

THE INCOME TAX APPELLATE TRIBUNAL
"K" Bench, Mumbai
Shri B.R. Baskaran (AM) & Shri Kuldip Singh (JM)

I.T.A. No. 1023/Mum/2021 (A.Y. 2015-16)

M/s. Integreon Managed Solutions (India) Pvt. Ltd. 602, 6 th Floor, IT Building 3, Nesco IT Park, Nesco Complex, Western Express Highway Goregaon-East Mumbai-400 063. PAN : AAACI7431A (Appellant)	Vs.	Additional/Joint/ Deputy/Assistant/ Income Tax Officer National e- Assessment Centre Delhi & DCIT, Circle 4(2)(1) Mumbai. (Respondent)
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Assessee by	Shri Ketan Ved & Shraddha Jain
Department by	Dr.Yogesh Kamat
Date of Hearing	17.05.2022
Date of Pronouncement	18.05.2022

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the assessment order dated 09-04-2021 passed by the assessing officer u/s 147 r.w.s. 144C(13) of the Act for assessment year 2015-16 in pursuance of directions given by Ld Dispute Resolution Panel (DRP).

2. The Ld Counsel appearing for the assessee submitted that he is not pressing ground no.1 & 2. He submitted that the ground no.3 relating to transfer pricing adjustment of Rs.20.60 crores made in respect of Provision of back office support services to the Associated Enterprises has since been settled under Advance Pricing Agreement Procedure. Accordingly, he submitted that the assessee, vide its letter dated 10th May, 2022 has withdrawn ground no.3. Accordingly, we dismiss grounds No.1 to 3 as not pressed/withdrawn.

3. The remaining grounds give rise to following issues:-

- (a) Addition of Rs.1,13,74,847/- relating to the difference between the turnover reported in Service tax returns and books of account.
 - (b) Claim for deduction of Education cess.
 - (c) Charging of interest u/s 234B in excess.
4. The assessee herein is a subsidiary of M/s Integreon Managed Solutions (Mauritius) Ltd. It provides low end back officer support services to its Associated Enterprises (AEs) located in USA and UK.
5. The first issue relates to the addition of Rs.1,13,74,847/- relating to the difference between the turnover reported in Service tax returns and books of accounts. The AO noticed that the assessee has reported turnover of the year under consideration as Rs.82,16,85,683/- in the Service tax returns. However, the books of accounts disclosed a turnover of Rs.81,03,10,836/-. When the AO questioned this discrepancy, the assessee submitted that the difference is due to Audit adjustment. Not convinced with the reply given by the assessee, the AO added the difference amount of Rs.1,13,74,847/- to the total income of the assessee.
6. Before Ld DRP, the assessee submitted that it is a captive service provider to its associated enterprises and it is remunerated at cost plus mark-up of 15% basis. It was submitted that the assessee had raised bills upon its AEs on estimated basis forecasting the quantum of expenditure. Accordingly, the revenue was estimated at Rs.82,03,73,755/- and the said figure was reported to the Service tax authorities. At the time of finalisation of accounts, the above said forecast was found to be higher by the auditors. Accordingly, the assessee reversed the difference amount of Rs.1,13,74,847/- in the books of accounts and accordingly, the turnover came to be reported at Rs.81,03,10,836/- in the books of accounts.
7. The Ld DRP took the view that the assessee, being a KPO company, should be following detailed and well established guidelines for billing purpose

and it will have control by way of audit trails to avoid errors. Hence, the Ld DRP opined that it is difficult to imagine as to how the mistakes have crept in. It also observed that the assessee has not shown that necessary corrections have been made in Service tax returns and further, no detailed break-up was given. Accordingly, the Ld DRP rejected the objections made by the assessee to the proposed addition. Accordingly, the AO passed the final assessment order making the above said addition of RS.1,13,74,847/-.

8. The Ld A.R submitted that the assessee has actually booked the revenue at Rs.82,03,73,755/- in its books of accounts and the said billing was done by estimating the probable expenditure that will be incurred. Since the assessee is compensated at cost Plus 15% basis, the auditor has examined the costs actually incurred by the assessee and he has found that there was excess billing. Accordingly, the assessee has reversed the excess billing amount of Rs.1,13,74,847/- in the books of accounts. He submitted that the assessee may be provided with an opportunity to furnish the relevant details and also the books of accounts before the AO in order to offer explanations to him with regard to the difference.

9. The Ld D.R, on the contrary, supported the order passed by the tax authorities.

10. We heard the parties and perused the record. There should not be any dispute that the books of accounts are the books of original entry and hence, in our view, the assessing officer should have took the same as the basis. With regard to the difference in the turnover reported in Service tax returns and the financial statements, the assessee has explained that the difference represents excess billing and it was submitted that the excess amount has since been reversed in the books of accounts as at the year end. We notice that the Ld DRP did not appreciate the above said contention of the assessee. On the contrary, the Ld DRP has expressed the view that the assessee has not shown

that it has corrected the service tax return. In our view, non-revision of the service tax return cannot be the deciding factor, as opined by the Ld DRP. What is relevant is to ascertain what was the revenue of the assessee and the revenue would depend upon the contract between the assessee and its Associated Enterprises. There should not be any dispute that the excess amount reported from the side of the assessee in the Service tax return will not make the Associated Enterprises to pay more amount than that was contracted.

11. Hence, the explanation of the assessee is required to be examined on the basis of books of accounts and the contract between the parties. According to Ld A.R, the assessee is prepared to produce relevant books of accounts to show that the excess amount of Rs.1,13,74,847/- has been reversed in the books of accounts. If that be the case, in our view, the difference in turnover and books of accounts would stand explained and there is no necessity to make any addition. However, this submission of the assessee requires verification at the end of the AO. Accordingly, we set aside the order passed by the AO on this issue and restore the same to his file with the direction to examine the explanations of the assessee and take appropriate decision in accordance with law after considering the discussions made supra.

12. The next issue relates to the claim of the assessee to allow deduction of education cess paid during the year. The Finance Act 2022 has amended the Act providing for disallowance of education cess with retrospective effect. Accordingly, we dismiss the ground of the assessee.

13. The next ground relates to the charging of interest u/s 234B of the Act. The charging of interest is consequential. In any case, we restore this issue also to the file of the AO to examine the claim of the assessee.

14. In the result, the appeal of the assessee is treated as partly allowed.
Order pronounced in the open court on 18.05.2022.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 18/05/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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