

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "D", KOLKATA**

**BEFORE SH. P.M.JAGTAP, VICE PRESIDENT &
SH.S.S.VISWANETHRA RAVI, JUDICIAL MEMBER**

**ITA No.469/KOL/2017
(ASSESSMENT YEAR-2010-11)**

ACIT, Circle-28, Kolkata.	vs	Sri Mangilal Suthar, 2/4, J.K.Paul Road, Kolkata-700038. PAN-AKWPS9255P
(Appellant)		(Respondent)
Appellant by		Sh.Shankar Halder, Sr.DR JCIT
Respondent by		None
Date of Hearing		30.01.2019
Date of Pronouncement		27.03.2019

ORDER

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

This appeal filed by the Revenue against the order dated 09.12.2016 passed by CIT(A)-8, Kolkata for AY 2010-11 u/s 144 of the Income Tax Act, 1961 (in short "Act"). This appeal filed with a delay of 02 days and on submissions of the Ld.DR, we find the reasons stated by the Ld.AR are bonafide and really prevented the appellant-Revenue to file this appeal. Therefore, delay of 02 days is condoned.

2. At the time of hearing, we find no representation on behalf of the respondent-assessee nor any application filed seeking adjournment. The assessee called absent and set ex-parte.

3. The only issue is to be decided as to whether the CIT(A) is justified in deleting the addition made on account of difference between amount shown in P&L A/c and amount credited in Form No.26AS.

4. Heard Ld. DR and perused the material available on record. The contention of the Ld.DR is that the assessee did not submit or furnish any details regarding the difference as found by the AO during the course of assessment proceedings relating to amount as per P&L A/c and amount found to be credited in Form No.26AS. Further, it was submitted that the assessee filed details such as copies of work orders, invoices, ledgers and bank statement, P&L A/c and balance sheet for AY 2011-12 and reconciliation statement before the CIT(A) and was argued without considering the relationship between project-wise income earned and TDS thereon, the CIT(A) deleted the said difference of amount as found by the AO arbitrarily. We note that at para 6.5 of the impugned order, the CIT(A) sought Remand Report from the AO and considering the same, he found satisfied with the details as provided by the assessee and deleted the addition by the AO. The relevant portion of which is reproduced herein below:-

6.6. *“As stated at Para 6.3 - there is bound to be seeming difference. The appellant at the end of his reconciliation statement, has given the consolidation summary for 3 years - the preceding 2 years and the relevant previous year, i.e., for FYs 2008-09, 2009-10, and 2010-11. This is the only rational way for reconciliation exercise - as the accounts are running accounts and run for several years.*

In the respective parties details the appellant has furnished the explanation - which are but because of :

- from assessee's point - due to Previous dues/Billing yet to be done/Advance received / instalment payment;*
- from TDS deductors point - TDS deducted on provision/on actual payment.*

The reconciliation statement furnished is for 3 years, upto the relevant FY 2010-11; and the seeming difference has been largely explained.

M ARTS Prop: MANGILAL SUTHAR

Statement of payment Received and TDS credited for the Financial Year 2008-09 and 2009-10 and 2010-11.

S.No.	Head & Branch Offices	Total Bill Submitted			Total TDS Credited			Total Credited/Received		
		2008-09	2009-10	2010-11	2008-09	2009-10	2010-11	2008-09	2009-10	2010-11
1.	2	3.	4.	5.	6.	7.	8.	9.	10.	11.
Kolkata A/c		26175828	30852813.00	18933734.00	681805.00	573266.00	496171.00	39055772.00	29461522.00	34869529.00
Hyderabad A/c		24061100.00	24418082.00	18615682.00	839273.00	834919.00	5.00	37937428.00	39147422.00	5.00
Uttarpara A/c		608364.00	17350.00	315788.00						
50845292.00	56088245.00	37865204.00	1521078.00	1408189.00	497176.00	76093200.00	68608944.00	34869534.00		

A	B	C	D
(1+2+3)	(4+5+6)	(7+8+9)	(C-A)
144798741.00	3425439.00	179571678.00	34772937.00

Apperjay Surrender Park Hotels Ltd.	1281710.00
AMRI Hospitals Ltd.	1209766.00
Bengal Park Chamber Housing Dev. Ltd.	475000.00
Darjeeling Tea Estates Pvt.ltd.	700000.00
Vodafone Essar Sought Ltd.	243248.00
Suraksha Diagnostic Pvt.Ltd.	2600000.00
Chalot Hotel Limited	<u>18615682.00</u>
	25125496.00
Advance Recd. As on 31.03.2010	<u>11660292.00</u>
	36785698.00

The pertinent data of the above table is the last column 'Total Credit/Received' [which is the total received by the appellant from the parties I compared to the first column 'Total Bill submitted' [which are the Bills raised by the appellant on the parties]. For various obvious business reasons and processes, there cannot be one-to one tally. There has to be some difference; and the difference for the 3 years combined is at Rs.3,47,72,937/-. This has to be compared with the party-wise explanation + the advance received as on 31.03.2010. These total to Rs.3,67,85,698/-. Thus it turns out, accounting recognition wise, that the appellant has accounted for more than the Total Credited/Received. '

The reconciliation statement for the 3 years is upto 31.03.2010. Yet, by itself it cannot be taken to be finale - as the accounts are still continuing to the future years. In the party's details is seen - advances received/bills raised in subsequent years, etc. So, the seeming difference will always be there.

Party-wise, the appellant has also furnished explanation

Thus, I do not see any valid reason to even make some estimate of addition, just because there is bound to be difference, and which in this case, the accounted for receipts are more than the TDS receipts."

5. In view of the discussion made by us herein above and observations made by the CIT(A), we find no infirmity in the order of CIT(A) and it is justified. Thus, sole ground raised by the Revenue is dismissed.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 27.03.2019.

Sd/-
(P.M.JAGTAP)
VICE PRESIDENT

Date:-27.03.2019

Amit Kumar

Copy forwarded to:

1. Appellant- ACIT, Circle-28, Kolkata.
2. Respondent- Sri Mangilal Suthar, 2/4, J.K.Paul Road, Kolkata-700038.
3. CIT-Kolkata
4. CIT(Appeals)-Kolkata
5. DR: ITAT -Kolkata Benches

Sd/-
(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER

By order

AR/H.O.O
ITAT, KOLKATA