

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"B" BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.410/Mum./2020**  
**(Assessment Year : 2008-09)**

Income Tax Officer  
Ward-14(2)(3), Mumbai

..... Appellant

v/s

M/s. Nayak Chaudhari Construction Pvt. Ltd.  
24, Indraprasad CHS, Near Teacher Colony  
Bandra (East), Mumbai 400 051  
PAN - AACCN4376M

..... Respondent

Assessee by : None

Revenue by : Shri Ashok Kumar Ambastha

Date of Hearing - 27/09/2023

Date of Order - 03/10/2023

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the Revenue challenging the impugned order dated 31/10/2019, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-22, Mumbai, [*learned CIT(A)*], for the assessment year 2008-09.

2. When this appeal was called for hearing neither anyone appeared on behalf of the assessee nor was any application seeking adjournment filed. From the perusal of the record, we find that the notice issued through Registered post A/D was also returned unserved by the postal authorities. Therefore, in view of the above, we proceed to decide the present appeal ex-

parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

3. In its appeal, the Revenue has raised the following grounds:–

*"1. Whether on the facts of the case and in law, the Ld.CIT(A) was correct in deleting the additions made in the basis of entries in the books of account with respect to the issue of treating part of the "Contract Charges" received as advance?*

*2. Whether the Ld.CIT(A) has erred in revenue recognition in the facts and circumstances of the case, when entire Tax Deducted as Source (TDS) corresponding to the contractual receipts has been claimed by the Assessee?*

*3. The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal.*

*4. The appellant prays that the order of CIT(A) on the above grounds be set-aside and that of the assessing officer be restored."*

4. The only dispute raised by the Revenue, in the present appeal, is against the deletion of addition made on the basis of entries in the books of accounts of the assessee with respect to contract charges.

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is engaged in the business of contractor for building development with labour and materials. For the year under consideration, the assessee did not file its return of income. Subsequently, pursuant to the notice issued under section 142(1) of the Act, the assessee filed its return of income on 21/03/2011 declaring a total income of Rs. 91,73,403. Thereafter, proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued on the basis that the assessee has not filed any return of income under section 139 of the Act and as per Form no.26AS tax credit of TDS appearing in assessee's claim was Rs.

27,32,540, which was deducted by M/s Sigrun Realities Ltd and the amount paid by them to the assessee was Rs. 12,05,88,663 during the year. During the reassessment proceedings, as per the information available on ITS, it was observed that during the year under consideration, contractual payments were received by the assessee amounting to 12,05,88,663 from M/s Sigrun Realities Ltd. It was further observed that as per the profit and loss account, the assessee has recognised income of contractual payments amounting to Rs. 9,85,88,663 only. Accordingly, the assessee was asked to reconcile the difference in the fees as per the profit and loss account and as per the ITS details. After considering the details submitted by the assessee, the AO vide order dated 20/12/2011 passed under section 143(3)(iii) read with section 147 of the Act noted that the assessee has recognised the revenue of Rs. 9,85,88,663, while the credit for tax deducted at source of Rs. 27,32,540 was claimed for the whole amount received by the assessee during the year. Accordingly, in light of the provisions of section 199 of the Act, the AO disallowed proportionate TDS credit of Rs. 4,98,520, since credit for TDS shall be allowable only in the year in which the income is assessable. The AO further held that the assessee is free to claim the said credit in the year in which the corresponding income has been offered to tax. Accordingly, the AO vide aforesaid order, assessed the total income of the assessee at Rs. 96,56,230.

6. Subsequently, the learned CIT vide order dated 12/03/2014 passed under section 263 of the Act set aside the aforesaid assessment order on the basis that the entire payment of Rs. 12,05,88,663 are towards the contract cost and work carried out by the assessee and the entire TDS deducted was claimed by the assessee. Thus, vide revision order, the learned CIT held that

the assessee has in its return of income not shown income of Rs. 2,26,08,779 (Rs. 12,05,88,663 – Rs. 9,79,79,884) for the relevant assessment year. Pursuant to the directions of the learned CIT vide aforesaid order passed under section 263 of the Act, the AO issued several notices to the assessee, however the same were not responded to by the assessee. In the absence of any details and explanations from the assessee, the AO vide order dated 31/03/2015 passed under section 143(3) read with section 144 read with section 263 of the Act completed the assessment on the basis of material available on record and made an addition of Rs. 2,26,08,779 in view of the directions of the learned CIT under section 263 of the Act. The learned CIT(A), vide impugned order, deleted the addition of Rs. 2,20,68,779 made by the AO and directed that the TDS claim for the year under consideration will be restricted to the TDS referable to the receipt/income of Rs. 9,79,79,884 and the balance excess claim for TDS pertaining to receipt of Rs. 2,20,68,779 will be allowed in the assessment year 2009-10 and/or assessment year 2010-11 after due verification of receipt/income. Being aggrieved, the Revenue is in appeal before us.

7. We have considered the submissions of the learned Departmental Representative and perused the material available on record. In the present case, it is undisputed that the assessee has followed the Accounting Standards-9 for the preparation of its financial statements. Accordingly, the assessee has accounted for the revenue of Rs. 9,79,79,884 on the basis of proportionate completion of service. The balance amount of Rs. 2,26,08,779 was treated as advance from the customer in the year of receipt and was offered to tax in the succeeding year. Since in the year under consideration,

the assessee received an amount of Rs. 12,05,88,663 from M/s Sigrun Realities Ltd, and on the said amount the said entity deducted TDS and as the same was appearing in Form 26AS of the assessee, the learned CIT vide order passed under section 263 of the Act directed the AO to make an addition of Rs. 2,26,08,779. The learned CIT(A), vide impugned order found that the assessee has offered the receipt/income from M/s Sigrun Realities Ltd for the assessment year 2008-09, 2009-10, and 2010-11 and the total TDS claim also do not exceed the total TDS deducted by M/s Sigrun Realities Ltd. The learned CIT(A) also found that the AO has made an addition of Rs. 2,26,08,779 in the assessment year 2008-09 but has not reduced the said receipt from the income offered to tax in the subsequent years and thus the receipt of Rs. 2,20,68,779 which was shown as an advance in the year under consideration has been taxed twice. Thus, after considering the submissions of the assessee and the remand report filed by the AO, the learned CIT(A) directed the AO to delete the addition of Rs. 2,20,68,779 and also restrict the TDS claim made by the assessee in the year under consideration only in respect of the income of Rs. 9,79,79,884 for the assessment year 2008-09.

8. As there is no dispute regarding the preparation of the financial statement by the assessee as per AS-9, wherein the assessee offered to tax the income to the extent of project completed and the balance amount was considered as advance, we are of the considered view that the learned CIT(A) correctly directed the AO to delete the addition of Rs. 2,20,68,779, which was declared as advance by the assessee in the year under consideration and offered to tax in the subsequent year on the basis of project completion. We also do not find any infirmity in the directions of the learned CIT(A) to restrict

the credit of TDS only with respect to the income of Rs. 9,79,79,884 for the assessment year 2008-09 and the balance excess claim for TDS be allowed in the subsequent years in which the income has been offered to tax as per the consistent accounting practice followed by the assessee. Accordingly, the impugned order passed by the learned CIT(A) is upheld and the grounds raised by the Revenue are dismissed.

9. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 03/10/2023

**Sd/-**  
**PRASHANT MAHARISHI**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 03/10/2023**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai