

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI
BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1671/Mum/2017
(A.Y: 2012-13)

DCIT 6(2)(1), R.No. 563, Aayakar Bhavan, MK Road, Churchgate, Mumbai – 400020.	Vs.	Credit Analysis and Research Ltd., 5 th Floor, RBC Mahindra Towers, Road No.13, Worli Mumbai-400018.
PAN/GIR No. : AAACC4587F		
Appellant	..	Respondent

Appellant by :	Shri Pratap Singh, DR
Respondent by :	Ms. Priyank Jain, AR

Date of Hearing	31.05.2021
Date of Pronouncement	14.06.2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the Revenue against the order of the Commissioner of Income Tax (Appeals) -12 Mumbai, passed u/s. 143(3) and 250 of the Income Tax Act, 1961. The revenue has raised the following grounds of appeal:

“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the Addition on account of surveillance fees amount to Rs. 19,78,92,924/- ignoring the fact that the assessee has been following method of accounting of offering amount of surveillance fee @ 100% in the year of receipt, that is as per the mercantile system of

accounting being regularly followed by the assessee for many years.

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

3. The appellate craves leave to amend or alter any ground or to submit additional new ground, which may be necessary.

2. The Brief facts of the case are that, the assessee is engaged in the business of credit rating, evaluation, appraisal of debts and commitments, information services, consultancy and advisory services. The assessee company has filed the return of income electronically on 28.09.2012 with total income of Rs.126,46,31,880/-, the return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny under the CASS and notice u/s 143(2) and 142(1) of the Act along with questionnaire are issued. In compliance the Ld.AR of the assessee appeared from time to time and filed the information and explanations. The A.O on perusal of the financial statements found that (i) the assessee company has made a excess claim of leave encashment expenses and disallowed Rs.1,30,30,181/- .(ii) Similarly A.O. identified that the assessee has debited expenses of Rs.14lakhs related to increase of authorized capital. The A.O found that the claim is in the nature of capital expenditure, therefore the same was disallowed.(iii) IPO expenses Rs.11.25 lakhs was

disallowed u/s 37(1) of the Act, as the expenses are not wholly and exclusively incurred in the purpose of business. (iv) And on the disputed issue with respect of surveillance fee in the year of receipt, the A.O found that there is a mismatch of receipts as per Form no – 26AS and actual income offered it was found that the assessee has changed the method of accounting regularly followed in the earlier years. The surveillance fee is a nature of income of the assessee and this A.Y i.e 2012-13 the assessee has offered only 60% of the surveillance fee in the year of receipt and balance amount in the subsequent year. The contentions of the assessee are that the change is reliable and more relevant information on the operations of the company are reflected in the financial statement. But the A.O was not satisfied with the explanations and observed that the assessee has been following the mercantile system of accounting from many years and offering 100% receipts of surveillance fee. The assessee has filed the explanations mentioning that the statutory auditor has recommended to the audit committee for change in accounting policy related to revenue recognition on surveillance income. The surveillance revenue shall be considered in the accounting system on time proportion basis. The A.O found that the assessee company has paid the advance

tax on the basis of old method of accounting of surveillance fee. The change in accounting system after the end of the financial year is a afterthought of the company. During the financial year 2011-12, the assessee has not offered surveillance fee of Rs.19,78,92,924/- due to change in the method of revenue recognition and the revenue is reflected in Form no 26AS. Whereas, the assessee has claimed full TDS on this amount in A.Y 2012-13. But as per Rule 37BA(3)(i) credit for tax has to be given for the Assessment year in which such income is assessable. Hence there is a clear violation of matching concept in respect of claim of TDS. Finally, the A.O. has made addition of the differential income, which is not offered to tax and assessed the total income of Rs. 147,80,79,990/- and passed order u/s 143(3) of the Act dated 27.03.2019.

3. Aggrieved by the A.O. order, the assessee has filed an appeal with the CIT(A). Whereas, the CIT(A) considered the grounds of appeal, findings of the A.O and submissions of the assessee in respect of disputed issue of addition on surveillance fee due to change in method of system in accounting policy. The CIT(A) considered the observations of the A.O on this particular disputed issue at page 5 to Para 7 of CIT(A) order and further at Para 7.1 the written submissions of the assessee on the

surveillance fee. The CIT (A) on perusal of the submissions and the findings in order of the A.O. has observed that the Assessing officer (A.O.) has not given any finding that, the change in revenue recognition policy in respect of surveillance fee is not giving appropriate or correct picture of financial statements. The CIT(A) find that the A.O has not demonstrated how the income change in revenue recognition shall result in under estimation of profit. The CIT(A) find the policy adopted by the assessee is in line with Accounting standard issued by the ICAI. Further no addition was made on account of change in the accounting in the A.Y.2013-14 on this disputed issue of surveillance fee. Accordingly, the CIT(A) has observed that the change in method of revenue recognition accounting with respect of surveillance fee is bonafide and directed the A.O. to delete the addition and also allow the credit of TDS certificate in the year when such income is taxed as per Rule 37BA(3)(i) of IT Rules and granted relief in other grounds of appeal and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the revenue has filed an appeal before the Honble Tribunal.

4. At the time of hearing the Ld.DR Submitted that the CIT(A) has erred in directing the A.O to delete the addition on account of surveillance fee irrespective of the

fact that the assessee has not offered the income in this assessment year as reflected in Form no 26AS and TDS was deducted. The assessee is following the mercantile accounting system and up to the Assessment Year 2011-12 the surveillance fee is offered on receipt basis but for this assessment year due to change in method of accounting system of surveillance fee and the revenue recognition was only 60% of the receipts and remaining was offered in subsequent year. The Ld. DR submitted that the concept of income and claim of TDS does not match as the assessee company has offered only part of the receipts as income but claimed full TDS deducted and violated the provisions of claim of TDS. The concept of bifurcation of income cannot be adopted and prayed for allowing the revenue appeal.

5. Contra, the Ld. AR supported the orders of the CIT(A) and submitted that the assessee company was offering 100% surveillance fee as income up to A.Y 2011-12 and due to change in revenue recognition policy recommended to the audit committee by the statutory auditor, the surveillance income can be booked in time proportionate basis. In the subsequent Assessment years, the A.O has accepted the income on the similar basis. Whereas the disputed income of this present asst year was recognized and offered to tax in A.Y 2013-14 and The A.O. has

accepted the policy and passed order u/sec143(3) of the Act. The Ld.AR made elaborate submissions and supported her stand relying on the financial statements, accounting policy, paper book and prayed for dismissal of the revenue appeal.

6. We heard the rival submissions and perused the material on record. The sole matrix of the disputed issue that the CIT(A) has accepted the system of accounting of surveillance fee which the assessee company for the first time has adopted in A.Y 2012-13. The Ld. DR has emphasized that the assessee has bifurcated surveillance fee based on the report of statutory auditor recommended to the auditor committee after the end of the financial year and the same was incorporated in the financial statements. Whereas, the contentions of the Ld.AR that the assessee company is following mercantile system of accounting and there are operational reasons for bifurcation to give correct revenue on quarterly basis. The A.O has made addition of surveillance fee which was not offered in the current year but in the subsequent year i.e. A.Y.2013-14, where the assessee has offered in the revenue from operations as per note 17 to the profit and loss account which cannot be disputed. The Ld.AR has made submissions with respect to the income recognition policy, Accounting standards, effect of change

in accounting policy and referred to the material information adopted in the similar credit rating agencies. At this juncture, we considered it appropriate to refer to the observations of the CIT(A) at page 14 to 15 Para 7.2 of the order which is read as under:

“7.2 I have carefully perused the assessment order and the submission of the appellant. It is seen that the AO has not given any finding that the change in revenue recognizing policies which respect to surveillance fees is not giving the appropriate or correct picture of the financial statement of the appellant. It is true that change in method once regularly employed cannot be change frequently but AO has not mentioned that the appellant is changing the method of revenue recognition frequently and the change in method now adopted is not giving the true or correct financial statement of the appellant. It is seen that the AO has not demonstrated as to how the change in revenue recognition would result is underestimation of profit and not giving the correct financial result of the profit. Instead, the appellant stated that the change in revenue reorganization policies would result in more appropriate presentation of the financial statement. The fees named surveillance is an activity whereby the appellant monitors the instruments rated by the appellant for each year to check whether any upgrade or downgrade is required, based on the changed financial position or the business condition of the appellant client, the appellant is charging the fee at once and thereafter monitoring the grade assigned to the client. The appellant change in the revenue recognition policies is to give more appropriate financial result of the appellant. The appellant also stated that its policies is in line with accounting standard -9 issued by the ICAI. Further the appellant also noted that in A.Y 2013-14, the A.O has only disallowed the TDS credit taken by the appellant but no addition was made on account of change in the accounting policy with regard to surveillance fees.

Therefore, it can be said that the change in revenue reorganization policies is for a bonafide reason. The appellant also argued that provisions of Rule 37BA(3)(i) specifies for claiming credit of TDS and does not apply to accounting of income and merely because the appellant has claimed credit for TDS of the said sum of Rs. 19,78,92,924/- does not made the said income taxable in the year under consideration. It is already seen that the change in method of revenue accounting with respect to surveillance fees is bonafide and therefore, AO is directed to delete the addition and allow the credit of TDS certificate in the year when such income is offered for tax in view of Rule 37BA(3)(i). I find force in the submission of the appellant the ground No. 2 of the appeal is partly allowed.

7. On perusal of the findings of the CIT(A), we find the CIT(A) has observed that the change in method of accounting was not supported by any adverse observation of the A.O. Further, the A.O. has not explained, how the change in method of accounting system on income recognition would show under estimation of income. Finally CIT(A) concluded that the method of accounting fallowed is a bonafide. The Ld.AR has emphasized with the submissions in respect of revenue recognition, committee on ICAI accounting standards and the income has to be considered on the quarterly basis in the financial statements. Therefore the assessee has adopted for change in accounting policy and the income is reflected accurately. The contentions of the Ld.AR are that the change in method of accounting policy is

followed by the minutes of the board of directors of the company referred at page 21 of the paper book. Further for the subsequent assessment year from 2013-14 to 2017-18, the assessment orders were passed u/sec143(3) of the Act. Where the similar accounting policy was followed for income recognition referred at page 52 to 92 of the paper book. The Ld. AR trust upon the fact that the assessment orders have been passed considering the assessee's submissions and there is no addition of any income on account of surveillance fee.

8 Further the Ld.AR referred to page 93 of the paper book in respect of CRISIL Ltd, the revenue recognition policy implementation and income from operations were mentioned. The Ld.AR also dealt at page 94 at Para 3.2 on the notes to the financial accounts and the basis of recognition of surveillance fee at Para 3.2 of revenue recognition. It was brought to the knowledge of the bench that in the earlier date of hearing, the bench wanted the assessee company to file the details of revenue offered. The Ld. AR has filed the documents for the A.Y 2013-14, where the portion of surveillance of Rs. 19.78 crores was recognized and offered. We have considered the facts that the method of accounting employed by the assessee is acceptable and is followed by the similar credit rating

agencies and the change is bonafide and has been recognized as standard industrial practice.

9. We find that the A.O has never doubted the income and has also not accepted the fact of change in accounting policy on revenue recognition as the assessee was following mercantile system of accounting till last financial year. Whereas, in this present assessment year the assessee has bifurcated 60% fees as income of the current year and remaining 40% was carry forwarded and offered in A.Y 2013-14 which cannot be disputed. The Id.AR mentioned that due to change in system of accounting policy, the bench mark as applicable to other credit rating agencies are followed. When the query was raised to the Ld. AR to explain the basis of offering of fee in 60% and 40% ratio or industry yardstick or standard. The Ld. AR reply/explanations are not supported by evidences.

10. We find the Ld. DR also accepted the fact of offering of income in the A.Y 2013-14 based on the supporting evidences including assessment order u/sec143(3) of the Act filed by the Ld.AR. We find that the CIT(A) relied on the submissions and the accounting policies and has deleted the addition. Whereas, in respect of 100% TDS claim made by the assessee on the 60% income/fee

offered for taxation needs to be modified. When the income is recognized, the TDS claim should be restricted to the extent of income offered. Further as per the provisions of Rule 37BA(3)(i) of the IT Rules, the credit for TDS has to be given for the assessment year in which such income is assessable. We find that the assessee company has offered only 60% of the surveillance fee in A.Y.2012-13 and has been accepted by the CIT(A). Since the assessee is offering only 60% fee as income, in such circumstances the assessee should mandatorily restrict the claim of TDS attributable to the extent of 60% income and the balance in the subsequent assessment year. Further, in the income tax return filed electronically by the assessee, there is a Schedule of TDS, where there are columns earmarked for set apart/carry forward of income and TDS claim for the Subsequent assessment year, which needs to be opted.

11. We considering the overall facts, submissions and the material filed are of the opinion that the CIT(A) has passed a reasoned order and we up hold the same to the extent of deletion of addition of surveillance fee made by the Assessing officer. Whereas, on the aspects of TDS claim, we modify the CIT(A) order and direct the A.O to restrict the claim of TDS to the extent of income offered in the A.Y.2012-13 and the balance of TDS shall be claimed

against the income assessable in the assessment year A.Y.2013-14 and we partly allow the grounds of appeal of the revenue.

12. In the result, the appeal filed by the revenue is partly allowed.

Order pronounced in the open court on 14.06.2021

Sd/-

(M BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 14.06.2021

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumba