

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं, श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.1775/PUN/2016

निर्धारण वर्ष / Assessment Year : 2010-11

Smt. Sujata Santosh Gawade
(M/s. Mahalaxmi Constructions)
Shah Khandelwal Jain & Associates
Chartered Accountants
Level 3, Riverside Business Bay,
Plot No.84, Wellesley Road,
Near RTO, Pune – 411001

.... अपीलार्थी/Appellant

PAN: AFMPB8935J

Vs.

The Dy. Commissioner of Income Tax,
Circle 8, Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Rajeev Thakkar
प्रत्यर्थी की ओर से / Respondent by : Ms Shabana Parveen

सुनवाई की तारीख / Date of Hearing : 06.09.2018	घोषणा की तारीख / Date of Pronouncement: 10.09.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against order of CIT(A)-9, Pune, dated 30.06.2016 relating to assessment year 2010-11 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

1. *On facts & circumstances prevailing in the case & as per provisions of law, it be held that the TDS claimed disallowed in the year under consideration, income for which was offered to tax by the appellant in F.Y 2008-09, and that confirmed by the first Appellate Authority is erroneous and contrary to the provisions and scheme of the Act. The appellant be granted just and proper relief as per provisions of law and facts prevailing in the case.*
2. *Without prejudice to the above referred ground of appeal, on facts and circumstances prevailing in the case and as per provisions & scheme of the Act, credit of TDS be allowed in the year when the corresponding income was offered to tax by the appellant i.e. F.Y 2008-09. The appellant be granted just and proper relief in the respect.*
3. *On facts and circumstances prevailing in the case and as per provisions & Scheme of the Act it be held that, the A.O erred in treating advance received in FY 2009-10 as income of that year and added back to returned income. The appellant be granted just and proper relief as per provisions of law and facts prevailing in the case.*

3. The first issue raised in the present appeal is against orders of authorities below in disallowing the claim of TDS, where the income, against which, was offered to tax in financial year 2008-09.

4. Briefly, in the facts of the case, the assessee for the year under consideration was engaged in the business of providing industrial construction services and was dealing in construction contracts as sole proprietorship of M/s. Mahalaxmi Constructions. The assessee had furnished the return of income declaring total income of ₹ 60,55,943/-. The case of assessee was picked up for scrutiny. During the course of assessment proceedings, the assessee was provided with copy of ITS data and was requested to furnish the reconciliation along with relevant evidences. The assessee furnished reconciliation of ITS data, which reflected difference of ₹ 73,69,030/-. The major difference was in the account of Gabriel India Ltd. of ₹ 62,31,930/-. The assessee was asked to file reconciliation with contra evidences and also why the differential receipts should not be treated as receipts of assessee. The assessee explained that it was not able to coordinate and communicate with

the parties i.e. in the case of Gabriel India Ltd. and Spicer India Ltd. due to scarcity of time. The Assessing Officer rejecting the submissions of assessee, added sum of ₹ 73,69,030/-.

5. Before the CIT(A), additional evidence was filed, which was forwarded to the Assessing Officer to furnish remand report. The assessee pointed out that she had provided reconciliation of differences in relation to Gabriel India Ltd. vide letter dated 27.10.2015 to the Assessing Officer. The difference of ₹ 20,30,834/- was updated late in Form No.26AS due to system technicalities and late filing of TDS returns by the said concern. It was pointed out that income of ₹ 51,05,628/- pertained to the amounts recorded in books of account by the assessee in assessment year 2009-10 and an amount of ₹ 9,48,779/- represented excess amount recorded by the assessee, on which TDS was not deducted and after reconciliation, there was difference of ₹ 44,221/-.

6. With regard to Spicer India Ltd., it was pointed out that difference arose as the assessee had recorded the said amount as an advance in the instant assessment year. The Assessing Officer in the remand report commented as under:-

"i Gabriel India Ltd.

Comments of the AO.

The AO, in his report, has stated that after reconciliation, difference of Rs.44,221/- still remains and hence the same should be added to the income of the appellant. The AO has also stated that as the amount of Rs.51,05,628/- was considered by the appellant in the A.Y. 2009-10, whereas TDS on this amount has been claimed in A.Y. 2010-11. The AO is of the view that the TDS claimed may be disallowed as per the provisions of Section 199 of the Income Tax Act, 1961 (the 'Act'). As regards, Rs.9,48,779/-, the AO has accepted the same."

7. The assessee in rejoinder has pointed out that since Gabriel India Ltd. had deducted and paid TDS on the income of ₹ 51,05,628/-, offered by the

assessee in assessment year 2009-10, TDS credit was not taken in assessment year 2009-10 and has been taken by the assessee in the year under appeal. In respect of Spicer India Ltd., the Assessing Officer in the remand report stated that the assessee has not been able to link the advance received with the sales effected. In rejoinder, the assessee explained that there was no direct connection between the sales effected and payment made, hence the contention of Assessing Officer cannot be adopted. It was pointed out that *The said company has been making ad-hoc payments to the appellant which are being appropriated against undisputed bills. The difference between amount received from Spicer India Pvt. Ltd. and bills raised on Spicer India Pvt. Ltd. has been accounted as advance in nature. There has not been any loss to the revenue. The advance received by the appellant can be apportioned on the sales effected by the appellant with Spicer India Ltd. during the F.Y. 2010-11, which amounts to Rs.68,75,082/- whereas the payment made by Spicer India Ltd. is only Rs.45,46,167/-.* Hence, it can be seen that the advance received by the appellant has been offered to tax in the A.Y. 2011-12. The CIT(A) confirmed the addition of ₹ 44,221/- on account of non-reconcilable difference in account of Gabriel India Ltd. As far as TDS claim of income offered in financial year 2009-10 was concerned, since the assessee had not offered any income corresponding to such TDS in assessment year 2010-11, the said claim was not allowed in the hands of assessee. Similarly, difference in the account of Spicer India Ltd., in respect of sale of ₹ 9,73,000/- was upheld in the hands of assessee.

8. The assessee is in appeal against both the aforesaid differences. The first issue has been raised vide grounds of appeal No.1 and 2 and the issue of

addition on account of difference in Spicer India Ltd. is raised by way of ground of appeal No.3.

9. The learned Authorized Representative for the assessee pointed out that the assessee had offered the receipts of Gabriel India Ltd. in assessment year 2009-10 but had claimed the TDS in assessment year 2010-11. Our attention was drawn to the Ledger Account of Gabriel India Ltd. for financial year 2008-09 placed at page 1 of Paper Book and it was pointed out that sales have been accounted for in assessment year 2009-10. He further drew our attention to the certificate issued by Gabriel India Ltd., wherein it was pointed out that the TDS deducted on aforesaid amounts was booked in financial year 2009-10 i.e. assessment year 2010-11, copy of which is placed at page 3 of Paper Book. The learned Authorized Representative for the assessee pointed out that the said amount of TDS is to be claimed in assessment year 2010-11. In this regard, he placed reliance on the provisions of section 199 of the Act and also the decision of the Hon'ble High Court of Punjab & Haryana in CIT Vs. Abbott Agency (2014) 41 taxmann.com 404 (P&H).

10. The learned Departmental Representative for the Revenue placed reliance on the orders of authorities below.

11. We have heard the rival contentions and perused the record. The first issue which arises in the present appeal is vis-à-vis claim of TDS in respect of receipts which were booked by the assessee in assessment year 2009-10 and the TDS of ₹ 1,15,898/- was claimed in assessment year 2010-11. It is not in dispute that the assessee had offered receipts of Gabriel India Ltd. totaling

₹ 51,05,628/- in assessment year 2009-10. However, the assessee had claimed the benefit of TDS of ₹ 1,15,898/- deducted out of such invoices in assessment year 2010-11. The assessee in this regard pointed out that though it had received the amounts in assessment year 2009-10 but because of certain technical issues, Gabriel India Ltd. could book the TDS out of such payments in assessment year 2010-11 only. The authorities below have denied the assessee benefit of tax deducted at source in succeeding year holding that since the income was offered in preceding year, then the TDS is also to be allowed in the hands of assessee in preceding year. In this regard, there is need to look at the provisions of the Act i.e. section 199 of the Act, which allows credit for tax deducted at source and Rule 37BA(1) of the Income Tax Rules, 1962 (in short 'the Rules'). Rule provides that credit for tax deducted at source and paid to the Central Government in accordance with the provisions of Chapter XVII, shall be given to the person to whom payment has been made or credit has been given on the basis of information relating to deduction of tax furnished by the deductor to the Income-tax authorities. Proviso further provides that the deductee has to file declaration. Rule 37BA(3) of the Rules provides that credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable.

12. The Hon'ble High Court of Punjab & Haryana in CIT Vs. Abbott Agency (supra) while interpreting the above said provisions of the Act held that where the payee had shown the amounts received in its accounts books for the relevant assessment years and where the said payee proves that TDS certificate, issued late, pertained to receipts reflected in the accounts books of

earlier years, then the assessee is entitled to claim the benefit of tax deducted at source in the succeeding year, where the TDS certificates were issued late. Applying the said principle to the facts of the present case, we hold that the assessee having offered the income in assessment year 2009-10, is entitled to claim the benefit of tax deducted at source out of such receipts in assessment year 2010-11, since the TDS amount was booked by the deductor in the said year and not in the preceding year. Accordingly, we direct the Assessing Officer to allow the benefit to the assessee. The grounds of appeal No.1 and 2 raised by the assessee are thus, allowed.

13. The issue in ground of appeal No.3 raised by the assessee is in respect of addition made of an amount which was received by the assessee as advance and the assessee having booked the receipts in the succeeding years, can the same amount be added in the hands of assessee.

14. In the facts of present case, the assessee had claimed that it had received sum of ₹ 9,73,000/- as advance from Spicer India Ltd, which was kept as advance and the same was offered to tax in assessment year 2011-12. The TDS was deducted out of such amount but the assessee had not claimed the benefit of TDS either in assessment year 2010-11 or 2011-12. The sale bills have been booked in assessment year 2011-12 and the assessee has also filed on record the copy of account of Spicer India Ltd. for the year under appeal and the same very clearly reflects that the receipts from the said parties. In such circumstances, where the assessee not even has claimed the benefit of TDS for the year under consideration, there is no merit in the orders of authorities below in treating the advance received against the project by the

assessee from M/s. Spicer India Ltd., as receipt of the current year. Reversing the order of CIT(A), we delete the addition of ₹ 9,73,000/-. The ground of appeal No.3 raised by the assessee is thus, allowed.

15. In the result, the appeal of assessee is allowed.

Order pronounced on this 10th day of September, 2018.

Sd/-
(D.KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 10th September, 2018.

GCVSR

आदेश की प्रतिलिपि अग्रहित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-9, Pune;
4. The Pr.CIT-5, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune