INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SMT BEENA A PILLAI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2669/Del/2015
(Assessment Year: 2010-11)

Vox Public Relation India (P) Ltd, Plot No. 7, 2nd Floor, TDI Centre, Jasola, New Delhi PAN: AACCV3152D	Vs.	DCIT, Circle-17(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Rohit Jain, Adv Ms. Meenal Goyal, Ca
Revenue by:	Shri S. N. Pandey, Sr. DR
Date of Hearing	14/05/2019
Date of pronouncement	31/07/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by assessee against the order of the learned Commissioner of income tax (appeal) – 9, New Delhi dated 25/2/2015 raising following grounds of appeal:-

"1. That the Commissioner of Income Tax (Appeals) erred on the facts and in law in sustaining the action of the assessing officer in making addition of Rs. 96,69,419/- being the difference between the gross receipts as per service tax return and service fee shown in the profit and loss account.

1.1 That the Commissioner of Income Tax (Appeals) erred on facts and in law in not appreciating that the aforesaid differential amount comprises of the following components-

a) Fixed mechanical expenses amounting to Rs. 31,64,228 which were charged from clients as a percentage of fees and were duly offered to tax after netting off actual expenditure;

b) Reimbursements from the clients of actual expenditure incurred by the appellant amounting to Rs. 58,62,911 and

c) An amount of Rs. 7,32,000 on account of receipt of fees in the year under consideration pertaining to the previous year 2008-09, which was offered to tax on accrual basis in the assessment year 2009-10.

2. That the Commissioner of Income Tax (Appeals) erred on facts and in law in not admitting the additional evidences/ documents filed by the appellant, under Rule 46A of the Income Tax Rules, on the ground that various opportunities were provided to the appellant during the course of assessment proceedings.

2.1 That the Commissioner of Income Tax (Appeals) erred on facts and in law rejecting the additional evidences filed by the appellant without calling a remand report from the assessing officer.

2. Brief facts of the case shows that assessee is a company engaged in the business of public relations services. It filed its return of income on 28/9/2010 declaring a loss of Rs. 7702384/–. The assessment u/s 143 (3) of the income tax act was passed on 1/3/2013 by The Deputy Commissioner Of Income Tax, Circle 17 (1), New Delhi (the learned AO) determining the total income of the assessee at Rs. 5555456/–. The major addition which is contested before us is the addition of INR 9 669419 made by the learned assessing officer because of difference in the declared receipt of fee income of INR 2 6261532/– in annual accounts as well as fee income shown of INR 3 5930951/– in the service tax returns of the assessee. On appeal before the learned CIT – A the above addition was confirmed. Therefore, assessee is in appeal before us.

3. The brief facts of the issue shows that assessee company has declared a receipt of fee income of INR 2 6261532/–. As the assessee is engaged in the business of providing public relation campaign and promotion of the brands is a service provider. It is also liable to pay service tax and fee income so received from the aforesaid services. During the course of assessment proceedings, the assessee company was asked to explain the applicability of service tax and to furnish the copy of service tax return filed by it. As per the service tax returns filed by the assessee the learned assessing officer noted that the total Gross Value of services was shown at INR 3 5930951/– in the service tax return therefore the learned assessing officer asked the assessee to reconcile the difference. The assessee as per the letter dated 11/02/2013 submitted that

   a. fixed mechanical expenses amounting to INR 3 164228/bad charged from clients of the fixed percentage of fees. It would be a positive mention here that the same has been offered to tax after netting of actual expenditure incurred.

b. Extraordinary expenses amounting to INR 5 862911/– on which service tax has been paid but does not form part of the income expenses of the company has charged from the client on actual basis.

c. The difference of INR 7 32000/– is due to different in timing of taxation and payment as per legal provisions related to service tax on income tax. It was stated that as per the legal provision service tax chargeability arises as and when services are rendered but service tax payment becomes due at the time of receipt of the payment. On the other and under the income tax act income is taxable in the year in which services rendered if the assessee follows mercantile system of accounting. During the year under consideration the company raised invoices and received payment of INR 7 32000/– towards services rendered and offered to tax in the financial year 2008 – 09. Consequently, the service tax on the same has been paid in the financial year 2009 – 10 the year in which the payment for such services is received.

4. The learned AO rejected the explanation of the assessee, as the assessee company has not produced any documentary evidence to justify their claim. Further, the assessee company was asked to furnish the confirmation from the parties confirming the above facts. In spite of the opportunity allowed, the learned assessing officer noted that the assessee company failed to place on record the confirmations from the parties. With reference to the difference of INR 732000/– the assessee company submitted that it is due to the difference in timing of taxation and payment as per the service tax laws. However according to him the assessee company could not explain the difference that whether the sum of INR 7 32000/– has been offered to tax in the financial year 2008 – 09 or not. Therefore the learned assessing officer made the addition of INR 9 669419/–.

5. Before the learned CIT – A the assessee submitted an additional evidence under rule 46A which was objected by the learned assessing officer stating that many opportunities were given to the assessee company however the same were not complied with. Therefore the learned CIT – A held that none of the conditions laid down under rule 46A satisfied in the present case as the assessee was given more than adequate opportunities. Therefore, he

confirmed the finding of the learned assessing officer by not admitting additional evidences.

6. The learned authorised representative aggrieved by the non-admission of the additional evidence before the learned CIT – A as well as non consideration of the ground that adequate opportunities were not given by the learned assessing officer, submitted that additional evidences submitted before the learned CIT – A clearly shows that the addition is unwarranted. He further submitted that Assessee Company has produced the complete details before the learned assessing officer in the form of the annual accounts as well as the service tax returns filed by the assessee. He further submitted that if the above-impugned explained amounts have been excluded on which service tax is not chargeable, then there is no difference in the gross receipt shown by the assessee. With respect to the confirmation of the parties, he submitted that even otherwise it is available in form number 26AS of the assessee and the complete payments have been received through cheque. He therefore submitted that merely because the assessee has not filed the confirmation the above addition could not be made.

7. Learned departmental representative vehemently supported the orders of the lower authorities and submitted that assessee has been given sufficient opportunity before the learned assessing officer to reconcile the difference between the amount shown as service income in the service tax returns as well as the gross fee income shown in the annual accounts. He therefore submitted that as adequate opportunity is given by the learned assessing officer therefore the learned CIT – A is correct in not admitting additional evidences filed by the assessee before him. He submitted that when any of the conditions laid down under rule 46A of the income tax rules 1962 are not satisfied no fault can be found with the order of the learned CIT – A.

8. We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly, there is a difference between the gross fee shown in the annual accounts as well as the gross services rendered in the service tax return filed by the assessee. The assessee is bound to reconcile the same to the satisfaction of the learned assessing officer with proper evidences. Even otherwise the action of the learned assessing officer of

making the addition of the difference between the gross fee as per the books of accounts and the gross value of services rendered as per the service tax return is devoid of any merit. The difference between the gross value of the services rendered and the gross receipt shown in the annual account may be the first trigger point of making the further investigation and examination but it cannot result into the addition straight way. Merely not furnishing the confirmation of the parties also cannot go against the assessee as the impugned amounts paid by the clients of the assessee is available in form number 26AS of the assessee. In view of the above facts, we set aside the whole issue back to the file of the learned assessing officer with a direction to the assessee to submit the reconciliation and show to the assessing officer about the discrepancy of gross value of services rendered in the service tax return and the gross fee income recorded in the annual accounts. The assessee is also directed to produce the relevant claim of reimbursement of the expenses with proper evidences and taxability of certain amounts in another year due to the difference in the taxability as per the finance act 1994 and as per the income tax act. The learned AO may verify the same and if on verification it is found that there is no income which should have been shown, has not been shown, the addition may be deleted. Accordingly, the AO may decide the issue based on information furnished by the assessee and in accordance with the law. Accordingly, ground number 1 of the appeal is allowed for statistical purposes.

9. Ground number 2 of the appeal is with respect to the additional evidences not admitted by the learned CIT – A has become only academic in view of our decision in ground number 1 of the appeal. Therefore, it is dismissed.

10. Accordingly, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 31/07/2019.

-Sd/-	-Sd/-
(BEENA A PILLAI)	(PRASHANT MAHARISHI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated: 31/07/2019
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi