

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH (SMC), KOLKATA
[Before Shri P.M. Jagtap, AM]**

I.T.A. No. 529/Kol/2018
Assessment Year: 2008-09

ACIT CIRCLE 10(2) Kolkata.....Appellant
P-7, Chowringhee Square, 3rd Floor,
Kolkata – 700 069.

Emami Frank Ross Ltd.....Respondent
7, J.L. Nehru Road,
Kolkata – 700 013.
[PAN: AAACF 3726 DJ]

Appearances by:

Shri Imlimeren Jamir, Addl. CIT appearing on behalf of the Revenue.
Shri S.K. Agarwal, FCA appearing on behalf of the Assessee

Date of concluding the hearing : June 14, 2018

Date of pronouncing the order : June 22, 2018

ORDER

PER P.M. JAGTAP, AM

This appeal is preferred by the revenue against the order of Ld. CIT(A) – 5, Kolkata dated 04.12.2017 on the following grounds:

“1. The CIT(A) has erred in restricting the disallowance of Rs. 61,78,614/- to Rs. 3,12,796/- ignoring the fact that during the stage of re-assessment proceeding the claim of the assessee could not be verified in absence of necessary details of sales & supporting books of accounts and at the appellate stage the assessee failed to reconcile the sale amount vis-a-vis gross receipts as per TDS certificate & TDS thereon.

2. The CIT(A) has erred in not going into the fact that the assessee has only furnished a branch wise break up of sales but has not submitted any supporting documentary evidences regarding inclusion of above receipts from M/s. Dishnet Wireless Ltd. & M/s. Amalgamated Bean Coffee Trading Co. Ltd.”

2. The assessee in the present case is a company which is engaged in the business of trading of medicines, pharmaceuticals products, cosmetics etc. In the assessment originally completed under section

143(3) vide an order dated 13.12.2010, the total income of the assessee was determined by the AO at a loss of Rs. 1,08,225/-. Subsequently the AO found that miscellaneous income of Rs. 5,78,378/- was declared by the assessee as other income and credit for TDS of Rs. 6,24,952/- was claimed against the said income. He also found from the relevant TDS certificates filed by the assessee that the total amount received by the assessee was shown at Rs. 61,78,614/-. He, therefore, reopened the assessment by issuing a notice under section 148 and required the assessee to explain the non-disclosure of income to the extent of Rs. 56,00,236/- (61,74,614/- - 5,78,378/-). In reply, an auditor's certificate was filed by the assessee claiming that the amount to the extent of Rs. 51,37,793/- as reflected in the relevant TDS certificate was included in the sales disclosed while the amount to the extent of Rs. 1,09,020/- was included in the hire charges disclosed. The assessee however could not produce the relevant details and documents as well as its books of accounts to enable the AO to verify its claim. The AO, therefore, treated the amount of Rs. 56,00,236/- as the undisclosed income of the assessee and added the same to the total income of the assessee in the assessment completed under section 147/143(3) of the Act vide an order dated 24.03.2014.

3. Against the order passed by the AO under section 143(3)/147, an appeal was preferred by the assessee before the Ld. CIT(A). During the course of appellate proceedings, it was submitted on behalf of that the AO has wrongly added back difference amount to Rs. 5600236/- received by the assessee from Dishnet Wireless Ltd. Chennai and

Amalgamated Bean Coffee Trading Co. Ltd. on the ground that the same was disclosed in the return of income. It was contended that the said amount was duly disclosed and accounted for the assessee company in its books of account under different heads of income such as sales, higher charges and miscellaneous income. It was contended that there was however a mistake in claiming the entire TDS amount against miscellaneous income instead of respective heads and it was due to this mistake that the AO treated the amount of Rs. 56,00,236/- as the undisclosed income of the assessee. A reconciliation statement was also prepared and furnished by the assessee to show that the amount of Rs. 56,00,236/- treated by the AO as the undisclosed income of the assessee was duly accounted for and disclosed by the assessee.

4. The Ld. CIT(A) found merit in the submissions of the assessee and restricted the addition of Rs. 56,00,236/- made by the AO to Rs. 3,12,796/- for the following reasons given in his impugned order:

"I have carefully considered the submission of the appellant and perused the relevant assessment records. A certificate of the auditor was submitted by the appellant in which it is clearly stated that TDS of Rs. 6,08,639/- has been mistakenly disclosed in the TDS mentioned besides Misc. Income – Sch. 14 in audited accounts. The auditor has stated that the same should have been disclosed under sales in audit accounts under Sch. 13. It appears to be a typographical error. The appellant has also paid VAT and Service Tax on the receipts from Dishnet Wireless Ltd., Chennai and Amalgamated Bean Coffee Trading Ltd. It is evident that the addition has been made on the basis of misinterpretation of facts due to the appellant inadvertently showing TDS deduction against Misc. Income, which has no connection with receipts from Dishnet Wireless Ltd. Chennai which, has been disclosed under sales in the audited accounts. However, the appellant could not reconcile the total receipts in the reconciliation statement, which has resulted in difference of Rs. 3,12,796/- as per chart

above. Therefore, the Assessing Officer is directed to restrict the disallowance of Rs. 3,12,796/- instead of Rs. 56,00,236/-. The A.O. is directed accordingly. This ground of appeal is partly succeeds, is therefore, partly allowed."

Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

5. I have heard the arguments of both the sides and also perused the relevant material available on record. As submitted by the learned DR, the explanation offered by the assessee as regards the difference of Rs. 56,00,236/- in respect of undisclosed income as found from the relevant TDS certificate was not accepted by the AO as the assessee could not produce the relevant details and documents as well as his books of accounts to support and substantiate the same. He has contended that the said details and documents however were produced by the assessee before the Ld. CIT(A) along with a reconciliation statement showing the disclosure of the amount in question under different heads such as sales and hire charges and the same filed by the assessee for the first time before the Ld. CIT(A) was relied upon by him to give substantial relief to the assessee without giving any opportunity to the AO to verify the same. As rightly contended by the learned DR, there is thus a violation of Rule 46A of the Income Tax Rules, 1962 by the Ld. CIT(A) and this position clearly evident from the respective orders of the AO and the Ld. CIT(A) is not disputed even by the learned counsel for the assessee. I, therefore, set aside the impugned order passed by the Ld. CIT(A) giving relief to the assessee on this issue and restore the matter to the file of the AO for

deciding the same afresh after verifying the relevant details and documents filed by the assessee before the Ld. CIT(A) in support of its case. The AO shall afford proper and sufficient opportunity of being heard to the assessee and decide the issue on merit in accordance with law.

6. In the result, the appeal of the revenue is treated as allowed for statistical purpose.

Order Pronounced in the Open Court on 22nd June, 2018.

Sd/-
(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 22/06/2018
Biswajit, Sr. PS

Copy of order forwarded to:

1. Emami Frank Ross Ltd., 7, J.L. Nehru Road, Kolkata – 700 013.
2. ACIT CIRCLE 10(2), P-7, Chowringhee Square, 3rd Floor, Kolkata – 700 069.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata