

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-I" NEW DELHI
BEFORE SHRI S.V. MEHROTRA : ACCOUNTANT MEMBER

Income-tax Officer,
Ward 5(3), New Delhi.

ITA no. 1287/Del/2014
Asstt. Yrs: 2005-06
Vs. M/s Knowledge Infrastructure
Systems Pvt. Ltd.,
(1) A-2/22, Safdarjung Enclave, N. Delhi.
(2) G-02, Salcon Aurum Complex,
4, Commercial Centre, Jasola,
New Delhi.

PAN: AACCK 4380 L

(Appellant)

(Respondent)

Appellant by : Shri V.K. Khanna Addl. CIT (DR)
respondent by : Shri R.S. Singhvi CA

Date of hearing : 31/08/2015.
Date of order : 09/10/2015.

ORDER

PER S.V. MEHROTRA, A.M.:

This appeal, preferred by the revenue, is directed against the order dated 11-12-2013, passed by the Id. CIT(A)-VIII4, New Delhi in appeal no. 0069/2012-13, relating to A.Y. 2005-06. Sole effective ground is as under:

“Whether in the facts and circumstances of the case & in law, the Ld. CIT(A) has erred in deleting the addition made by the AO of Rs. 13,75,400/- which has been not offered for taxation during the year under consideration, as per provision of section 198/199 of the Income Tax Act, 1961.”

2. Brief facts of the case are that assessee company in the relevant assessment year was engaged in the business of providing consultancy services in the field of education and infrastructure area such as energy, power and construction and providing consultancy during the year under consideration. It had filed its return declaring income of Rs. 16,505/-. Original return had been completed u/s 143(3) on 23-11-2007 at the returned income. On verification of assessment record the AO noticed that the assessee company had received a sum of Rs. 34,75,400/- (21,00,000 + 13,75,400), towards total fee for professional and technical services but only Rs. 21 lacs had been shown in the P&L A/c and the balance amount of Rs. 13,75,400/- had not been offered for taxation. Accordingly, notice u/s 148 was issued, in response to which assessee replied that the original return filed on 27-10-2005 be treated as return in response to notice u/s 148. The assessee was required to show as to why the receipt of Rs. 13,75,400/-, not shown in the return for the year under consideration, on which credit of TDS was claimed and was allowed, be not added back to assessee's income.

3. After considering the assessee's reply the AO referred to the provision of section 198 and pointed out that income is to be assessed in the year in which the assessee claims the credit for tax deducted at source of such income. He, accordingly made addition of Rs. 13,75,400/-.

4. Ld. CIT(A) allowed the assessee's appeal on merits and, accordingly, did not decide the issue relating to reopening of the assessment.

5. Being aggrieved the department is in appeal before us.

6. The assessee had submitted before Id. CIT(A) that the impugned amounts were in the nature of advance and same was either subjected to tax in the subsequent year or refunded. The submissions were as under:

- i. Advance from M/s. Nat West Constructions Pvt. Ltd. Rs. 6 lacs
- ii. Advance from Mis. Mukand Ltd. Rs. 5 lacs
- iii. Service Tax Rs. 2,75,000/-

i. Advance from M/s. Nat West Constructions Pvt. Ltd. amounting to Rs. 6 lacs duly accounted for and taxed in the A. Y 2006-07. In support of above position, copy of balance sheet and assessment order is enclosed.

ii. The amount of 5 lacs being advance from M/s. Mukand Ltd. which was refunded back as the assessee has not provided professional and technical services and as such the same is not liable to tax in the assessment year 2005-06 or 2006-07, copy of account of M/s. Mukand Ltd. and bank statement is enclosed in support and for reference.

iii. Service tax to the extent of Rs. 2, 75,000/- was duly paid to the Government and there is no case of any income or tax liability in respect of the same.

7. Having heard both the parties I do not find any reason to interfere with the order of Id. CIT(A), because none of the facts narrated in the findings of Id. CIT(A) have been controverted by the department. It is not disputed that the impugned amounts were in the nature of advance on which service tax was paid to the government. As regards advance from M/s Nat West Constructions Pvt. Ltd., the amount had duly been accounted for and taxed in assessment year 2006-07, for which assessee had filed balance-sheet and assessment order. Id. CIT(A) has observed that out of advance of Rs. 6 lacs, Rs. 1,32,005/- was considered as income in AY 2006-07 and it was shown in the tax audit report of the assessee in the next year.

8. As regards advance from M/s Mukand Ltd., of Rs. 5 lacs, the same was refunded back as the assessee had not provided professional and

technical services. The assessee has duly accounted for this amount in its books of account and assessee had furnished the bank statement also in support of its contention regarding refund of advance.

9. In view of above, order of the Id. CIT(A) is upheld and the departmental appeal is dismissed.

Order pronounced in open court on 09/10/2015.

Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER

Dated: 09/10/2015.

MP

Copy of order to:

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.

-+		Date	<u>Initial</u>	
1.	Draft dictated on	-09.2015		PS
2.	Draft placed before author	.09.2015		PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			