

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.4153/M/2018
Assessment Year: 2014-15**

ACIT 23(3), Room No.104, 1 st Floor, Matru Mandir, Tardev Road, Mumbai - 400007	Vs.	M/s. Ramlal Dayaldas Khanduja, 4 th Floor, AN House, 31sst Road, TPS-III, Bandra (West), Mumbai - 400 050 PAN: AAHPK4195P
(Appellant)		(Respondent)

Present for:

Assessee by : Ms. Dinkle Hariya, A.R.
Revenue by : Shri Jothilakshmi Nayak, D.R.

Date of Hearing : 07.01.2020
Date of Pronouncement : 19.02.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 26.03.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2014-15.

2. The grounds raised by the Revenue are as under:

“(1) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in accepting the assessee's contention that the difference in the receipts shown in the Audit Report and Form 26AS us reflected in previous and subsequent years, ignoring the fact that the auditor has clearly pointed out that the assessee has not maintained consistent policy of accounting ?

(2)The appellant prays that the order of the Ld. CIT(A) on the above ground be set aside and that of the AO be restored.

(3) The appellant craves leave to add, delete, alter, amend and modify any or all grounds of appeal."

3. The only issue raised by the Revenue is against the order of Ld. CIT(A) wherein the Ld. CIT(A) has accepted the contentions of the assessee that difference in the receipts shown in the audit report and form No.26AS were duly reflected in the previous and subsequent assessment years and thus offered to tax.

4. The facts in brief are that the assessee filed return of income on 29.11.2014 declaring the income of Rs.25,37,770/-. Thereafter the case of the assessee was selected for scrutiny under CASS and statutory notices were duly issued and served upon the assessee. During the course of assessment proceedings, the AO noticed that there was a mismatch between the receipts as per form No.26AS and annual accounts of the assessee. The total receipts as per form 26AS were Rs.6,41,28,692/- whereas the total receipts as per P&L account were Rs.5,07,74,479/- while total receipt as per TDS certificates were Rs.7,05,67,187/-. Accordingly, the assessee was provided a copy of the form 26AS vide order sheet entry dated 23.09.2016 with the direction to reconcile the same failing which why the difference between form No.26AS and receipts as well as P&L account which comes to Rs. 2,24,74,445/- should not be added to the income of the assessee as unaccounted income. Thereafter, the assessee was allowed several opportunities. however, no reconciliation was filed. On 13.12.2016 the Ld. A.R. submitted the ledger of Bartec India Pvt. Ltd. for F.Y. 2010-11, 2011-12 & 2012-13 and also ledger of M/s. Engineer India Ltd. for F.Y. 2014-15 that too without any explanation. On 05.12.2016 the assessee filed reconciliation before the AO. The

AO however, did not accept the same and came to a conclusion that mere submission by the assessee that the payments were offered in F.Y. 2010-11 to 2014-15 by filing the copies of ledger accounts could not be accepted and thus the AO calculated the difference as unaccounted income at Rs.2,24,74,445/- which was calculated by subtracting Rs.4,73,50,036/- from Rs.7,24,00,481/- and added the same to the income of the assessee.

5. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee after considering the contentions and arguments of the assessee by observing and holding as under:

“5.2 Ground No.1:-

This ground relates to the mismatch in receipts as per TDS claimed by the assessee & Receipts as per P& L account. During course of the assessment proceedings, the AO merely on the basis of the auditor's qualification report in form no. 3CB concluded that the appellant was not following consistence accounting policy and was not able to reconcile the mismatch. However, It was noted that the auditor's qualification report was general in nature and does not bear any relevance to the facts and circumstances of the case. It was contended that the receipts were offered to tax either in preceding years or in subsequent years and TDS was claimed when the party deducted the TDS. And the same contention was made during the assessment proceedings. During course of the assessment proceedings, the appellant submitted ledgers of all the parties for the F.Y. 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 to substantiate his claim. The same was also included in the assessment order. However no examination was made by the AO in respect of the ledgers account to arrive at conclusion against the claim that receipts were taxed either in preceding years or in subsequent years. The same ledger accounts of parties were also furnished during appellate proceedings and the same have been examined carefully and it was found that the mismatch occurred due to the reason that receipts were booked by the appellant in preceding years or in subsequent years and TDS was claimed whenever it was deducted by the parties. Once a receipt has already been offered for tax in preceding year or subsequent year, it cannot be taxed again in any other year. The AO completely ignored the books of account furnished by the appellant and did not make any examination and merely on basis of auditors qualification report, concluded that the appellant did. not follow the consistent accounting policy. The AO failed to appreciate that the receipts have been offered for tax either in preceding years or in subsequent years. In view of the above I hold that the addition on the basis of mismatch cannot be made merely on the basis of auditor's qualification report, instead of that facts and circumstances of the cases should be looked in to make any addition. In view of the above, it is held that the appellant had offered the receipts for tax either in preceding year or in

subsequent year and the same cannot be added in the year under consideration. Hence, the AO is directed to delete the addition of Rs. 2,26,74,445/-and this ground of appeal is allowed.”

6. After hearing both the parties and perusing the material on record, we observe that in this case there were apparently some differences in the total receipt as per form 26AS and receipts as per P&L Account. The assessee filed reconciliation before the AO submitting that all these receipts were duly accounted for from 2010-11 onwards to 2014-15 and all the ledger accounts were also filed of M/s. Bartec India Pvt. Ltd., Engineer India Ltd., Mangalore Refinery Petro Chemical Ltd. and M/s. Dcore Exports Ltd. in support of the reconciliation. We note that the only basis on which the AO rejected the reconciliation of the assessee is that the assessee has not properly explained the items of difference and the AO has merely based his conclusion on the basis of audit reports . The Ld. CIT(A) has recorded a finding that note in the audit report was general in nature and does not bear any relevance to the facts and circumstances of the case. The Ld. CIT(A) noted that the receipts were offered to tax either in the preceding or subsequent years whereas TDS was claimed in the year of deduction. The Ld. CIT(A) has noted that in the ledger accounts of all the parties, all receipts were properly shown and offered to tax and accordingly held that the receipt which is offered to tax in the preceding and subsequent years could not be brought to tax in the current year as it would amount to double taxation. Considering these facts on record and the contentions made by the rival parties, we are of the view that the assessee has duly explained these differences and there is in fact no difference in accounting for the receipts by the assessee. Thus, we do not find any fault or infirmity in the order

of Ld. CIT(A) and accordingly, the order is upheld by dismissing the appeal of the Revenue.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 19.02.2020.

**Sd/-
(Saktijit Dey)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 19.02.2020.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.