

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI**

BEFORE SHRI R.C. SHARMA(AM) AND SHRI SANDEEP GOSAIN (JM)

**ITA No. 6574/MUM/2012
Assessment Year: 2008-09**

Meghana A Singit
59 Rekha Kunj, R.A.
Kidwai Rd. King Circle
Mumbai-400019

Vs.

ITO 17(2)3
Piramal Chambers,
4th Floor, Lalbaug
Parel, Mumbai- 400012

PAN No. AAJPS7201A

(Appellant)

(Respondent)

Appellant by : Shri. R.C. Jain
Respondent By : Shri. Neil

Date of Hearing : 21/07/2016

Date of pronouncement : 09/08/2016

ORDER

PER SANDEEP GOSAIN, JUDICIAL MEMBER :

The present appeal has been filed by the assessee against the order of Ld. CIT(A)-29, Mumbai dt. 16/07/2012.

2. Brief facts of the case are that the assessee is a Proprietor of his business concern M/s Midas Interior and is also having income from other sources. The assessee has also been carrying out the job of Civil Contractor. The return of income for AY 2008-09 declaring total income of Rs. 7,34,856/- was filed by the assessee on 30/09/2008. The case was reopened. Accordingly, after serving statutory notices and seeking reply from the assessee, the order of assessment

was passed under section 147 r.w.s 143(3) of the Income Tax Act 1961, thereby making addition.

3. Aggrieved by the assessment order the assessee preferred appeal before the Ld. CIT(A) and the Ld. CIT(A) after considering the case of both the parties had dismissed the appeal vide order dt. 16/07/2012.

4. Aggrieved by the order of Ld. CIT(A) the assessee preferred the appeal before us on the ground mentioned herein below:

1. *The Ld. CIT(A) erred in deciding the appeal filed by your appellant as ex-parte. The last adjournment for the hearing dt. 23/04/2012, was not noted by the staff of Chartered Accountant's office and therefore due to lack/ oversight, the hearing was not taken place which is otherwise always obeyed by either attended or sought adjournment by your appellant which is referred in the order.*

2. *The Ld. CIT(A) erred in not considering the facts of the case mentioned in the Statement of Facts along with Form of Appeal as well as submitted before Ld. A.O. being letter dated 28/11/2011 from your Appellant giving reconciliation of turnover as per OLTAS and book of accounts.*

3. *The Ld. CIT(A) erred in dismissing the ground No. 1 "adding a sum of Rs. 28,94,843/- as undisclosed receipts being difference in gross receipts received and as per NSDL e-TDS record", taken by your appellant with stating as "The reply of the appellant that such receipt was shown as advance from customer / party which is duly supported / reflected in the balance sheet is not acceptable." Your appellant prays to consider the same as per the provisions under the Act as full the reconciliation statement have been filed with the submissions made on 28/11/2011 before the Ld. A.O. so your goodselfs is requested to allow the same.*

4. *Your Appellant reserves the right to add, amend or alter any ground/s that may be necessary.*

Ground No. 1

5. Ld. AR appearing on behalf of the assessee, submitted that the Ld. CIT(A) erred in deciding the appeal filed by the assessee as ex-parte. It was further

submitted by Ld. AR that the last date of hearing dt. 23/04/2012 was not noted down by the staff of Chartered Accountant's office and therefore due to lack /over sightedness the hearing was not taken place which is otherwise obeyed by either attended or seeking adjournment by the assessee.

6. On the other hand Ld. DR submitted that the assessee intentionally did not appeared before the Ld. CIT(A) and had been delaying the appeal one pretext or other.

7. We have heard the rival submissions and also perused the orders passed by lower authorities. We have also noted down that initially case was fixed for hearing on 28/03/2012 and the assessee had requested for Adjournment. The matter was adjourned to 23/04/2012 but no one appeared. Again the case was fixed for hearing by issuing fresh notice even then no one appeared on behalf of the assessee.

8. Before Ld. CIT(A), the AO requested for disposing the case as the tax demand was unnecessary locked up. Therefore, the Ld. CIT(A) after providing reasonable opportunities of hearing had decided to proceed to disposed off the appeal on the basis of Statement of Facts and other material available on record.

9. After considering the argument of both the parties and after perusal of the order passed by Ld. CIT(A), we are of the considered view that the CIT(A) has provided sufficient opportunity of hearing to the assessee but even then no body has appeared on behalf of the assessee therefore we see no reason to interfere into judicious order passed by Ld. CIT(A). Hence this ground raised by the assessee is dismissed.

10. Ground No. 2 & 3 are interconnected therefore we decide the same by this common order.

11. Ld. AR appearing on behalf of the assessee submitted that Ld. CIT(A) erred in upholding the order of Ld. Assessing Officer by adding the sum of Rs. 28,94,843/- as undisclosed receipt being difference in gross receipts and as per NSDL e-TDS record.

The Ld. AR further relied upon the written submissions filed by the assessee before the AO the relevant portion of the letter is as under:

"1) TDS DETAIL From ABCT Co. Ltd.

I have received said amounts from ABCT Co. Ltd. as advance for various sites to start work. Many times we receive amount for one site and start work on another site. So in some site show Advance and in some site it shown outstanding.

The company accepts the final bill only n completion of work. Also, as the bill amount is finalized after the bill is sent and corrections made in quantities and rates of materials which are not standard. Agreed we are not able to finalize the exact amount until the bill is cleared. That unbill amount show in Book as Work in progress. TDS Deduction on Advance Paid. Is higher than bill amount.

Total TDS Deduction

<i>a) Amalgamated Bean Coffee Trading Co. Ltd.</i>	<i>2,32,595/-</i>
<i>b) Liladhar Pasco Forwarders Pvt. Ltd.</i>	<i><u>59,836/-</u></i>
<i>Total</i>	<i>2,92,431/-</i>

2) Work in Progress:

I am received advance from ABCT Co. Ltd. Start Work at various site but bill will be accepted only when work is completed. I am already made expenses. Till that Amount we are shown as work in progress."

Further, vide letter dated 28/11/2011 the AR of the assessee submitted the following:

" I follow mercantile basis of accounting and had received advance from Amalgamated Bean Coffee Trading Co. Ltd. Rs. 1,02,64,469/- for our various site out of which work was completed and bill raised on Rs. 73,69,626/- and same amount is offered for tax. Balance Rs. 28,94,843/- was already offered in subsequent years and tax is paid in

subsequent year. I have attached necessary annex for the said purpose. TDS is claimed fully in the year."

The Ld. AR submitted that the AO wrongly considered that the assessee has shown less receipt of Rs. 28,94,843/- from M/s Amalgamated Bean Coffee Trading Co. Ltd. In this respect it is submitted that the assessee had received the said amount from M/s Amalgamated Bean Coffee Trading Co. Ltd. as advance for various sites to start work. It is further argued by Ld. AR that the company accept the final bill only on completion of work as many times assessee received amount for one site and start work from another site therefore in some sites it is shown as advance and in some sites it is shown as outstanding. It is further submitted by Ld. AR that the bill amount has finalized after the appeal has sent and correction made in quantity and rates of material which are not standard. It is further submitted that unbilled amount shown in books as work in progress and TDS deduction and advance paid is higher than the bill amount.

Ld. AR lastly submitted that the assessee has been following mercantile basis of accounting and had received advance from M/s Amalgamated Bean Coffee Trading Co. Ltd. of Rs. 28,94,843/-. In this respect Ld. AR submitted that the assessee followed mercantile basis of accounting and had received advance from M/s Amalgamated Bean Coffee Trading Co. Ltd. of Rs. 1,02,64,469/- for various sites out of which work was completed and bill raised of Rs. 73,69,626/- and the same amount is offered for tax. It is further submitted that there is no loss of Revenue to the department as the balance of Rs. 28,94,843/- was already offered in subsequent years and tax is paid in subsequent years.

12. On the other hand Ld. DR relied upon the orders passed by Revenue authority.

13. We have heard the rival submissions and also perused the material placed on record before us.

14. After considering the facts of the present case we find that the AO as well as Ld. CIT(A) has added the amount of Rs. 28,94,843/- as undisclosed receipt only on the ground that the bills raised of Rs. 73,69,626/- is not supported by any documentary evidence such as confirmation from M/s Amalgamated Bean Coffee Trading Co. Ltd. and moreover the ground raised by the assessee that he has also offered the sum of Rs. 28,94,843/- in subsequent years and tax has been paid in subsequent years is not supported by any evidence.

15. Be that as it may, from the facts of the present case we find that the appellant has stated that these accounts has been audited and there has been no understatement of turnover and the disputed turnover was part of work in progress. Moreover it has also been submitted by LD. AR that out of Rs. 1,02,64,469/- for various sites, out of which work was completed and bill raised of Rs. 73,69,626/- and the same amount has been offered for tax. It is also submitted that the balance of Rs. 28,94,843/- was also offered in subsequent years and tax is paid in subsequent years. Therefore keeping in view the facts of the present case we allow this ground in ,principle in favour of the assessee as the assessee has argued that he has also offered the balance of Rs. 28,94,843/- in subsequent years and tax has been paid in subsequent years. Since the AO as well as Ld. CIT(A) has taken a specific stand that the assessee has not submitted any copy of return of income which would shows that the assessee has offered the balance of Rs. 28,94,843/- from M/s Amalgamated Bean Coffee Trading Co. Ltd. for taxation. Therefore, in the interest of justice and while setting aside the order of Ld. CIT(A), we remit the matter back to the file of AO with a direction to the assessee to file copy of return of income which shows that assessee had already paid tax on the balance of Rs. 28,94,843/- from M/s Amalgamated Bean

Coffee Trading Co. Ltd. and there after AO is directed to verify the same and if the AO found that the amount has already been offered for taxation, then the Assessing Officer is directed to delete the addition.

Following the discussion we allow this ground of appeal of the assessee.

16. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 09 September, 2016.

Sd/-
(R.C. SHARMA)
ACCOUNTANT MEMBER

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai; Dated: 09/09/2016
AG (On Tour)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai