

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

BEFORE SHRI B.R. MITTAL, JUDICIAL MEMBER  
AND  
SHRI B.R. JAIN, ACCOUNTANT MEMBER

ITA No.1861/Del/2011  
Assessment Year : 2007-08

DCIT,  
Circle 11 (1),  
Room No.312,  
CR Building,  
New Delhi.

Vs. Five Star Construction P. Ltd.,  
Flat No.8, First Floor,  
New Rajinder Nagar,  
New Delhi.

PAN : AAACF2332H

(Appellant)

(Respondent)

Assessee by : Ms Lalitha Krishnamoorthy, CA  
Revenue by : Shri Deepak Sehgal, Sr.DR

ORDER

PER B.R. JAIN, ACCOUNTANT MEMBER

This appeal by the revenue for Assessment Year 2007-08 against the order dated 15.02.2011 passed by Ld. CIT (A)-XIII, New Delhi, raises the following grounds:-

- “1. On the facts and circumstances of the case and in law, the CIT (A) has erred in deleting the addition of Rs.37,29,738/- on account of mobilization advance.
  2. On the facts and circumstances of the case and in law, the CIT (A) has erred in deleting the addition of Rs.14,29,256/- on account of terms of Section 41 (1) of the IT Act.”
2. Briefly, the facts are that the assessee company is in the business of construction activities. It has declared income of ₹ 32,41,870/- from the said business. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has received mobilization

advances to the extent of ₹ 37,29,738/- from M/s Matrix Buildwell Private Limited. Even TDS has been deducted on these receipts. As the assessee did not disclose these receipts as his income for the year under consideration, he required the assessee to justify and explain the said receipt. The assessee furnished written submissions which were duly considered. The Assessing Officer, thereafter, being not satisfied with the explanation of the assessee, proceeded to treat the receipt of ₹ 37,29,738/- as assessee's income from business and brought the same to taxation.

3. Before the Ld. CIT (A), the assessee relied on the same submissions as were produced before the Assessing Officer wherein it was stated that the assessee had raised the bill on M/s Matrix Buildwell Private Limited for the work done by the assessee company. The impugned amount is the closing balance appearing in mobilization advance account which the assessee contractor received from the developer M/s Matrix Buildwell Private Limited for mobilizing resources and recovered on prorata basis from payment due to the contractor from such running bills of the contractor and the same is subject to adjustment in the final bill. It was also submitted that the mobilization advance cannot at any rate be the income of the appellant company as the amount of running bills has already been taken into account as assessee's income for the year under consideration under the head "Work certified." It has also explained the nature of mobilization advance account as under:-

"Nature of Mobilisation Advance:-

That the Mobilisation Advance is an advance amount which is given by Contractee to his Contractor according to letter of intent made between contractor and contractee towards construction of project before commencing the construction at specific site/project.

Mobilisation payments are payments of funds to a supplier or contractor before in anticipation of and for the purpose of performance under the contract in connection with the Structure. Since these payments are not measured by contract performance, they differ from partial payments which are based on actual performance of tasks in furtherance of the contract.

Advance payment may, for example, be advisable to cover the initial mobilization expenses for large civil works or custom made goods. Any advance payments are to be liquidated from payments made to the supplier or contractor during performance of the contract, usually by deducting a percentage from each scheduled payment for performance.

The basic purpose of Mobilisation advance which is initially released against Bank Guarantee is to extend financial assistance within the terms of contract to the contractor to mobilize the man and material resource for timely and smooth take off of the project or procurement of equipment, material or other services contract."

4. The Ld. CIT (A) required the assessee to substantiate further from production of documents/evidence or letter of intent issued by M/s Matrix Buildwell Private Limited that the mobilization advance was in the nature of advance and was not related to its income/sale/work receipts. The assessee company was also asked to give the basis on which the mobilization advance was give by M/s Matrix Buildwell Private Limited to the appellant contractor. The assessee vide its letter dated 11.02.2011 enclosed the letter of intent dated 09.22.1006 and release of mobilization amount letter dated 15.12.2006 given by the aforesaid builder to the assessee company, running account of M/s Matrix Buildwell Private Limited., work certificate account for financial year 2006-07 and mobilization advance account till date as appearing in its books of account. The letter issued by M/s Matrix Buildwell Private Limited at the time of releasing the mobilization advance and first running account bill issued by the assessee company on the builders were also produced before the Ld. CIT (A) and it was explained that part of the mobilization amount is being adjusted in the running bills raised by the assessee which are subject to adjustment in the final

bill that would be issued by the assessee contractor to the builder M/s Matrix Buildwell Private Limited, after the completion of the project. Since the gross amount of running bills has taken part of the assessee's income, the mobilization advance amount so received as advance cannot be treated as income of the assessee.

5. The Ld. CIT (A), after considering the entire details as were laid before the Assessing Officer during the course of assessment proceedings and also those as were called for by virtue of the powers vested in him, found that the letter of intent itself stipulates that the mobilization advance shall be recovered from running bills on prorata basis subject to adjustment in pre final bill for complete recovery. The total contract value was for ₹ 5,24,56,297/- and 7 ½ % thereof as mobilization advance comes to ₹ 39,29,884/- as is also revealed from the copy of work order dated 15.12.2006 laid on record. From the copy of account of M/s Matrix Buildwell Private Limited mobilization advance account in the assessee's books and from the copy of first running bill for the work done for ₹ 26,68,618/- which after adding service tax in the invoice value comes to ₹ 27,76,409/-, the assessee is found to have adjusted ₹ 2,00,146/- on account of mobilization advance and, thus, the balance of ₹ 37,29,738/- has been shown in the balance sheet, as a current liability under the head 'Mobilisation advance' as on 31.3.2007. The Ld. CIT (A) also found that the first running bill for ₹ 26,68,618/- raised against the impugned work contract forms part of the total work certified account of the appellant and is taken as income of the year under consideration. Since the work certified forms part of the income of the year under consideration and the additional amount received as mobilization advance required to be adjusted on prorata basis against work certified, therefore, was held to be an advance and not a contract receipt. He, therefore, found no justification in bringing to tax the outstanding amount of

mobilization advance for ₹ 37,29,738/- as income of the assessee for taxation for the year under consideration.

6. The Id. DR contends that the Ld. CIT (A) has erred in setting aside the addition as the amount of mobilization advance outstanding at ₹ 37,29,738/- is not an amount of advance only but a contract receipt liable for taxation as income in the year under consideration on which tax at source was also been deducted. It is further stated that before the Tribunal, the assessee has laid copy of mobilization amount at paper book page 8 which does not tally with the copy of this account produced before the assessing authority and this fact is verifiable from the assessment record produced before the Tribunal. He, therefore, requested to ignore this document for coming to the conclusion in accordance with the law.

7. On the other hand,, the assessee's counsel relying on the order of the Ld. CIT (A) contents that there is no material difference in the copy of account as laid before the Appellate Tribunal and that laid before the assessing authority inasmuch as all the dates of the entries, narrations and amounts contained in both the accounts are materially the same. It is only because of the "Tally Programme" in the computer the last entry appearing on 31.03.2007 reflects complete details of first running bill which though was available in the voucher produced before the assessing authority, was not reflected due to computer programming in the copy laid before the assessing authority. No adverse view of such narrations which are factually a part of record needs to be taken. It has therefore, been contended that the mobilization advance being not part of contract receipts taken as certified work has justifiably been treated as advance received and, thus, not liable to tax as income of year under consideration.

8. We have heard parties with reference to the material on record. The assessee is found to have maintained two accounts in the name of builders in the books of account maintained by it in the regular course of its business. The first account is under the title 'Mobilisation advance account' in which the advances received and required to be adjusted against the running bills have been credited and stand adjusted from time to time. The second account is in the name of M/s Matrix Buildwell Private Limited as a running account in which the assessee has received payments in advance towards contracts and raised debits for the certified work by raising running bills. We have also perused the running bill laid at the assessee's paper book at page 38. This bill reveals that the assessee has adjusted an amount of ₹ 2,00,146/- out of mobilization advance amount and the balance of the running bill amount has been routed through the running account of the builder client. The amount received as mobilization advance is not towards a contract receipt, but is merely an advance for mobilizing resources by the assessee for carrying out the work of its customer/client. This amount is required to be adjusted proportionately against the running bills for the work certified. The amount of mobilization account that has been adjusted during the year under consideration has been included as assessee's income whereas the balance outstanding remains as a current liability for the year. The same is liable to be adjusted against the future running bills in the subsequent year. Essential this receipt was not in the nature of income. Merely because tax at source has been deducted by the builder, the receipt of mobilization money cannot be deemed as income of the assessee for the year under consideration. We, therefore, do not find any error in the decision reached by the Ld. CIT (A) in deleting the addition on this count. Finding no merit in this ground raised by the revenue, the same stands rejected.

10. The facts relating to the ground No.2 are that the Assessing Officer treated the outstanding liability of ₹ 14,29,256/- as ceased liability by application of provisions of Section 41 (1) of the Act. The Ld. CIT (A) deleted the addition as there was no material on record of the Assessing Officer to say that such liability has ceased to exist, particularly when the assessee was declaring the said amount as payable in its accounts. He has placed reliance on the judgements of Hon'ble Supreme Court in CIT vs. Kesaria Tea Co. Ltd. 254 ITR 434 (SC) and in CIT vs. Sugauli Sugar Works (P) Ltd., 236 ITR 518 (SC).

11. We have heard the parties with reference to the material on record. Admittedly, the assessee has not written back the credit balance in its accounts. This is a case of a private limited company wherein the liabilities are appearing in its books of account. The balance sheet being a public document, it cannot be said that the assessee has not acknowledged the debt towards its creditors. The liability under the circumstances cannot be taken to be a ceased liability. The Ld. CIT (A), therefore, cannot be said to have erred in deleting the addition. As provisions of Section 41 (1) of the Act are not applicable to a case like this and finding no merit in this ground, the same is also rejected.

12. In the result, the appeal filed by the revenue is dismissed.

The order pronounced in the open court on 02.11.2012.

Sd/-  
[B.R. MITTAL]  
JUDICIAL MEMBER

Sd/-  
[B.R. JAIN]  
ACCOUNTANT MEMBER

Dated, 02.11.2012.

dk

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

TRUE COPY

By Order,

Deputy Registrar,  
ITAT, Delhi Benches