

**IN THE INCOME TAX APPELLATE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD
(THROUGH VIRTUAL COURT)
BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No. 66/ALLD/2019
Assessment Year: 2015-16

Ashoka Construction Company, Chopan Road, Obra, Sonebhadra, Uttar Pradesh- 231219	v.	The ACIT, Circle-3, Income Tax Office, Shiwala Mahanth, Mirzapur, Uttar Pradesh - 231001
PAN: AAFA1946R		
(Appellant)		(Respondent)

Appellant by:	Shri Brij Bhushan Goenka, Adv.
Respondent by:	Shri A.K. Singh, Sr. DR
Date of hearing:	09. 03. 2021
Date of pronouncement:	17.03. 2021

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by assessee, being ITA No. 66/AllD/2019, is directed against appellate order dated 06.03.2019 in Appeal No. CIT(A), Allahabad/10210/2017-18 passed by learned Commissioner of Income Tax (Appeals,)Allahabad(hereinafter called "the CIT(A)"),for assessment year(ay)2015-16, the appellate proceedings had arisen before learned CIT(A) from assessment order dated 30.12.2017 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3)of the Income-tax Act, 1961 (hereinafter called "the Act") for ay: 2015-16. We have heard both the parties through video conferencing mode through virtual court.

2. The grounds of appeals raised by assessee in memo of appeal filed with Income-Tax Appellate Tribunal, Allahabad (hereinafter called “ the tribunal”) reads as under :

- “1. Because the learned CIT (A) passed the order without appreciating the facts of the case.*
- 2. Because the authorities below have erred in law and on facts in making addition of Rs. 2073875/-, which has already been subjected to tax in earlier year, without making any verification of the facts of the case.*
- 3. Because the authorities below have erred in law and on facts in making addition of Rs. 433200/-, which has already been subjected to tax in the same year, without making any verification of the facts of the case.*
- 4. Because the authorities below have erred in making addition to the income of Rs. 1285663/- in total disregards to the fact that this amount appearing in 26 AS was neither received by the appellant nor it belonged to him.*
- 5. Because the appellant craves leave to add, amend or withdraw any grounds of appeal at the time of hearing of appeal.”*

3. The brief facts of the case are that the assessee is engaged in the business of civil construction contracts and total contractual receipts during the year under consideration were to the tune of Rs. 10,52,19,266/-. The solitary issue in this appeal filed by the assessee before the Tribunal is with respect to mismatch of income as shown by the assessee in the return of income filed with the Department , and income from contractual receipts as is reflected in Form No. 26AS. The Assessing Officer observed from comparing the details of contractual receipts as per books of accounts of the assessee and those as are reflected in Form No. 26AS, that the assessee has credited Rs. 1,20,11,525.63 as contractual receipts from Alstom T &D, however as per Form No. 26AS contractual receipts from Alstom T&D were shown to the tune of Rs. 1,58,04,262.99. The assessee was asked by AO to explain the difference to the tune of Rs. 38,93,737.36 in the contractual receipts from Alstom T&D as shown in its books of accounts and those as are reflected in Form No. 26AS. The assessee on its part submitted that out of the aforesaid difference, an amount of Rs. 12,85,663/- which were shown by the said company Alstom T&D on 23rd July 2014 (uploaded in TDS

return by Alstom T&D on 16.10.2014) never belonged to the assessee and the assessee had not received any such payment of Rs. 12,85,663/- from the said party Alstom T & D. The assessee with respect to the balance difference amount of Rs. 26,08,074.36 submitted that the aforesaid payments were received in the financial year 2013-14 and was duly reflected in the books of accounts for the financial year 2013-14. The AO on perusal of Form No. 26AS observed that the deductor Alstom T&D has uploaded the amount paid/credited and tax deducted in fifteen sequences whereas the assessee has credited in its books in eight sequences. The AO observed that amount of Rs. 12,85,663/- was found in Form No. 26AS. The AO observed that the assessee could have substantiated its claim by furnishing the bank statement for the financial year 2013-14 highlighting payment received and prove its claim, but as per AO, the assessee failed to do so, which led AO to make additions to the tune of Rs. 38,93,737.36 in the hand of the assessee , vide assessment order dated 30.12.2017 passed by AO u/s 143(3) of the 1961 Act.

4. Aggrieved by assessment framed by the AO u/s 143(3) of the 1961 Act, the assessee filed first appeal with Id. CIT(A). It was submitted by assessee before Id. CIT(A) that the difference between contractual receipts from Alstom T&D and the amount as is reflected in Form No. 26AS is Rs. 37,92,738/- and not Rs. 38,93,737.36 as is taken by the AO. The Id. CIT(A) accepted this contention of the assessee and the additions to the income were sustained to the tune of Rs. 37,92,738/- by Id. CIT(A). It was observed by Id. CIT(A) in its appellate order dated 06.03.2019 that the only contention of the assessee with respect to differential amount of Rs. 26,08,074.36 was that the assessee has considered this amount in its books of accounts for the financial year 2013-14 as the said amount was stated to be received in financial year 2013-14. The Id. CIT(A) was of the view that this amount received as an advance was wrongly reflected as income in the year in which it was received on cash basis of accounting. The Id. CIT(A) was of the view that this is not permissible as per law or by principles

of accounting standards. The ld. CIT(A) was also of the view that the assessee did not objected to the action of Vendor Alstom T&D in reflecting the said income in the TDS returns of current year under consideration . Thus, the ld. CIT(A) rejected the claim of the assessee with respect to differential amount of Rs. 12,85,663/- between the amount reflected as contractual receipt from Alstom T&D in assessee's books of accounts and as is reflected in Form No. 26AS although the assessee again claimed that the said amount does not belonged to the assessee and it was claimed that the assessee has raised objection before Alstom T&D and requested to get Form No. 26AS corrected. The assessee submitted that it is the vendor Alstom T&D who wrongly uploaded the aforesaid amount of Rs. 12,85,663 to the credit of the assessee in the TDS returns filed for current year and the Revenue cannot penalize assessee for the same. The ld. CIT(A) also rejected this contention of the assessee and held that it is the vendor who uploaded income to the credit of the assessee and the AO cannot reduce or increase the amount of TDS credited to the assessee. The ld. CIT(A) also held that the assessee can always file rectification petition u/s 154 of the 1961 Act before the AO to reduce this amount once the vendor has rectified TDS return and the assessee can accordingly claim relief. Thus, in nutshell the ld. CIT(A) upheld additions to the income of the assessee to the tune of Rs. 37,92,738/- on the grounds of differential between the income as is reflected in contractual receipts and in Form No. 26AS, vide appellate order dated 06.03.2019.

5. Aggrieved by appellate order dated 06.03.2019 passed by ld. CIT(A), the assessee has filed second appeal with tribunal. The ld. Counsel for the assessee submitted that the assessee received an advance of Rs.26,08,074.36 from Alstom T&D in immediately preceding financial year viz. 2013-14, which was offered for taxation on cash basis although the assessee was following mercantile system of accounting . It was submitted that Alstom T&D erroneously uploaded the said amount in its TDS return for the current year . It was submitted that the above amount has already

suffered taxation in the preceding year, but both the authorities below did not accept the contentions of the assessee and that is how the assessee is before the tribunal . The Id. Counsel for the assessee drew our attention to page 38 of the paper book , which is a difference reconciliation statement and it was submitted that an amount of Rs. 11,45,102/- as is reflected in this statement was paid by Alstom T&D on 05.03.2014 and the assessee has included the said amount in its books of accounts for financial year 2013-14 as income and due taxes paid on it for that year. Our attention was drawn to page 28-29 of the paper book and it was submitted that it reflects ledger account of contract receipts from Alstom T&D for financial year 2013-14 and 2014-15. Our attention was drawn to an entry dated 5.3.2014 in ledger account for financial year 2013-14 to show that it reflect an contract receipt of Rs. 11,73,409.32 received from Alstom T&D which is included in books of accounts. Similarly, it was stated by Id. Counsel for the assessee that similarly an amount of Rs. 7,01,763/- as reflected in the difference reconciliation statement was reflected in the books of accounts of the assessee for financial year 2013-14 and due taxes paid on it for that year. It was submitted that this payment of Rs. 7,01,763/- was made by Areva T & D which was later taken over by Alstom T&D. The assessee counsel submitted that corresponding ledger accounts to prove that this amount is included in books of accounts of the assessee for financial year 2013-14 are not enclosed. With respect to entries of Rs. 4,33,200/- and Rs. 2,27,010/- reflected in said difference reconciliation, it was submitted that these are on account of various expenses reimbursements. It was also claimed that part of these expenses reimbursements were credited by Alstom T&D in last year, while the same are uploaded by Alstom T&D in the system while filing TDS returns for the current year. The assessee counsel also submitted that the Alstom T&D has uploaded an amount of Rs. 12,85,663/- as paid to assessee during the year under consideration while filing TDS returns for current year, but no such amount was ever paid by Alstom T&D. The Id. Counsel for the assessee submitted that the assessee has written several emails to Alstom T&D requesting them to provide

details of Rs. 12,85,663/- and it was submitted that the said party has not furnished the details mainly due to change in their management. Our attention was drawn to page 75 to 78 of the paper book. The ld. Counsel for the assessee stated that the above amount of Rs. 12,85,663/- never belonged to the assessee. Thus in nut-shell , it was submitted that there is no difference between contract receipts from Alstom T&D , rather it was a matter of reconciliation . The ld. Counsel for the assessee made prayer that the additions be deleted or in alternative the matter can be set aside and restored back to the file of Assessing Officer for reconciliation. The Ld. CIT-DR on the other hand relied on the appellate order passed by ld. CIT(A). The ld. CIT-DR submitted that the onus is on the assessee to prove that the income of the assessee for previous year has been correctly computed and due taxes paid.

6. We have considered rival contentions and perused the material on record , including orders of authorities below and paper book filed by the assessee. The assessee is engaged in the business of civil construction and has declared contractual receipts from civil construction business to the tune of Rs. 10,52,19,266/-. The solitary issue before us for adjudication is the difference between contractual receipts declared by assessee in its books of accounts from Alstom T&D/Areva T&D amounting to Rs. 1,20,11,525.63 for the previous year 2014-15(ay:2015-16) and the income as is reflected in Form No. 26AS to have been paid by Alstom T&D/Areva T&D to the assessee for previous year 2014-15(ay:2015-16) which reflected an amount of Rs. 158,04,262.99, leading to a differential of Rs. 37,92,738/- , which as per Revenue has escaped assessment and hence consequential additions to the income of the assessee. The aforesaid contractual receipts from civil construction business are from Alstom T&D which also included contractual receipts from Areva T&D which is stated to have been taken over by Alstom T & D. It is undisputed that the assessee has dealing with the Alstom T&D as well with Areva T&D , during the year under consideration and hence primary onus is on the assessee to prove that the correct amount of income

as was earned from these parties are offered for taxation to Revenue and due taxes paid to Revenue. Thus, it is not a case where the tax-payer is claiming that the amount as is reflected in Form No. 26AS is from parties with which the tax-payers has no dealings at all and hence the tax-payer cannot be asked to prove impossible. The assessee has explained that differential of Rs. 18,46,865/- (Rs.11,45,102 + 701763/- -paper book /page 38) were received by assessee from Alstom T&D and Areva T&D in preceding previous year viz. 2013-14(ay:2014-15) and was offered for taxation in that previous year(viz. ay:2014-15) and due taxes paid to Revenue, and it is further stated by assessee that Alstom T&D /Areva T&D have erroneously uploaded the income in the current year TDS returns filed with the department . If that be so , we donot find any prejudice to the Revenue if the income is included by assessee in the return of income filed for ay:2014-15 and due taxes paid to Revenue in that year. There could be a bonafide belief in including income in a particular year say in the instant case , the assessee has claimed that income was received in preceding previous year viz. 2013-14 and the assessee included the same as income for that year and paid taxes, but the Alstom T&D included the said amount in TDS returns for current year under consideration . Now, it is for revenue to bring on record cogent material to prove that prejudice is caused to Revenue or there is malice on part of assessee to have included said income in preceding previous year while it ought to have been included in the current previous year income. However at the same time we are of the considered view that this contention of the assessee that the said amount is duly included in the return of income filed for preceding previous year and due taxes paid for previous year 2013-14 requires verification . We are restoring this issue to the file of the AO for fresh adjudication and the assessee is directed to provide all necessary evidences to prove that income of Rs. 18,46,865/- reflected by Alstom T&D in TDS return filed for current year is the same amount which was paid by Alstom T&D to assessee in preceding year and the same income was duly included by assessee in return of income filed with the department for ay: 2014-15 and dues taxes

paid to Revenue . With respect to an amount of Rs. 6,60,210/- (Rs. 4,33,200 + Rs.2,27,010/-) , it is submitted by the assessee that these are expenses reimbursement. Again, the onus is on the assessee to prove that these are merely expenses reimbursements received from Alstom T&D/Areva T&D. Thus, this contention of the assessee that the said amounts are merely reimbursements of expenses requires verification . We are restoring this issue to the file of the AO for fresh adjudication and the assessee is directed to provide all necessary evidences to prove that payment of Rs. 6,66,210/- as is reflected by Alstom T&D in TDS return filed for current year are the expenses reimbursements and the same were included by assessee in return of income filed with the department for ay: 2015-16 and dues taxes paid to Revenue. With respect to the remaining amount of Rs. 12,85,663/- uploaded by Alstom T&D in its TDS return for current year as income of the assessee, but the assessee has denied that the assessee did not have any such dealings with Alstom T&D and no such income was earned by assessee but rather it was erroneously uploaded by said company Alstom T&D in TDS returns filed for current year. The assessee has also produced copies of emails which are placed in paper book to reflect that the assessee has requested Alstom T&D to correct this error. The said emails are placed in paper book filed by assessee with tribunal at page 75-78. The assessee has claimed that the said concern is not responding to the assessee's request to correct TDS returns to remove said amount as to the credit of the assessee and to credit to the correct payee , mainly due to change in their management as new management has taken over. It is equally true that the assessee has dealing with said concern Alstom T&D/Areva T&D and primary onus is on the assessee to prove that the income as is reflected in Form No. 26AS to its credit does not belong to it. Keeping in view entire factual matrix under consideration, we are restoring this issue to the file of the AO for fresh adjudication and the assessee is directed to provide all necessary evidences to prove that payment of Rs. 12,85,663/- as is reflected by Alstom T&D in TDS return filed for current year does not belong to it. As it is claimed

that the said concern is not responding to the request of the assessee owing to change in management, we are also directing AO to invoke provisions of Section 133(6) of the 1961 Act to get information directly from the said concerns to unravel the truth. It is the bounden duty of authorities to assist the tax-payer so that correct and legitimate taxes as are mandated under the provisions and authority of the 1961 Act can be collected. Similarly, every tax-payer of the country has a duty cast on it to ensure that correct taxes are paid to Government by the taxpayers as mandated under the provisions of 1961 Act and all reasonable assistance as may be required in this direction is provided which is also the bounden duty of all tax-payers. With these directions we are restoring this issue to the file of the AO for fresh adjudication on merits in accordance with law. Needless to say that the AO shall provide proper and adequate opportunity of being heard to the assessee in set aside remand proceedings in accordance with principles of natural justice in accordance with law. The evidences filed by the assessee in its defense shall be admitted by the AO and adjudicated on merits in accordance with law. We order accordingly.

7. In the result, the appeal filed by the assessee with tribunal in ITA No. 66/Alld./2019 for ay: 2015-16 is allowed for statistical purpose.

Order pronounced in open court through virtual mode through video conferencing
on 17/03/2021 at Allahabad.

Sd/-

[VIJAY PAL RAO]
JUDICIAL MEMBER

Sd/-

[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 17/03/2021

A.K., PS

Copy forwarded to:

1. Appellant –Ashoka Construction Company, Sonebhadra

2. Respondent – ACIT, Circle-3, Mirzapur, U.P.
3. CIT(A) –Allahabad, U.P.
4. CIT
5. DR -

By order
Assistant Registrar