

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "E", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

I.T.A. No. 694/DEL/2016		
A.Y. : 2012-13		
ITO, WARD 20(3), NEW DELHI	VS.	M/S RMS ENERGY PVT. LTD. C-138, PHASE-I, NARAINA INDL. AREA, NEW DELHI - 110 028 (PAN: AAECR8827P)
<b>(ASSESSEE)</b>		<b>(RESPONDENT)</b>

Revenue by : Ms. Rinku Singh, Sr. Dr.  
Assessee by : Sh. Rakesh Aggarwal, CA

**ORDER**

**PER H.S. SIDHU : JM**

The Revenue has filed this Appeal against the impugned Order dated 26.11.2015 of the Ld. CIT(A)-7, New Delhi relevant to assessment year 2012-13.

2. The grounds raised in the appeal read as under:-

i) On the facts and in the circumstances of the case, Ld. CIT(A) has erred in law in deleting the addition of Rs. 2,89,17,000/- without appreciating the fact that the assessee could not prove the invoice raised by it during the year was in the nature of advance only.

ii) The appellant craves to be allowed to add any fresh ground(s) of appeal and / or delete or amend any of the ground(s) of appeal.

3. The brief facts of the case are that the assessee filed the e-return of income on 29.9.2012 declaring income of Rs. 27,46,320/-. The same was processed u/s. 143(1) of the Income Tax Act, 1961 (hereinafter referred as "Act") and later picked up for scrutiny by issuing of notice u/s 143(2) of the Act. Thereafter, notice u/s. 143(2) and 142(1) of the Act, alongwith detailed questionnaire, was issued to the assessee company calling for various information. In response to these notices, the AR of the assessee attended the proceedings from time to time and filed necessary details and documents. The AO observed that in the assessment year 2013-14 the assessee has shown returned income of Rs. 14,28,820/- which included income of Rs. 2,89,17,000/- and if this income amounting of Rs. 14,28,820/- which included income of Rs. 2,89,17,000/- and if this income amounting of Rs. 2,89,17,000/- was included in the assessment year 2013-14 then there would be loss of Rs. (-) 27488180/- in the assessment year 2013-14. Hence, the AO held that the assessee has not disclosed receipts of Rs. 2,89,17,000/- in the AY 2012-13 and therefore, the same was added to the income of the assessee by assessing the income at Rs. 3,30,49,768/- vide order dated 3.3.2015 passed u/s. 143(3) of the Act. Against the

assessment order, the assessee filed the appeal before the Ld. CIT(A) who vide his impugned order dated 26.11.2015 has partly allowed the appeal of the assessee. Aggrieved with the order of the Ld. CIT(A)-7, New Delhi the Revenue is in appeal before the Tribunal.

4. Ld. DR relied upon the Order of the AO and reiterated the contentions raised in the grounds of appeal.

5. On the other hand, Ld. counsel for the assessee has relied upon the order of the Ld. CIT(A) and stated that he has passed a well reasoned order which does not need any interference.

6. We have heard both the parties and perused the records, especially the impugned order passed by the Ld. CIT(A). We find that Ld. CIT(A) has elaborately discussed the issue in dispute vide para no. 2.3 to 2.6 at page no. 4-6 of the impugned order. For the sake of clarity, we are reproducing hereunder the said relevant findings of the Ld. CIT(A).

*"2.3 I have carefully considered the submission of the appellant and the order passed by the AO. The AO has brought to tax revenue of Rs. 2,89,17,000/- on the ground that the appellant had received Rs. 5,46,77,916/- from M/s Sistema Shyam Teleservices Ltd. on which TDS of Rs. 10,93,559/- had been deducted. As the appellant had only*

*disclosed income of Rs. 2,06,55,000/- and claimed credit of TDS of Rs. 4,56,650/- in the year under appeal, she was of the view that the entire revenue from M/s Sistema Shyam Teleservices Ltd. pertained to the current year and therefore the balance amount was brought to tax in the year. The AR has stated that the net amount of revenue after service tax was Rs.4,95,72,000/- on which TDS has been deducted. Out of this amount, Rs.2,06,55,000/- had been accounted during the current year and proportionate tax credit of Rs.4,55,650/- was claimed. The balance amount of Rs.2,89,17,000/- pertained to the period April to October, 2012 and was accordingly declared in the next assessment year i.e. A. Y. 2013- 14 and proportionate TDS of Rs.6,37,909/- was claimed.*

*2.4. The transaction between the appellant and M/s Sistema Shyam Teleservices Ltd. is governed by Joint Promotional Activity Agreement which was effective for the period of one year i.e. November, 2011 to October, 2012. Services were to be rendered by the appellant on monthly basis over the entire tenure of 12 months. The*

*appellant raised one lump sum invoice "on account" on 11.11.2011 for Rs.5,46,77,916/- (inclusive of service tax). The services against the invoice were rendered during the 12 months period from November, 2011 to October, 2012 and against the services rendered payments were received by the appellant on periodic basis every month. Since the services were rendered during 12 months period spread from November, 2011 to March, 2012 in year one and April, 2012 to October, 2012 in year to 2, the appellant disclosed revenue in two years i.e. Rs.20655000/- in F. Y. 2011-12 (A.Y. 2012-13) and Rs.28917000/- in F. Y. 2012-13 (A.Y. 2013-14). These facts are borne out from the agreement between the appellant and M/s Sistema Shyam Teleservices Ltd. and the ledger account evidencing receipt of monthly payments by the appellant. The AO however, was of the view that as per copy of invoice raised by the appellant on 11.11.2011 whereby services have been billed for the period November, 2011 to October, 2012, the appellant was paid full amount during the year itself. She has further stated that the appellant has not filed any copy of the*

*agreement which shows that it had received the amount in advance. Further, since M/s Sistema Shyam Teleservices Ltd. had deducted TDS of Rs. 10,93,559/- on the full amount therefore the entire amount was taxable in the current year itself. The AR has submitted that the appellant had not received the full amount during the year and the payments were made after rendering of service for each month which is borne out by the bank statement. As for the AO's finding that there is no agreement which show that the appellant had received the amount in advance, it is stated by the AR that this claim was never made by the appellant company. Further, the amount receivable for the period April, 2012 to October, 2012 was shown as provision for advance billing in the balance sheet. As for AO's finding that TDS on full amount was deducted by M/s Sistema Shyam Teleservices Ltd. and therefore the corresponding income was taxable in the current year itself, the AO stated that even though TDS is deducted on full amount in a year, the credit of TDS is allowed in a year to which the income pertains. In the case of the appellant, the total basic amount of*

*the bill for Rs.49572000/- i.e.(5467916-5105916) service tax, the amount of Rs.2,89,17,000/- pertained to the period in the next F. Y. and was accordingly accounted for therein with proportionate credit of TDS amount of Rs.637909/- claimed in the next year.*

*2.5. It is evident from the above that the AO has brought to tax revenue of Rs.2,89,17,000/- in the current year primarily on the ground that TDS of Rs.10,93,559/- was deducted by M/s Sistema Shyam Teleservices Ltd. on the bill for entire amount invoice by the appellant in November, 2011. Section 199 of the Act read with Rule 37(BA)(3) of the I. T. Rules, 1962 clearly lays down the procedure for credit of tax deduction at source as under:*

*"37(BA)(3): (i) 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.*

*(ii) Where tax has been deducted at source and paid to the Central Government and the income is*

*assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax."*

*2.6. Since the appellant had offered the receipts in two financial years and claimed proportionate credits of TDS as per the aforesaid Rules, I do not find any merit in the addition made by the AO. Further, payments have actually been received in two separate financial years and not in the current year as stated by the AO. The appellant has also booked expenditure with reference to the payments made in the two financial years. It is not understood as to how the appellant was planning to escape tax in both assessment years as was held by the AO, which, is the basis for taxing the receipts of Rs.2,89,17,000/- in the current year. In view of the above, the addition made by the AO is without any basis and is therefore ordered to be deleted. This ground of appeal is ruled in favour of the appellant."*

6.1 After perusing the aforesaid findings of the Ld. CIT(A), we are of the view that AO has brought to tax revenue of Rs. 2,89,17,000/- in the current year primarily on the ground that DS of RS. 10,93,559/- was deducted by M/s Sistema Shyam Teleservices Ltd. on the bill for entire amount invoice by the assessee in November, 2011. It is noted that the

assessee had offered the receipts in two financial years and claimed proportionate credits of TDS as per Rules, hence, AO has not rightly made the addition. It is further noted that payments have actually been received in two separate financial years and not in the current year and assessee also booked expenditure with reference to the payments made in the two financial years. Therefore, Ld. CIT(A) has rightly deleted the addition in dispute which does not need any interference on our part, therefore, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground raised by the Revenue.

7. In the result, the Revenue's Appeal stands dismissed

Order pronounced on 13/02/2019.

Sd/-

**[PRASHANT MAHARISHI]  
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]  
JUDICIAL MEMBER**

*Date 13/02/2019*

**SRBHATNAGAR**

**Copy forwarded to: -**

1. Assessee -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

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By Order,

Assistant Registrar, ITAT, Delhi Benches