

**IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 5405/MUM/2024
(Assessment Year: 2011-2012)**

M/s. Evergreen Infra Structures

A/803-804, EE Heights, Bandivali Hill Road,
Jogeshwari West, Mumbai – 400102,

Maharashtra.

[PAN:AACFE6568R]

..... **Appellant**

Income Tax Officer

41(4)(1), Mumbai

Kautilya Bhavan,

Bandra (East), Mumbai – 400051,

Maharashtra.

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Dhaval Salot

For the Respondent/Department : Shri Hemanshu Joshi

Date

Conclusion of hearing : 02.12.2024

Pronouncement of order : 09.12.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Assessee is directed against the order, dated 30/09/2024, passed by the Commissioner of Income Tax (Appeals) – 51, Mumbai [hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had dismissed the appeal against the Assessment Order, dated 27/03/2015, passed under Section 143(3) read with Section 147 of the Act for the Assessment Year 2011-12.
2. The Assessee has raised following grounds of appeal :

"1. The learned assessing officer erred in law and fact in stating

that the appellant had not paid the taxes due as per the return of income.

2. *The learned assessing officer erred in adding Rs.3,23,00,000/- to the returned income of the appellant.*
3. *The learned assessing officer erred in disallowing expenses of Rs.1,00,000/- from the work-in-progress account of the appellant.*
4. *The learned assessing officer erred in not granting proper opportunity of being heard to the appellant.*
5. *The learned assessing officer erred in making the same addition of Rs.2,40,00,000/- twice in the appellants returned of income."*

3 The relevant facts as emerging from the record are that the Appellant is a company carrying on the business of builders and developers. The Appellant had filed return of income on 25/03/2013 declaring 'Nil' income. A survey action under Section 133A of the Act was carried out on 07/10/2013 at the business premises of the Appellant. During the course of the aforesaid survey the Appellant firm offered a sum of INR.2,40,00,000/- as additional income. Subsequently, notice under Section 148 of the Act was issued on 18/10/2013 and in response to the same, the Appellant filed return of income on 21/03/2014 declaring total income of INR.2,38,16,740/-. Admittedly, the Appellant had not paid the self-assessment tax of INR.43,59,370/- as per section 140A of the Act. Subsequently, Assessment under Section 143(3) read with Section 147 of the Act was framed on the Appellant vide order dated 27/03/2015 at assessed income of INR.5,61,96,744/- as against the returned income of INR.2,38,16,744/-.

4 Being aggrieved the Appellant preferred appeal before CIT(A) which was dismissed on the ground that the Appellant had failed to pay self assessment tax on the income declared in the return of income filed on 21/03/2014 in response to notice issued under Section 148

of the Act. Therefore, the CIT(A) declined to admit the appeal in term of provision contained in Section 249(4) of the Act and the same was dismissed.

5 Now the Appellant has preferred the present appeal before the Tribunal.

6 The Learned Authorised Representative for the Appellant appearing before us, at the outset, submitted that the Appellant had made following payments after passing of the Assessment Order

- (a) INR.45,00,000/- (31/03/2018)
- (b) INR.10,00,000/- (02/02/2018)
- (c) INR.15,00,000/- (01/08/2015)

It was submitted that the above payments were reflected in Form 26AS placed at Page 30 of the Paper Book and were in addition to the payments made prior to the passing of the Assessment Order. It was submitted that since the Appellant has now made payment of taxes, an opportunity be granted to the Appellant to pursue the grounds of appeal raised before the CIT(A) on merits.

7 Replying to the above submissions, the Learned Departmental Representative submitted that the payment of taxes by the Appellant requires verification.

8 We have considered the rival submissions and perused the material on record. On perusal of Form 26AS we find that the factual averment made by the Appellant in respect of deposit of taxes is supported by entries contained in "Part C – Details of taxes paid (other than TDS or TCS)" of Form 26AS which are reproduced herein under:-

Sr. No.	Major Head	Minor Head	Tax	Total Tax	BSR Code	Date Deposit	of	Challan Serial Number
1.	0021	400	45,00,000.00	45,00,000.00	0282611	31-Mar-2018		00033
2.	0021	400	10,00,000.00	10,00,000.00	0282611	02-Feb-2018		00014

3.	0021	400	15,00,000.00	15,00,000.00	0350460	01-Aug-2015	00004
4.	0021	300	.00	.00	350460	28-Apr-2015	00003
5.	0021	300	10,00,000.00	10,00,000.00	0282611	28-Apr-2015	00010
6.	0021	300	20,00,000.00	20,00,000.00	0282611	06-Feb-2014	00001

- 9 In view of the above, we deem it appropriate to set aside the order, dated 30/09/2024, passed by the CIT(A) with the directions to verify the payment of self-assessment tax and thereafter, adjudicate the grounds raised in appeal by the Appellant before the CIT(A) as per law after granting the Appellant reasonable opportunity of being heard. The Appellant is directed to file all documents/details in support of the grounds raised before CIT(A). It is clarified that in case the Appellant fails to enter appearance before CIT(A) and/or to file requisite submissions/documents/details, the CIT(A) would be at liberty to adjudicate upon the grounds raised on merits on the basis of material on record.
- 10 In terms of paragraph 9 above, the Ground No.1 raised by the Appellant in the present appeal is treated as allowed for statistical purposes while all the other grounds raised by the Appellant are dismissed as having been rendered infructuous.
- 11 In result, the appeal preferred by the Assessee is allowed for statistical purposes.

Order pronounced on 09.12.2024.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 09.12.2024
Milan,LDC

आदेश की प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai