

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

SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 939/MUM/2021
(Assessment Year: 2016-17)

Lintas India Private Limited,
A Wing, 16th Floor, Parinee Crescenzo,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400051
[PAN: AAACL0124F]

..... Appellant

Vs

Additional/Joint/Deputy/Assistant
Commissioner of Income Tax/
Income Tax Officer,
National e-Assessment Centre,
Delhi

..... Respondent

Appearances

For the Appellant/Assessee : Shri Ajit Jain,
Sh. Siddhesh Chaugule
For the Respondent/Department : Ms. Samruddhi Dhananjay Hande

Date of conclusion of hearing : 09.11.2022
Date of pronouncement of order : 24.01.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal is directed against Assessment Order dated, 03.03.2021 passed under Section 143(3) read with Section 144C(13) and 144C(13) read with Sections 143(3A) & 143(3B) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'], as per directions issued by CIT (Dispute Resolution Panel-I), Mumbai [hereinafter referred to as 'the DRP'] under Section 144C(5) of the Act pertaining to the Assessment Year 2016-17. This appeal was disposed off by the Tribunal vide order dated 21.04.2022.

2. On a Miscellaneous Application filed by the Assessee (MA No. 156/Mum/2022), the order, dated 21.04.2022, passed by the Tribunal disposing the present appeal for the Assessment Year 2016-17 was recalled vide order, dated 30.09.2022, for the limited purpose of adjudication of Ground No. 16 raised in the present appeal which was not adjudicated while passing the order dated 21.04.2022. Ground No. 16 raised by the Appellant reads as under:

“ 16 On the facts and circumstances of the case, and in law, the learned AO has erred in making an addition of INR 28,42,537/- to the total income on the basis of details reflected in reconciliation of income as per books vis-a-vs Form 26AS.”

3. The relevant facts in brief according to the Assessing Officer during the assessment proceedings the Appellant could not reconcile 6 entries reflected in Form 26AS with the income offered to tax as per the books of accounts. Therefore, the Assessing Officer proposed addition of INR 28,42,537/- in the Draft Assessment Order, dated 30.03.2021, holding that the Appellant had under-reported income by not crediting to the Profit & Loss Account income of INR 28,42,537- reflected in Form 26AS. The objections filed by the Appellant before DRP on this issue were rejected. The DRP noted that the Appellant had failed to reconcile the amounts even after extra-time was granted by the DRP. Further, similar disallowance was made in the case of the Appellant for the Assessment Year 2015-16. Being aggrieved, the Appellant is now in appeal before us.
4. The Ld. Authorised Representative for the Appellant submitted that Appellant is in advertising agency engaged in activities of releasing advertisement on behalf of its clients and production of

advertisements for the clients. The income earned by the Appellant is in the form of commission or service income. The income is only specified percentage of the gross billing. However, the parties, at times, reflect the gross amount paid to the Appellant (which includes media costs as well as income component) as income of the Appellant. This results in mismatch in the income reflected in Form 26AS and the income offered to tax as per the books of accounts of the Appellant. This is a recurring issue in nature. The Tribunal has in the earlier years deleted identical additions made by the Assessing Officer. In this regard, the Ld. Authorised Representative for the Appellant placed reliance on the order dated 12.06.2019 passed by the Tribunal in ITA No. 1156/Mum/2015 for the Assessment Year 2010-11 and common order dated 07.08.2019, disposing off, inter alia, ITA 2075/Mum/2016 (Assessment Year 2011-12), ITA No. 1762/Mum/2017 (Assessment Year 2012-13) and ITA No. 890/Mum/2018 (Assessment Year 2013-14).

5. Per contra, Ld. Departmental Representative relied upon the order passed by DRP and submitted that sufficient time was granted to the Appellant by the Assessing Officer and the DRP to reconcile the income reflected in Form 26AS with the income offered to tax as per the books of accounts of the company. The six entries in Form 26AS were identified by the Assessing Officer. However, the Appellant failed to reconcile the difference. Therefore, the Assessing Officer was justified in holding that the Appellant had under reported the income.
6. We have considered the rival submissions and perused the material on record including the orders of the Tribunal passed in the case of the Assessee for the Assessment Year 2010-11, and

the common order for the Assessment Years 2011-12, 2012-13 and 2013-14. The issue arising in the present appeal is recurring in nature and has been decided in favour of the assessee by the decisions of the co-ordinate Bench of Tribunal in the aforesaid assessment years. The relevant extract of the decision of the Tribunal in the case of the Appellant for the Assessment Year 2010-11 [ITA No. 1156 & 1187/Mum/2015, pronounced on 12.06.2019] are as under:

“9. Ground No.3 raised by the assessee in its appeal is with regard to the action of the Id. DRP in confirming addition of Rs.8,25,869/- on account of non-reconciliation on certain amounts reflected in Form 26AS with the return of income of the assessee.

9.1. The brief facts of this issue are that during the course of assessment proceedings, the assessee was asked to reconcile the AIR statement. On perusal of the re-reconciliation submitted by the assessee, the Id. AO found that there were many receipts entries as per form 26AS but which were not reported in the books of accounts of the assessee. The Id. AO accordingly made an addition for the difference in the sum of Rs.8,25,869/- in the assessment. This action of the Id. AO was upheld by the Id. DRP.

9.2. Aggrieved, the assessee is in appeal before us.

9.3. We have heard rival submissions and perused the materials available on record. We find that the details of reconciliation statement submitted by the assessee are enclosed in pages 1053,1055,1071 of the paper book wherein we find that assessee had reconciled certain specific client balances such as ITC Limited, Tata Global Beverages Limited etc., The Id. AR contended before us that assessee is an advertisement agency and is engaged in activities of releasing advertisements on behalf of clients and production of advertisement for clients. The assessee earns revenue either in the form of commission or fees. The income in the case of commission is only a specified percentage of the gross billing, accordingly, the assessee reports only the commission portion as its income in its P & L account and not the gross receipts. Hence, there is always bound to be

difference with regard to the amounts reflected in the Form 26AS vis-a-vis books of accounts of the assessee with regard to this aspect of the transaction.

9.4. We also find that assessee had identified the difference in amounts with respect to various parties which are detailed in pages 84 & 85 of the appeal set. The assessee does not deny having transactions with these parties. It is only the amount which is reflected in Form 26AS against the names of said parties which the assessee was not able to reconcile. We find that the explanation given by the assessee is reasonable and it is highly impracticable for reconciling the same in this scenario. We are inclined to accept argument of the Id. AR that income offered by the assessee is much more than what is reflected in Form 26AS.

9.5. We also place reliance on the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. S. Ganesh in ITA No.1930/2011 dated 18/03/2014 wherein on similar facts, the Hon'ble Jurisdictional High Court had agreed with the view of the Tribunal and held that no substantial question of law arises in this case. For the sake of convenience the said order is reproduced hereunder:-

"1. Having heard Ms.Bharucha, learned counsel appearing on behalf of the Revenue and perusing the order passed by the Income Tax Appellate Tribunal, we are of the opinion that the Tribunal did not commit any error of law or perversity in partly allowing the appeal of the respondent assessee. 2. The assessee in regard to grounds 1 to 7 challenged the order of the Commissioner of Income Tax in confirming the addition of Rs.47,37,000/ made by Assessing Officer on account of nonconciliation of professional receipts with TDS certificates. Insofar as that aspect is concerned, the Tribunal considered this submission of both sides and found that the assessee was engaged as an Advocate to argue the matters by what is popularly known as Advocates on record or instructing Advocates method, meaning thereby the client does not engage the assessee directly but a professional or the Advocate engaged by the client requests the assessee to argue the case. The brief is then taken as the counsel brief. That being the practice, the assessee gave an explanation that the breakup as desired cannot be given and with regard to all payments. It is pointed out that at times, assessee receives fees directly from the clients or from the instructing Advocates or Chartered Accountants if such professionals have collected the amounts from the clients. 3. Under these circumstances,

the breakup as desired cannot be placed on record. An explanation which has been given by the assessee and accepted in the past has been now accepted by the Tribunal once again. Since it is accepted for the Assessment Year 200607, in the peculiar facts, in relation to the present assessee, we are of the view that this Appeal does not deserve to be entertained. It does not give rise to any substantial question of law. 4. Appeal is accordingly dismissed."

9.6. In view of the aforesaid findings, facts and circumstances of the case and respectfully following the aforesaid judicial precedents, we direct the Id. AO to delete the addition made in the sum of Rs.8,25,869/-. Accordingly, ground No.3 raised by the assessee is allowed."

7. Respectfully following the orders passed by the coordinate Bench of the Tribunal in the Appellant's own case for the Assessment Years 2010-11, 2011-12, 2012-13 and 2013-14, the plea of the Appellant is accepted and the Ground No. 16 raised by the Appellant is allowed. The other grounds raised by the Appellant in the said appeal stand disposed off vide order dated 21.04.2022.
8. In result, the present appeal by the Appellant is allowed in terms of paragraph 7 above and the order dated 21.04.2022, passed by the Tribunal.

Order pronounced on 24.01.2023.

Sd/-
(B.R. Baskaran)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 24.01.2023
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai