

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM

**ITA No. 5933/MUM/2019**

(Assessment Year 2013-14)

Royal Palms Property Pvt.  
Ltd. Survey No. 169 Aarey  
Milk Colony Goregoan (E)  
Mumbai-400 065

Vs.

Dy. CIT-13(3)(1)  
R No. 229, Aayakar  
Bhavan, M.K. Road,  
Mumbai-400 020

**(Appellant)**

**(Respondent)**

**PAN No.AACCR3216L**

**Assessee by** : Sh. Rohan Deshpande  
**Revenue by** : Sh. Ujjawal Chavan, SR AR

**Date of hearing:** 22.09.2022

**Date of pronouncement:** 12.10.2022

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

1. This appeal is filed by the assessee for A.Y. 2013-14 against the appellate order passed by the CIT(A)-21, Mumbai [ The Id. CIT [A]]dated 09/05/2017 wherein the appeal filed by assessee against the assessment order passed under Section 143(3) of the Act by the DCIT 13/3/1 Mumbai [ the Ld.AO] was dismissed.
2. The only grievance of the assessee is that the learned Assessing Officer has made an addition of ₹ 19,55,652/- being the difference between sales as per profit and loss account and gross services as per service tax return to the income of the assessee and

confirmed by the learned CIT(A). Assessee has raised following grounds of appeal: -

*"1. The Appellant-Assessee-M/s Royal Palms Property Pvt. Ltd. (hereinafter referred to as 'Assessee') begs to prefer the following amongst other Grounds of Appeal against the Order of the Hon'ble Commissioner of Income Tax (Appeals)-21, Mumbai [hereinafter referred to as 'the Hon'ble CIT (A)'] dated May 09, 2017, in the Assessee's case for A.Y. 2013-14:*

*I. In the facts and circumstances of the case, the Hon'ble CIT(A) erred in dismissing the Assessee's appeal and in doing so, the Hon'ble CIT(A) erred in confirming the disallowance of ₹ 19,55,625/- made by the learned Assessing Officer*

*II. The Hon'ble CIT(A) erred in not appreciating that the difference in the receipt of sum of ₹ 1,24,250,020/- on account of sales made during the Financial Year relevant to A.Y. 2013-14, and the reflected sum of ₹ 1,04,71,368/- in the profit and loss account, was on account of revenue amount mentioned in service tax returns vis-s-vis the Profit and Loss Account of the Assessee.*

*III. The Hon'ble CIT(A) erred in not appreciating that the service tax return of the Assessee was based on the provisions of the Finance Act, 1994 and the Service Tax Rules framed thereunder, and that a*

*detailed reconciliation was duly submitted with the aid of necessary documents, reconciling the books of accounts with the service tax returns.*

*2. All the aforesaid Grounds of appeal are urged without prejudice to each other.*

*3. The Appellant-Assessee reserves its right to add, amend or alter the aforesaid Grounds of Appeal.*

*4. The Appellant-Assessee further submits that the decisions relied upon by the Hon'ble CIT(A) are distinguishable on facts, and the Appellant-Assessee reserves its right to do so at the time of hearing of the present Appeal.*

*5. The Appellant-Assessee therefore prays that the difference of ₹ 19,55,625/- between the receipt of sum of ₹ 1,24,250,020/- on account of sales made during the F.Y., and the reflected sum of ₹ 1,04,71,368/- in the Profit and Loss Account should be allowed and the additions made on account of this alleged difference between the service tax return and the books of accounts may kindly be deleted."*

3. Assessee is a company engaged in the business and profession filed the return of income on 07/06/2014 declaring total income of ₹12,73,398/-. The return was picked up for scrutiny. On looking at the individual transaction statement Assessing Officer noted that in profit and loss account assessee has shown gross turnover of ₹1,04,74,368/- whereas as per the service tax return gross receipt is



₹1,24,27,020/- and therefore, the difference of ₹19,55,652/- between sales as per profit and loss accounts and service tax return. The assessee submitted explanation as per letter dated 16/02/2016 which was rejected and assessment order under Section 143(3) of the Income Tax passed on 26/06/2016 declaring the total income of the assessee at ₹32,27,050/-

4. Assessee preferred an appeal before the Id.CIT(A). Assessee submitted that difference is on account of the provisions of the Finance Act, 1984 where till February 2011, service tax was payable on receipt basis and later on it was charged on accrual [billing] basis. It was submitted that even on the advance received service tax was payable. Further, services which was not received till 1<sup>st</sup> March 2011, service tax was payable on cash basis. Therefore, there is a difference between the two sums. It was further stated that assessee has raised its bill to its customers on composite basis and therefore, service tax is payable on grossed up amount. The learned AR submitted half-yearly details of turnover of service tax as well as the turnover as per profit and loss account. Therefore, it was contended that therefore the turnover as per Gross services as per service tax and Gross turnover as per books of accounts bound to have difference, which is reconciled, therefore, the

addition cannot be made. It was stated that there is not a single rupee sale which has not been offered for taxation as income.

5. The learned CIT(A) rejected the contention of the assessee he held that party wise details of service tax turnover is not furnished and therefore he confirmed the addition by appellate order dated 09/05/2017. Therefore, aggrieved with the same assessee is in appeal before us.
6. At the time of hearing, it has come to notice that the order of the learned CIT(A) appeal is received by the assessee on 15/06/2017 whereas the impugned appeal is filed on 17/09/2019 and therefore, there is a substantial delay in filing of the appeal. The assessee explained delay in filing of the appeal by filing an affidavit of the Director of the assessee company. In the affidavit, it was stated that the order was received by employee of the assessee company and the delay caused in filing of the appeal of 764 days at the time of reviewing the pending tax related matters in 2019 it came to knowledge of the assessee that the learned CIT(A) has already disposed off the appeal of the assessee. However, same could not be traced. Only on 25<sup>th</sup> July 2019 it was found to be lying in the file of employee. Therefore, the delay is on account of ignorance of the employees and further as soon as it

came to notice of assessee in July 2019 immediately assessee contacted the counsel of the assessee who advised to file the appeal. Accordingly, on 17/09/2019 the appeal was filed. Therefore, the delay in filing of the appeal is due to inadvertent omission on account of assessee. It was stated that it is a sufficient cause for the delay and therefore, same may be condone.

7. The learned Departmental Representative vehemently objected to the affidavit of assessee for condonation of delay.
8. We have carefully considered the rival contentions and find that the appeal of the assessee is delay on account of inadvertent omission on the apparent of employee of the assessee. As soon as the assessee came to know about the non-filing of the appeal it immediately files that appeal. When technicalities are pitted against the merit, the technicalities should be ignored if there not malafide and issue should be decided on the merits of the case. Therefore, the condone the delay in filing of the appeal.
9. The learned authorized representative reiterated the statement made before the lower authorities and learned DR relied upon the orders of the lower authorities.

10. We have carefully considered the rival contentions and perused orders of the lower authorities. In the present case, the addition has been made in the hands of the assessee on account of difference in turnover shown in service tax returns as well as gross receipts shown in the books of account. Assessee has categorically stated that service tax was payable on receipt basis till 1<sup>st</sup> March 2011 and later on same was changed on approval basis. Further, it is admitted fact that service tax is also payable on advances received. It is also the fact that the money, which was not received and outstanding in earlier years, but was received during the F.Y. 2012-13 is also required to be included in service tax turnover. The turnover for service tax for first half of F.Y. 2012-13 was shown at ₹ 20,55,436/- and for second half at ₹1,03,71,584/-. Thus, the total turnover as per service tax return is shown as ₹1,24,27,020/- whereas turnover as per books of accounts is only ₹ 1,04,71,368/-. Thus, naturally the turnover as per books of accounts were shown less by ₹19,55,652/-. For the F.Y. 2011-12 the service tax turnover was shown as ₹49,11,311/- whereas the turnover as per books of accounts is ₹91,28,374/-. Therefore, in earlier year assessee has shown higher turnover of ₹ 42,17,063/- in the books of accounts. In view of this, it is possible that the turnover in service tax return is



on account of receipt of money during the year. Therefore, it is apparent that manner of recording turnover for service tax is different than the amount of Turnover shown in the profit and loss account. Though, the difference arising between these two sums is required to be explained by the assessee, [1] with respect to advances [2] grossed up of the services, [ services received during the year, but turnover shown in last year etc. The difference between gross receipt shown by the assessee in service tax return and in the books of accounts may be the first trigger point of investigation and reconciliation, but unless there is difference which shows that there is lower income offered by the assessee in its tax return, the addition cannot be made. In view of the above facts, we direct the assessee to submit the party wise reconciliation of income offered in the profit and loss account with the amount of gross receipts on which service tax is collected and reconcile the difference between the two. If the advances are received during the year, assessee should also demonstrate that these sums are disclosed in advance received from the customers. Therefore, it is the duty of the assessee to provide reconciliation between the two sums. In view of this, we set aside the whole issue back to the file of the learned Assessing Officer with a direction to the



assessee to submit the reconciliation with proper evidence. The learned Assessing Officer may examine the same and then if there is an escapement of income, the addition should be restricted to that extent. Accordingly, ground no 1 of the appeal is allowed with above direction.

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

Order pronounced in the open court on 12.10.2022

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 12.10.2022

*Sudip Sarkar, Sr.PS*

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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai