

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'A': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.7466/DEL/2019
[Assessment Year: 2011-12]**

| | | |
|--|----|------------------------------------|
| M/s Aargus Global Logistics Pvt. Ltd. 150, Kapashera, South West Delhi, New Delhi-110037 | Vs | DCIT, Circle-1(1), New Delhi |
| PAN-AAACP3701A | | |
| Assessee | | Revenue |

| | |
|-------------|-----------------------|
| Assessee by | Sh. Sameer Kapur, CA |
| Revenue by | Sh. Kanv Bali, Sr. DR |

| | |
|------------------------------|-------------------|
| Date of Hearing | 23.11.2022 |
| Date of Pronouncement | 06.12.2022 |

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the assessee is directed against the order of Ld. CIT (Appeals)-I, New Delhi, dated 09.07.2019 for the Assessment Year 2011-12.

2. The grounds of appeal read as under:-

“1. Whether on law and facts of the case, ld. CIT(A) was justified in upholding the rectification of mistake made by the Ld. Assessing Officer u/s 154 of Income Tax Act, 1961.

2. Whether on law of facts of the case, Ld. CIT(A) was justified in upholding the addition of Rs.77,49,433/- made by the Assessing Officer on account of prior period income.

3. Brief facts of the case are as under:-

Return of income was filed in this case on 15.09.2011 declaring income of Rs. 34,09,794/- under the normal provisions of the I.T. Act and income of Rs. 1,07,64,763/-

u/s 115JB of the I.T. Act. The assessment in this case was completed u/s 143(3) of I.T. Act, 1961 on 09.01.2014 and income was assessed at Rs. 34,09,790/- It was later found that the assessee had failed to include prior period income of Rs. 77,49,433/- in its income under the normal provisions of I.T. Act although it was included in income u/s 115JB of the I.T. Act. According to Revenue, since the mistake was apparent from record a notice u/s 154 of the I.T. Act, 1961 was issued to the assessee on 20.03.2018. In the rectification order passed u/s 154 dated 30.03.2018 AO made addition of Rs. 77,49,433/- on account of 'prior period income' to the income assessed under normal provisions of the I.T. Act and the income was assessed at Rs. 1,11,59,227/-.

4. Upon assessee's appeal, the ld. CIT(A) firstly found that there is no infirmity in the order of the Assessing Officer rectifying the mistake u/s 154 of the Act then he proceeded to deal with the merits of the case. The Ld. CIT(A) also noted assessee's claim that this income has already been included in the normal income earlier in prior period but the Ld. CIT(A) found that the assessee has not been able to show any note by the Auditor that income of Rs.77,49,433/- was already been considered in the block assessment order u/s 158BC/Order u/s 245D(4) of Hon'ble Settlement Commission for the block period. The ld. CIT(A) rejected the assessee's plea by observing as under:-

"Ld. AR has argued that Hon'ble Settlement Commission has already deliberated upon the issue and does not call for separate treatment in Total Income of the appellant company for the year under consideration. Ld AR has also argued that the action of the A.O has resulted to taxing the same income twice, in spite of the fact that in the block assessment this income was subjected to tax @ 60% as against 30% in the normal assessment. I have carefully considered the facts of the case. During the course of appellate proceedings, Ld. AR was asked to explain as to whether the auditor has made any observation

in the audited account in support of the claim that the prior period income of Rs 77,49,433/- is covered by the order of Hon'ble Settlement Commission for the block period 01.04.1999 to 19.10.2000. Even though Ld. AR has made several submissions, he could not show any note to the accounts in support of the claim of the appellant that the prior period income of Rs 77,49,433/- has been already considered by Hon'ble Settlement Commission for the block period 01.04.1999 to 19.10.2000. It could not be conclusively proved that the prior period income of Rs 77,49,433/- has been already considered by Hon'ble Settlement Commission for the block period 01.04.1999 to 19.10.2000. In the audited account, the auditor has not mentioned that the prior period income of Rs 77,49,433/- was already considered in the block assessment order u/s 158BC / Order u/s 245D(4) of Hon'ble Settlement Commission for the block period 01.04.1999 to 19.10.2000. There is no appropriate note to the accounts to support the claim of the appellant. Moreover, the figures could not be fully reconciled. Considering the facts of the case, I agree with the findings of the AO that the income of Rs. 77,49.433/-, shown as Prior Period Income, was some other income and therefore, the appellant was required to include this income as part of its Total Income in the Income tax return filed by it. Considering the facts of the case, the addition on account of Prior Period Income of Rs. 77,49.433/- is upheld. This ground of appeal is decided against the appellant.”

5. Against the above order, the assessee is in appeal before the Tribunal.

6. We have heard both the parties and perused the records. The Ld. counsel for the assessee has reiterated that this income has already been included in the return of income in earlier period. Hence considering the same, he pleaded that same amount is being taxed twice. He further submitted that prior period income appearing in profit & loss account are the accounting entries passed in the books to give effect to the order of Settlement Commission. These incomes have already been subject to

60% tax and taxing them again at 30% will cause great hardship to the assessee company and is against the principles of natural justice. We note that the Ld. AO and the Ld. CIT(A) have ignored comprehensive replies and relevant documents submitted before the both. It is further pointed out that the Ld. CIT(A) has reproduced all the explanation offered during the course of appellate proceedings in his order but has ignored the same while deciding the issue. We do not understand why Ld. CIT(A) has insisted upon need of auditors note when all prior assessment records are with the Revenue.

7. Upon careful consideration, we are inclined to remit the issue to the file of the AO. The AO is directed to examine and if the income in dispute has already been taxed and taken into income in the earlier period as claimed by the assessee, no disallowance is required in the normal provision. The AO shall take upon the issue after giving proper opportunities to the assessee. Both parties agreed to the above proposition.

8. In the result, the assessee's appeal stands allowed for statistical purpose.

Order pronounced in the open court on 06th December, 2022.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Delhi; Dated: 06.12.2022.

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi