

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “D” KOLKATA

Before **Shri Waseem Ahmed, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.1160/Kol/2015
Assessment Year:2006-07

DCIT, Circle-8(1), P-7, Chowringhee Square, 5 th Floor, Kolkata-69	बनाम / V/s.	M/s Mercury Travels Ltd., 4, Mangoe Lane Kolkata-700 001 [PAN No. AABCM 7139 E]
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Arindam Bhattacharjee, Addl. CIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Asim Choudhury, Advocate
सुनवाई की तारीख/Date of Hearing	23-10-2017
घोषणा की तारीख/Date of Pronouncement	26-12-2017

आदेश /ORDER

PER Waseem Ahmed, Accountant Member:-

This Revenue has filed this appeal for the assessment year 2006-07 of Commissioner of Income-tax (Appeals)-8, Kolkata on the following grounds:-

- “1. The Ld. CIT(A) erred on facts in accepting that the assessee has been able to reconcile the difference in income as per ITS details and the income shown by the assessee in its computation of income.*
- 2. The Ld. CIT(A) has erred on facts by accepting that the income of Rs.2,11,53,391/- & income of Rs.17,88,917/- fall under the category of income of tours & freight & out bound tours without the assessee providing any corroborative evidences.*
- 3. Further the CIT has erred on facts by accepting assessee contention that it has not earned any rental income when the evidences as per ITS details contrary.*

4. That he appelland reserves the right to amend, alter or add to any grounds of appeal before or at the time of hearing of the appeal.”

Shri Arindam Bhattacharjee, Ld. Departmental Representative appeared on behalf of Revenue and Shri Asim Chowdhury, Ld. Advocate appeared on behalf of assessee.

2. The common issue raised by Revenue in this appeal is that Ld. CIT(A) erred in deleting the addition made by Assessing Officer for ₹2,11,53,391/- and ₹17,88,917/- and ₹1,30,500/- on account of mismatch between the audited profit and loss account and ITS details.

3. Briefly stated facts are that the assessee is a limited company and engaged in business of travel agency, tour operator and dealing in foreign exchange. The assessee is also a Member of International Air Transport Association and travel agent association of India. The assessee is acting as agent on various Air Lines for domestic and international bookings. The assessee operates through its branches in almost all the major cities and places of tourist interest in India.

4. The AO during the course of assessment proceedings on the basis of ITSs details observed that assessee has not shown following income in its books of account:-

- i) Contractual receipts ₹2,11,53,391-
- ii) Rental income of ₹1,30,500/-
- iii) Professional fee of ₹17,88,917/-

Accordingly, an explanation was sought for by the AO about the non-disclosure of aforesaid income. The assessee in compliance thereto submitted:-

- a) It had no rental income.
- b) The professional income has been shown in the income of out bound tours of ₹58,39,190/- which had been shown under the Schedule 14 of other income in the audited financial statement.
- c) It has shown an income of ₹4,49,98,847/- under the head tours in its audited financial statement.

Thus, the contractual receipt for ₹ 2,11,53,391/- has already included in such income. However, the party has wrongly deducted tax on behalf of assessee u/s 194-I of the Income Tax, Act, 1961 (hereinafter referred to as 'the Act'). However, the

corresponding income has already been included in the gross income as declared in the audited financial statement. In view of above, assessee submitted that all the income has shown in ITS details have been duly disclosed in its income tax return. However, the AO observed that the assessee failed to make specific submission as well as reconciliation of the income between the ITS details viz-a-viz financial statement. Therefore, the addition was made for ₹1,30,500/- to ₹2,11,53,391/- and ₹17,88,917/- on account of rent, contractual amount and professional services respectively and added to the total income of assessee.

5. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that a detailed reconciliation was filed before the AO for the income as per ITS details and the income shown in the income tax return. A party-wise reconciliation was filed reconciling all the entries except a few mismatch. As per the ITS detail the income was at ₹8,92,07,466/- whereas the assessee has declared its gross income at ₹12,65,18,608/- in its profit and loss account. Thus, the income declared by assessee is higher than the income as per ITS details. The assessee in support of its claim has relied on the order of Hon'ble Mumbai Tribunal in the case of *M/s AF Ferguson & Co. C/o Deloitte Haskina & Sells v. JCIT & ACIT-11(2), Mumbai 5037/Mum/2012 & ITA No.437/Mum/2013*. The Ld. CIT(A) after considering the submissions of assessee and the cited case law has deleted the addition made by the AO by observing as under:-

“8. I have carefully considered the submissions of the appellant in the backdrop of the AO's action in making the impugned additions totalling ₹2,30,72,808/-. I have also gone through the various relevant details and documents filed and placed on record. Basically it is the contention of the AR of the appellant that reconciliation was provided to the AO and almost all the entries were reconciled and moreover returned income as per P&L A/c far exceeded the ITS details for which no adverse conclusion could be drawn in this regard. This proposition of the appellant was backed by the decision of the ITT, Mumbai as in the foregoing, wherein it was held that addition solely on the basis of AR information was not sustainable. Further, I find that as per letter dated 18.02.2011, the assessee had explained to the AO the factual details with respect to the impugned matters that (a) there was no rental income actually received as per the books during the year under consideration and (b) with regard to professional receipt u/s 1194J and receipts u/s. 194C, reconciliation statement party-wise were also submitted before the AO. These same submissions are before me as well. The AO has not rebutted the

*explanations of the appellant with any counter arguments backed with any cogent materials. In such a scenario, I find force in the submission of the appellant that ultimately additions made on the basis of AIR information would not hold good since the returned amount was more than the AIR information which should not call for any adverse decision as spelt out in the ITAT's decision, supra, in the case of **S. Ganesh vs. ACIT, ITA No. 527/Mum/2010 dated 08.12.2010**. Following the judicial precedence on the pertinent issues involved in the appellant's case as discussed in the foregoing, impugned order have no hesitation in holding that the ads made by the AO do not merit any sustenance t the appellate stage and the same are directed to be deleted."*

The Revenue, being aggrieved, is in appeal before us.

6. Before us Ld. DR heavily relied on the order of AO whereas Ld. AR for the assessee filed paper book which is running pages from 1 to 38 and further submitted that the reconciliation was duly filed before the AO and no defect was pointed out therein. Ld. AR in support of assessee's claim drew our attention on pages 2 and 4 of the paper book where the reconciliation statement was placed. Ld. AR cited various case laws in favour of assessee's claim and relied on the order of Ld. CIT(A).

7. We have heard the rival contentions of both the parties and perused the material available on record. We have also gone through the orders of the lower authorities and the case laws relied upon by the assessee. In the case on hand the addition was made by the AO on the ground that the income shown in ITS details of the assessee was not disclosed in the income tax return. However, on perusal of audited financial statement we note that the assessee has shown gross total income of ₹12,65,18,608/- as evident from the audited profit and loss account which is placed on page 22 of the paper book. Thus, the allegation of the AO that all the income shown in the ITS details has not been declared in income tax return does not hold good. The AO has not brought anything on record about the name of parties in respect of which the assessee failed to disclose income in its income tax return. Thus, we feel that no addition cannot be sustained in the given facts and circumstances.

7.1 We also note that the additional income declared by assessee in its income tax return vis-à-vis in ITS details exceeds the income shown in ITS details. Once the income shown by the assessee is greater than the ITS details then no addition can be made on account of non-disclosure of income. In holding so, we find support and guidance of Hon'ble Mumbai Tribunal in the case of *M/s AF, Ferguson & Co. C/o*

Deloitte Haskins & Sells Vs. JCIT & ACIT in ITA No.5037/Mum/2012 and ITA No.437/Mum/2013 dated 13.10.2014, wherein it was held as under:-

“6. We have considered the rival contention of the ld. Representatives of the parties. It is an undisputed fact on the file that the professional fees shown by the assessee in its P&L account far exceeds than the amount shown in the AIR information. Even the assessee has reconciled the major portion of the receipt. It has not been denied by the Revenue authorities that full and complete details of the parties are not mentioned in the AIR information. The addition in this case has been made by the lower authorities solely on the basis of AIR information. In our view, the addition, made solely on the basis of AIR information, especially in the absence of full details of parties and when the professional receipts declared by the assessee far exceeds than the amount mentioned in the AIR information, is not sustainable in the eyes of the law or above view is fortified with the decision of the Bangalore Bench of the Tribunal in the case of “DCIT vs. Shree G. Selva Kumar” in ITA No.868/Bang/12 decided on 22.10.10 and another in the case of “Mrs. Arati Rman vs. CIT” in ITA No.245/Bang/12 decided on 05.10.12 wherein it has been held that the assessment order based only on the AIR information would not stand in the eyes of law. If the assessee denies that he I in receipt of income from a particular source, it is for the Assessing Officer to prove that the assessee has received income as the assessee cannot prove the negative. Reliance can also be placed on the decision of Mumbai Bench of Tribunal in the case of Shri S. Ganesh vs. ACIT” in ITA No.527/M/2010 decided on 08.12.10=2011/TIOL-87-IIT-MUM wherein the Tribunal has held that in the absence of any material brought by the revenue authorities that the assessee has received amount more than the professional fees which has been declared by him in the P&L account and when the professional income declared by the assessee far exceeds the professional fees shown in the AIR information, than additions solely based on the AIR information are not sustainable.

7. In view of our above observations and in the facts and circumstances of the case, to additions made by the Revenue solely based on the AIR information are not sustainable and the same are hereby ordered to be deleted.”

We respectfully following the consistent view of the Tribunal decline to interfere with the order passed by the Ld. CIT(A) on this account and accordingly the ground taken by the Revenue is regretted.

8. In the result, Revenue’s appeal stands dismissed.

Order pronounced in open court on 26/12/2017

Sd/-
(न्यायिक सदस्य)
(S.S.Viswanethra Ravi)
Judicial Member

Sd/-
(लेखा सदस्य)
(Waseem Ahmed)
Accountant Member

*Dkp, Sr.P.S

दिनांक:- 26/12/2017

कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-DCIT, Cir-8(1), P-7, Chowringhee Square, Kolkata-69
2. प्रत्यर्थी/Respondent-M/s Mercury Travels Ltd., 4, Mangoe Lane Kolkata-700001
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary
Head of Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता