IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No.87/Hyd/2022		
Assessment Year: 2017-18		
M/s. Daicel Chiral Technologies India Private Limited, Medchal, Hyderabad. PAN : AACCD8423B.	Vs.	1. Deputy Commissioner of Income Tax, Circle 8(1), Hyderabad. 2. National Faceless Assessment Centre, Delhi.
(Appellant)		(Respondent)
Assessee by:	Shri N. Pradeep	
Revenue by:	Shri T. Vijaya Bhaskar Reddy	
Date of hearing:	01.02.2023	
Date of pronouncement:	03.02.2023	

O R D E R

Per Laliet Kumar, J.M.

This appeal is filled by the assessee feeling aggrieved with the order dt.31.01.2022 passed by the National Assessment Centre, Delhi u/s 143(3) r.w.s. 144C(13) r.w.s. 144(B) of the Income Tax Act, 1961 for the assessment year 2017-18 on the following grounds:-

> *"1. The learned Assessing Officer has grossly erred in law as well on the facts in making addition of Rs. 23,36,099/-, being the difference in revenue appearing in Form No. 26AS vis-à-vis revenue reflected in the books of account by disregarding the revenue accrued as per generally accepted accounting principles resulting in double jeopardy as the same has already suffered tax in AY 2016-17.*

2. The learned Assessing Officer has grossly erred in law as well on the facts in making addition of Rs. 11,17,000/-, being the difference in revenue appearing in Form No. 26AS vis-à-vis revenue reflected in the books of account by disregarding the revenue accrued as per generally accepted accounting principles resulting in double jeopardy as the same has already suffered tax in AY 2018-19.

3. Alternatively, with regards to Ground No. 1 in 2, the learned Assessing Officer has made the addition in AY 2017-18 and erred by not excluding the corresponding revenue from the gross receipts of the said assessment years (AY 2016-17 Et AY 2018-19) and refund the excess taxes paid by the Appellant for the said years to relieve the assessee from double taxation of the same income.

4. Without prejudice to Ground No. 1, 2 Et 3, the learned Assessing Officer has grossly erred in law as well on the facts making addition of Rs. 34,53,099/-, being the difference in revenue appearing in Form No. 26AS vis-a-vis revenue reflected in the books of account instead of disallowing the TDS credit claimed for the receipts not offered to tax in AY 2017-18.

5. The learned Assessing Officer has grossly erred in law as well on the facts in not bringing on record cogent material to prove that prejudice was caused to the Revenue or there was malice on part of the Assessee, if the view taken by the learned Assessing Officer is accepted, for the sake of argument."

2. The brief facts of the case are that the assessee is a company incorporated on 02 April, 2008 in the state of Andhra Pradesh with the main object of development, manufacture and market specialty chemicals and other products utilizing chromatographic separation, biochemistry and fine organic synthesis technologies, in addition to the chiral technology related to pharmaceutical industry. Assessee filed its return of income for A.Y. 2017-18 and declared an income of Rs.3,21,14,290/-.

2.1 The case of the assessee was selected for scrutiny through CASS and a statutory Notice u/s. 143(2) of the Income tax Act, 1961 dated 14.08.2018 was issued and duly served upon the assessee. A Notice u/s. 142(1) of the Act dated 05.09.2019 along with the detailed questionnaire calling for details was also issued and served upon the assessee.

2.2 During the year under consideration, it was noticed that Assessee Company had undertaken certain international transactions with its Associated Enterprises. Accordingly, a reference u/s. 92CA(1) of the Income Tax Act was made on 19.09.2019 for computation of Arm's Length Price about the International Transactions and the same was transferred to the DCIT, Transfer Pricing Officer-3, Hyderabad. Thereafter, the TPO after considering the submissions of the assessee passed an order under section 92CA(3) dated 29/01/2021 with an adjustment amounting to Rs.2,71,91,368/- to the total income of the assessee. Accordingly, a draft assessment order was served upon the assessee on 30.03.2021.

2.3 Aggrieved by the action of the TPO/AO, the Assessee had filed the objections before the Dispute Resolution Panel (DRP). In between, the TPO passed the Rectification order and worked out an operating cost of Rs.42,13,89,631/-. Based on the remand report given by the TPO, DRP had directed the Assessing Officer to compute the margin by taking the arithmetic mean. Letters were written to the TPO to give the effect of the directions of Ld. DRP. Thereafter, TP adjustment made in draft assessment order u/s 143(3) r.w.s. 144C(1) was treated as nil. The assessee is not aggrieved by the TP addition made by the Assessing Officer as the TP additions were deleted by the DRP. However, the assessee is aggrieved by the mismatch of the income reflected in 26AS and the income disclosed by the assessee. Based on the above said mismatch, the Assessing Officer passed the final assessment order u/s 143(3) r.w.s. 144C(13) r.w.s. 144B of the Income Tax Act by assessing the total income at Rs.3,55,67,389/-.

3. Aggrieved with the final assessment order / DRP directions dt.31.01.2022, assessee is now in appeal before us.

4. For the purpose of adjudication of the grounds raised before us, the ld. AR has drawn our attention to 4.2 to 4.4 at page 13 of the order.

> *"4.2 The assessee not submitted ledger, sales Register, VAT Return/ GST Return and proof of delivery of services to establish that the assessee has offered the said receipts in its books of accounts and offered for taxation. In absence of any details without any documentary evidence, only written reply was not justification for above difference amount. Therefore the amount of Rs.34,61,064/- was treated not offered for taxation by the assessee and less receipts offered amounting to Rs.34,61,064/- was added to the returned income. The assessee was provided draft assessment order. The assessee raised this issue also before the Id DRP. The Id DRP in its order dated 29.12.2021 given the directions to consider the claim of the assessee after considering the reconciliation provided by the assessee and as per extant rules in this regard.*
>
> *4.3 Keeping in view of the directions given by the Id. DRP, the assessee was asked to provide the reconciliation. The assessee in its reply submitted as under*
>
> *" Diacel India is mainly engaged in trading of columns apart from this it is also provides pharma services. The pharma services rendered are being classified under the taxable category of Technical Testing and analysis Services'. The services are rendered by the company in India. The Income received from the above services is treated as service income and is being reported under the head service Income.*
>
> *The invoice of such separation services provided by the assessee is raised as soon as the separated goods are delivered to the customers and recorded in the books of Diacel India. However, , the customers after getting the separate goods they get it tested to check whether the separation process is correctly done and the desired outcome is derived. After it obtained the report then the customers record the separate cost in its books and deduct TDS and process the payment.*
>
> *As stated above the invoice are recorded at different time period by both the parties in their books. Due to which many a times the invoice raised by the Daicel India in March is recorded by Diacel India as income in the financial Year. However, the invoice by the customers is recorded in the next financial year. However, the invoice by the customers is recorded in the next financial year and TDS is deducted and reported by them in that financial year.*

Accordingly, the income tax is paid by the assessee for the income in the year recorded and TDS for the same income is claimed when it is reflecting in the form 26AS. Hence, the company has not defaulted in recognition of income and offering it to tax.

The assessee also submitted reconciliation, which is as under-

Addition proposed by your goodself based on receipts appearing in form 26AS for the A.Y2017-18 which is not forming part of profit and loss account	Rs.34,61,064/-
Assessees response providing the reasons as under	
1.There are invoices raised and offered to tax in A.Y. 2016-17 by the assessee. However, the customers has recognised the same in the following year and accordingly reported it in A.Y.2017-18	Rs.23,36,099/-
2.(a) The difference is on account of inclusion of service tax component as part of income by the customer while uploading the TDS details . However net amount has been appropriately disclosed as revenue by the assessee (b) The rest is on account of mis attributing income against our account for which the assessee has not claimed the TDS in the Return for the A.Y.2017-18	Rs.7,965/-
3 These are invoices which were raised and offered to tax in the A.Y. 2018-19 by the assessee. However, the customers had made accrual entries in A.Y. 2017-18 and accordingly withheld TDS based on such provisions.	11,17,000/-

The assessee also submitted that said receipts has already been offered for tax.

4.4 The reply of the assessee has been perused and found not acceptable in respect of income offered in different assessment years. It is pertinent to outline the scheme of taxation in our country. Section 4 of the IT Act the charging section and back bone of the Act, lays down the provisions as to what are taxable and at what rate, income of which period is taxable and in whose hands.

Income is defined in section 2(24) of the IT Act, it is an inclusive definition not exhaustive. It is not capable of exact definition. It has got a legal concept. The scheme of section 2(24) of the Act reads which section 4 and 10 of the Act is that given its ordinary and natural meaning. The word income we take in any monetary return come in.

The work income is of the widest amplitude and must be given its natural and grammatical meaning —CIT v G R Karthikeyan(1993) 201 ITR 866 874(SC).

Income is taxable when it accuses or is earned , if the assessee's accounts are maintained on the mercantile basis, it is taxable when it is received, if the assessee's accounts are maintained on cash basis —CIT-V A Gajapaty Naidu(1964) 53 ITR 114(SC)

This facts is reiterated by the Hon'ble High Court of Madras in the case of CIT vs Planters Co P Limited (1980) 123 ITR 648 650-51(Mad) income is liable to be taxed on the basis of accruing or arising to the assessee, or its receipts by the assessee, during the relevant previous year. The accrual or arising of income is generally dependent on the method of accounting employed by the assessee. In cash system on accounting, the accrual or arising of the income will be simultaneously with its receipt. In the mercantile system of accounting, the accrual of income is independent of its receipts. So long as the amount is due to the assessee, the system of accounting would envisage the amount being treated as having accrued to the asseessee.

Further, it has been held that in the mercantile system of accounting, the assessee is taxable on the income earned or accrued due through the receipts or payment may not be immediate and may be delayed. CIT Vs Raja Rajeeshwari Narikelly Estate(1993) 199ITR 383,387,(Ker) Following state of Kerela V Bhavani Tee Produce Co Limited followed in Bisonfied A Estate Vs IAC(1998) 233ITR 656,659(Ker) which kerela decision has been affirmed in Bison Field A Estate Vs IAC(2001) 248 ITR 341,342(SC)

A Basis concept in Income tax law is that the assessee must have received or have acquired a right to receive the income before it can be taxed. There must be a debt owed to him by somebody, if the amount is to be taxed on mercantile (accrual) basis.

Taxability is attracted not only when income is actually received but also when it accrues, income accrues when it falls due that is to say when it became legally recoverable, irrespective of whether it is actually received or not and accrued is that income which that the assessee has a legal right to receive H P Mineral, Ind Development Corporation V CIT(2008) 302 ITR 120(HP).

When a statue bring to charge certain income in its intention is to enforce the charge at the earliest point of time. If the income has accrued earlier and the assessee treats it taxable in the year of accrual, it is not open to the revenue to treat it as the income in the year of receipt in a case where the assessee follows mercantile system of accounting —T.N.K. Govindarajulu Chetty v CIT(1973) 87 (Mad) affirmed in (1987) 165 ITR 231(SC).

The two words — accrue and arise are used to contradistinguish the word receive income is said to be received when it reaches the assessee when the right to receive the income becomes vested in the assessee, it is said to accrue or arise CIT —vs Ashokbhai Chimanbhai (1965) 561TR 42-45-46(SC).

".. it can be said without hesitation that the words accrue or arise though not defined in the Act are certainly synonymous and are used in the sense of brining in as natural result. Strictly speaking the work accrue is not synonymous with arise, the former connoting the idea of growth or accumulation and the letter of the growth or accumulation with tangible shape so as to be receivable. There is distinction in the dictionary meaning of these words but through out the Act they seem to denote the same idea very similar and the difference only lies in this that one is more appropriate when applied to a particular case' CIT v Ahmedbhai Umarbhai & Co(1950) 18ITR 472,496(SC)"

When an Income Tax Officer proceeds to include a particular income in the assessment, he should ask himself inter alia, two questions namely (i) What is the system of accountancy adopted by the assessee? And (ii) if it is the mercantile system of accounting, subject to the deemed provisions when has the right to receive that amount accrued? if he comes conclusion that such a right accrued or arose to the assessee in a particular accounting year. he shall include the said income in the assessment of the succeeding assessment year CIT V A Gajapaty Naidu (1964) 53 ITR 114,119(SC)

The assessee during the year under consideration has followed mercantile system of accounting. Therefore it must have offered in its income the receipts accrued in the F.Y. 2016-17 relevant to A.Y. 2017-18. However, the assessee failed to do so. The assessee also not submitted any corroborated evidences viz VAT Return/ GST Return and proof of delivery of services and third party evidences etc to establish its claim. Further, on verification of Return of Income filed by the assessee, it is noticed that the assessee has claimed entire TDS credit appearing in 26AS in the year under consideration. Since, the TDS credit has been claimed from the parties appearing in 26AS therefore the assessee was required to offer the corresponding receipts as income in the profit and loss account. However, the assessee failed to do so. (emphasis supplied by us)

Keeping in view of the above facts, the justification given by the assessee is not acceptable. Therefore, less receipts offered amounting to Rs.34,53,099/- is hereby added to the returned income. Penalty proceedings u/s 270A of the I.T. Act for under reporting of Income is initiated."

5. It is the contention of the ld. AR that the Revenue Authorities had wrongly made the addition in the hands of assessee based on income reflected in Form 26AS. It was submitted assessee was showing the income, as and when the project has completed in the return of income. It was submitted that the assessee had shown the income reflected in 26AS in the subsequent assessment years. Therefore, the action on the part of the Assessing Officer is not in accordance with the law, more particularly when the tax is neutral. He has drawn our attention to page 95 of the paper book wherein the assessee had submitted the following explanation to the query of the Assessing Officer.

"This has reference to the above-mentioned Notice dated January 05, 2022. Pursuant to the Hon'ble DRP's direction, your good self has requested the reconciliation of revenue with Form 26AS with necessary evidence and justification with regard to additional receipts appearing in Form 26AS as compared to revenue as per P & L account. In this regard, we wish to state the following:

Daicel India is mainly engaged in Trading of Columns apart from this it is also provides Pharma services. The Pharma services rendered are being classified under the taxable category of `Technical Testing and Analysis Service'. The services are rendered by the Company in India. The income received from the above services is treated as service income and is being reported under the head "Service Income.

The invoice of such separation services provided by Assessee is raised as soon as the separated goods are delivered to the customers and recorded in the books of Daicel India. However, the customers after getting the separated goods they get it tested to check whether the separation process is correctly done, and the desired outcome is derived. After it obtains the report then the customers record the separation cost in its books and deducts TDS and process the payment.

As stated above the invoice are recorded at different time period by both the parties in their books. Due to which many a times the Invoice raised by the Daicel India in March is recorded by the Daicel India as income in that financial year. However, the invoice by the customer is recorded in next financial year and TDS is deducted and reported by them in that Financial Year.

Accordingly, the income tax is paid by the Assessee for the income in the year it is recorded and TDS for the same income is claimed when it is reflecting in the Form 26AS. Hence, the company has not defaulted in recognition of income and offering it to tax.

A detailed reconciliation of receipts in Form 26AS and P&L along with the supporting's as requested by your good self is enclosed as Annexure A and all the supporting in Annexure B to Annexure P for the perusal of your good self.

The summary of the same has be enclosed below for the perusal of your good self:

Reconciliation of Form 26AS vis-a-vis P & L

Particulars	Amount.
Addition proposed by your good self based on receipts appearing in Form 26AS for AY 2017-18 which is not forming part of PEtL A/c 34,61,064	
Assessee's response providing the reasons is as under:	
1. These are the invoices raised and offered to tax in AY 2016-17 by the Assessee. However, the customer has recognised the same in the following year and accordingly reported it in AY 2017-18.	23,36,099
2. (a) The difference is on account of inclusion of service tax component as part of income by the customer while uploading the TDS details. However, the net amount has been appropriately disclosed as revenue by the Assessee. (b) The rest is on account of misattributing income against our account for which the Assessee has not claimed the TDS in the return for AY 2017-18	7,965
3. These are the invoices which were raised and offered to tax in AY 2018-19 by the Assessee. However, the customers had made accrual entries in AY 2017-18 and accordingly withheld TDS based on such provisions.	11,17,000
Total	t 34,61,064

As justified in the reconciliation statement above, these receipts have already been offered to tax and addition of same in the year under consideration would lead to double Taxation of the same income which would be unjust and result in travesty of law. Therefore, we humbly request your good self to consider our above submission wherein it is proved that there is no case of income ;jot being offered to tax as reflecting in Form 26AS."

6. Per contra, the ld. DR relied on the orders of lower authorities.

7. We have heard the rival submissions and perused the material on record. Admittedly, in Para 4.2 reproduced hereinabove, the Assessing Officer has mentioned that several opportunities were granted to the assessee to produce various documents, based on which it can be inferred that the assessee has offered the income in subsequent assessment years. However, no such documents were produced by the assessee during the assessment proceedings. Further the Assessing Officer on page 13 of the order has mentioned that the assessee was following the mercantile system of accounting and the evidence should be available in the form of VAT / GST Return. Even no such document was produced by the assessee satisfying the disclosure of income in the preceding/subsequent assessment years. In our view, the income is required to be taxed in the year of its accrual.

8. In the present case, the income has accrued in the year under consideration. However, for the reasons best known to the assessee, the assessee has shown the same in the assessment year 2017-18. In our view, the income is to be taxed in the year of its accrual and not in any other year as per the whims of the assessee. Undoubtedly, the income shall not be taxable merely on the basis of the alleged completion of work in the subsequent years. In our considered opinion, the income is required to be computed in the year of its accrual. The assessee has not set up its case that the income has not accrued in the year under consideration. Merely because the final invoices were raised after the completion of work will not make any difference as the income is required to be computed based on accounting standard

as approved by the Central Government while exercising its power u/s 145A of the Act. Further, the argument of the assessee that disclosure of income in the subsequent assessment years would be tax neutral and therefore, the appeal of the assessee is required to be allowed, this submission of the assessee is without any substance. According to us, there are various expenses like rent, salary, maintenance, electricity bills etc. are required to be incurred by the assessee to earn the corresponding accrual of income. As the expenses either in the form of salary / depreciation on capital asset / interest payment etc. are to be taken into account during the year under consideration, the corresponding income accrued is also required to be accounted for in the year under consideration. The principle of tax neutrality is a lucid and attractive proposition however, it comes with its complications and cannot be blindly followed. In view of the above said reasoning and also approving the reasoning giving by the lower authorities, we do not find any merit in the submissions of the assessee and the order passed by the Assessing Officer or lower authorities is in accordance with the law. Accordingly, this appeal is dismissed.

9. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 3rd February, 2023.

Sd/-	**Sd/-**
(RAMA KANTA PANDA) **ACCOUNTANT MEMBER**	**(LALIET KUMAR)** **JUDICIAL MEMBER**

Hyderabad, dated 3rd February, 2023

TYNM /sps

Copy to:

S.No	Addresses
1	M/s. Daicel Chiral Technologies India Private Limited, Survey No.542/2, IKP Knowledge Park, Shamirpet Mandal, Medchal, Malkajgiri District, Mendchal, Kolthur B.O., K.V. Rangareddy District, Telangana.
2	Deputy Commissioner of Income Tax, Circle 8(1), Hyderabad.
3	Addl/Joint/Deputy/ACIT/ITO, National Faceless Assessment Centre, Delhi.
4	ITO (OSD) & Secreary (DRP-1), Bengaluru.
5	DCIT, Transfer Pricing Officer – 3, Hyderabad.
6	DR, ITAT Hyderabad Benches
7	Guard File

By Order