

आयकर अपीलीय अधिकरण "E" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री एन. के. प्रधान लेखा सदस्य के समक्ष।

BEFORE SRI MAHAVIR SINGH, JM AND SRI NK PRADHAN, AM

आयकर अपील सं./ ITA No. 6316/Mum/2016

(निर्धारण वर्ष / Assessment Year 2013-14)

Trent Retail Services Limited Taj Building, 2 nd Floor, 210, DN Road, Fort, Mumbai-400 001	Vs.	The Income Tax Officer, 1(3)(3), Ayakar Bhavan, Mumbai
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAACR1733N		

अपीलार्थी की ओर से / Appellant by	:	Shri Nitesh Joshi, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri DG Pansari, DR

सुनवाई की तारीख / Date of hearing:	03-10-2018
घोषणा की तारीख / Date of pronouncement :	03 -10-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal filed by the assessee is arising out of the order of Commissioner of Income Tax-3, Mumbai [in short CIT(A)], in appeal No. CIT(A)-3/ITO-1(3)(3)/IT-90/2015-16, order dated 16.08.2016. The Assessment was framed by the Income Tax Officer, Ward-1(3)(3), Mumbai (in short 'ITO/ AO') for the A.Y. 2013-14 vide order dated 18.02.2016 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').



2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in making addition of an amount of ₹ 1,64,20,627/- as unrecorded receipts. For this assessee has raised following ground No. 1: -

"1. The Id. CIT(A) erred in confirming Assessing Officer order in adding an amount of ₹ 1,64,20,627/- as unrecorded receipts."

3. The AO during the course of assessment proceedings noted from reconciliation statement of receipts from various parties filed by assessee vide letter dated 23.12.2015 that as per P & L account and as per AIR data there is difference and according to AO the assessee has offered less income in its computation of income amounting to ₹ 1,64, 20,627/-. As the assessee could not reconcile or offer any explanation for the differences, the AO added this amount to the total income of the assessee as unrecorded receipts. Before CIT(A) also the assessee could not produce anything, and hence, he confirmed the action of the AO making addition of unrecorded receipts of ₹ 1,64,20,627/-. Aggrieved, now assessee is in appeal before Tribunal.

4. We have heard rival contentions and gone through the facts and circumstances of the case. Before us, the learned Counsel for the assessee filed details and contended that in the first form No. 26AS, the party has not included Hypermarket Limited and accounted for less expenses. For this, he drew our attention to old 26AS issued by the department wherein the total receipts paid/ credited was accounted for as ₹ 3,36,38,525/- as against the revised form No. 26AS the receipts recorded are at ₹ 2,68,96,925/-. Hence, the learned Counsel for the assessee stated that the difference has accrued accordingly. The learned Counsel for the assessee stated that the reconciliation statement which explains difference with financials is mainly on account of the service tax



and the difference of expenses excess recorded by Hypermarket Limited amounting to ₹ 96,78,069/- and ₹ 67,41,600/- respectively. The relevant reconciliation submitted by assessee reads as under: -

<i>Particulars</i>	<i>Amount</i>
<i>Basic Service fee as per financial statement</i>	<i>7,83,01527.00</i>
<i>Add-service tax @12.36% of above</i>	<i>96,78,069.00</i>
<i>Add-Amount excess booked as expenses & later on reversed by one of our client however tds return not rectified</i>	<i>67,41,600.00</i>
<i>Interest Income from Citi Bank shown in other Income</i>	<i>52,544.00</i>
<i>Receipt As per AIR 26AS statement</i>	<i>94,773,740.00</i>

5. After going through the reconciliation, we find that as per revised form No. 26AS, the amount paid / received/ amount credited is amounting to ₹ 2,68,96,925/- and the difference is mainly on excess credit claimed by Hypermarket Limited, which was not rectified in the TDS return but later revised the same. This difference of ₹ 67,41,600/- is on account of wrong booking of expenses by Hypermarket Limited. Another difference is on account of service tax which is not part of income. Service tax cannot be considered as income amounting to ₹ 96,78,069/-. This can be verified by the AO and will decide accordingly. The assessee should be allowed relief in case these actual facts. This issue is remanded back to the file of the AO and the orders of the lower authorities are set aside.

6. The next common issue in this appeal of assessee is as regards to the disallowance of adhoc expenses at the rate of 20% on travelling, conveyance fee and car hire charges at ₹ 16,31,600/-, repair and maintenance and repair and other expenses at ₹ 5.20 lacs and journal expenses i.e. printing and stationary postage and telegram and telephone expenses at ₹ 7,39,800/-.



7. Briefly stated facts are that the assessee has debited travelling expenses, car higher charges at ₹ 73,28 lacs and 8.30 lacs respectively. Similarly, the assessee has also debited repairs and maintenance and repairs and other expenses amounting to ₹ 26 lacs. Similarly, the assessee has also debited journal expenses of ₹ 12.09 lacs, stationary and printing expenses of ₹ 8.36 lakhs and postage, telegram and telephone expenses at ₹ 16.55 lacs. The AO disallowed 20% of these expenses on adhoc basis for the reason that the assessee could not support these expenses by third party verification.

8. We have heard rival contentions and gone through the facts and circumstances of the case. We find that these expenses are business expenses and it is not the case that these are not related to business. Only that the assessee could not produce proper supporting bills of third parties in respect to these expenses and hence, the AO disallowed 20% of the expenses on adhoc basis and CIT(A) confirming the same. We are of the view that the assessee is unable to produce the proper supporting of third parties and hence, the AO has disallowed by estimating at 20%. According to us, the disallowance at a 20% is on higher side and hence, we restricted the disallowance on these expenses at 10%. We direct the AO accordingly. This common issue of adhoc disallowance of expenses is partly allowed.

9. **In the result, the appeal of assessee partly allowed.**

Order pronounced in the open court on 03-10-2018.

Sd/-

(एन. के. प्रधान / NK PRADHAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 03 -10-2018

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

**आदेश की प्रतिलिपि अग्रेषित/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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai