

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

BEFORE MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

AND

SHRI OMKARESHWAR CHIDARA (ACCOUNTANT MEMBER)

**ITA No. 3184/MUM/2024
Assessment Year: 2020-21**

DCIT Circle 4(3)(1),
6th floor, Aayakar Bhavan, M.K.
Road,
Churchgate – 400020.
PAN NO. AADCK 0673 R
Appellant

Vs.

Kaustubh Construction Pvt. Ltd.,
Bungalow No. 3-37, Building Shop
No. 3, Gorai-1, Borivali West.

Respondent

Assessee by : None
Revenue by : Ms. Sudha Ramachandran, Sr. DR

Date of Hearing : 12/11/2024
Date of pronouncement : 31/12/2024

ORDER

PER OMKARESHWAR CHIDARA, AM

This appeal by the Revenue is directed against order dated 14.03.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2020-21.



2. At the outset, it is observed that the above cited Departmental Appeal was filed with a delay of 30 days. The Ld. DR has stated that during the months of March and April there was heavy workload with her and the scrutiny report sent by her was sent back to her to make certain amendments. Hence, there is a delay of 30 days which is not intentional and to protect the interest of Revenue, it was submitted by Ld. DR that the delay of 30 days may be condoned and appeal may be taken up to adjudicate on merits. Because of the reasoning given, the delay is condoned and case is taken up for arguments on merits.

3. The following grounds of appeal were raised by the Department in this appeal :

1. *"Whether on the facts and in circumstances of the case an law, the Ld. CIT(A) was justified in deleting the additions without appreciating the fact that due of tax arrears of A.Y.2013-14 & 2014-15 have been paid under VsV cannot be claimed as deduction in A.Y. 2020-21."*

2. *"Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) was justified in accepting assessee's contention that the amount of Rs. 2,76,54,247/- has been taxed twice i/s. in A.Y. 2015-16 also, thereby allowing the same to claim as deduction in A.Y. 2020-21 ignoring the fact that there is nothing on record to show that the income of A.Y. 2013-14 and 2014-15 have been offered to tax in A. Y.-2015-16."*

3. *"Whether on the facts and in circumstances of the case an law, the Ld. CIT(A) has erred in allowing deduction of Rs. 2,76,54,247/- pertain to A. Y. 2013-14 and A.Y 2014-15 claimed by the assessee in A.Y. 2020-21 without appreciating that there is no provision in the income tax law for claiming deduction of the income shown by the assessee in some other year?."*

4. The assessee filed a return of income for AY 2020-21 with a returned income of Rs.30.86 crores and claimed deduction of



Rs.2,74,54,247/- towards the amount offered under Direct Taxes Vivad Se Vishwas Act, 2023 (VSV for short). This deduction is claimed during this assessment year because VSV Scheme settled the issue in this year, even though amount of Rs.1,84,65,436/- relates to AY 2013-14 and an amount of Rs.81,88,811/- relates to AY 2014-15. The Ld. AO is of the view that these deductions relate to AY 2013-14 and AY 2014-15 and hence cannot be allowed in AY 2020-21 and disallowed the same and added while computing the assessment, disregarding the explanation of assessee that same income cannot be taxed twice. The Ld. AO has also stated in his assessment order that the right platform to decide the dispute is Ld. CIT(A). It was also stated that the order of PCIT dated 08.11.2021 for AYs 2013-14 and 2014-15 for full and final settlement of tax assessee cannot be construed as litigation issue was settled.

5. Aggrieved by the addition made by the Ld. AO, an appeal was filed before the Ld. CIT(A). Before this first appellate authority, the appellant has stated that the additions made in AYs 2013-14 and 2014-15 were offered as income voluntarily in AY 2015-16 by the appellant company by recognizing them as incomes in view of the Revenue recognition policy followed by them consistently. But, since additions were made by the Ld. AO in those two assessment years, an appeal was preferred and the same is pending for disposal before Ld. CIT(A). Meanwhile, as the VSV Scheme was announced, the appellant wanted to put an end to the litigation, opted for the



scheme, paid taxes and filed all documents related Form 3 and 4. By accepting the tax and forms, the Ld. PCIT issued Form No. 5 which practically implies that the litigation has come to an end. After noting all these facts, the Ld. CIT(A) held that since the same income was offered voluntarily in AY 2015-16 and dues relating to AY 2013-14 and 2014-15 were settled in AY 2020-21, it amounts to double taxation. The Ld. CIT(A) held that the appellant company is entitled to deduction as claimed in AY 2020-21 and allowed the appeal.

6. Aggrieved by the deletion of addition of the Ld. AO, the Department filed an appeal before the ITAT stating that the Ld. CIT(A) has given relief to the appellant even though there is nothing on record to show that the disputed incomes of AY 2013-14 and 2014-15 were voluntarily offered as income in AY 2015-16.

7. On the date of hearing, none appeared for the appellant whereas the Ld. DR has argued the matter and emphasized that the order of Ld. AO should be upheld and order of Ld. CIT(A) to be set aside for two reasons :

(a) There is nothing on record to show that the appellant has offered the disputed incomes relating to AYs 2013-14 and 2014-15 in AY 2015-16. No proof/evidence was submitted by the appellant before the Ld. CIT(A) nor any remand report was called for by the Ld. CIT(A) before adjudication the matter in favour of the assessee.



(b) The deductions relating to AYs 2013-14 and 2014-15 cannot be claimed in AY 2020-21.

7.1 Case is heard. As none was present on behalf of the assessee, the material available like orders of the Ld. AO and Ld. CIT(A) were taken into consideration alongwith arguments of Ld.DR, while passing this order.

8. The following vital facts were not discussed and hence the file is remitted back to Ld. AO for fresh hearing and adjudication :

(a) Neither the Ld. AO nor Ld. CIT(A) have gone through the factual position of as to whether the appellant company has offered the disputed incomes of AYs 2013-14 and 2014-15 during the AY 2015-16 voluntarily while filing its return of income as claimed by appellant company. It is also not clear from the assessment order whether the profits on these disputed incomes were offered to tax in AY 2015-16.

(b) It is also not clear from Form 5 issued by the Ld. PCIT, whether the disputed incomes were admitted in AY 2015-16.

(c) It is also not clear whether the audit report of AY 2015-16 mentioned about incomes of prior years of AY 2013-14 and 2014-15 were admitted in AY 2015-16.



(d) Status of appeals filed before the Ld. CIT(A) for AYs 2013-14 and 2014-15 is also not mentioned in the order of the Ld. AO and Ld. CIT(A).

(e) The VSV provisions relating to settlement of dispute, vis-à-vis incomes offered is also not clear from the orders.

8.1 In view of the above, the file is remitted to the file of Ld. AO for adjudication and passing the order afresh after giving effective opportunity of hearing to the appellant company.

9. The appeal of Department is allowed for statistical purposes.

Order pronounced in the open Court on 31/12/2024.

**Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

**Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 31/12/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai