IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.808/Del./2015
(ASSESSMENT YEAR : 2006-07)

Chander Batra, Unistar Estates, 62, G.F. Sahara Malls, M.G. Road, Gurgaon (Haryana)	vs.	ACIT, Circle 1 (1), Gurgaon.
(PAN : AFTPB6362E)		
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri Ashish Virmani, Advocate
Shri S.K. Virmani, Advocate
REVENUE BY : Ms. Ashima Neb, Senior DR

Date of Hearing : 17.07.2019
Date of Order : 29.07.2019

O R D E R

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Chander Batra (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 10.12.2014 passed by the Commissioner of Income-tax (Appeals)-1, Gurgaon qua the assessment year 2006-07 on the grounds inter alia that :-

> ***"A. The re-opening of the assessment of the Appellant under section 147/148 of the Act is illegal and bad in law since assessment under section 143(3) had already been carried out.***

B. For that the Ld. AO and Ld. CIT (A) have wrongly imputed a tax liability upon the Appellant, whereas the appropriate tax had already been paid by the Appellant in the subsequent assessment years.

C. For that the Ld. Assessing Officer has grossly erred in computing the total receipts on the basis of TDS certificates which includes the payments of Rs.15,04,577/- as service tax which had been paid by the Appellant to the concerned authorities.

D. For that the Ld. AO and the Ld. CIT(A) failed to appreciate that in the business of the Appellant, the commission accrues to the Appellant at the time of receipt of payment from the builder, which happened in the subsequent years and on which appropriate tax was paid by the Appellant.

E. For that the Ld. AO and the Ld. CIT(A) failed to appreciate that this system of accounting has been accepted by the Department for the last around 15 years."

2. Briefly stated the facts necessary for adjudication of the issue at hand are : Originally assessment was framed in this case under section 143 (3) of the Income-tax Act, 1961 (for short 'the Act') vide order dated 31.09.2008. However, from the assessment record, Assessing Officer (AO) noticed that the assessee has shown less receipt for commission to the tune of Rs.46,12,855/- and as such escaped assessment on failure of the assessee to disclose all the facts fully and truly in its return of income. After recording reasons for initiating the proceedings u/s 147 of the Act, notice u/s 148 of the Act was issued. AO from the documents filed by the assessee noticed a difference between total receipt of the assessee as per Tax Deducted at Source (TDS) certificate and return of

income for AY 2009-10 to the tune of Rs.46,12,855/-. Disagreeing with the contentions raised by the assessee, AO proceeded to make addition of Rs.46,12,855/- on account of difference of total receipts as per TDS certificate and return of income for AY 2009-10 and assessed the total income at Rs.1,47,66,890/-.

3. Assessee carried the matter by way of an appeal before the ld. CIT (A) who has confirmed the addition by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUND No.A

5. Ground No.A which is a jurisdictional issue has not been pressed during the course of arguments, hence needs no adjudication and consequently decided against the assessee.

GROUNDS NO.B, C, D & E

6. Undisputedly, AO has made an addition of Rs.46,12,885/- by noticing a difference in the total receipt of the assessee as per TDS certificate and return of income filed for AY 2009-10; that assessee has been consistently following mercantile method of

accounting; that the assessee has already offered the amount in question to tax in AY 2007-08; that it is a revenue neutral exercise.

7. Ld. AR for the assessee challenging the impugned order passed by the AO/CIT(A) contended inter alia that since the assessee has received amount in question in the year 2007-08 but deducted TDS in 2006-07, there is no failure on the part of the assessee to disclose all the true facts necessary for assessment; that income accrued to the assessee only when money was received; that the assessee also added service tax and the customer has deducted tax on the same. However, on the other hand, ld. DR for the Revenue relied upon the order passed by the AO/CIT (A).

8. Assessee has come up with categoric case that the entire income of the year under assessment has been duly accounted for and at no point of time, loss has been caused to the Revenue. It is also categoric case of the assessee that as per mercantile system of accounting, the tax has been paid in the subsequent year on receipt of the income as per agreement with the builders, but the commission accrued is released conditionally subject to the payment of installment by the purchaser.

9. When we examine assessment order for AY 2007-08, available at pages 24 to 28 of the paper book, it is apparently clear on record that assessee has shown gross commission receipt to the

tune of Rs.1,63,78,343/-. Since assessee has been consistently following the mercantile system of accounting, income accrued only when money received.

10. It is also the case of the assessee that the AO has wrongly added back the amount of service-tax liability which was already discharged by the assessee, the reconciliation was also brought on record before the ld. CIT (A) as is evident from the written submissions dated 23.07.2013 given to ld. CIT (A) which are part and parcel of the appeal file. We are of the considered view that since the assessee has already discharged the liability of service-tax, he is entitled to the benefit of TDS deducted on that account which has been computed at Rs.1,64,564/-.

11. When the assessee has duly accounted for amount received in the year under assessment and in the subsequent assessment years, as per agreements entered into with builders, namely, Tata Housing Development Co. Ltd., DLF Home Developers Ltd., Emaar MGF Land Pvt. Ltd., Raheja Developers Pvt. Ltd. and Vatika City by following the mercantile system of accounting and thereby accounted for all the income received during the year under assessment, no loss has been caused by the Revenue.

12. So, the assessee, being a broker, got the commission for sale of the property of different builders as per agreement vide which

income accrued and is ascertained at the time of release of payment to the assessee by the builder, so the commission accrues and is released subject to the condition of payment of installment by the purchaser. In other words, income accrued to the assessee only when the payment was released by the builder. All these facts have been brought to the notice of ld. CIT (A) by filing detailed submissions by the assessee but he has erred in deciding the issue against the assessee.

13. When the assessee has been consistently following the mercantile system of accounting which has been accepted by the Revenue, converse view cannot be taken by the Revenue as the Revenue is required to follow the rule of consistency as has been held by the Hon'ble Apex Court in the case of ***Radhasoami Satsang vs. CIT – (1992) 1 SCC 659***. Moreover, the entire exercise is revenue neutral because the assessee has paid the tax in 2007-08 when the income was actually accrued to him.

14. In view of what has been discussed above, we are of the considered view that AO to verify the facts inter alia that the assessee has offered the amount of tax qua the commission received during the year under assessment, when the income was accrued and has paid income-tax thereon in AY 2007-08, qua the same amount of which TDS was deducted in 2006-07; that no loss

has been accrued to the Revenue because the assessee had paid the dummy tax during the year under assessment and paid actual tax on receipt of actual payment; that each payee of the commission had deducted TDS on the amounts paid/discharged as service-tax by the assessee and as such assessee is entitled to the benefit of TDS deducted on that account to the tune of Rs.1,64,564/-. If the aforesaid facts are verified to be correct then addition made by the AO is not sustainable and is required to be deleted. Consequently, Grounds No.B, C, D & E are determined in favour of the assessee in the above terms.

15. Resultantly, the appeal filed by the assessee is partly allowed subject to the verification by the AO on the above terms.

Order pronounced in open court on this 29th day of July, 2019.

Sd/-	**sd/-**
(R.K. PANDA)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated the 29th day of July, 2019
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Copy forwarded to:

1.Appellant
2.Respondent
3.CIT
4.CIT(A)-1, Gurgaon.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.