of gross receipts in facts and figures. It is pertinent to note that figures in form 26AS would get changing as and when TDS returns were modified/ rectified by the payers which is absolutely not in the control of the assessee. Hence, the main argument of the Id DR that discrepancy were noticed in the respective three parties whereas with other parties, without GST, figures were matching has got no relevance at all. Admittedly, the addition was made by the Id AO based on Form 26AS. We find from pages 34 of the Paper Book containing Form 26AS which is updated till 01.02.2018 and from pages 48 of the Paper Book containing the revised form 26AS updated till 28.09.2019, the assessee filed complete reconciliation of figures in second Form 26AS vis a vis gross receipts shown in books. The said reconciliation is enclosed in pages 43 to 47 of the Paper Book. One more excruciating fact that requires consideration is that all the payers are Govt parties and hence, there is no scope of receiving any undisclosed income from said parties. Some payers had deducted TDS including GST/ service tax portion and some had not done it. The assessee had duly filed the reconciliation and the Id CIT(A) had tabulated the difference in figures in respect of three parties in para 6.6 of this order with facts and figures after due examination of the same. In fact the Id CIT(A) on examination of reconciliation had also found that the assessee

was not able to explain the difference of Rs. 4,88,044/- and accordingly had sustained the said addition, which is also accepted by the assessee. Hence, we do not find any infirmity in the order of the Id CIT(A) granting relief to the assessee to the extent of Rs. 1,76,53,879/-. Accordingly, grounds raised by the revenue are dismissed.

10. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 20/02/2024.

-Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 20/02/2024
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi