

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC-C” BENCH : BANGALORE**

BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT

ITA No.372/Bang/2019
Assessment year : 2014-15

M/s. D M Estates Private Limited, #150, 1 st Floor, Embassy Point, Infantry Road, Bengaluru – 560 001. PAN : AAACD 7449 M	Vs.	The Deputy Commissioner of Income Tax, Circle – 2(1)(1), BMTC Depot, 6 th Block, 80 Feet Road, Koramangala, Bengaluru – 560 095.
APPELLANT		RESPONDENT

Assessee by	:	Shri. G. Sitaraman, CA
Revenue by	:	Shri. Ganesh R. Ghali, Advocate Standing Counsel to Department

Date of hearing	:	13.11.2019
Date of Pronouncement	:	20.11.2019

ORDER

This is an appeal by the Assessee against the order dated 31.12.2018 of CIT(A) - 2, Bengaluru, relating to Assessment Year 2014-15.

2. The appellant Company is in the business of construction and property development. It filed its return of income, declaring Rs.99,80,689/-. During the assessment proceedings, the AO noticed that the Rental Facility Income derived from the following customers, as reflected in 26AS (a form in which the person making payment to the Assessee declares the sum payable / paid and tax deducted on such payment) is more than the amount reflected in the books of accounts of the assessee. The following were the discrepancy noticed by the AO:-

Sl. No.	Name of the Customer	Rent as per Book	Rent as per 26AS
1.	Dominos Pizza India Limited	21,96,109	22,80,933
2.	Fish and Chips Hotels Private Limited	5,39,504	5,68,469
3.	East West Ethnic Foods Private Limited	7,75,135	9,84,426
4.	Alliance Retail	6,06,147	6,45,877
5.	Barista Coffee Company Limited	17,81,844	19,01,886
6.	Ample Media Outdoor Advertising	7,08,750	8,50,500
7.	Beijing Hotels Private Limited	19,67,894	19,77,450

3. The sum total of the difference as above was a sum of Rs.5,98,398/-. The receipts shown by the Assessee as per its books of accounts and as per AS-26 was less by Rs.5,98,398/-.

4. When the above discrepancy was pointed out by the AO and the Assessee was asked to show cause as to why the aforesaid difference of Rs.5,98,398/- be not added as income of Assessee not disclosed in the return of income, the Assessee submitted that it maintained books of accounts in the normal course of business and that they are duly audited and no adverse features were noticed by the Statutory Auditors and the entire income had been correctly disclosed in the return. It also submitted that the "Facility Income" was supported by Lease Agreements and the payments are received by cheques and that there has been no omission whatsoever.

5. The AO rejected the contentions raised by the assessee and made an addition of Rs.5,98,398/-.

6. The CIT(A) sustained the additions and hence the present appeal by the assessee before the Tribunal. The learned Counsel for the assessee submitted that out of 29 customers, these mistakes were found only in 7 customers. The gross revenue under "Facility Income" was Rs.5.49 Crores and there can be no probability of Assessee not disclosing Rs.5,98,398/-. The difference is on account of the fact that some customers, in 26AS have disclosed the gross payment, including Service Tax whereas, in the Books, the Assessee had shown the net amount, including Service Tax. The amount shown in 26AS includes income rendered for "Other Services", besides "Facility Income". The Rental Facility Income does not include Income in respect of "Other Services", which had been disclosed under Miscellaneous Income". That the AO has not found out any mistakes in the Books of Accounts and in the absence of the same no addition should be made. There is no evidence whatsoever that the Assessee had received the entire amount disclosed by the customers in 26AS. It was submitted that the person who made payments to the Assessee (i.e., customers) might have committed a mistake while furnishing the information to the Department. The assessee has no access whatsoever to verify the correctness of the information collected by the Department. He relied on decision of ITAT, Mumbai Bench, in the case of TUV India Pvt. Ltd., Vs. DCIT (2019) 75 ITR (Trib.) wherein it was held an addition to total income cannot be made due to discrepancy in receipts as shown in 26AS.

7. The learned DR relied on the order of the CIT(A).

8. I have heard the rival submissions. It is clear from the orders of the Revenue authorities that the impugned addition has been made purely on the basis

of difference between income as reflected in Form 26AS and income as reported in books of accounts. As far as the Assessee is concerned, the receipts of rents as recorded in the books of accounts is in consonance with the agreement between the assessee and the lessee. No defect whatsoever has been pointed out by the Revenue authorities in the books of accounts of the assessee. In such circumstances, the impugned addition cannot be sustained as held by the ITAT, Mumbai Bench in the case of TUV India Pvt. Ltd., (supra). The Tribunal on an identical addition made to the total income on the basis of mismatch of receipts as per Form 26AS and the receipts shown by the Assessee firstly held that the assessee has done all what best it could do to discharge its onus/burden which lay under the provisions of the 1961 Act by submitting reconciliation statements as well explaining the reasons for differential between the income as is reported in Form No. 26AS information as per the data base maintained by the Income-tax Department and the income as is reflected in its books of account. The assessee has discharged its primary onus/burden and the assessee could not be asked to do impossible. Secondly the Tribunal held that there could be differences in the accounting policy followed by the taxpayer and its clients who have deducted Income-tax at source on behalf of the taxpayer as well wrong mention/punching of the permanent account number of the tax payers by the clients while filing the TDS returns with the Department. One of the reasons for differential could be that the clients have deducted TDS on the gross amount inclusive of service tax while the income is reflected by the taxpayers exclusive of service tax. Thirdly, the tribunal held that the assessee has no control over the data base of the Income-tax Department as is reflected in Form No. 26AS and at best the assessee could do is to offer bona fide explanations for these differential which the assessee did in this case during the appellate/remand proceedings. Fourthly, it held that the Income-tax Department has all the information and data base in its possession and control. The learned Commissioner of Income-tax (Appeals)/Assessing Officer ought to have conducted necessary enquiries to unravel the truth but

asking the assessee to do impossible is not warranted. The tribunal finally concluded that no additions to the income are warranted in the hands of the assessee owing to differential in income based on Form No. 26AS and the income as is reflected in the books of account maintained by the assessee.

9. I am of the view that the facts of the case of the Assessee are identical to the case decided by the Mumbai ITAT referred to above. I am therefore of the view in the facts and circumstances of the case, the impugned addition cannot be sustained and the same is directed to be deleted. The appeal of the assessee is accordingly allowed.

10. In the result, the appeals by the Assessee is allowed.

Order pronounced in the open court on this 20th day of November, 2019.

Sd/-
(N. V. VASUDEVAN)
Vice President

Bangalore.

Dated: 21st November, 2019.

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.