

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI, BENCH "E", MUMBAI
BEFORE SHRI G.S. PANNU, VICE PRESIDENT AND

SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 50/Mum/2018 (Assessment year: 2014-15)

Tata Services Ltd 24, Homi Mody Street Fort, Mumbai 400 001 PAN : AA ACT3991J	Vs	ACIT-2(3)(2), Aayakar Bhawan, M.K.Road, Mumbai-400020
APPELLANT		RESPONDEDNT

Appellant by	Shri M.M. Golwala
Respondent by	Shri D.G. Pansari
Date of hearing	26-08-2019
Date of pronouncement	19-09-2019

ORDER

Per Pawan Singh, Judicial Member:

1. This appeal filed by the assessee is directed against the order of CIT(A)-6, Mumbai dated 12-10-2017, which in turn arises out of the assessment order passed u/s 143(3) 27-12-2016. The assessee has raised the following grounds of appeal:-

"1) The learned Commissioner of Income Tax (Appeals) erred in not ordering deletion of the entire addition on account of erroneous transactions for the year appearing in the AIR statement- Rs.31,27,929/-

a. (i) In particular, the learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.5,94,046/-, which is not at all the income of the appellant.

(ii) The learned Commissioner of Income Tax (Appeals) failed to consider that an addition could not be made merely on the basis of AIR information erroneously provided to the tax department.

b. The learned Commissioner of Income Tax (Appeals) ought to have deleted Rs. 11,50,6807-, already accounted as income from services in

Assessment Year 2013-14, and in respect of which the Assessing Officer made a double addition.

c. The learned Commissioner of Income Tax (Appeals) ought to have deleted Rs.8,93,946/-- as the same has already been offered and taxed in the current year itself.

d. Without prejudice, the learned Commissioner of Income Tax (Appeals) following his own decision ought to have deleted Rs.4,89,257/-, also being income offered to tax in the current Assessment Year and duly taxed, but in respect of which deductors have passed the TDS entry in the subsequent Assessment Year.

2) The learned Commissioner of Income Tax (Appeals) erred in holding that addition made u/s.115JB was consequential to the additions made in respect of issues referred to in Ground No. 1, under the normal provisions of law which is completely misconceived, and erroneous in law, having regard to decisions of the Supreme Court.

3) The learned Commissioner of Income Tax (Appeals) erred in not determining the MAT credit available, and set off brought forward MAT credit from earlier years, against the tax payable in current year, as per section 115JAA.

4) The learned Commissioner of Income Tax (Appeals) erred in not directing the Assessing Officer to grant credit for the following tax deducted at source claimed by it:

a. Rs. 11,50,680/-, wherein income has been accounted in the preceding year, but TDS credit is reflected in Form 26AS of the current year. The learned Commissioner of Income Tax (Appeals) failed to consider that the said amount of Rs. 11,50,680/- had been claimed in the preceding year but no credit had been allowed by the Department.

b. Without prejudice to Ground No.4 (a) above, if credit of the said amount is not to be granted in the current year, then the appellant submits that the Assessing Officer be directed to grant credit in the preceding year i.e. Assessment Year 2013-14.

c. Credit for Rs.8,93,946/- not claimed at the time of filing the return, but claimed during assessment proceedings, and in respect of which income was duly offered and taxed in the current year.

d. Credit for Rs.4,89,257/- claimed at the time of filing the return and in respect of which income was duly offered and taxed in the current year but deductors have passed TDS entries in the subsequent Assessment Year.

5) The Commissioner of Income Tax (Appeals) erred in not directing the Assessing Officer to allow interest for the months of December 2016 and January 2017, mandatorily allowable under section 244A and erroneously not granted by the Assessing Officer.”

2. The brief facts of the case are that the assessee company is engaged in the business of providing services to Tata group companies, filed its return of income on 09-10-2014 declaring total income at Rs.18,36,480 was file for the assessment year 2014-15. In a scrutiny assessment, the assessing officer determined total income at Rs.64,61,040/- and book profit u/s 115JB at Rs.30,36,930/-, vide order dated 27-12-2016 by making disallowance u/s 14A of Rs.14,96,633/- and Rs. 31,27,929/- being amount of excess TDS claimed. Aggrieved, the assessee filed appeal before CIT(A). The Ld.CIT(A) deleted the disallowance u/s 14A. However, he sustained the addition of Rs.31,27,929/- on account of TDS in the normal computation as well as in the computation while computing book profit u/s 115JB. Further aggrieved, the assessee is in appeal before the Tribunal. Further, aggrieved by the order of Id CIT(A) the assessee has filed this appeal before this Tribunal.
3. We have heard the submissions of Id. authorised representative (AR) for the assessee and the Id. departmental representative (DR) for the revenue and perused the material available on record. Ground No. 1 (a)

pertains to confirming the addition of Rs.5,94,046/-. The Ld.AR of the assessee submits that during the course of assessment proceedings, the assessing officer asked for a reconciliation of TDS claimed in return with TDS appearing in form 26AS. The same was furnished vide letter dated 2nd November, 2016 (pages 4 to 9 of PB). As some of the parties mentioned below had made mistakes while filing their e-TDS returns, erroneous TDS entries were appearing in the AIR statement against the PAN of the assessee, as under:-

TAL Manufacturing Solutions Ltd	Rs. 30,000
Automotive Stampings Ltd	Rs. 6,277
Tata Capital Financial Services Ltd	Rs.5,47,755
Cavincare Ltd	Rs. 4,832
Sesa Sterlite Ltd	Rs. 5,182
Total	Rs.5,94,046

4. The assessing officer added the said TDS amount of Rs.5,94,046/- to the income of the assessee. Out of the above five parties (refer page 8 of PB), the largest one is Tata Capital Financial Services Ltd of Rs.5,47,755/-. The assessee did not claim any TDS credit. The said erroneous entry by the relevant party has now been corrected in a revised e-TDS return filed by them. The extract of 26AS prior to the rectification (page 10 of compilation) downloaded on 28th September, 2016 shows an entry (No.69) wherein tax deducted by the said party was appearing as Rs.5,47,755/-. The amount was added by the

Assessing Officer in the assessment order. After the party filed a revised e-TDS return, the assessee downloaded the latest Form AS (page 12 of PB), extracted on 11th January, 2019, wherein on page 13 of PB, it will be seen that entry No.69 is reversed in entry No.70, on account of rectification carried out by the said party. The Ld.AR submits that in the light of the same, this amount of Rs.5,47,755/- needs to be fully deleted. For remaining other four parties totalling Rs.46,261/-, the Ld.AR of the assessee submits that it has written letters and reminders to the said parties to rectify their e-TDS returns (pages 15 to 20 PB). The assessee has not claimed TDS on credit of the said amounts. The assessing officer has added the credit to the total income to the extent of Rs.46,261/-. The Ld.AR submits that no addition is required as the entries are erroneous, and no TDS credit has been claimed by the assessee. There is no basis in fact or in law for making this addition. The Ld.AR submits that the addition of Rs.46,261/- may be deleted.

5. On the other hand the ld. DR, for the revenue submits that since the assessee has claimed credit for the amount of Rs.5,47,755/- the lower authorities were right in their action. However, he conceded that since the assessee is trying to reconcile the difference with the revised e-TDS return, necessary action deemed fit may be taken.

6. We have considered the rival submissions and perused the material available on record. Considering the submission of the Id AR for the assessee as recorded in para -4 above, we restore this ground of appeal to the file of assessing officer to verify the facts and grant relief to the assessee in accordance with law. Thus, this ground of appeal is allowed for statistical purpose.
7. Ground No. 1(b) relates to addition of Rs. 11,50,680/-. The Ld.AR submits that in respect of several parties (details on page 28 of PB), the assessee offered income in the preceding assessment year, i.e. AY 2013-14 and claimed TDS credit in that year. The statement placed on page 28 of the compilation shows the date of the invoice raised to demonstrate that all relevant invoices fall in A.Y 2013-2014, and that is why the income was booked in that year. The Ld.AR further submitted that the parties concerned have deducted and paid TDS in the first quarter of the current assessment year, which is why the same is reflecting in Form 26AS of the current year. No TDS credit has been claimed in the current year, because it was claimed in the preceding year, as corresponding income has also been accounted and offered in Assessment Year 2013-2014. The Assessing Officer had added the said TDS of Rs. 11,50,680/- to the total income of the current year. The addition made in the current year is uncalled for, as it amounts to

double taxation, first taxed in Assessment Year 2013-14 when offered by the assessee and second in current year. The Ld.AR submitted that the addition may be fully deleted, as it is already taxed in Assessment Year 2013-14.

8. On the other hand the ld. DR, for the revenue submits that the ld CIT(A) has already directed the assessing officer to verify the facts hence, this ground of appeal is uncalled for.
9. We have considered the submissions of the parties and find that the ld CIT(A) in para 7.3 of his order has clearly directed the assessing officer to verify the facts and grant relief to the assessee. Considering the submissions of ld DR for the revenue that ld CIT(A) has already directed the assessing officer to verify the fact and grant relief to the assessee, we direct the assessing officer to examine the facts as per the submissions of the ld AR for the assessee as recorded by us in para 7 above and grant relief to the assessee. In the result this ground of appeal is also allowed for statistical purpose.
10. Ground No. 1(c) relates to sustaining the addition of Rs. 8,83,050/-, the ld.AR submits that the assessee submitted before the Assessing Officer vide letter dated 22 December 2016 (Page 29 of PB) that owing to late entries by customers, some TDS credits could not be claimed while filing the return of income, although the income had been fully booked

in the current year. The amount, so claimed, was Rs.8,83,050/- (later increased to Rs.8,93,946/-), the details of which are available on page 31 of PB. These are the entries, the income of which is booked in the current year, but TDS inadvertently not claimed in return of income. It was claimed vide letter dated 22nd December, 2016. In assessment proceedings, it was pointed out to the Assessing Officer that only TDS credit remained to be claimed by the assessee in the return of income, whereas the gross income was already offered to tax. The Ld.AR further submitted that the Assessing Officer has added the TDS amount claimed of Rs.8,93,946/-. The appellant Submits that the addition is uncalled for, as income is already offered and taxed in the current year. The Ld.AR, therefore, submits that this amounts to double taxation, and needs to be deleted.

11. The ld. DR, on the other hand supported the order of the lower authorities.
12. We have considered the rival submissions and perused the material placed on record. In our view considering the submission this ground of appeal also require verification of the facts, thus this ground is also restored to the file of assessing officer to verify the fact in accordance with the submission of assessee which we have recorded in para 10

above and grant relief to the assessee in accordance with law. In the result this ground of appeal is also allowed for statistical purpose.

13. Ground No.1 (d) relates to sustaining the additions of Rs.4,89,257/-.

The Id.AR for the assessee submits that in the return of income, the assessee claimed TDS credit of Rs. 4,89,257/- (details available on Page 8 and 9 of PB), being items where income had been offered in the current year, but credit for TDS appeared in Form 26AS in the subsequent assessment year, because deductor have deducted and paid TDS in the subsequent assessment year. The details were also furnished to the Assessing Officer vide letter dated 02nd November 2016, when a reconciliation of TDS claimed as per the return of income, with TDS available in 26AS was furnished (Page 6 to 9 of PB). The Id. AR for the assessee further submits that without any verification and justification, the Assessing Officer has added the said amount of Rs.4,89,257/- to the taxable income on this account. The addition is completely uncalled for, because the gross income is already booked in the current year. The claim for TDS was made in the current year and disclosed in the reconciliation statement, because it appeared in the Form 26AS of next year (AY 2015-16). The claim for TDS credit was made because under Section 199 of the Income-tax Act, credit is allowable in the year in which the income is taxed. In any

event, the addition to the income is completely uncalled for because the income is already offered to tax in the current year, which is once again a clear case of double taxation.

14. The Id. DR, on the other hand, submits that as the facts can be verified by the assessing officer and this ground may also be restore to the file of assessing officer.
15. We have considered the rival submissions and perused the material placed on record. Considering the submissions of the Id AR for the assessee that the was TDS was made in the current year and disclosed in the reconciliation statement, because it appeared in the Form 26AS of next year (AY 2015-16). The claim for TDS credit was made because under Section 199 of the Income-tax Act, credit is allowable in the year in which the income is taxed. The addition to the income is double taxation. Hence, this ground of appeal is also restored to the file of assessing officer for verification of the facts and to grant relief to the assessee in accordance with law. In the result this ground of appeal is also allowed for statistical purpose.
16. Ground No. 2 relates to adjustment/ addition under section 115JB of Rs. 31,27,929/-. The Id. AR of the assessee submitted that after making the erroneous addition of Rs.31,27,929/- in the normal computation of income, (referred and challenged in Ground No.1 above) the assessing

officer has made an addition of the very same amount while computing Book Profits u/s 115JB. The computation of book profit is available on Page 4 of the assessment order. Although the assessing officer has not explained it in detail, the working of which is, as under:

Particulars	Amount Rs.	Amount Rs.
Book Profit as per accounts and declared in Return of Income (Page 3 of compilation)		(15,87,6327-)
Add: Disallowance under Section 14A	14,96,6337-	
:Add: Additions made on account of TDS in para 6 of	31,27,9297-	
Assessment Order.		
		46,24,562
Assessed Book Profit		30,36,930

17. The Ld.AR further submitted that the disallowance u/s.14A has been deleted in first appeal. However, as regards the second addition of Rs.31,27,929/-, it would be observed that after making the additions made on account of TDS in the normal computation in para 6 of the assessment order, the assessing officer repeated the addition in calculation of book profit under Section 115JB. The said addition is completely contrary to law. The provisions of Section 115JB mandate that the computation to be made as per profits and loss declared by the assessee in its books of account. Certain additions / deductions are to be made, as provided in the Explanation below Section 115JB. The

addition of Rs. 31,27,929/- made in the instant case is not provided for in any of the subsections which require addition /deletion to book profit u/s.115JB. In support of his submission the Id AR for the assessee relied upon the decision of the In the case of Ajanta Pharma vs. CIT 327 ITR 305(SC) where it was held by the Supreme Court that Section 115JB constitutes a complete code by itself, and the decision of Hon'ble Supreme Court in Apollo Tyres vs. CIT 255 ITR 273(SC) and HCL Comnet vs. CIT 305 ITR 409(SC), wherein it was held that while determining book profits under the MAT provisions, the Assessing Officer has to accept the authenticity of accounts which are prepared by the Company. The Assessing Officer is not empowered to embark upon a fresh enquiry in respect of the entries made in the books of account. The ratio of the above mentioned decision is that the Assessing Officer cannot make an addition while computing book profits, merely because he made addition under the normal provisions of the Act. The addition is contrary to the above decisions of the Apex court and needs to be deleted.

18. On the other hand the Id. DR for the revenue supported the order of the lower authorities.
19. We have considered the rival submissions and perused the material placed on record. Considering the facts that we have already restored

the disallowances to the file of assessing officer, hence, this ground of appeal is also restored to the file of assessing officer to decide this issue afresh after considering the submission of the ld AR for the assessee and the case law relied by him. In the result this ground of appeal is also allowed for statistical purpose.

20. Ground No. 3 relates to claim of set off of MAT credit. The Ld.AR submitted that in the return of income, the assessee claimed setoff of MAT credit to the tune of Rs. 5,67,471/- against the tax payable determined in the normal computation of income. The detail of working is filed as per Page 35 of the Paper Book. The Assessing Officer did not allow the set-off of MAT Credit, although the same is mandated by Section 115JAA. The Ld.AR further submits that the assessing officer be directed to set-off MAT Credit under Section 115JAA against the tax determined in the computation of total income under the normal provisions of the Act.
21. The Ld. DR, on the other hand, submits that suitable direction may be given to the Assessing Officer. Considering the fact that assessee is entitled for MAT Credit of Rs. 5,67,471/- against the tax payable in normal computation of income, which has not been allowed by the Assessing Officer. Therefore, considering the submission of ld. AR of the assessee, the Assessing Officer is directed to allow the set off of

MAT Credit in accordance with provision of section 115JAA. In the result, this ground of appeal is also allowed for statistical purpose.

22. Ground No. 4(a) to 4(d) relates to denial of credit of TDS. We have noted that these grounds of appeal are consequential to Ground No. 1(a) to 1(d), which we have restored to the file of Assessing Officer for verification of fact and to allow the appropriate relief in accordance with law. Therefore, these grounds of appeal are also restored to the file of Assessing Officer to allow the credit of TDS after considering the relief on ground no. 1(a) to 1(d). In the result, these grounds of appeal are allowed for statistical purpose.
23. Ground No. 5 is consequential and need not specific adjudication.
24. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 19-09-2019.

Sd/-

Sd/-

(G.S. Pannu)	(Pawan Singh)
VICE PRESIDENT	JUDICIALMEMBER

Mumbai, Dt : 19 September, 2019

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Asstt. Registrar, ITAT, Mumbai