

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री इंद्ररी रामा राव, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri Inturi Rama Rao, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A. No. 1081/Chny/2019
निर्धारण वर्ष/Assessment Year: 2015-16

M/s. Summit Online Trade Solutions
Pvt. Ltd., No. 6, Ground Floor, Rayala
Towers, 781-785, Anna Salai, Mount
Road, Chennai 600 002.

Vs. The Assistant Commissioner of
Income Tax,
Central Circle 1(3),
Chennai.

[PAN:AALCS8098J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri D. Anand, Advocate &
Shri Sriraj Gokavarapu, CA
प्रत्यर्थी की ओर से/Respondent by : Shri Sridhar Dora, JCIT
सुनवाई की तारीख/ Date of hearing : 23.07.2019
घोषणा की तारीख /Date of Pronouncement : 27.09.2019

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 18, Chennai, dated 20.02.2019 relevant to the assessment year 20015-16. In the grounds of appeal, the assessee has challenged the order of the Id. CIT(A) in confirming the addition of ₹.80,53,26,740/- being variation in additional income admitted by virtue of service tax refund brought to tax under section 41(1) of the Income

Tax Act, 1961 ["Act" in short], which was not at all obtained any benefit in respect of the service tax paid to attract the said provisions.

2. Brief facts of the case are that a search and seizure operation under section 132 of the Act was conducted in the group case of "Sugal and Damani" on 20.11.2014. As a part of the search operations, the business premises of the assessee company were also covered. The assessee filed its return of income declaring a total income of ₹.273,46,73,260/- and book profit as ₹.268,37,14,425/-. However, considering the submissions of the assessee in response to various notices, queries, etc., the Assessing Officer completed the assessment under section 143(3) r.w.s. 153B(1)(b) r.w.s. 92CA(6) of the Act by assessing the total income of the assessee at ₹.354,00,00,000/- after making various additions. The assessee carried the matter in appeal before the Id. CIT(A) challenging the additions/ disallowances on account of variation in additional income admitted, unexplained expenditure, disallowance under section 14A of the Act as well as unexplained cash. After considering the facts of the case as well as submissions of the assessee, the Id. CIT(A) partly allowed the appeal filed by the assessee.

3. On being aggrieved, the assessee is in appeal before the Tribunal. With regard to the addition towards variation in additional income admitted,

the Id. Counsel for the assessee has vehemently argued that as per letter dated 09.01.2015, the assessee has submitted before the Department that the additional income of ₹.203 crores will cover up all issues arising on account of stock, cash in hand, various omissions, commissions, assets, jewellery valuable, documents and on any instances where the search party is not satisfied on the explanations and clarifications given by us on any issues may be on account of large number of whole-sellers, agents, distributors, sub-agents, retailers in their own capacity and enormous volume of transactions, etc. Therefore, in absence of any incriminating material impounded during the course of search operation, further addition towards service tax refund, which was not at all received in the relevant assessment year any addition over and above the admission of additional income admitted under section 132(4) is unwarranted and prayed for deleting the addition. On the other hand, the Id. DR strongly supported the order of the authorities below.

4. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. During the course of post search investigation, Shri Naresh C. Mangal, the Director of the assessee company has submitted a letter in which the disclosed amount was bifurcated as ₹.200 crores in the hands of M/s. Summit Online Trade Solutions Pvt. Ltd. and ₹. 3.00 crores in the hands of individuals. The

returned income of the assessee was ₹.273,46,73,260/-. Since the Assessing Officer observed that the regular income of the assessee was ₹.354 crores, he called the assessee to explain towards the deficit of ₹.80,53,26,740/- in the income admitted in the return filed with reference to the income admitted at the time of search operation under section 132(4) of the Act. After considering the submissions of the assessee, the Assessing Officer observed that since, the day on which the additional income of ₹.203 crores was admitted on 09-01-2015, the assessee has brought nothing on record regarding the existence of the decision of the Hon'ble Supreme Court and its presumption or expectation on receipt of the refund during the year under consideration. The said order of the Hon'ble Court was delivered on 24.10.2013. As such, the fact of the Service Tax Refund of ₹.77.80 Crores was very much known to the assessee even at the time of the search operation and admission of income but, nowhere this was mentioned before the search authorities or in the depositions admitting the unaccounted income. The said sum of ₹.203 crores was admitted as additional income but, the Service Tax Refund is assessable to tax under section 41(1) of the Act and cannot be acceptable as additional income offered to tax at the time of search operation. As stated earlier, the said sum of ₹.203 crores was admitted as additional income voluntarily expressing its inability to explain the issues that were raised in respect of accounting for of the returned or

unsold paper lottery tickets and the recipients of the prize winning money in the online lottery. Thus, further investigation was thwarted and in the circumstances, it appears that the assessee has acted in with a preconceived plan to take the situation to its advantage. Further, Service Tax Refund of ₹.77.80 Crores whereas the variation in income admission is at ₹.80,53,26,740/- and the assessee has failed to explain reasons for this variation. Hence, by rejecting assessee's explanation the deficit amount of ₹.80,53,26,740/- not admitted during the course of search was brought to tax. On appeal, the Id. CIT(A) confirmed the addition.

4.1 In this case, it is an admitted fact that during the course of search under section 132 of the Act, the Department has not impounded any incriminating documents or materials against the assessee. The Director of the assessee company voluntarily admitted additional income of ₹.203 crores, that would cover up all issues arising on account of stock, cash in hand, various omissions, commissions, assets, jewellery valuable, documents and on any instances where the search party is not satisfied on the explanations and clarifications given by us on any issues may be on account of large number of whole-sellers, agents, distributors, sub-agents, retailers in their own capacity and enormous volume of transactions, etc. Moreover, it was made it clear before the investigating authorities that the above admission of additional income was declared in good faith with a spirit

of cooperation with the department and to buy peace of mind with the clear understanding that no penalty shall also be imposed and no prosecution proceedings will be initiated against any of their group concerns or any of the family members.

4.2 If the Department is prompted to bring to tax of the Service Tax Refund of ₹.77.80 crores in view of the decision of the Hon'ble Supreme Court, which was delivered on 24.10.2013, the same should have been taxed in the relevant to the assessment year 2014-15 or it can be taxed as and when the said sum or any part thereof is actually received by way of refund from the concerned authorities. In fact, it was the argument of the Id. Counsel that before completion of the assessment on 29.12.2017, the assessee has given an undertaking in the form of an affidavit dated 28.12.2017 to offer for taxation of the receipt of service tax refund as and when it was actually received. Moreover, despite the Hon'ble Supreme Court delivered the judgement on 24.10.2013, the assessee could not get the refund till the date of passing assessment order or the Assessing Officer has not given any findings that the assessee has received the service tax refund. Further, the Assessing Officer has not discussed anything in the assessment order of receipt of service tax refund during the assessment year under consideration. Further, the service tax refund was not accrued to the assessee in the assessment year under consideration in lieu of the Hon'ble

Supreme Court's decision. The provisions of section 41(1) of the Act warrant taxation of the benefit obtained, whether in cash or in any other manner whatsoever or accrued. By virtue of the judgement of the Hon'ble Supreme Court delivered on 24.10.2013 towards service tax refund, the Assessing Officer cannot held that the benefit of service tax refund accrues to the assessee in the assessment year 2015-16 automatically. Moreover, the assessee also filed an undertaking before the Assessing Officer by way of an affidavit that the actual receipt of the service tax refund will be offered to tax, we are of the considered opinion that the Assessing Officer was not factually and legally correct to bring the same to tax in the assessment year in which the assessee has not actually received the refund or accrued. Under the above facts and circumstances, the addition to the extent of ₹.77.80 crores made by the Assessing Officer to bring the service tax refund under tax net stands deleted.

4.3 With regard to the balance addition of ₹.2,73,26,740/- [₹.80,53,26,740- ₹.77,80,00,000], towards variation in additional income admitted, the Id. Counsel for the assessee has not advanced any argument or the assessee has furnished any material evidence on record. When the assessee was asked to explain with regard to the short fall in income that was admitted under section 132(4) of the Act being ₹.80,53,26,740/-, before the Id. CIT(A), the assessee has explained about service tax refund of ₹.77.80 crores only

and no reply was given on the difference amount of ₹.80,53,26,740-
₹.77,80,00,000. Accordingly, the balance addition of ₹.2,73,26,740/- stands
confirmed.

5. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on the 27th September, 2019 in Chennai.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, 27.09.2019

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/
Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5.
विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.