IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'B' NEW DELHI

BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
SHRI K.N.CHARY, JUDCIAL MEMBER
[Through Video Conferencing]

ITA No.6984/Del./2017
Assessment Year: 2013-14

M/s. Concrete Technologies Pvt. Ltd., 926, Tower-A, DLF Tower, Jasola, New Delhi	**Vs.**	ITO, Ward-6(3), New Delhi
PAN :AAACC6538J		
(Appellant)		**(Respondent)**

Appellant by	Sh. Vinod Kumar, CA
Respondent by	Sh. Mahesh Thakur, Sr. DR

Date of hearing	05.04.2021
Date of pronouncement	31.05.2021

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 31/07/2017 passed by the Learned CIT(Appeals)-2, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2013-14 raising following grounds:

1. *The Ld. CIT(A) allowed an addition of income amounting to Rs.60,16,218/- u/s 199 of the Income Tax Act, 1961 by Ld. AO which is completely illegal, arbitrary, fallacious, conjectural and bad in law and face as well.*

2. *The Ld. CIT(A) did not give a sufficient opportunity to Appellant before passing the Assessment Order.*
3. *The Assessment is illegal, arbitrary, fallacious, conjectural and bad in law and face as well.*
4. *The appellant reserves the right to add or delete the ground of appeal.*

2. Briefly stated facts of the case are that the assessee company was engaged in the business of construction, renovation reconstruction etc. of buildings, road, farmhouse etc. For the year under consideration, the assessee filed return of income on 25/09/2013, declaring income of ₹ 64,960/-. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. During the scrutiny proceedings, the Assessing Officer observed that the assessee has received total amount of ₹ 1,08,23,061/- from 'Bhagwant Education Foundation' and 'Bhagwant Education Development Society' on which tax @ 2 percentile was deducted at source by those entities. However, the assessee claimed that during the year under consideration work of ₹ 48,06,843/- was only executed and balance amount were shown as advance received. But the assessee claimed entire TDS in the year under consideration. The Assessing Officer referred to various decisions wherein it is held that the assessee cannot claim credit for the TDS on the income which is not offered for taxation. However, finally, the Assessing Officer in assessment order dated 16.03.2016 added the amount of ₹ 60,16,218/- (i.e. which was shown by the assessee as advance) to the income offered in the return of income. The Ld. CIT(A) also upheld the finding of the Assessing Officer. Aggrieved,

the assessee is before the Income Tax Appellate Tribunal (in short 'the Tribunal') raising the grounds as reproduced above.

3. Both the parties appeared before us through Video Conferencing Facility. The Learned Counsel of the assessee filed a paper book containing pages 1 to 145 and submitted that assessee has already offered the advance amount of ₹ 60,16,218/- in subsequent years and, therefore, corresponding credit of the TDS might be drawn from the year under consideration and same might be allowed in subsequent year(s), corresponding to the income offered. In Support of his contention, he relied on the decision of Tribunal, Mumbai Bench the case of Varsha G Salunke Vs DCIT, reported in 98 ITD 147.

4. The Learned DR, on the other hand, relied on the order of the lower authorities and submitted that Learned CIT(A) has correctly upheld the addition.

5. We have heard rival submission of the parties on the issue in dispute. The parties who have made payment to the assessee has deducted TDS at the rate of 2 percentile on entire payment of ₹ 1,08,23,026/-. The assessee claimed entire tax which was deducted by those parties (i.e deductor) but income of ₹ 46,06,843/- has only been offered for tax by the assessee and balance amount of ₹ 60,16,218/- has been claimed as advance against work. The Assessing Officer has treated this advance as income of the assessee in the year under consideration. The issue before us is whether the credit of the TDS has to be allowed corresponding to the income offered or the income has to be computed according to the amount of TDS which has been deducted and claimed by the assessee. The Assessing Officer

himself has relied on the decision of the Tribunal in the case of **Smt. Varsha G Salunke** (supra) wherein it is held that unless the assessee offered the income for taxation, the TDS cannot be given credit. In the said case, there was a difference of opinion between two Members of the Bench, and therefore matter was referred to 3rd Member, who concurred with the reasoning given by the Accountant Member. The relevant finding of the third Member is reproduced as under:

> *"6. Sections 198 and 199 of the Act nowhere provide for an exception either to the determination of the income under the aforesaid provisions of sections 28,29 or as to the method of accounting employed under section 145 of the Act, which alone could be the basis for computation of income under the provisions of sections 28 to 43A of the Act. Section 198 has a limited intention. It only declares the amounts deducted at source under sections 192 to 194, section 194A, section 194B, section 194BB, section 194C, section 194D, section 194E, section 194EE, section 194F, section 194G, section 194H, section 194I, section 194J, section 194K, section 195, section 196A, section 196B, section 196C and section 196D to be treated as an income received. The purpose of section 198 is not to carve out an exception to section 145 of the Act. Section 199 of the Act has two objectives - one to declare the tax deducted at source as payment of tax on behalf of the person on whose behalf the deduction was made and to give credit for the amount so deducted on the production of the certificate in the assessment made for the assessment year for which such income is assessable. The second objective mentioned in section 199 is only to answer the question as to the year in which the credit for tax deducted at source shall be given. It links up the credit with assessment year in which such income is assessable. In other words, the assessing officer is bound to give credit in the year in which the income is offered to tax. This section 199 does not empower the assessing officer to determine the year of assessability of the income itself but it only mandates the year in which the credit is to be given on the basis of the certificate furnished. In other words, when the assessee produces the certificates of TDS, the assessing officer is required to verify whether the assessee has offered the income pertained to the certificate before giving credit. If he finds that the income of the certificate is not shown, the assessing officer has only not to give the credit for TDS in that assessment year and has to defer the credit being given to the year in which the income is to be assessee. At the cost of repetition, it may be mentioned that sections 198 and 199 do*

not in any way change the year of assessability of income, which depends upon the method of accounting regularly employed by the assessee. They only deal with the year in which the credit has to be given by the assessing officer. It cannot be disputed that according to the method of accounting employed by the assessee the income in respect of the three TDS Certificates, which are mentioned in paragraph 3 above, does not pertain to the assessment year in question, but it pertains to the next assessment year and, in fact, in that year the assessee has offered the same to tax. Therefore, the credit in respect of these three TDS Certificates shall not be given in the assessment year under consideration, but the credit for the same shall be given in the next assessment year in which the income is shown to have been assessed.

7. In the light of the above discussions, I agree with the reasoning given by the learned Accountant Member, who has correctly directed the exclusion of the income represented by these three TDS Certificates from being assessed in the assessment year 1997-98, i.e., the year under consideration, But the assessee, in the light of the scheme of the provisions of sections 198 and 199 of the Act, shall not be allowed to claim the credit in respect of these TDS Certificates for which the income has not been returned by her as a result of the method of accounting employed. The credit shall be carried forward and the assessee will get the credit for the present TDS Certificate in the year in which she offers the income to tax on the basis of the method of accounting regularly employed.

7. In the light of the above discussions, I agree with the reasoning given by the learned Accountant Member, who has correctly directed the exclusion of the income represented by these three TDS Certificates from being assessed in the assessment year 1997-98, i.e., the year under consideration, But the assessee, in the light of the scheme of the provisions of sections 198 and 199 of the Act, shall not be allowed to claim the credit in respect of these TDS Certificates for which the income has not been returned by her as a result of the method of accounting employed. The credit shall be carried forward and the assessee will get the credit for the present TDS Certificate in the year in which she offers the income to tax on the basis of the method of accounting regularly employed.

8. Before parting with the matter, I think it is necessary for me to deal with certain observations regarding the claiming of the expenditure as discussed by the learned Judicial Member. The claim of deduction for an expenditure depends upon again the method of accounting regularly employed by the assessee. There is no dispute that the assessee has incurred these expenses even in respect of the services rendered to its clientele in the month of March, 1997 (to which the bills are not raised). These expenses have been

undoubtedly incurred during the previous year in question. Only the matching receipts have not accrued to the assessee in the accounting year in question due to the method of accounting employed by her. But over the years, the effect on the profit & loss account gets neutralized. Sections 198 and 199, it may again be stressed, do not in any way determine the year of assessability of profits and gains of business. They only deal with the year in which the TDS Certificates have to be given credit to. In my humble opinion, the decision of the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. (supra) relied upon by the learned Judicial Member, does not in any way alter the year of assessability of income, which is governed under sections 28, 29 and 145 as has been interpreted by the Apex Court and as discussed by me above.

8. Before parting with the matter, I think it is necessary for me to deal with certain observations regarding the claiming of the expenditure as discussed by the learned Judicial Member. The claim of deduction for an expenditure depends upon again the method of accounting regularly employed by the assessee. There is no dispute that the assessee has incurred these expenses even in respect of the services rendered to its clientele in the month of March, 1997 (to which the bills are not raised). These expenses have been undoubtedly incurred during the previous year in question. Only the matching receipts have not accrued to the assessee in the accounting year in question due to the method of accounting employed by her. But over the years, the effect on the profit & loss account gets neutralized. Sections 198 and 199, it may again be stressed, do not in any way determine the year of assessability of profits and gains of business. They only deal with the year in which the TDS Certificates have to be given credit to. In my humble opinion, the decision of the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. (supra) relied upon by the learned Judicial Member, does not in any way alter the year of assessability of income, which is governed under section 28, 29 and 145 as has been interpreted by the Apex Court and as discussed by me above."

5.1 The Assessing Officer has though relied on above decision in his order, but in final para he has done reverse to the ratio of decision. Following the decision, the Assessing Officer was required to exclude the credit of the TDS, but instead, he added the advance amount as income of the assessee in the year under consideration. The action of the Assessing Officer without any reasoning is not justified. Simultaneously, the claim of the entire

amount of the TDS by the assessee in the year under consideration is also not justified. The Ld. CIT(A) noted this fact, however, she upheld the addition proposed by the Assessing Officer instead of restricting the credit of the TDS. The duly of the Assessing Officer is to decide, whether particular receipt is in the nature of taxable income and raise tax liability corresponding to that. He cannot assess particular receipt as income merely on the ground that tax on such receipt has been deducted by the deductor. In the case, the AO was required to examine whether the work was performed by the assessee for entire amount or for the amount of Rs.48,06,843/- only. Without examining that issue, he is not justified in holding the advance amount as taxable receipt of the year. In the case of Varsha G. Salunke (supra), also the payment was received in one year, however, bills for part of payment received in subsequent years. The Tribunal directed to give credit of the TDS the year in which income was offered for taxation.

5.2 In the facts and circumstances of the case, we feel it appropriate to restore the issue in dispute to the file of the Assessing Officer, with the direction to the assessee to demonstrate taxability/non-taxability of amount of Rs.60,16,128/- in the year under consideration with the help of documentary evidences including, bills/invoice, proof of work performed etc. Then, the Assessing Officer shall decide the issue in accordance with law. The Ground No. 1 of the appeal is accordingly allowed for statistical purposes.

5.3 The Remaining grounds being general in nature, we are not required to adjudicate upon and same are dismissed as infructuous.

6. In the result, the appeal of the assessee is allowed partly.

Order pronounced in the open court on 31st May, 2021

Sd/-	***Sd/-***
(K.N. CHARY)	**(O.P. KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 31st May, 2021.
RK/-(DTDS)
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi