

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

BEFORE SH. B. R. BASKARAN, ACCOUNTANT MEMBER  
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

**I.T.A. No. 603/Asr/2017**  
Assessment Year: 2014-15

L.T. Builders, 59, City Centre, vs. Deputy Commissioner of Income  
Opp. Pingalwara, Amritsar Tax, Circle-III, Amritsar

[PAN: AADFL 3233B]

**(Appellant)**

**(Respondent)**

Appellant by : Sh. Vinamar Gupta (C.A.)

Respondent by: Sh. Charan Dass (D.R.)

Date of Hearing: 21.08.2019

Date of Pronouncement: 21.08.2019

**ORDER**

Per B. R. Baskaran, Accountant Member:

The assessee has filed this appeal challenging the order dated 30-06-2017 passed by Ld CIT(A)-1, Amritsar and it relates to the assessment year 2014-15.

2. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition of Rs.1,01,04,406/- addition made by the Assessing Officer on account of difference in the gross receipts between the books of accounts and Form-26 AS.

3. The appeal is barred by limitation by one day. The assessee has filed petition requesting the bench to condone the delay. Having regard to the submissions made in the petition, we are of the view that there is reasonable cause for filing the appeal belatedly. Accordingly we condone the delay and admit the appeal for hearing.

4. We heard the parties and perused the record.
5. The assessee is a civil contractor engaged in the business of construction of roads by obtaining contracts from Government Departments. During the under consideration, the assessee declared gross receipts of 1974.32 lacs. However the gross receipts shown in Form-26AS (Consolidated Statement of TDS deducted on behalf of the assessee and tax paid) were Rs.2075.36 lacs. Thus there was a difference of 101.04 lacs between the books of accounts and Form-26 AS.
6. Before the AO, the assessee submitted that the above said difference represented “mobilization advance” received by the assessee from the Government Departments. It was submitted that the Government departments have deducted TDS on mobilization advance also. It was further submitted that the assessee is following mercantile system of accounting and hence mobilization advance was its liability, since the same shall be adjusted against the future bills. Accordingly it was submitted that the proportionate mobilization advance is taken to gross receipts as and when the same is adjusted against the bills raised by the assessee. The AO, however, noticed that the assessee has not shown any working progress or passed entry for works done up to March, 2014 against pending advance. He further noticed that the assessee has been paying money to its sub-contractor only upon receipt of cheque from the Government Departments. Accordingly the AO took the view that the assessee is following cash system of accounting and accordingly took the view that the above said difference of 101.04 lacs should be added to the total income. Accordingly the AO added the same to the total income of the assessee. The Ld CIT(A) also confirmed the addition and hence the assessee has filed this appeal.

7. At the time of hearing, the Ld AR submitted that the mobilization advance is a liability in the hands of the assessee at the time of receipt, since it is following mercantile system of accounting. He further submitted that the assessee has offered proportionate amount of mobilization advance as its income as and when the same is adjusted against the bills raised by the assessee. Accordingly, he submitted that the assessee has offered the above said amount in various years and hence the addition made by the Tax Authorities during the year under consideration has resulted in double taxation of the same amount.. The Ld AR submitted that the Tax Authorities are not correct in holding that the assessee is following the cash system of accounting and the reasoning given by the AO would not repel against the actual fact.

8. The Ld DR on the contrary, supported the order passed by Ld CIT(A).

9. In support of its contentions, the assessee has furnished a chart before us showing the details mobilization of advance received and how it was adjusted against bills raised by the assessee in subsequent dates. Copies of bills sanctioned by the Government departments are also furnished. The Ld AR submitted that the amount adjusted in each of the bill has been offered as income by the assessee in the year in which the mobilization advance was so adjusted, i.e., the gross amount of bill has been shown as its income and not the net amount after adjustment of mobilization advance. From the perusal of the chart furnished by the assessee, we noticed that the mobilization advance has been claimed to have been adjusted from the financial year 2013-14 to 2016-17.

10. We find merit in the submission of the assessee. If the assessee has offered the gross amount of bills as its gross receipts and not the net amount after adjustment of mobilization advance, then the impugned addition would result in

double taxation of same amount. In our view, the mobilization advances cannot be taken as revenue receipts, when it is liable to be adjusted against subsequent payments. In that case, the same would represent advance payments made by the Government departments. There is no dispute with regard to the fact that the difference in the gross receipts declared by the assessee and shown in Form-26AS has arisen due to the fact that the Government Departments have deducted TDS from the mobilization advance also. Merely because TDS has been deducted on the said advance, in our view, the character of mobilization advances cannot change from “liability payable” to “Revenue receipts”, in view of the fact that same is liable to be adjusted against future bills. If the mobilization advance is not liable to be adjusted in future bills, then the same shall acquire the character of revenue receipts, which is not the case here. Accordingly, we are not able to agree with the view taken by the Tax Authorities.

11. At the same time, the chart furnished by the assessee showing the details of adjustment made in subsequent bills, in our considered view, would require verification at the end of the AO. Accordingly, we set aside the order passed by the Ld CIT(A) and restore this issue to the file of the Assessing Officer for the limited purpose of examining the chart furnished by the assessee in order to satisfy himself that the assessee has offered the mobilization advance in the financial years 2013-14 to 2016-17 as its income as claimed in the chart. If the Assessing Officer is satisfied with the working furnished by the assessee, then the addition made by him during the year under consideration is liable to be deleted. We order accordingly.

12. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

*Order pronounced in the open court on August 21, 2019*

Sd/-  
(N. K. Choudhry)  
Judicial Member

Sd/-  
(B. R. Baskaran)  
Accountant Member

Date: 21.08.2019

*/GP/Sr. Ps.*

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

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By Order