

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No.534/Del of 2017
Assessment Year: 2013-14**

M/s Overseas Logistics P.Ltd., C/o Kapil Goel, Advocate, F-26/124, Sector 7, Rohini, New Delhi. PAN: AABFO2548J (Appellant)	vs	DCIT, Circle 19(1), New Delhi. (Respondent)
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**Assessee by: Shri Kapil Goel, Advocate
Department by: Ms Rinku Singh, Sr.DR**

**Date of Hearing: 19.08.2019
Date of Pronouncement: 13.11.2019**

ORDER

PER NARASIMHA K. CHARY, JM

The present appeal is filed by the assessee against the order dated 28.10.2016 passed by the learned Commissioner of Income-tax (Appeals)-12, New Delhi ("CIT(A)") for the Asstt. Year 2013-14.

2. Brief facts of the case are that the assessee is a company engaged in the business of logistics. For the Assessment Year 2013-14, they have filed their return of income on 30.09.2013 declaring an income of Rs.60,54,440/-. During the assessment proceedings, learned Assessing Officer found that the assessee mentioned that

the turnover as per the P&L account was Rs.38,65,35,145/-whereas as per AIR information, service tax, the turnover was of Rs.39,17,48,317/-, resulting in short turnover of Rs.52,13,229/-as per the profit and loss account. Assessee explained before the Assessing Officer that the last service tax return was filed on 31st August, 2013 and the audited annual accounts were signed by the then auditors of the company on 4th September, 2013 and, therefore, the difference in the turnover was correctly mentioned in the audited accounts by the auditors after verifying all the details and the reconciliation between the turnover mentioned as per the service tax and P&L Account was attached. It was further stated by the assessee that the above reference difference was attributed to the facts that the credit notes issued against the deductions and bills on account of incorrect billing due to related difference, weight difference etc. amounting to Rs.22,88,922/-was not deducted from the turnover as per service tax details, which resulted in excessive turnover as per the service tax as compared to the turnover reported in the audited annual accounts for the same period.

3. Learned Assessing Officer observed that the assessee had not given any reason why the service tax return was not revised and more so since audited accounts were signed after filing the service tax return, he further observed that, as regards the reason for a difference of Rs.22,88,922/-furnished by the assessee, the assessee has not given any reason for not revising the service tax return after

finalisation of the audit even if mistake was noted by the assessee. On this ground, learned Assessing Officer did not accepted the explanation of the assessee and proceeded to add the difference amount of Rs.52,13,229/-to the income of the assessee.

4. In the appeal preferred by the assessee, Ld. CIT(A) observed that the claim of the assessee that the amount of Rs. 29.24 Lacs was mentioned by oversight in the service-tax return, had no basis inasmuch as the tax audit was complete on 4.9.2016 and the assessee had filed the service-tax return on 31.08.2013 and, therefore, the assessee was very much aware of the turnover in the service-tax return and if there was any mistake, the assessee could have revised the service-tax return since the period of three months was available to the assessee to revise the return. On this premise, Ld. CIT(A) rejected the plea of the assessee.

5. There is a delay of one-day in presenting the appeal and while arguing that the limitation begins on the 2nd December, 2016 and, therefore, the appeal filed on 31st January, 2017 is well within limitation, in the alternative assessee pleaded that it is only under the bona fides belief about the operation of limitation, there occurred such a mistake and since there is no intentional delay the same may be condoned. On a consideration of the matter, we are of the opinion that one-day delay in presenting the appeal that too bonafide under the mistaken impression about the law of limitation, shall not result in throwing the appeal at the threshold instead of

testing the case on merits. We, therefore, condone the delay and to proceed to hear the matter.

6. It is the submission on behalf of the assessee that the addition of Rs.52,13,229/-is the result of the difference between the turnover between the service-tax return and audited accounts which stands reconciled by the assessee. He submitted that mere return filed with service-tax authorities by itself does not constitute a ground to infer any unaccounted receipts, that too in the absence of any doubt as to the correctness of books of accounts maintained by the assessee. According to the Ld. AR, all the confirmations are truly filed by the assessee, but no Inquiry from any party was made by the learned Assessing Officer or by the Ld. CIT(A) and the authorities did not point out any trading outside the books of accounts. He, therefore, prayed that the authorities may be directed to look into the books of accounts maintained by the assessee and the reconciliation furnished by them.

7. Per contra, it is the submission of the Ld. DR that as rightly pointed out by the Ld. CIT(A), the tax audit of the assessee was complete on 4.9.2016 whereas the assessee filed the service-tax return on 31.08.2013 and even after knowing the defect in the service-tax return, the assessee did not take any steps for rectification or filing of the revised return and, therefore, the plea taken by the assessee is not acceptable.

8. We have gone through the record in the light of the submissions made on either side. At the outset, it is an admitted fact that there is a difference between the turnover shown in the service-tax return and the turnover disclosed in the books of accounts. The turnover in the service-tax return is shown on the basis of the services provided by the assessee for which they have been paid; whereas the turnover in the books of accounts is shown on the basis of income accrued. There is, therefore, difference of system of recording turnover in the service-tax return as well as in the books of accounts. This could be the first trigger point of making further investigation, but merely on this basis, addition cannot be made. Turnover shown in the service-tax could also be the advance received from the customers which cannot be the income of the assessee as per its books of accounts as it is not accrued. Similarly, income might have been accrued to the assessee but it may be exempt under the service-tax. Further, the assessee had shown that credit note was received by the assessee, however, that was not included in the service-tax return.

9. In view of the above facts, the whole issue is set aside to the file of the Assessing Officer with a direction to the assessee to reconcile the income and show the year in which the same was shown as income, with respect to the income shown in the service-tax return. AO may verify the same and if found any error, the addition may be deleted.

10. With this view of the matter, we set aside the impugned order and remand the issue to the file of the Assessing Officer with a direction to the assessee to reconcile the income and show that in which year the same was shown as income with respect to the income shown in the service tax return, and the Assessing Officer after verification of the same, if finds any error, may delete the addition.

11. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Open Court on 13th November, 2019.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**Sd/-
(K.NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 13th November, 2019.

VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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