

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. No.101/Coch/2018
Assessment Year : 2008-09

Smt. Mariamma John, Kochuveetil House, Kuttickal, Illimattom, South Pampady P.O., Kottayam-686 502. [PAN:ADQPJ 6889B]	Vs.	The Income Tax Officer, Ward-2, Thiruvalla
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	Smt. Parvathy Ammal, CA
Revenue by	Smt. A.S. Bindhu, Sr. DR

Date of hearing	19/02/2019
Date of pronouncement	20/02/2019

ORDER

Per CHANDRA POOJARI, AM:

This appeal filed by the assessee is directed against the order of the CIT(A), Kottayam dated 30/01/2018 and pertain to the assessment year 2008-09.

2. The only issue in this appeal is with regard to assessment of Rs.13,07,095/- as reflected in Form No. 26AS.

3. The facts of the case are that Form 26AS reflected the payment of Rs.13,07,095/- to the assessee by Tata Teleservices. Before the Assessing

Officer, it was stated that the amount represented the payment made to Falcon India wherein the assessee was a partner. The partnership deed showed two partners of the firm, Shri Stanly Joseph John and the assessee herself. Shri Stanly Joseph John was the managing partner of the said firm. The partnership deed stated that the assessee herself shall be a working partner and assist the managing partner in the day to day affairs of the firm. Since Form 26AS was bearing the Pan No. of the assessee, the said amount reflected therein was considered as the income of the assessee.

4. Against this, the assessee went in appeal before the CIT(A). The CIT(A) observed that on the payment of Rs.13,07,095/-, TDS was deducted by Tata Teleservices under the PAN number of the assessee. The CIT(A) observed that neither the assessee made any effort to take up the issue with Tata Teleservices for correction of the PAN which was wrongly quoted by the Tata Teleservices as per the assessee nor the assessee ensured that the firm Falcon India filed any return of income reflecting the receipt of Rs.13,07,095/-. Considering the fact that the assessee failed to discharge the burden placed on her, the CIT(A) held that the Assessing Officer had rightly assessed the amount of Rs.13,07,095/- in the hands of the assessee.

5. Against this, the assessee is in appeal before us. The Ld. AR submitted that M/s. Falcon India entered into an agreement with TTSL for distribution of their

products. M/s. Falcon India was having PAN AABEF 7841D, TIN No. 3206065289. It was submitted that the partners of the firm were the assessee herself and Shri Stanley Joseph John. As per the deed, Shri Stanley Joseph John was the managing partner and the assessee was a working partner. It was submitted that from the partnership deed, PAN No. and KVAT registration, it was very clear that Falcon India was a separate entity. It was submitted that the vendor statement accounts of TTSL confirmed that the business of Tata Teleservices was with M/s. Falcon India and therefore, the impugned amount belonged to M/s. Falcon India only. It was stated that it was only due to a mistake that the PAN of the assessee was mentioned. It was submitted that the assessee took various steps to get the 26AS Form corrected by Tata Teleservices, but since the company had closed operations in Kerala, the same could not be done. The Ld. AR referred to section 68 wherein it was stated that where any sum is found credited in the books of an assessee maintained for any previous year and assessee offers no explanation about the nature and source thereof or the explanation offered by him/her was not satisfactory in the opinion of the Assessing Officer, the sum so credited may be charged as income of the assessee of the previous year. It was submitted that the Assessing Officer had no case that the sums were found credited in the books maintained by the assessee and therefore, the addition cannot be made only on the ground that the amount appeared in 26AS.

5.1 In this connection, the Ld. AR relied on the following decisions –Income Tax Appellate Tribunal, Chennai in the case of P.K. Rajasekhar dt. 15/09/2016

".....that the assessee is engaged in the business of laying cables. During the year under consideration, the assessee has received a sum of Rs.64,85,397/- from M/s Tulip Telecom P. Ltd. The assessee has offered the above said sum of Rs.64,85,397/- for taxation. However, while filing the TDS return, M/s Tulip Telecom P. Ltd. appears to have claimed a sum of Rs.26,84,856/- paid to the assessee. Out of the so-called claim of M/s Tulip Telecom P. Ltd., a sum of Rs.58,36,556/- was said to be given credit on 01.07.2010 is totally incorrect. When the assessee contacted the company M/s Tulip Telecom P. Ltd., they said they will rectify the TDS return filed electronically. However, they have not rectified. Since the amount was not paid, according to the Ld. counsel, the same cannot be taken as income of the assessee. According to the Ld. counsel, a wrong entry filed by the deductor cannot be a reason to treat the same as income of the assessee.

This Tribunal is of the considered opinion that even though the burden of proof is initially on the shoulder of the assessee, the Assessing Officer is also equally responsible to find out whether the credit entry found on 01.07.2010 is genuine or not. The Assessing Officer cannot take advantage of the ignorance or handicap of the assessee and say that

there was undisclosed receipt by the assessee. When the assessee claims that the entry as on 01.07.2010 is a wrong entry, the Assessing Officer in all fairness has to examine the same and find out whether there was genuine entry or not. The Assessing Officer was conferred the power of civil court to examine and find out the real nature of transaction. If the Assessing Officer could not exercise the power conferred on him, it is not known how the individual citizen of this country will be able to find out the genuineness of the transaction. Therefore, in order to meet the ends of justice, this Tribunal is of the considered opinion that the Assessing Officer has to find out the address and thereafter find out whether so-called credit of Rs.58,36,556/- said to be given on 01.07.2010 is a genuine transaction or it is a wrong entry. Thereafter, the Assessing Officer has to decide the same in accordance with law. Accordingly, the orders of the authorities below are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh in the light of the material available on record and therefore decide the same in accordance with law after giving a reasonable opportunity to the assessee.

In the case of ITO vs. Ch. Atchiaiah (1966) 218 1TR 239 (SC), the Hon'ble Supreme Court held that the AO can and he must, tax the right person and the right person alone. The 'right person' is meant to be the

person who is liable to be taxed, according to law, with respect to a particular income.

It is submitted that since the amounts do not relate to the appellant the appellant is not the right person liable to be taxed.

VIKASH YADAV VS. ITO, WARD-2, 2016 (9) TM1 500 - ITAT DELHI

FDRS Interest taxability-income accrued - Held that:-Assessee is engaged in the business of sales of bikes and owner of bikes are insured with M/s National Insurance Co. Ltd. or assessee IndusInd Bank. All sums received by the assessee as job charges duly declared. No dealings of the assessee with National Insurance Co. Ltd. and books of accounts has been accepted. No such sums received by the assessee. On perusing a Certificate from the Bank along with copy of FDR it shows that the interest is on account of FDRs of wife of the assessee Smt. Sarita Yadav. It is of the view that once no sum is credited in the books of accounts of the assessee, it is really not known how any figure reflected in Form 26AS can be treated as income of the assessee as Form 26AS neither forms part of books of accounts of the assessee, As find considerable cogency in the assessee's counsel that it is a well settled law that the bank account is not books of account of the assessee, therefore, the Form 26AS cannot be made a basis for addition.

As regards the TDS Certificate is concerned, on perusing the records, as noted that the National Insurance Company has issued a TDS Certificate in the name of the assessee and mere issue of TDS certificate does not establish that there is any income credited to the income of the assessee as no sum is either due to the assessee or any sum has been actually received by the assessee, thus the addition of Rs.11,605/- and Rs. 8,47,592/- is not tenable in the eyes of law, hence, the same are deleted. With regard to addition of Rs.4,19,563/- relating to FDR interest, from the records, it reveals that this amount relates to Smt. Sarita Yadav, W/o Sh. Vikas Yadav, who is a regular income tax assessee. The FDRs interest and TDS claim was duly made in her return. The TDS deducted under the assessee PAN actually its belong to her. Nor the interest is claimed by the assessee nor the benefit of TDS is availed. Hence, the addition in dispute is untenable and the same is deleted. - Decided in favour of assessee

INCOME TAX OFFICER VS. SH. BASANT KUMAR S/O SH. SHEO NARAI.
2015 (11) TM1 1127 - ITAT DELHI

Addition on account of suppressed receipts - Additions on the basis of 26AS statement - CIT(A) deleted the addition - as per OLTAS information, 26AS details and also per TDS form 16A the amount has been credited to the account of the assessee by the company - whether there is no record with the company that the payment has been made directly to the

retailers? - Held that:- As evident from affidavit a copy placed the assessee has categorically stated that the impugned "amount of Rs.58,78,256 shown in form No. 26AS was neither received by me nor receivable to me" and that "the above stated amount was directly paid by the Vodafone Essar Digilink Ltd to the retailers of the company, a complete list of which is provided by the company and placed on file". We have further noted that vide letter dated 15.12.2011 (duly acknowledge by the office on 23,12.2011 Vodafone Digilink Ltd has given a complete break up of Rs.58 ,78,256 and given details of the retailers to whom the related payments have been made. There is no material to come to the conclusion that assessee ever received any such coupons or payments nor the same are reflected in his books of accounts or bank statements. The fact that these payments are made by coupons and vouchers etc, can also not be put against the assessee since the assessee never received the same and there is no evidence to the contrary..... On these facts, in our considered view, learned CIT(A) was quite justified in deleting the impugned addition. We approve his conclusions, and decline to interfere in the matter. Decided in favour of assessee."

5.2 Thus, it was therefore prayed that the Tribunal considering the fact the payments were not made to the assessee may delete the addition made by the assessing Officer adopting the figure from the Form 26AS.

6. The Ld. DR relied on the order of the authorities below.

7. We have head the rival submissions and perused the record. Admittedly, Form 26AS showed the receipt of amount of Rs.13,07,095/- and also PAN of the assessee. However, the contention of the Ld. AR is that the amount shown in Form 26ASA was not related to the assessee, on the other hand, it was related to M/s. Falcon India wherein the assessee was a partner and the PAN No. of the assessee was wrongly mentioned in Form 26AS. In our opinion, it is appropriate to remit this issue to the file of the Assessing Officer to examine who has rendered the services to Tata Teleservices, who actually received the said amount and in whose account the said amount was deposited. Accordingly, the Assessing Officer has to tax the same in the hands of the assessee only if the assessee has actually rendered the services to Tata Teleservices and correspondingly received the said amount for the services rendered to Tata Teleservices. Hence, we remit this issue to the file of the Assessing Officer for fresh consideration on above lines.

8. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on this 20th February, 2019

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi
Dated: 20th February, 2019
GJ

Copy to:

1. Smt. Mariamma John, Kochuveetil House, Kuttickal, Illimattom, South Pampady P.O., Kottayam-686 502.
2. The Income Tax Officer, Ward-2, Tiruvalla.
3. The Commissioner of Income-tax(Appeals), Kottayam.
4. The Pr. Commissioner of Income-tax, Kottayam.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin