

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.1660/Del/2018
Assessment Year: 2009-10

Rakhi Parihar,
A-56, Sector-16,
Noorpur,
Uttar Pradesh.

Vs. ITO,
Ward-1(3),
Noida.

PAN: AHAPP0752H

(Appellant)

(Respondent)

Assessee by : Shri Ved Jain, Advocate
Revenue by : Shri P.S. Thoingaleng, Sr.DR

Date of Hearing : 10.12.2018
Date of Pronouncement : .12.2018

ORDER

This appeal by the assessee is directed against the order dated 29th November, 2017 of the CIT(A)-I, Noida relating to Assessment Year 2009-10.

2. Although a number of grounds have been raised by the assessee, they all relate to the order of the CIT(A) in sustaining the addition of Rs.3,60,364/- made by the Assessing Officer on account of difference in gross receipts.

3. The facts of the case, in brief, are that the assessee is an individual and filed her return of income on 2nd December, 2009 declaring total income of Rs.3,47,910/-.

During the course of processing of the return u/s 143(1), it was found that the assessee had shown nil receipts in column 1 of the P&L Account of ITR-4. However, the copy of form 26AS generated from the system revealed that the assessee has received Rs.16,05,263/- during the financial year 2008-09 on which TDS of Rs.1,72,043/- had been made by the respective tax deductors. Accordingly, the Assessing Officer reopened the assessment after recording reasons and notice u/s 148 of the IT Act was issued to the assessee on 8th August, 2011. Subsequently, detailed notice u/s 142(1) was also issued to the assessee asking him to explain the difference in gross receipts as shown in the return of income and as appearing in Form No.26AS. The assessee, in her reply, submitted the following explanation:-

"4. The ITR-4 filed for the year ended 31/03/2009. the profit before tax of Rs. 3,47,905/- is duly shown with all the details for expenses, TDS and Assets and Liabilities except due to clerical error, turnover of Rs. 12,44,899/- omitted to be shown. This is a mistake apparent on our part. Without turnover, the profit cannot arise, which is being reflected by the ITR and tax paid is Rs. 22,230/-.

5. As per Books of Accounts of the firm for the year ended 31/03/2009, turnover of Rs. 12,44,899/- is being shown, which is including service tax @ 10%. Total sales including service tax is Rs. 14,07,486/-. Form 26AS is showing payments of Rs. 6,31,750/- realized against sales made in FY 2007-08, which is realized in current year ended 31/03/2009 is receivable from debtors as opening balance. ”

4. The Assessing Officer, thereafter, asked the assessee to produce the original copies of the bills raised during financial year 2007-08 for which the payments were received in F.Y. 2008-09. The assessee was also asked to furnish the confirmations from all the debtors from whom the payments were outstanding during F.Y. 2007-08. The assessee filed the reply. However, the Assessing Officer was not satisfied with the explanation given by the assessee and held that the assessee is not showing the

income on accrual basis as claimed and is showing the same on receipt basis. Further, the assessee has not filed return of income for assessment year 2008-09, therefore, the Assessing Officer held that the gross receipts as appearing in Form No.26AS are to be considered for assessment purpose during the year under consideration. Rejecting the various explanation given by the assessee, the Assessing Officer made addition of Rs.3,60,364/- being the difference between Rs.15,06,263/- and Rs.12,44,899/-, after recording the following facts:-

“(i) The assessee has not produced any evidence, which could substantiate payment of service tax.

(ii) At one hand, the assessee is claiming that the gross receipts appearing in Form 26AS include the amount of Rs.6,31,750/-, which pertains to FY 2007-08. On the other hand, the assessee is showing gross receipts of Rs. 14,07,486/- (including service tax) during the year under consideration. The gross receipts as per Form 26AS is Rs.16,03,263/- (including service tax). If the receipts of Rs.6,31,750/- pertains to the payments pertaining to preceding year, the assessee should have disclosed gross receipts of only Rs.9,73,513/-. The assessee has failed to reconcile the difference.

(iii) During the preceding year, the assessee did not file the return of income. As per her own version, she received gross receipts of Rs.6,31,750/-. Copy of Form 26AS for FY 2007-08 shows that she received gross receipts of Rs.2,88,464/-. It means that the total gross receipts of the assessee for FY 2007-08, as per her own calculation was Rs.9,20,214/-. The assessee has shown NP @ 27.94% during the year under consideration. Applying the same NP ratio for AY 2008-09, the NP should have been 2,57,107/-, which was well above the taxable limit for FY 2008-09. Had the assessee showing receipts on accrual basis, she would have definitely filed the return of income and had shown the correct receipts.

(iv) Although the assessee is claiming that out of the gross receipts of Rs. 16,05,263/-, the amount of Rs.6,31,750/- pertains to the preceding year, she has claimed the TDS of Rs. 1,84,770/-, which is even more than the TDS of Rs. 1,72,043/- appearing in Form 26AS against the gross receipts of Rs.16,05,263/-.”

5. In appeal, the Id.CIT(A) upheld the action of the Assessing Officer by observing as under:-

“3. The Id. A.O. has found that there was discrepancy between the gross income as deductible from the information available on Form 26AS and that declared by the appellant in the returned of income. The appellant is contesting the same.

4. Although the appellant has furnished voluminous records and documents the discrepancy between the gross income deductible from Form 26AS and that returned by the appellant in the return of income does not get resolved by the voluminous documents placed on record.

5. There is no infirmity in the impugned assessment order and no interference is called for in the same.

6. By impugned assessment order is therefore confirmed. The appeal of the appellant fails and is dismissed.”

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

7. The Id. counsel for the assessee, at the outset, referred to page 6 of the paper book and drew my attention to the list of sundry debtors where the opening balance was shown at Rs.6,31,750/- in respect of seven debtors. Referring to pages 44,59,63,68,73,74 and 81 of the paper book, he drew the attention of the Bench to the opening balances as shown in the ledger account of the above parties. Referring to page 3 of the paper book, he drew the attention of the Bench to the Profit & Loss Account where the assessee has shown income of Rs.12,44,899/- for the period ended 31st March, 2009. Referring to page 13 and 14 of the paper book, he drew the attention of the Bench to the reconciliation of the receipts as per books of account of the F.Y. 2009-10 with Form No.26AS. Referring to page 82-83 of the paper book, he drew the attention of the Bench to the Profit & Loss Account and balance sheet of the

assessee for the period ending 31st March, 2008. He submitted that the entire reconciliation was filed before the CIT(A). However, the Id.CIT(A) in a cryptic order dismissed the appeal of the assessee holding that discrepancy between the gross income deductible from Form NO.26AS and that returned by the assessee in the return of income does not get resolved by the voluminous documents placed on record. He accordingly submitted that the issue may be decided in favour of the assessee since the assessee has properly reconciled the difference in the Form No.26AS and the income shown by the assessee.

8. The Id.DR, on the other hand, heavily relied on the order of the Assessing Officer and CIT(A).

9. I have heard the rival arguments made by both the sides and perused the material available on record. I find the Assessing Officer made addition of Rs.3,60,364/- on the ground that the assessee could not reconcile the difference between Rs.16,05,263 as per Form No.26AS and the income of Rs.12,44,899/- shown in the P&L Account towards direct income. I find from the various details furnished by the assessee in the paper book that the Id. counsel for the assessee has successfully reconciled the difference between the Form No.26AS and the income shown by the assessee. Although these details were furnished before the CIT(A), however, I find the Id.CIT(A) in a very cryptic order, rejected the voluminous details filed before him on the ground that the issue of difference between the two figures does not get resolved. This type of action on the part of the CIT(A), in my opinion, is not justified especially

when the assessee has submitted the requisite details before him substantiating the difference and reconciliation thereof. I, therefore, set aside the order of the CIT(A) and direct the Assessing Officer to delete the addition. The grounds raised by the assessee are accordingly, allowed.

10. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 19.12.2018.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 19th December, 2018

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Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi