

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

IT(TP)A No. 2595/Bang/2017
Assessment Year : 2013-14

M/s. Xerox Business Services India LLP (Now converted to Conduent Business Services India LLP), Unit A, 5 th Floor, Aviator Building, Ascendas ITPB SEZ International Tech Park, Whitefield Road, Bangalore – 560 066. PAN: AADCA8386M	Vs.	The Deputy Commissioner of Income Tax, Circle 7 (1)(2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Nageshwar Rao, Advocate
Revenue by	:	Smt. Susan Dolores George CIT (OSD)

Date of Hearing	:	31-05-2022
Date of Pronouncement	:	30-06-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by the assessee against the final assessment order dated 27/09/2017 passed by the Ld.DCIT Circle7(1)(2), Bangalore, for assessment year 2013-14.

2. At the outset, the Ld.Counsel submitted that, **Grounds 2-3** are in respect of transept is on issues which already stands settled by map resolution between India and United States as per article 25 of double taxation avoidance agreement. The assessee therefore wishes to withdraw the issues alleged in respect of the transfer pricing adjustment made by the Ld.AR and impugned order. Assessee has filed letter dated 06/01/2022 withdrawing the said grounds.

3. We have perused the submissions advanced by both sides in light of records placed before us. Pursuant to the letter filed by the assessee dated 06/01/2022 that arises out of transfer pricing adjustment challenged, by assessee in ground 2-3 is allowed to be withdrawn.

Accordingly, Grounds 2-3 is dismissed as withdraw.

4. The effective grounds that needs to be adjudicated ease Ground No.4-7 that are reproduced for ready reference:

“CORPORATE TAX

4. The Ld. AO / Ld. DRP erred in law and facts of the case in making addition of INR 28,579,928 as alleged undisclosed income on account of alleged difference between revenue from operations as per books of account of the Appellant and revenue reported by the Service Tax Department directly under section 133(6) of the Act;

4.1. The Ld. AO / Ld. DRP failed to appreciate that Appellant follows mercantile system of accounting and accordingly, erred in taking into account the gross receipts as stated in Service Tax Return (STR-3) instead of revenue that accrued to the Appellant during the year while making aforesaid addition in the total income;

4.2. Without prejudice to above, the Ld. AO/ Ld. DRP has erred in making the above addition without specifying the relevant provisions of the Act under which the alleged difference of INR 28,579,928 may be construed as "undisclosed income" of the Assessee and / or identifying, any assets representing such alleged undisclosed income;

4.3. *Without prejudice to above, the Ld. AO has erred in not providing the information obtained from service tax department while making the above addition thereby violating the principles of natural justice.*

5. *Without prejudice to the above, the Ld. AO / Ld. DRP has erred in law and facts of the case, in not providing relief of additional Minimum Alternate Tax ("MAT") credit of INR 12,142,780 brought forward from earlier years, which the Appellant is entitled to set off against the excess tax liability computed by the Ld. AO on account of above additions made in the draft order of assessment.*

5.1. *The Ld. DRP erred in holding that it is empowered to deal only in variations in the proposed income and not dealing with the aforesaid matter. The stand taken by the Ld. DRP is contrary to the provisions of the Act. In this regard, reliance is placed in case of Orient Overseas Container Line Ltd. ITA No. 2043/Mum/2016 (Mum-ITAT)*

6. *On the facts, in circumstances of the case and in law, the Ld. AO has erred in levying interest under section 234B of the Act.*

6.1. *The Ld. DRP erred in holding that it is empowered to deal only in variations in the proposed income and not dealing with the aforesaid matter. The stand taken by the Ld. DRP is contrary to the provisions of the Act. In this regard, reliance is placed in case of Orient Overseas Container Line Ltd. ITA No. 2043/Mum/2016 (Mum-ITAT)*

7. *The Ld. AO erred in proposing to initiate penalty proceedings under section 271(1)(c) of the Act.*

The aforesaid grounds are mutually exclusive and without prejudice to each other.

The Appellant craves leave to add, amend, alter, delete, rescind, forgo or withdraw any of the above grounds of appeal either before or during the course of the proceedings before the Hon'ble Income Tax Appellate Tribunal in the interest of the natural justice."

5. Ground No.4 raised by the assessee is in respect of the addition of ₹ 2,85,79,928/- as undisclosed income on account of alleged difference between the revenue from operations as per books of account of the assessee and the revenue reported by the service

tax department obtained under section 133(6) of the Act, by the Ld.AO.

5.1 The Ld.Counsel submitted that the assessee filed form STR3 and the reconciliation of the financials vis-à-vis the turnover as per form STR 3, which was ignored by the Ld.AO. He is a submitted that the issue may be remanded to the Ld.AR to verify the same.

5.2 The Ld.AR did not object for the submissions by the learnt counsel.

5.3 We have perused the submissions advanced by both sides in light of records placed before us.

5.4 We note that the reconciliation of the turnover as per STR -3, vis-à-vis the financials are to be considered before making such additions. We are therefore remanding this issue to the Ld.AO to carry out necessary verifications in the light of the reconciliation statement, the STR-3 form. The Ld.AO is directed to consider the claim of assessee in accordance with law.

5.5 Needless to say that proper opportunity of being heard must be granted to assessee in accordance with law.

Accordingly this ground raised by assessee stands allowed for statistical purposes.

6. **Ground No.5** raised by assessee is in respect of additional mat credit of ₹ 1,21,42,780/- bought forward from earlier year that has been denied.

6.1 It is submitted that as the issue alleged by the assessee in ground No.4 has been remanded, this issue also may be remanded as it has a bearing.

Accordingly this ground also stands remitted to the Ld.AO considering it to be consequential to ground for hereinabove.

7. **Ground No.6-7** is consequential in nature as it is in respect of levy of interest under section 234B and penalty under section 271 (1) (c) of the act, accordingly, do not require any adjudication.

In the result appeal filed by assessee stands partly allowed for statistical purposes.

Order pronounced in open court on 30th June, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 30th June, 2022.
/MS /

Copy to:

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|---------------|------------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore