

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G', NEW DELHI**

**Before Ms. Sushma Chowla, Vice President**

**Dr. B. R. R. Kumar, Accountant Member**

**SA No. 44/Del/2020**

**(in ITA No. 8353/Del/2019 : Asstt. Year : 2015-16)**

**&**

**ITA No. 8353/Del/2019 : Asstt. Year : 2015-16**

M/s Trinetra Impex Pvt. Ltd., 8/19, W.E.A. Smile Chamber, 2 <sup>nd</sup> Floor, Karol Bagh, New Delhi-110005	Vs	Asstt. Commissioner of Income Tax, Circle-25(2), New Delhi-110002
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AABCT3848F</b>		

**Assessee by : Sh. Salil Kapoor, Adv.**

**Revenue by : Dr. Anjula Jain, Sr. DR**

**Date of Hearing: 27.01.2020**

**Date of Pronouncement: 28.01.2020**

**ORDER**

**Per Dr. B.R.R. Kumar, Accountant Member:**

**Stay Application:**

The assessee was carrying on business of a custom clearing agent and acted as C&F agent. The assessee had filed its return of income for AY 2015-16 on 05.10.2015 declaring total income of Rs. 40,27,460/-. The case of the assessee was selected under limited scrutiny on account of mismatch in sales turnover. During the course of assessment proceedings, it was noticed by Assessing Officer that as per Form 26AS the total receipts by the assessee were Rs.6,60,65,680/-. It was further observed that in P&L account, the assessee has shown a total

receipts of Rs.1,81,72,612/-. Hence, the assessee was asked to explain discrepancy between 26AS data and its P&L account.

2. The assessee submitted reconciliation between receipts in Form 26AS and corresponding revenue recorded as per P&L account with respect to three sample parties since the number of transactions and their related documents were voluminous. The Assessing Officer disregarded the submissions of the assessee, and vide order sheet entry dated 11.12.2017 show caused the assessee as to why addition should not be made on account of difference of receipts appearing in Form 26AS and revenue disclosed in P&L account for the relevant assessment year. Date of compliance to file all submissions and documents for the assessee was the very next day i.e. - 12.12.2017. Since the submissions and documents were voluminous in nature and time given was too short and since the assessee could not comply with show cause of the Assessing Officer, he added difference of receipt shown in 26AS and P&L account amounting to Rs. 4,78,93,068/- to the total income of the assessee.

3. The Assessing Officer also issued a demand notice u/s 156 of the Act raising the demand of Rs.2,07,49,030/-.

4. During the arguments of the stay application against the recovery, it was brought to our notice that additional evidences were submitted before the Id. CIT (A) which have been accepted under Rule 46A were forwarded to the Assessing Officer and obtained the remand report. The Assessing Officer submitted to the Id. CIT (A) that the reconciliation has been

accepted except for an amount of Rs.3,37,067/-. During the hearing of the Stay Application, these facts have been examined and since the issue involved verification of the expenses claimed as reimbursement by the assessee, the matter of the quantum appeal has been taken up simultaneously and adjudicated. Since, the Stay Application and the regular appeal have been heard and orders are being passes simultaneously. The matter in the quantum appeal stands remanded back to the file of the Assessing Officer. Hence, the Stay Application of the assessee becomes infructuous and treated as dismissed.

### **ITA No. 8353/Del/2019**

5. Following grounds have been raised by the assessee:

*"1. That, in view of the facts and circumstances of the case, the assessment order passed under section 143(3) of the Income Tax Act, 1961 ('the Act') dated 13.12.2017 by the Assessing Officer ('the AO') and also addition/disallowance made therein is illegal, bad in law and without jurisdiction.*

*2. That, in view of the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) ('CIT(Appeals)') has grossly erred in upholding the action of AO in assessing the total income of the assessee at Rs. 5,19,20,530/- as against the returned income of Rs. 40,27,460/-.*

*3. That, the AO/CIT(A) has erred in not appreciating that this is a case of limited scrutiny and hence the addition made of Rs. 4,78,93,068/- is illegal and bad in law and without jurisdiction.*

*4. That, in view of the facts and circumstances of the case, the AO/CIT(A) has erred in making/upholding the addition on the basis of alleged difference of receipt shown in Form 26AS*

*and financials/return of income amounting to Rs. 4,78,93,068/-. The AO/CIT(A) has failed to appreciate the reconciliation along with all evidences/details and documents as filed by the Assessee which explains the difference of receipt appearing in Form 26AS and financials/return of income.*

*5. That, in view of the facts and circumstances of the case and in law, no addition can be made on the basis of the alleged difference of receipt shown in Form 26 AS and financials/return of income, and hence the same is liable to be deleted.*

*6. That, in view of the facts and circumstances of the case, the AO/CIT(A) has erred in not appreciating the business model of the Assessee and the accounting method adopted by it.*

*7. That, on the facts and circumstances of the case, the AO/CIT(A) has failed to appreciate the favourable assessment order passed in Assessee's own case pertaining to AY 2014-15 and AY 2016-17, which is based on identical facts and wherein the business model and accounting method of the Assessee stands accepted.*

*8. That, in view of the facts and circumstances of the case, the CIT(A) has grossly erred in law in rejecting the application for additional evidence of the Assessee under Rule 46A of the Income Tax Rules, 1962 ('the Rules').*

*9. That, in view of the facts and circumstances of the case, the AO has erred in passing the impugned assessment order without giving the Assessee a reasonable opportunity of being heard and the same is in clear violation of principles of natural justice.*

*10. That, without prejudice, the addition made is unjust, illegal, bad in law and is liable to be deleted.*

*11. That the explanations given, evidence produced and material placed and made available on record have not been properly considered and judicially*

*interpreted and the same do not justify the addition made.*

*12. That, on the facts and circumstances of the case, the AO has erred in charging interest under Section 234B of the Act. The same has been wrongly levied and is also excessive.*

*13. That on the facts and circumstances of the case, the AO has erred in recording satisfaction and initiating penalty proceedings under Section 271(1)(c)."*

6. The Assessing Officer made addition on account of difference of the receipts shown in 26AS and return of income of Rs.4,78,93,068/-. Receipts of Rs.6,60,65,680/- are appearing in 26AS whereas revenues from operation of Rs.1,62,09,805/- and other income of Rs.19,62,807/- totaling to Rs.1,81,72,612/- are disclosed in Profit and Loss A/c.

7. During the year under consideration, assessee acted as C&F agent and provided services to various clients. Accordingly, invoices were raised in this behalf. The invoice issued by the assessee comprised of following components:

- a. Custom Duty, Air Freight, Dock / Port Charges*
- b. Crane / Fork Lift, Survey / Insurance / License Prem*
- c. D.O. Charges / Detention, Customs Documentation*
- d. Local Transport, Loading / Unloading, Repair / Packing*
- e. Examination Expenses, Print out Charges,*
- f. Others Charges, License Charges*
- g. Agency commission"*

8. Out of above mention components only Agency commission was the revenue of Assessee Company and all the remaining components were basically reimbursement to the

Government Department/ outside agencies which the assessee company pays after recovering the same from clients. Such reimbursements were neither treated as income or expense in the books of accounts. These were directly paid to a particular vendor who bills the assessee company for the specific amount spent by assessee on account of different expenses as mentioned above. The vendor company also invoices to the assessee company mentioning the clients name which clearly supports the fact that the expense has been done on behalf of the clients.

9. Before the Id. CIT (A), the assessee submitted documentary evidence in large volumes with respect to the expenses incurred by the assessee on behalf of its client and reimbursement received from them.

<i>S No.</i>	<i>Particulars</i>	<i>Volume No.</i>	<i>Page No.</i>
1.	<i>Invoices raised by assessee company to its clients</i>	1-9	1-4505
2.	<i>Bills/ledgers being submitted in support of reimbursable components</i>  <i>Encl.:</i>  <i>1. Bills of dock/AAI charges incurred by assessee</i> <i>2. Bills of delivery order (DO) charges incurred by assessed</i> <i>3. Challan of Custom Duty</i> <i>4. Bills of transportation expenses incurred by assessee</i> <i>5. Bills of freight expenses incurred by assessee</i>	   <i>10-14</i> <i>15-16</i> <i>17-18</i> <i>19-20</i> <i>21</i>	   <i>4506-7278</i> <i>7279-8085</i> <i>8086-8832</i> <i>8833-9411</i> <i>9412-9504</i>

10. The assessee has submitted the reconciliation of income in the P&L account vis-à-vis the invoices raised.

Particulars	Amount	Amount	Formula
TOTAL INVOICE VALUE		488,145,306	A
INVOICE OF PREVIOUS YEAR		167,910	B
TOTAL INVOICE OF CURRENT YEAR		437,977,396	C= A-B
LESS:			
CUSTOM DUTY		405,906,684	D
DOCK CHARGES		12,732,470	E
FREIGHT/TRANSPORTATION:		27,114,964	F
D.O. CHARGES:		12,982,145.25	G
EXAMINATION EXPENSES:-			
i) License expenses	646,610		
ii) Bond debiting	360,333		
iii) Crain/ Forklift	823,556		
iv) Urgent Railment expenses	960,000		
v) Miscellaneous expenses	831,077	3,621,576	H
LOADING & UNLOADING EXPNESES:-			
i) Wages	1,438,260		
v) Bond debiting	360,333		
vi) Crain/ Forklift	823,556		
vii) Urgent Bailment expenses	960,000		
V) Miscellaneous expenses	831,077	<b>3,621.576</b>	
LOADING & UNLOADING EXPNESES:-			
i) Wages	1,438,260		
ii) Packaging/ Sealing	860,796		
iii) Repair and other expenses	709,003	<b>3,008,059</b>	
<b>BE</b>			
<b>CHARGES/DOCUMENTATION CHARGES</b>		<b>436,045</b>	
<b>SERVICE TAX (INCLUDING CESS)</b>		<b>3,918,684</b>	k
<b>BAD DEBTS</b>			l
Credit note of M/s Tirupati Global	<b>211,500</b>		
Commission paid to M/s. GVP Forwarder	<b>16,854</b>		
Commission paid to M/s. Chopra Associates	<b>50,000</b>		
W/ off/Deduction by Clients (Ester Industries Ltd)	56,113		
W/ off/Deduction by Clients (Majestic Auto Ltd.)	8,986.20		
W/ off /Deduction by Clients (GVB Forwarder)	2,342		
W/ off/Deduction by Clients (India Mat Pro)	<b>2,527</b>		
W/ off /Deduction by Clients (RTC International)	1,854		
W/ off/Deduction by Clients (Pooja Forge)	1,685		
W/ off /Deduction by Clients (Sandeep Industries)	29,533		

W7 off /D eduction by Clients (Rasa Autocom)	3,821		
W/ off/Deduction by Clients (Veegee Industries)	1,831		
W/ off/Deduction by Clients (Hero Motors Ltd)	126,183.97		
Bad debts (M/s. Munjal showa Ltd.)	1,533,732.82	2,046,963	
Total Expenses		471,767,590	M= D+E+F+G+H +I+J+K+L
INCOME AS PER PROFIT & LOSS A/C		16,209,806	N=C-M

11. Further, the assessee submitted that even as per the service tax return which consisted of transportation, loading expenses and agency commission, the service tax has been levied only on the components which are not reimbursements. The assessee has also reconciled the differences between receipts shown in the service tax return and revenues from operations.

12. Further, it was submitted that the assessee has been consistently following such method of accounting and the same has been duly accepted by the department as well. The details for the earlier and subsequent years are as under:

Assessment Year	Receipts as per Form 26AS	Revenue as per books
AY 2014-15	6,37,09,595/-	1,58,93,920/-
AY 2016-17	6,66,32,3317-	2,59,41,417/-

13. The additional evidences filed before the Id. CIT (A) were remanded to the Assessing Officer and the Assessing Officer technically refused to accept the additional evidences (para 3.4 of the CIT(A)), he has examined the matter on merits and submitted that

*"it is observed from the reconciliation furnished by the assessee company, it is observed that amount of Rs.6,52,05,181/- (shown as payment/ amount credited in the form 26AS) on which TDS was deducted by the client of the assessee company on its services, in this regard, it is noticed that the amount of Rs.6,52,05,181/- was part of the invoices having the value of Rs.48,81,45,306/-. In the reconciliation of invoice value with the receipts recorded in the Form 26AS, it is observed that aggregate value of invoices issued during the year as per the said reconciliation statement is Rs.48,81,45,306/-. In comparison thereto, total value of income reported as per Form 26AS is Rs.6,52,05,181/-. In this regard, assessee submitted before your goodself an invoice wise reconciliation citing reason for difference between the revenue as per each invoice vis-a-vis the corresponding entry in form 26AS which is placed on paper book page no. 9722- 9866.*

*It is observed that each party has followed different mechanism of deducting tax at source and considered different components of invoice for the purpose of deducting TDS. Some parties have deducted tax at source only in respect of the agency commission; some parties have deducted tax at source in respect of total invoice value less custom duty charges, some parties have deducted tax at source in respect of all components but dock charges and so on and so forth.*

*In view of these facts, the reconciliation submitted by the assessee with respect to verified on test check basis and it is found that amount shown in the Form 26AS comprises in the details of invoices submitted by the assessee company."*

14. Further, the Assessing Officer has also reconciled the difference between the turnover as per service tax return and

as recorded in the P&L a/c. The report of the Assessing Officer on this aspect is as under:(page 30 of the CIT(A) appeal)

*"From the above reconciliation it is observed that the difference in turnover as per service tax return and that recorded in profit and loss A/c has been arisen because of the reason that Sendee tax has been levied only in respect of agency commission, transportation and loading/unloading charges. The details furnished by the assessee in this regard has been examined and it is found that various other components such as customs duty, dock charges, examination fee, etc. when added to such value results in the total invoice value of Rs. 48,81,45,306/- which has already been reconciled with the form 26AS and with P&L A/c. The contents of above reconciliations submitted by the assessee have been test checked, in this regard, it is claimed, by the assessee that it has followed the accounting treatment consistently in subsequent years as well but no evidence, in this regard, has been furnished by jt In this regard, the additional evidence adduced by the assessee may be considered for the disallowance on account of difference of receipt shown in 26AS & return of income."*

15. Though the Assessing Officer has examined the reconciliation part on merits except a difference of Rs.3,37,067/-, the Id. CIT(A) has chosen not to accept the additional evidences filed by the assessee and rejected the reconciliation filed by assessee. During the arguments before us, the Id. AR contended that the voluminous data given to the Id. CIT (A) could not have compiled within a short span of two days i.e. the date of show cause 11.12.2017 and the date of

order 13.12.2017. He argued that the details filed if considered with due diligence will reconcile the correct taxable income. The Id. DR also fairly argued that the matter needs to be examined by the Assessing Officer by taking into consideration the evidences filed by the assessee subsequently. Hence, taking into consideration and keeping in view, the arguments of both the parties, the time available to the assessee during the assessment proceedings, the examination under took by the Assessing Officer on the additional evidences field by the assessee before the Id. CIT (A) and the remand report thereof, we hereby set aside the matter to the file of the Assessing Officer to reconcile the mismatch of TDS vis-à-vis the returned income of the assessee.

16. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 28/01/2020.

Sd/-  
**(Sushma Chowla)**  
**VICE PRESIDENT**

Sd/-  
**(Dr. B.R.R. Kumar)**  
**ACCOUNTANT MEMBER**

**Dated: 28/01/2020**

\*Subodh\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**