

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'F' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.5764/Mum/2024  
(Assessment Year :2012-13)**

Sudhir Dayalal Mistry 34-C, Thakkar Industrial Estate Ground Floor, Gala No.8, Old Anjirwadi Chapsi Bhimji Cross Road Mazagaon, Mumbai-400010	Vs.	Asst. Commissioner of Income Tax Officer- Circle20(3), Mumbai
<b>PAN/GIR No.AADPM7256K</b>		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

Assessee by	Shri Ketan Vajani
Revenue by	Smt Kavita P Kaushik, Sr. AR
<b>Date of Hearing</b>	<b>01/05/2025</b>
<b>Date of Pronouncement</b>	<b>30/05/2025</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the assessee against order dated 17/09/2024 passed by NFAC, Delhi for the quantum of assessment passed u/s. 143(3) for the A.Y. 2012-13.

2. In the grounds of appeal assessee has challenged the addition of Rs.54,39,870/- on account of alleged difference received from

the contracts on the basis of entries in Form 26AS. The relevant grounds raised by the assessee reads as under:-

*“1. On the facts and in the circumstances of the case, the Commissioner of Income-tax (Appeals), hereinafter referred to as the CIT (A), has erred in confirming the addition of Rs. 54,39,870/- on account of alleged difference in the receipts from the contracts on the basis of the entries in Form 26AS*

*2. The CIT (A) has failed to appreciate the fact that the entries in Form 26AS were reflecting double deduction in respect of the same bills raised and accordingly the addition made is absolutely unjustified. The CIT (A) has failed to appreciate the detailed explanation and clarifications provided by the appellant in this connection.*

*3. The CIT (A) has erred in not appreciating the fact that the revenue has been already offered in the subsequent year and accordingly the impugned addition has resulted in double addition of the same income in the case of the appellant.*

*4. On the facts and in the circumstances of the case, the CIT (A) has erred in confirming the disallowance to the extent of Rs. 48,217/- on account of alleged personal element in Transportation Expenses and Depreciation on Motor car. The CIT (A) has erred in not appreciating the fact that there cannot be personal element in these expenses.”*

3. The brief facts are that assessee is an individual engaged in the business of interior and turnkey contractor in the name of M/s. Modfun. He has filed his return of income at Rs.45,20,414/- for the A.Y.2012-13 on 28/09/2012. The ld. AO collated 26AS /AIR information with the sales shown by the assessee in the profit and loss account. He noticed that there was a difference in the figures of sales as per 26AS and profit and loss account and assessee was required to reconcile the

figures. After reconciliation, ld. AO noted that there was difference in the receipts as declared in the profit and loss account and Form 26AS which worked out to Rs.54,39,879/-. The assessee had submitted his detailed reasons and explanation about the difference however, the ld. AO has rejected the same after holding as under:-

*“The explanation offered by the AR has been carefully perused and considered. It is an undisputed fact that the assessee is following mercantile system of accounting. The assessee has also booked the TDS by Wockhardt Hospitals Limited during the year under consideration. The reason given by the assessee for claiming the TDS that it was due to practical and administrative aspects is not convincing and acceptable. The assessee has emphasized on the fact that the sales on which TDS was deducted for A.Y. 2012-13 has been offered in A.Y.2013-14 and therefore, there is no revenue loss. The assessee's explanation is not acceptable as the assessee has Indulged in systematic postponement of tax liability. As such, the undisclosed sales of Rs. 54,39,879/-is added to the income of the assessee. Penalty proceedings under section 271(1) (c) of the I.T.Act, 1961 are initiated for concealing the income.”*

4. Thereafter, he has made adhoc disallowance of 10% of the expenses debited to the profit and loss account and made disallowance of 85,487/- in the following manner:-

*4.1. Disallowance of expenses debited to P & L A/c: On perusal of P&L A/c it is seen that the assessee has debited following expenses to P & L A/c wherein an element of personal expenditure cannot be totally ruled out.*

Sr. No.	Description	Amount (Rs)
1.	Transportation expenses	4,27,980

2	<i>Conveyance expenses</i>	2,06,350
3	<i>Motor car expenses</i>	1,66,364
4	<i>Motor car depreciation</i>	54,183
	<b>Total</b>	<b>8,54,877</b>

*To cover up an element of personal and non business expenditure involved in above expenses, and dilution of income thereby 10% of Rs.8,54,877/ being Rs.85,487/- is disallowed.*

5. The ld. CIT (A) has confirmed the said additions made by the ld. AO. Without considering the detailed explanation and the reasons given for the difference and the re-conciliation filed by the assessee which has been reproduced in the appellate order.

6. We have heard both the parties at length and also perused the relevant material and documents relied upon at the time of hearing. The case of the assessee before us has been that, firstly, addition cannot be made simply because the other party has reflected or deducted TDS in his own manner and ld. AO should have verified the books of accounts, entire contract work carried out and the bills raised as per the contract work. During the year assessee had carried out contract for Wockhardt Hospitals Limited (WHL). The contract work was carried over for two years and when the sales are booked for two years and if total sales as per Form 26AS for both years are by and large matching and in fact it can be seen that total sales booked by the assessee is slightly higher by few amount. The assessee had claimed TDS on the basis of Form 26AS only with a view to address the

administrative and system compulsions which could have arisen due to computerized processing of returns and the manner in which TDS credits are allowed by the system. The assessee has paid tax for both the years and there was no reason for assessee to postpone the tax liability. Sometimes, the customer / client do not release the payment on bill to bill basis and the payments are lumpsum. Sometimes payments are received in advance and customer may deduct TDS on the same in view of the volume 194C. Even though assessee is following mercantile system of accounting only those income which are accrued to the assessee can be brought to tax. Here in this case remand proceedings were conducted during the proceeding before the ld. CIT (A), wherein the assessee has made submission and bifurcation of mismatch entries of Rs.54,37,879/- wherein it was pointed out that WHL has deducted TDS on interim bill as well as final bill. In the confirmation given by the WHL, they have confirmed the following deduction of tax.

<i>Amount</i>	<i>TDS</i>
21,04,098/-	42,082/-
5,84,994	11,700/-
15,04,885/-	30,008/-
2,88,418/-	5,768/-
35,87,118/-	71,742/-
4,19,140/- (As per your notice amount is 4,11,140/-)	8,383/-

13,35,441/-	26,709/-
45,66,164/-	91,329/-

*In support of the above, kindly find attached herewith a copy of statement of financial transactions with M/s. Modfurn as per our books of accounts for the A.Y 2012-13.*

*3. For A.Y 2011-12 (A.Y 2012-13) TDS has been deducted by us on the RA bills booked in our books of accounts. As these are interim recurring bills for the project work, certain adjustments to the "Bills booked are made as per the "Work certification" through Debit notes.*

*4. For A.Y 2012-13, the differential amount along with the effect of TDS gets suitably adjusted later on during the tenure of the contract.*

7. However, the reply of WHL is silent on the issue of double deduction. The assessee has also given tabular presentation of figures of four years gross receipt as per 26AS and amount as per books and pointed out that certain amount pertain to the earlier year where tax was deducted for A.Y.2014-15. The tabular presentation of four years was as under:-

Asst year	Gross as per 26AS	WHL amount as per books
2011-12 (FY 10-11)	1573939.00	1573928.59
2012-13(FY 11-12)	54274772,59	48252887.75
2013-14(FY 12-13)	3452944.00	14574088.00
2014-15(FY 13-14) Year in which retention released.	5407952.00	3721 754. 05

69709607.59	68122668.39
Difference	1586939.20
Amount of retention which was pertaining to earlier year but tax deducted in AY 14-15	1492694.00
Different amount which cannot be explained	94245.20

8. During the course of hearing we had asked the ld. Counsel to explain the duplicate entries and what is the amount in which TDS has been deducted of interim bill and also in the final bill. In response the ld. Counsel has filed chart alongwith relevant documents placed in the paper book which are reproduced hereunder:-

Sr. No.	Amount (Rs.)	Primary Entry in Form 26AS	Duplicate Entries in Form 26AS which are already covered by the Primary Entries	Remarks	Relevant Documents and Page No. in paper book															
1	45,66,464	Sr. No. 2 Dt. 19-3-2012	Sr. Nos. 7, 13 and 27	<p>Interim Bill dated 7-11-2011 for Rs. 57,00,405/- consists of two parts – (a) Rs. 45,66,464/- for Civil Work and (b) Rs. 11,33,941/- for Chhaja Work. The interim bill is given on Page No. 28 &amp; 29 of paper book.</p> <p>Against the Bill of Rs. 57,00,405/-, Wockhardt Hospitals Ltd. adjusted retention money of Rs. 3,58,710/- on which no TDS deduction was made. On Balance Rs. 53,41,695/-, deduction is made at the time of payments as under :</p> <table><tr><th>Entry No.</th><th>Date</th><th>Amount</th></tr><tr><td>7</td><td>24-1-12</td><td>13,35,441</td></tr><tr><td>13</td><td>14-12-11</td><td>4,19,140</td></tr><tr><td>27</td><td>13-12-11</td><td>35,87,114</td></tr><tr><td></td><td></td><td>53,41,695</td></tr></table> <p>However again TDS deduction is made on 19-3-2012 on Civil work part of the Bill – Rs. 45,66,464/- which is reflected at Entry No. 2</p> <p>As such, there is double deduction of TDS for Rs. 45,66,264/- - once as part of Rs. 53,41,695/- and once independently on 19-3-12</p>	Entry No.	Date	Amount	7	24-1-12	13,35,441	13	14-12-11	4,19,140	27	13-12-11	35,87,114			53,41,695	(a) Interim Bill Dt. 7-11-2011 at Page No. 28 & 29 of paper book (b) Form 26AS – Entries on Page No. 12 & 13 of paper book
Entry No.	Date	Amount																		
7	24-1-12	13,35,441																		
13	14-12-11	4,19,140																		
27	13-12-11	35,87,114																		
		53,41,695																		

2	2,88,418	Sr. No. 4	Sr. No. 18	<p>Interim Bill dated 21-11-2011 for Rs. 15,04,885/- consists of two parts – (a) Rs. 2,88,418/- for Chhaja Work and (b) Rs. 12,16,467/- for Scaffolding Work. The interim bill is given on Page Nos. 30 &amp; 31 of paper book.</p> <p>TDS deduction is made on Rs. 15,04,885/- on 14-12-2011 and the same is reflected at Entry No. 18. However, once again the deduction of TDS is made on the Chhaja Work part of the Bill i.e. Rs. 2,88,418/- on 19-3-2012 and the entry for this is reflected at Sr. No. 4</p> <p>As such, there is double deduction of TDS for Rs. 2,88,418/- - once as part of Rs. 15,04,885/- and once independently on 19-3-2012</p>	<p>(a) Interim Bill Dt. 21-11-2011 at Page Nos. 30 &amp; 31 of paper book</p> <p>(b) Form 26AS – Entries on Page No. 12 &amp; 13 of paper book</p>
3	5,84,997	Sr. No. 70	Sr. No. 104	<p>Running Invoice dated 10-7-2011 for Rs. 21,04,098/- consists of two parts – (a) Rs.15,19,401/- for Civil Work and (b) Rs. 5,84,997/- for Chhaja Work.</p> <p>TDS deduction is made on Rs. 21,04,098/- on 4-7-2011 and the same is reflected at Entry No. 104. However, once again the deduction of TDS is made on the Chhaja Work part of the Bill i.e. Rs. 5,84,997/- on 14-9-2011 and the entry for this is reflected at Sr. No. 70</p> <p>As such, there is double deduction of TDS for Rs. 5,84,997/- - once as part of Rs. 21,04,098/- and once independently on 14-9-2011</p>	<p>(a) Running Invoice Dt. 10-7-2011 at Page Nos. 45 &amp; 46 of paper book</p> <p>(b) Form 26AS – Entries on Page No. 12 &amp; 13 of paper book</p>
Total	54,39,879				



9. On the other hand ld. DR strongly relied upon the order of the ld. AO and ld. CIT (A) and submitted that re-conciliation given now at this stage should be sent to the ld. AO for verification.

10. We find that nowhere the ld. CIT (A) has taken into consideration the assessee's explanation with regard to double taxation TDS on the interim bill and other in the final bill. Apart from that, it is seen that if over all contract receipt is seen is spread over the year of contract work carried out then there is no difference in the contract receipts. In any case from the bare perusal of Form 26AS there are multiple deduction appearing in the amount of Rs.54,39,879/-. For instance, there was double deduction of TDS for Rs.45,66,264/- once as part of Rs.53,41,695/- and again independently on 19/03/2012. There are other double deduction of TDS which has been explained in the aforesaid chart. All these explanation and re-conciliation was given before the ld. CIT(A). Accordingly, we do not find any reason to remand this matter back to the file of the ld. AO as no new material has been brought on record that re-conciliation is given before the ld. AO and ld. CIT(A) is factually incorrect. Accordingly, we hold that no addition can be made on account of sales simply based on difference in the figure in Form 26AS and the sales disclosed by the assessee in the audited accounts because the other party i.e. WHL has deducted TDS on interim bill as well as final bill and there are double deduction of TDS on various accounts. Thus, the addition made by the ld. AO is deleted.

11. In so far as adhoc disallowance of Rs.48,217/- on account of alleged personal element in transportation expenses and Depreciation on Motor car, no specific effect has been found as to what expenses are not verifiable or personal element. Since it is a query on adhoc disallowance, same can be sustained, accordingly, it is deleted.

**12. In the result, appeal of the assessee is allowed.**

Order pronounced on 30<sup>th</sup> May, 2025.

**Sd/-**  
**(PRABHASH SHANKAR)**  
**ACCOUNTANT MEMBER**  
Mumbai; Dated 30/05/2025  
KARUNA, sr.ps

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)



*ITA No.5764/Mum/2024*  
*Sudhir Dayalal Mistry*

**ITAT, Mumbai**