



ITA.No.3164/Mum/2016
Harsh Kaushal Corporation
Assessment Year-2011-12

आयकर अपीलीय अधिकरण "आई" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI

जोगिन्दर सिंह ,न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
BEFORE SHRI JOGINDER SINGH, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.3164/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2011-12)

Harsh Kaushal Corporation Crystal Shopping Arcade Opp. Indian Bank 1 st Floor, S.V.Road Santacruz(W) Mumbai-400 054	बनाम/ Vs.	Assistant Commissioner of Income Tax Circle 22(1) Air India Building Nariman Point Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AACFH-8774-L		
(अपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Rahul Hakani, Ld.AR
Revenue by	:	Ram Kumar Tiwari, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	14/12/2017
घोषणा की तारीख / Date of Pronouncement	:	10/01/2018

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by assessee for Assessment Year [AY] 2011-12 assails the order of the Ld. Commissioner of Income-Tax (Appeals)-34 [CIT(A)], Mumbai, Appeal No. CIT(A)-34/Addl.CIT.15(2)/IT-494/14-15 dated 21/03/2016 qua confirmation of certain addition on account of maintenance charges for Rs.34.56 Lacs. The Assessment for



impugned AY was framed by *the Ld. Additional Commissioner of Income Tax, Range 15(2), Mumbai [AO] u/s 143(3) of the Income Tax Act, 1961* on 21/03/2014.

2.1 Facts leading to the same are that assessee *being resident firm* engaged as *builders and developers* was assessed u/s 143(3) at Rs.3,41,54,410/- after sole disallowance of Rs.34.56 Lacs as against returned income of Rs.3,06,98,411/- *e-filed* by the assessee on 22/09/2011.

2.2 During Assessment Proceedings, it was noted that the assessee did not offer certain *maintenance charges* of Rs.34.56 Lacs stated to be receivable from *Trent Hypermarket Limited* to tax in the impugned AY. The assessee contended that the said receipt was in dispute and received subsequently and hence, offered to tax in AY 2012-13. However, not convinced, Ld. AO opined that the assessee following mercantile system of accounting was required to offer the same to tax in impugned AY and therefore, added the same to the income of the assessee.

3. Aggrieved, the assessee contested the same without any success before the Ld.CIT(A) vide impugned order dated 21/03/2016 where the assessee reiterating the stand contended that the revenue was recognized in the next AY in terms of *Accounting Standard-9* issued by *ICAI*. However, Ld. CIT(A) rejected the same by noting that TDS was deducted by the payee in the impugned AY and therefore, the additions were justified. Aggrieved, the assessee is in further appeal before us.

4. The Ld. Counsel for Assessee [AR] drew our attention to the fact that there was uncertainty as to the receipt of the income and the



revenue was recognized in next AY in terms of *Accounting Standard-9* and the assessee has already paid the due taxes on the same in the next AY and hence, additions were not justified. Our attention was further drawn to the fact that credit of TDS has also been claimed in the next AY only. Per *Contra*, Ld. DR justified the stand of lower authorities.

5. We have carefully heard the rival contentions and perused relevant material on record. It is trite law that income could not be taxed twice. It is gathered from Ld. AR's submissions that the assessee raised invoice for Rs.47.02 Lacs against the payee on 21/04/2011 and received payment of Rs.34.56 Lacs against the same. This fact lends certain strength to the argument of Ld. AR that there was some dispute as to the quantification of the charges to be received by the assessee. This is further fortified by the fact that the assessee claimed the credit of TDS in the next AY only. We also note that the assessee is a firm and subjected to similar tax rate in impugned AY as well as in next AY. Hence, upon factual matrix, we see no reason to disturb the already concluded assessment of AY 2012-13. Therefore, the matter is restored back to the file of Ld. AO to verify the facts that the assessee has offered the said income in AY 2012-13 and also verify the fact that that credit of related TDS has not been claimed in the impugned AY. If the contentions of the assessee are found true, the impugned additions stands deleted else the matter may be decided by Ld. AO as per law. Needless to say that the adequate opportunity of being heard shall be provided to the assessee, who, in turn, is directed to substantiate his claim in this regard failing which the Ld. AO shall be at liberty to dispose-off the same on the basis of material available on record.



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6. Resultantly, the assessee's appeal stands allowed for statistical purposes in terms of our above order.

Order pronounced in the open court on 10th January,2018

Sd/-

(Joginder Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai;दिनांक Dated :10/01/2018

Sr.PS:- *Thirumalesh*

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai