

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'B' BENCH : Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
And
Shri Mohan Alankamony, Accountant Member**

**ITA No. 2088/Hyd./2018
Assessment Year: 2013-14**

M/s CES Limited
C/o P. Murali & Co.
Chartered Accountants
6-3-655/2/3, 1st floor
Somajiguda
Hyderabad 500 082
Telangana
PAN: AADCS4564P

(Appellant)

vs. DCIT, Circle 1(2)
Hyderabad.

(Respondent)

For Assesse: Sh. P. Murali Mohan Rao, A.R.
For Revenue: Smt. Matta Padma, D.R.

Date of Hearing : 03/09/19
Date of Pronouncement : 21/11/19

ORDER

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for A.Y. 2013-14 against order of CIT(A)-1, Hyderabad dated 27.9.2018.

2. Brief facts of the case are that the assessee company was initially known as "M/s Serve All Enterprise Solutions Limited". The said company got merged with M/s Decatrend Technologies Private Limited which is a wholly owned Subsidiary of this Company w.e.f. 01.04.2012 as ordered by the Hon'ble High Court of Andhra Pradesh in Company Petition No.182/2013 dated 14.11.2013 and the Company Application No.815/2013 in the case of M/s Decatrend Technolgies Pvt. Ltd. and M/s Serve All Enterprise Solutions Ltd. The amalgamated company's name was subsequently changed to M/s

CES Pvt. Ltd. While filing the return of income for relevant A.Y., the assessee company had taken into consideration the income of both the amalgamating company and the amalgamated company and also had claimed the credit for advance tax and TDS credit of both the companies prior to the amalgamation. During the assessment proceedings u/s 143(3) of the Income Tax Act, 1961 (the Act) the A.O. had considered the income arising to the amalgamated company, but while granting credit of TDS and Advance Tax, he did not allow the same in toto. Against the said order of A.O. the assessee preferred an appeal before the CIT(A) who dismissed the same holding that the assessee did not submit any TDS Certificate or Advance Tax payment details before the AO/CIT(A). Further she also held that in the Hon'ble High Court order, there is no mention about the particular issue or class regarding the taxes paid. Against this order of the CIT(A) the assessee is in second appeal before us by raising the following grounds of appeal.

"1. The Ld. CIT(A) has erred both on facts and in law in upholding the order of the A.O., wherein credit for TDS and Advance Tax was not allowed, which the order passed by A.O. is against the weight of evidence and therefore not sustainable in law.

2. The Ld. CIT(A) ought to have appreciated that during the year under consideration, there was an amalgamation between assessee company (previously known as M/s. Serve All enterprise solution Ltd) and M/s Decatrend Technologies Pvt Ltd which is a wholly owned subsidiary of the assessee company and that the income arising to amalgamated company was included in assessee's and that the TDS deduction in respect of amalgamated company is claimed in the hands of appellant.

3. The Ld. CIT(A) has erred in not properly appreciating that submitted, that the Advance Tax and TDS Credit of M/s. Decatrend Technologies Pvt Ltd and M/s. CES Private Ltd have been taken into consideration while arriving at the total Tax payable by the assessee 'in its computation, while the income of both the companies was clubbed in the assessee's hands.

4. The Ld. CIT(A) ought to have appreciated that the AO erred in allowing the credit to advance tax for the lesser amount of Rs. Rs.80,00,000/- as against the actual amount of Rs. 1,40,00,000/-
Tax effect: Rs.60,00,000/-

5. The Ld. CIT(A) ought to have appreciated that AO erred in allowing credit to the TDS only to the extent of Rs. 5,92,604/- as against the actual amount of Rs. 23,12,919/-
Tax effect: Rs.17,20,315/-

6. The appellant may add or alter or modify or substitute or delete add or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal."

2.1. The Ld.Counsel for the assessee, while reiterating the submissions made before the authorities below, had drawn our attention to the Profit & Loss a/c, Balance Sheet and the computation of income filed by assessee during relevant Assessment Year which are part of the paper book. He has drawn our attention to page 2 of the paper book wherein total income has been taken at Rs.4,05,44,580/- and the TDS of Rs.23,12,990/- and Advance Tax of Rs.1,40,00,000/- has also been claimed. He submitted that this consists of the TDS Credit and Advance Tax of the amalgamating company and when the income of the amalgamating company has been offered to tax then the credit for TDS and Advance Tax of amalgamating company also must be given. He also referred to the order of Hon'ble High Court which is placed at pages 96 to 112 of the paper book, wherein the scheme of amalgamation has been approved by Hon'ble High Court. At para 9.1 of the order, meaning of 'undertaking of the transferor company' is given and at Clause 1.9.3, it is mentioned that it shall include "the leasing rights, licenses, approvals, exemptions, tax benefits, concessions, subsidies and other beneficial interest etc." Therefore, he submitted that the Hon'ble High Court has allowed the tax benefits to the amalgamated company and the TDS credit and credit for advance tax of the amalgamating company should be given to assessee.

2.2. The Ld.DR, however, submitted that the details furnished by the assessee need to be examined by the A.O.

3. Having regard to rival contentions and material placed on record, we agree with the contention of the assessee that when the amalgamated results or income of the amalgamating company has been taken into consideration, then the credit for advance tax paid and TDS made by amalgamating company should be given to amalgamated company, i.e. the assessee before us.

3.1. In view of the same, we deem it fit and proper to remand the issue to the file of A.O. with a direction to verify the claim of TDS credit and advance tax paid by amalgamating company and allow the same to the assessee in accordance with law.

4. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in Open Court on 21st November, 2019.

Sd/-

(MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-

(P MADHAVI DEVI)
JUDICIAL MEMBER

Dated: 21st November, 2019.

**GMV*

Copy forwarded to:

1. M/s CES Limited, C/o P Murali & Co. Cas, 6-3-655/2/3, Somajiguda, Hyderabad 500 082.
2. DCIT, Circle 1(2), Hyderabad.
3. Pr.CIT-1, Hyd.
4. D.R. ITAT Hyderabad
5. Guard File

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