IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)
AND
SHRI RAJESH KUMAR (ACCOUNTANT MEMBER)

I.T.A. No.6572/Mum/2019
(Assessment year 2011-12)

Tech Mahindra Limited, Gateway Building, Apollo Bunder Mumbai-400 001 PAN : AAACM3484F	vs	ACIT,Circle-2(3)(1), Mumbai
APPELLANT		**RESPONDENT**

Appellant by	Shri J.D. Mistry, Senior advocate
Respondent by	Shri Vijaykumar Menon, DR

Date of hearing	21-06-2021
Date of pronouncement	18-08-2021

O R D E R

Per: Saktijit Dey, JM:

This is an appeal by the assessee against order dated 28-08-2019 of learned Commissioner of Income Tax (Appeals)-53, Mumbai for the assessment year 2011-12.

2. The grounds raised by the assessee, are as under:-

"1.In the facts of the case and under the circumstances and in law, the Ld. AU erred in reopening the assessment under section 147 of the Act even though proper verification of facts and due examination of audited books of account, had been made by the then Ld. AU during the course of scrutiny assessment under section 143(3) r.w.s. 144C(3) of the Act

2. In the facts of the case and under the circumstances and in law, the Ld. CIT (A) erred in upholding the upward adjustment of INR 1,99,90,685/- under section 68 of the Act on account of certain software services income received from Controladora De-Services DE Telecommunicaclones & Consertel, Mexico ("customer"), without appreciating the submissions made by and evidences filed by Your Appellant

3. In the facts of the case and under the circumstances and in law, the Ld. CIT (A) erred in not taking cognizance of the certificate issued by a Chartered Accountant, as an independent verifier of the books of account and subject matter expert, as additional evidence, under the principles of natural justice

4. Without prejudice to the above, in the facts of the case and under the circumstances and in law, the Ld. AU erred in adding back the entire software services income received from the customer, amounting to INR 1,99,90,685/-, without having cognizance to/ giving relief to the amount recorded by the customer in its books of account."

3. As could be seen from the grounds raised, issues arising for consideration basically relate to validity of reopening of assessment under section 147 of the Income Tax Act, 1961 and the legality of the addition made under section 68 of the Act.

4. Briefly the facts are, the assessee is a resident company. For the assessment year under dispute, assessee had filed its return of income on 28-11-2011 declaring income of Rs.137,37,73,974/- under the normal provisions of the Act and book profit of Rs.5,84,60,60,104/- under section 115JB of the Act. Assessment in case of the assessee was originally completed under section 143(3) r.w.s. 144C(13) of the Act vide order dated 25-01-2016. Subsequently, as stated by the assessing officer, he received information from the DIT (I-CI), New Delhi indicating that as per information received from tax authorities of Mexico, the assessee has not offered an amount of Rs.30,56,192/- received from Copntroladora De-Services Telecommuncaclones & Consertel (Telemax International–1), Mexico to tax in the impugned assessment year. Based on such information, assessing officer reopened the assessment under section 147 of the

Act. In course of assessment proceeding, the assessee furnished detailed explanation with supporting evidence stating that as against the amount of Rs.30,56,192/-, allegedly not offered to tax during the year, the assessee, in fact, has offered much more, amounting to Rs.199,90,685/-. It was submitted, both, Copntroladora De-Services Telecommuncaclones and Consertel are one and the same customer. It was submitted, since the Mexican entity follows calender year as its accounting period, whereas, the assessee follows financial year as the accounting period, therefore, the assessee accounted for Rs.1,99,90,685/- in the impugned assessment year and Rs.27,60,337/- in assessment year 2012-13. Thus, the total amount received from the Mexican entity and offered to tax by the assessee in these two assessment years aggregated to Rs.2,27,51,022/-. In support of its claim, the assessee also furnished various documents, such as, foreign inward remittance certificate, ledger and copies of invoices. However, alleging that the assessee was unable to furnish copy of contract note in support of services given, the assessing officer treated the amount of Rs.1,99,90,685/- as unexplained cash credit under section 68 of the Act and added back to the income of the assessee. Though, the assessee contested the aforesaid addition before learned Commissioner (Appeals); however it was unsuccessful.

5. Shri J D Mistry, learned senior counsel appearing for the assessee submitted, the assessee has voluntarily offered the amount of Rs.1,99,99,685/- received from Telemax International-I, the Mexican entity, in the return of income filed for the year under consideration. He submitted, the income so offered was also accepted by the department while completing the original assessment. Drawing our attention to the reasons recorded, a copy of which is at page 6 of the paper book, learned senior counsel submitted, the assessing officer has reopened

the assessment for an amount of R.30,56,192. 24 allegedly received during the year from the Mexican entity but not offered it to tax. He submitted, when the assessee has offered much more than the amount mentioned by the assessing officer, where is the question of escapement of income. He submitted, after receiving the reasons recorded, the assessee on several occasions has made representation before the assessing officer to supply the details of the amount of Rs.30,56,192/-. Further referring to reply dated 28-11-2018 furnished to the assessing officer learned counsel submitted, the assessee has offered more income than what is referred to by the assessing officer. He submitted, all the details relating to the amount received from Telemax International-I, was furnished before the assessing officer in course of the assessment proceedings. He submitted, ignoring all the details furnished by the assessee, the assessing officer proceeded to pass the assessment order under section 143(3) r.w.s. 147 of the Act in respect of an item of income not only offered to tax by the assessee, but already assessed by the department. Thus, he submitted, when the departmental authorities are convinced that the assessee has offered the income received from the concerned party and has also established such fact through supporting evidence, there is no reason to believe that income has escaped assessment. Thus, he submitted, the reopening of assessment is invalid.

6. As far as merits of the issue is concerned, learned senior counsel, drawing our attention to the observations of the assessing officer and learned Commissioner (Appeals) submitted, both the departmental authorities have not disputed the fact that the assessee has not only received the amount from a party in Mexico, but also has offered it to tax. Merely, on a flimsy ground that no contract note was furnished, the selfsame addition of income already offered to

tax has been made in the re-assessment proceedings. He submitted, when the receipt of money and identity of the payer has been established, there is no reason to again add the amount, that too, by treating it as unexplained cash credit. He submitted, when the assessee has furnished all supporting evidences, like foreign inward remittance certificate, the transaction details, invoices, etc. there is no room for rejecting such evidence without contrary evidence brought on record. He submitted, to demonstrate that the assessee has already offered the amount received from the Mexican entity in the return of income filed for the impugned assessment year, the assessee has furnished a certificate of a Chartered Accountant before the first appellate authority. He submitted, without properly verifying the authenticity of such document, learned Commissioner (Appeals) has rejected it on a purely technical ground of not complying with Rule 46A of the Rules. Thus, he submitted, the addition made should be deleted.

7. The learned departmental representative strongly relied upon the observations of the assessing officer and learned Commissioner (Appeals).

8. We have considered rival submissions and perused materials on record. The dispute in the present appeal is confined to addition of Rs.1,99,90,685/-. Undisputedly, assessee is engaged in the business of providing information technology services. In fact, in the original assessment order passed under section 143(3) r.w.s.144C(3) of the Act, the assessing officer has accepted this factual position. In the reasons recorded for reopening of assessment, a copy of which is at page 6 of the paper book, the assessing officer has stated that though the assessee has received an amount of Rs.30,56,192. 24 towards provision of services to a Mexican entity, viz. Controladora De-Services DE Telecommunicaclones & Consertel, however, it has not offered such income to

tax in the return of income filed for the impugned assessment year. Whereas, it is the specific assertion of the assessee that in the year under consideration, the assessee has accounted for Rs.1,99,90,685/- received from the Mexican entity and offered it as income. Thus, according to the assessee, it has offered much more than what is referred to by the assessing officer in the reasons recorded.

9. As could be seen from the assessment order, the assessing officer has accepted that the assessee had furnished copies of foreign inward remittance certificate, ledger and copy of invoices in support of the amount received towards provision of services to the Mexican entity. In fact, the assessing officer has not drawn any adverse inference regarding assessee's claim that the amount of Rs.1,99,90,658/- was offered to tax in the return of income. As it appears, he has only disputed the nature and character of the income received while treating it as unexplained cash credit under section 68 of the Act. In fact, a perusal of the impugned order of learned Commissioner (Appeals) would make it clear that learned first appellate authority has not disputed the fact that the assessee has received the disputed amount from the Mexican firm and offered it to tax. In fact, the first appellate authority has clearly accepted that the receipt of money and identity of the payer has been established. However, reiterating the view expressed by the assessing officer, learned Commissioner (Appeals) has observed that in absence of any contract note towards rendering of services, the amount received cannot be treated as business income, but has to be treated as unexplained cash credit under section 68 of the Act.

10. Thus, it is patent and obvious, though it is not disputed that the assessee has offered the amount of Rs.1,99,90,658/- in the return of income and the amount has also been assessed in the original assessment order; however, only

for changing the nature and character of income from business income to unexplained cash credit, the entire exercise of making allegation of escapement of income and reopening of assessment under section 147 of the Act has been made. In fact, in course of proceedings before the first appellate authority, the assessee has furnished a certificate from a chartered accountant certifying that the amount of Rs.1,99,90,658/- forms part of the receipts shown in the profit and loss account for financial year 2010-11. A perusal of the certificate issued by the chartered accountant, a copy of which is placed at page 31 of the paper book clearly demonstrate that not only the auditor has certified that the amount of Rs.1,99,90,658/- has been received from the customers in Mexico, but he has also given the total break up of revenue earned and offered to tax in assessment year 2011-12.

11. Without verifying the authenticity of the chartered accountant's certificate, learned Commissioner (Appeals) has rejected it on a highly technical ground of non compliance with rule 46A of the Rules. When it is not disputed that the amount of Rs.1,99,90,658/-, is the amount received from the Mexican customer and when the amount has also been offered as income in the return of income and assessed to tax, there cannot be any escapement of income. That too, merely for the reason of changing the nature and character of income from business to income from other sources by treating it as unexplained cash credit. Thus, in our considered opinion, not only the reopening of assessment is invalid in absence of any escapement of income, but the impugned addition deserves to be deleted on merits, as well. Grounds are allowed.

12. In the result, appeal is allowed.

Order pronounced on 18/08/2021.

Sd/- sd/-

(RAJESH KUMAR)	(SAKTIJIT DEY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dt : 18/08/2021

Pavanan

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1. Appellant
2. Respondent
3. The CIT concerned
4. The CIT(A)
5. The DR, ITAT, Mumbai
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Asstt. Registrar, ITAT, Mumbai