

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC-1' NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

ITA No.3272/Del/2019
Assessment Year: 2015-16

M/s. Data Secure Solutions Pvt. Ltd., 1546, S.P. Mukharjee Marg, Near Novelty Cinema, New Delhi	Vs.	ITO, Ward-7(2), New Delhi
PAN :AACCD4614Q		
(Appellant)		(Respondent)

Appellant by	Sh. Pratham Bhatia, CA
Respondent by	Sh. R.K. Gupta, Sr.DR

Date of hearing	30.06.2021
Date of pronouncement	30.06.2021

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 29/01/2019 passed by the Learned Commissioner of Income Tax (Appeals)-15, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2015-16, raising following grounds:

1. *The Ld. Commissioner of Income Tax (Appeals)-15, New Delhi erred in confirming the additions of Rs.19,38,939/- u/s 68 of the IT Act, 1961. Without prejudice, the addition is not maintainable u/s 68 of the IT Act, 1961.*

2. *The Ld. Commissioner of Income Tax (A)-15, New Delhi erred in confirming the additions of Rs.5,31,087/- u/s 68 of the IT Act, 1961, particularly on reasons different than those taken by Ld. Assessing Officer and without providing any opportunity of hearing. Without prejudice, the addition is not maintainable u/s 68 of the IT Act, 1961.*
3. *The Ld. Income Tax Officer erred in charging interest 234A, 234B, 234C and 234D of the IT Act and without prejudice the same are excessive.*
4. *The order of Commissioner of Income Tax (Appeals)-15, New Delhi, is non-speaking.*
5. *The appellant craves leave to add, amend or alter the grounds of appeal.*

2. Briefly stated facts of the case are that during the year under consideration, the assessee was engaged in the business of trading of computer software on sale of services and filed return of income on 29/09/2015 declaring total income of ₹ 16,91,120/- . The return of income filed by the assessee was selected for scrutiny and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. The scrutiny assessment under section 143(3) of the Act was completed 16/08/2017 wherein additions of ₹ 19,38,393 and ₹ 5,31,087/- have been made to the returned income. Aggrieved, the assessee filed appeal before the Learned CIT(A), however, could not succeed and the additions made by the Assessing Officer were sustained. Aggrieved, the assessee is before the Income Tax Appellate Tribunal (in short 'the Tribunal') raising the grounds as reproduced above.

3. Before us, the parties appeared through video conference facilities and filed paper-book in electronic form. The assessee also filed an application under Rule 29 of the Income Tax (Appellate Tribunal) Rules for filing additional evidences

containing assessment order of Value Added Tax (VAT) and VAT returns etc.

4. The learned Counsel of the assessee addressing the grounds raised submitted that the lower authorities have not appreciated the contention of the assessee that sale of software by the assessee are subjected to service tax as well as sales tax (VAT) and therefore same sale has been reported twice for the purpose of service tax as well as sales tax and therefore combined turnover of service tax on sales tax reported in VAT return is higher than the turnover declared in the Income-tax return. The Learned Counsel submitted that in view of the additional evidences filed containing assessment order of the VAT, the doubts raised by the AO/ld. CIT(A) can be cleared. He submitted the issue in dispute may be restored back to the file of the Assessing Officer for verification of the additional evidence filed by the assessee.

5. The Learned DR though relied on the order of the lower authorities, did not object for restoring the matter back to the file of the Learned Assessing Officer.

6. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The issue in dispute in the instant appeal is regarding the difference in turnover reported in VAT return as well as Income-tax return. The contention of the assessee that certain sales of the software have been subjected to both service tax as well as sales tax and therefore the total turnover reported in VAT return is higher as compared to Income-tax return. In support of its contention, before us the assessee has filed additional evidence as follows:

1.	<i>Assessing order, vide Form DVAT 24, dated 9th January, 2019 passed by DVAT Assessing Officer.</i>
2.	<i>DVAT return vide Form DVAT 16 along with Return Verification Form vide Form DVAT 56 for First Quarter of FY 2014-15.</i>
3.	<i>DVAT return vide Form DVAT 16 along with Return Verification Form vide Form DVAT 56 for the Second Quarter of 2014-15</i>
4.	<i>DVAT return vide Form DVAT 16 along with Return Verification Form vide Form DVAT 56 for the Third Quarter of FY 2014-15</i>
5.	<i>DVAT return vide Form DVAT 16 along with Return Verification Form vide Form DVAT 56 for the Fourth Quarter for FY 2014-15</i>

6.1 Since issue-in-dispute is limited to verification of turnover reported in VAT return vis-à-vis the turnover reported in Income-tax return, which can be verified after examination of additional evidences filed by the assessee. In the facts and circumstances of the case and in the interest of substantial justice, we set aside the orders of lower authorities on the issue in dispute and restore the matter back to the file of the Learned Assessing Officer for deciding afresh after verifying the evidences furnished by the assessee. It is needless to mention that the assessee shall be afforded adequate opportunity of being heard. The grounds of the appeal are accordingly allowed for statistical purposes.

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

Order pronounced in the open court on 30th June, 2021

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 30th June, 2021.

RK/-(DTS)

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi