

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'D' NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 848/Del/2015  
Assessment Year: 2007-08**

Income-tax Officer,  
Ward 15(3), New Delhi.

vs.

Logistic Buildtech P. Ltd.,  
17B, MGF House, Asaf Ali  
Road, New Delhi.

**PAN : AABCL2921M**  
(Appellant)

(Respondent)

Appellant by : Sh. Vipul Kashyap, Sr. DR  
Respondent by: Sh. Satyen Sethi, Advocate &  
Sh. A.T. Panda, Advocate

Date of hearing: 13/09/2021

Date of order : 13/09/2021

**ORDER**

**PER K. NARASIMHA CHARY, J.M.**

Aggrieved by the order dated 18.12.2014 passed by the Commissioner of Income Tax (Appeals)-V, New Delhi ("Ld. CIT(A)") in the cases of Logistic Buildtech P. Ltd. ("the assessee") for the assessment year 2007-08, Revenue preferred this appeal.

2. Brief facts of the case are that the assessee is a company engaged in the business of construction of commercial complex and acts as a builders, colonizers etc. For the assessment year 2007-08, they have filed return of income on 27.03.2009 declaring loss of Rs.10,327/-.

Subsequently, the assessee claimed refund of Rs.1,93,07,796/- on account of TDS deducted by various parties. On verification of record, it was found that the assessee did not declare any corresponding receipts against this amount of TDS credit and, therefore, the Id. Assessing Officer calculated such receipts to be at Rs.86,04,18,771/- by reverse working of TDS by 2.44%. Under Section 44AD, learned Assessing Officer worked out the net profit at Rs.6,88,33,501/- at 8% of the total receipts.

3. Assessee preferred an appeal before the Id. CIT(A). It was contended before the Id. CIT(A) that there was a proposal to enter into the contracts with various companies for execution of contract works, but subsequently, such proposal was dropped, but under mistaken impression, TDS was deducted by various parties and credited to the account of the assessee, which the assessee sought refund of to repay the parties. Learned CIT(A) believed the contention of the assessee on examination of record and deleted the addition. Hence, this appeal by the Revenue.

4. It is contended on behalf of the Revenue that learned Assessing Officer categorically found, as a matter of fact, that the premises of the assessee as well as the 36 deductors of TDS are located in the same address, i.e., MGF House, Asaf Ali Road, New Delhi and therefore, the parties would be knowing the state of affairs without leaving any scope for mistaken deduction of TDS to the credit of the assessee. It is further submitted by the Id. DR that no piece of paper, let alone the original contract or cancellation thereof, is filed to justify the claim of the assessee. Further, when no advance payment was made nor any work was executed by the assessee, the occasion to deduct the TDS does not

arise. According to the Id. DR, certain under hand payments have changed hands between the parties and therefore, the Id. Assessing Officer is justified in making the addition. Lastly, Id. DR submitted that expenses booked by the payers in the shape of TDS must have gone back to them by escaping the tax. He, therefore, prayed to set aside the order of the Id. CIT(A) and to restore the assessment order.

5. It is contended by the Id. AR that even under mercantile system of accounting, income accrues when there is a right to receive income and inasmuch as there is no income accrued till the right is vested in favour of the person, no income could be brought to tax in the hands of the assessee. He further submitted that the TDS of Rs.1,93,07,796/- was refunded with interest by the Income-tax Department and the same was refunded to the various parties who effected TDS and therefore, no income accrued to the assessee. He further contended that since the department had refunded the amount with interest by accepting the stand of the assessee that no income has accrued to the assessee, now the department cannot turn around to contend anything contrary.

6. We have gone through the record in the light of submissions made on either side. It is an admitted fact that the assessee claimed refund of Rs.1,93,07,796/- and the same was refunded by the department with interest. In so far as the real income is concerned, Id. Assessing Officer only suspects that certain under hand dealings must have taken place between the parties. In view of the undisputed fact that all the 36 entities which effected the TDS are also located in the address of the assessee, the chances of error are less and that too a similar mistake committed by as many as 36 people, naturally lends support to the

suspicion. Learned Assessing Officer, however, does not seem to have conducted any enquiry as to whether really either the assessee or the deductors were benefited by this transaction. Id. Assessing Officer could have verified assessment records of the deductors to know whether such entities stood to gain by showing this expense in their books without really availing any services from the assessee. In the absence of any such exercise, mere suspicion does not take the Assessing Officer anywhere to make the addition.

7. Impugned order clearly reveals that during the financial years 2006-07 and 2007-08, the books of account of the assessee clearly show that no amount had flown from 36 entities to the assessee nor the assessee entered into any contract nor executed any contract during such period. Id. CIT(A) further perused the confirmations filed by the parties during the course of assessment proceedings and returned a finding that contract between the assessee and the parties could not be executed due to unforeseen circumstances and the parties have also filed the details of TDS deposited by them in the PAN of the assessee.

8. Learned CIT(A) further perused the Forms 16A issued by various parties and noted that the assessee did not receive any amount thereunder and such an observation of the Id. CIT(A) is corroborated by the bank account statement of the assessee.

9. In all these circumstances, we are of the considered opinion that except suspicion of the Id. Assessing Officer, there is no material, whatsoever, at the command of the Id. Assessing Officer to fasten any tax liability on the assessee. Learned CIT(A) on appraisal of all the material available on record reached a right conclusion which does not need any

interference. We, accordingly, decline to interfere with the impugned order.

10. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on this the 13<sup>th</sup> day of September, 2021.

Sd/-

**( N.K. BILLAIYA )**  
**ACCOUNTANT MEMBER**

Dated: 13/09/2021

‘aks’

Sd/-

**(K. NARSIMHA CHARY)**  
**JUDICIAL MEMBER**