

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No. 2002/Mum/2025
(Assessment Year: 2016-17)

Sainath Construction A-55, 1 st Floor, Chheda House, Dr. Ambedkar Road, Danpada, Khar (W) – 400 052.	Vs.	The Income Tax Officer, Ward 22(3)(1), Mumbai.
PAN/GIR No. ABRFS5635H		
(Appellant)	:	(Respondent)

Assessee by	:	Shri Shreyas Shah, Adv.
Respondent by	:	Shri Leyaqt Ali Aafaqui, SR AR

Date of Hearing	:	19.06.2025
Date of Pronouncement	:	23.06.2025

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) Delhi ('ld. CIT(A)' for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2016-17.

2. The assessee has raised the following grounds of appeal:

“1.0 On the facts and in the circumstances of the case and in law, the order of the learned Commissioner of Income-tax partly confirming the assessment order passed u/s 143(3) is both bad-in-law and bad-in-facts

*2.0 ADDITION ON ACCOUNT OF MISMATCH OF RECEIPT WITH 26AS
RS.1,71,11,232/-*



2.1 The learned Commissioner of Income-tax erred in facts as well as in law in confirming addition made by the learned assessing officer of Rs. 1,71,11,232/- being difference between the amount of receipts subjected to TDS as per Form 26AS and the amount of sales as reflected in the accounts as income of the appellant.

2.2 In doing so, he did not consider the fact that the assessee was following percentage completion method and the advances received from the debtors were not income of that year but was to be considered as income only based on percentage completion of work

2.3 In doing so, he also did not consider that the interest on FDR amounting to Rs. 1,43,877/- had already been offered to tax by the assessee while filing its ITR and addition of the same would amount to double taxation.

2.4 Without prejudice to the above ground, the learned assessing officer ought to have appreciated the fact that the amount of Rs. 1,71,11,232/- is the receipt from construction contracts and only the income embedded in such receipts could be subjected to tax.

3.0 The assessee craves its rights to add, amend or alter any of the above grounds.

4.0 The assessee prays for justice.”

3. Brief facts of the case are that the assessee firm is engaged in the business of construction contracts and had filed its return of income dated 18.10.2016, declaring total income at Rs. 45,610/-. The assessee's case was selected for scrutiny under CASS and notices u/s. 143(2) and 142(1) of the Act were duly issued and served upon the assessee. The learned Assessing Officer ('ld. A.O.' for short) observed that the assessee had large sundry creditors amounting to Rs. 1,94,21,184/- during the year under consideration, where the assessee was asked to furnish details of the same. As the assessee failed to explain the identity, genuineness and creditworthiness of the creditors, the ld. AO made an addition of Rs. 1,38,68,804/- u/s. 68 of the Act. Further, the ld. AO observed that the assessee had gross contracts receipts of Rs. 2,29,28,037/- as per 26AS statement but had declared sale of services only to the extent of Rs.



58,16,005/-. As the assessee could not reconcile the difference, the ld. AO made an addition of Rs. 1,71,11,232/- and determined the total income at Rs. 3,10,25,646/-, vide order dated 29.12.2018 passed u/s. 143(3) of the Act.

4. Aggrieved the assessee was in appeal before the first appellate authority, who vide order dated 25.02.2025 had partly allowed the assessee's appeal by deleting the addition u/s. 68 of the Act and upholding the addition made on the difference on gross receipts as per 26AS and the return of income filed by the assessee.
5. The assessee is in appeal before us, challenging the addition made on the difference in the gross receipts.
6. The learned Authorised Representative ('ld. AR' for short) for the assessee contended that the assessee has been following Percentage Completion Method and had filed the relevant details before the ld. CIT(A) which was not considered by him. Further, the ld. AR stated that the ld. CIT(A) did not seek for remand report from the ld. AO on the additional evidences filed by the assessee. The ld. AR brought our attention to the paper book, where the details of the chart showing the reconciliation of accounts of Matrubhoomi Granites Pvt. Ltd. in the books of accounts of the assessee, the entries in 26AS has been compared with the entries made by the Matrubhoomi Granites Pvt. Ltd. The ld. AR prayed that the impugned addition be deleted.
7. The learned Departmental Representative ('ld. DR' for short) for the revenue on the other hand vehemently controverted the same and stated that the assessee has failed to furnish complete details neither before the ld. AO nor before the ld. CIT(A). The ld. DR submitted that as the assessee has been following the Percentage Completion



Method, the assessee ought to have given details as to when the same was offered to tax in the subsequent years. In the failure of the complete details, the ld. DR prayed that the order of the lower authorities be upheld.

8. We have heard the rival submissions and perused the materials available on record. The only issue that requires adjudication is the reconciliation of the difference as per the assessee's return of income and the entries in 26AS. It is observed that the assessee is following Accounting Standard 'AS-7: Construction Accounting' issued by Institute of Chartered Accountants of India which provides for accounting of construction contracts by two methods for the purpose of accounting which is Percentage Completion Method and Project Completion Method, where the assessee is said to be following the Percentage Completion Method, as per which the revenue is recognized to the extent of the completion of the work. The total sale turnover declared by the assessee for the year under consideration was Rs. 58,16,005/- as per the P & L Account, where the expenses were also booked in accordance with the completed work and the same were duly audited. The assessee further contended that as there was delay in payment to suppliers, the debtors viz. Rehab Housing Private Limited. and Matrubhoomi Granites Pvt. Ltd. were making payment to suppliers in order to facilitate the work on behalf of the assessee and were deducting tax at source as well as the works contract tax in the name of the assessee and the same were duly debited in the assessee's accounts. The ld. AR submitted that there was no difference in the booking of income or expenditure by the assessee and the debtors viz. Rehab Housing Private Limited and Matrubhuoomi Granites Pvt. Ltd. and the TDS as per 26AS is against the payment made by the debtors



to the creditors of the assessee and the same is accounted for by the assessee which also reflects in the bank account of these debtors along with the name of the creditors of the assessee to whom payment is made. When quizzed by the bench, the ld. AR fairly agreed that the complete details of the payments made and the income offered subsequently as per the Percentage Completion Method was not furnished by the assessee before the ld. CIT(A) and neither before us. The ld. DR had also rightly pointed out these during the proceedings before us. Considering the same, we are of the view that this issue has to be remanded back to the file of ld. CIT(A) with the direction that the assessee should furnish all the relevant details for reconciliation of the difference in the receipt declared by the assessee and reflected in form 26AS along with details of the income offered by the assessee in the subsequent years in accordance with the Percentage Completion Method. The ld. CIT(A) is also directed to consider the same and decide the issue based on the documentary evidences and in accordance with law. Therefore, the grounds of appeal raised by the assessee are allowed for statistical purpose.

9. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 23.06.2025

Sd/-
(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai; Dated: 23.06.2025
Karishma J. Pawar (Stenographer)

Copy of the Order forwarded to:



ITA No. 2002/Mum/2025 (A.Y. 2016-17)
Sainath Constriction

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai