

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 1665/DEL/2020
[Assessment Year: 2014-15]**

Shree Balkrishna Commercial Co. Ltd., Plot no. 250, Udyog Vihar, Phase-IV, Gurgaon. PAN- AAECs2879J	Vs	DCIT, Central Circle-23(1), New Delhi.
APPELLANT		RESPONDENT
Assessee represented by		Shri Subhash Singhal, Ld. CA
Department represented by		Shri B.M. Singh, Ld. Sr. DR
Date of hearing		30.01.2023
Date of pronouncement		07.02.2023

ORDER

PER N.K. CHOUDHRY, JM:

The instant appeal has been preferred by the Assessee against the order dated 28.02.2020 impugned herein, passed by the Ld. Commissioner of Income tax (Appeals)-25, New Delhi, (in short "Ld. Commissioner") u/s 250 of the Income Tax Act, 1961 (in short "the Act"), pertaining to the assessment year 2014-15.

2. At the outset we observe that there is delay of 151 days in filling of the instant appeal and the Assessee has filed an application alongwith duly sworn affidavit in support of its contention for condonation of such delay. We find that in this case impugned order was passed on 28-02-2020 and from 22nd March 2020 onwards entire Nation was hold due to complete lockdown on account of COVID-19 and therefore the Assessee failed to file its appeal within the prescribed period, however as soon as lock down lifted, the Assessee filed its appeal 09th Oct 2020 with a delay of 151 days . Hence considering the delay occurred because of complete lockdown and the Hon'ble Apex Court extended the limitation period by excluding the lock down period, we deem it appropriate to condone the delay of 151 days in filling of the instant appeal and to proceed with the merits of the case.

3. The Assessee has raised the following grounds of appeal:

"1. The learned DCIT as well as CIT (A) erred in treating the repair of false ceiling after repair of AC ducts as capital expenditure whereas the expenditure on repair of AC ducts has been allowed as revenue expenditure.. Access to AC duct is not possible unless the old false ceiling is broken and is replaced after the duct repairs. No new asset has come into existence and the expenditure be allowed as current repairs.

2. One of the tenant Oriental Insurance Co. Ltd failed to

deposit TDS in an earlier year and deposited it in this previous year. Income on due basis has been taxed in the year to which it pertains but as TDS was not deposited by the tenant in that year, its credit was neither claimed nor allowed in that year. As the tenant has deposited the said TDS in this previous year, its credit was sought in ITR. The Id CIT (A) has observed suo moto that credit for this TDS is not allowable this previous year (though had been deposited in this year). Denial of credit of TDS is not correct/justified.

3. The act of CIT (A) in denying the credit of TDS of Rs. 185013 which do not originate from DCIT assessment order, amounts to enhancement adverse to the appellant. Though empowered by law in sec 251(l)(a), and 251(2) the proper procedure as given in law for enhancement-issue of show cause notice, allowing fair opportunity to appellant and to pass an speaking on the issue is totally missing in this case. Such an action of CIT (A) as per law be deleted/cancelled.

4. The Act of Id CIT (A) in not granting the credit of TDS and taxes paid being raised in grounds of appeal no.6 before him, is not correct/justified. He has simply directed the AO to grant the same in place of doing it himself. It is prayed that the credit of taxes paid and TDS be correctly allowed."

4. For brevity we are deciding this appeal by ground-wise.

5. Ground no. 1 pertains to the addition/disallowance made by the AO and confirmed by the learned Commissioner on account of repair of false ceiling by treating the same as "capital expenditure " instead of "revenue expenditure" as claimed by the Assessee.

5.1 The AO by perusing the P&L account of the Assessee found that during the financial Year 2013-14 the Assessee had paid Rs.5,76,21,563/- on account of AC Repair & Maintenance charges under the head 'Other expenses' and therefore, the Assessee was asked the Assessee to furnish the details of expenditure along with supporting documents regarding such claim, in response to which the Assessee vide reply dated 16.02.2016 filed details of 'AC Repairs & Maintenance'.

The AO, on perusal of the details, also found that payment of Rs. 1,20,70,000/- was made to 'Sunil Hi Tech Engineers Ltd.' on account of False Ceiling Repair, therefore asked the Assessee to clarify as to why this expenditure will not be treated as "capital expenditure" as the same is directly related to the construction building and further asked to explain how the said expenditure is treated as 'AC Repair & Maintenance'.

5.2 Though the Assessee replied by filing its submissions before the AO, however, on perusal of the said submissions, the AO opined that it

is clear that the expenditure made by the Assessee for 'False Ceiling Repair' was totally different from the business activities of the Assessee. The expenditure made is totally for building' and be treated as 'capital expenditure' and not allowable as 'revenue expenditure'. It should be treated as addition to fixed asset, however for the sake of natural justice depreciation @ 15% of that expenditure is allowed. Finally the AO worked out the disallowance to the tune of Rs. 1,02,59,500/- and added back the same in the income of the Assessee.

6. On appeal, the learned Commissioner affirmed the said disallowance by treating the same as "capital in nature". The Assessee before us claimed that the Assessee carried out repair, maintenance, modification and overhauling of air-conditioning ducts; and replacement of air handling units and pipe lines of chilled water/hot water, overhauling of cooling towers, ; and also done repair & replacement of pumps and overhauling of chillers and therefore due to the modification and overhauling of air-conditioning ducts, false ceiling damaged/broken and consequently the Assessee spent Rs. 1,20,70,000/- @ 681 per sq. ft. on the total area of 177500 sq. ft. The Assessee in order to substantiate its case also drew our attention to work order dated 30.01.2014 done by Shri Bal Krishna Commercial Co. Ltd. Jaipur and various bills issued by Sunil Hi Tech Engineers Ltd. with regard to replacement of air handling units and pipe lines of chilled water/hot water, overhauling of cooling towers, repair & replacement of pumps and overhauling of chillers and overhauling of air conditioning ducts. The Assessee also drew our attention to **page 5 of**

PB, which is invoice dated 24.2.2014 issued by Sunil Hi Tech Engineers Ltd., which pertains to repair and overhauling charges to the tune of Rs. 1,20,70,000/-.

7. On the contrary, the learned DR refuted the claim of the Assessee and submitted that building of the Assessee is more than thirty years old and at that particular time there was no false ceiling concept at all and therefore the claim of the Assessee seems to be false and fictitious and thus both the Authorities below have rightly treated the expenditure incurred as "Capital in nature".

8. In rejoinder, the Assessee claimed contrary to the claim of the Ld. DR and reiterated its claim. .

9. We observe that from the invoice dated 24.2.2014 as well as work order dated 30.1.2014 nothing is clear whether the entire area i.e. 177500 sq. ft. which is claimed by the Assessee for repair, maintenance, modification and overhauling of air conditioning ducts, got damaged completely or partly . It is also not clear whether false ceiling was replaced with the new one or just repaired old one without disturbing the originality and what were the terms and conditions of the quotation/agreement/work order if any executed for doing the repair of false ceiling and what material/manpower used. Hence, considering the peculiar facts and circumstances, in our considered view justice would be met by remanding the instant issue to the file of the AO for decision afresh, suffice to say by affording reasonable opportunity of being heard to the Assessee and by conducting field enquiry if

necessitates. We clarify that primary onus would be on the Assessee to establish the sanction plan or any other document to show that previously the building had false ceiling, the exact dimension and expenditure incurred for repairing of false ceiling, the material used, the mode of repair, use of resources/manpower, quotation/agreement/work order and its the terms and conditions .

9.1 In the result, **Ground no. 1** stands allowed for statistical purposes.

10. By **Ground no. 2**, which pertains to addition of Rs. 31,39,695/- on account of disallowance being difference in form 26AS and P&L A/c. From the form no. 26AS, it was found by the AO that though the Assessee had received Rs. 9,23,41,724/- during the F.Y. 2013-14, however, credited the amount of Rs. 8,92,02,029/- in its P&L A/c. Therefore, the Assessee was asked to explain as to why the balance amount will not be disallowed.

In response the Assessee vide reply dated 21.11.2016 claimed that receipt as per 26AS are more than the receipts in ITR. The difference is attributable to the following reasons:

- (a) *The company tenant namely the Oriental Insurance Company Ltd. paid a sum of Rs. 18,50,133/- on account of Rent, Air- Conditioning charges and other charges in the F.Y. 2011-12 but to an oversight TDS amounting to Rs. 185013/- could not be deposited in the F.Y. 2011-12. The same was*

however deposited on 30.06.2013.

(b) Again, the same tenant (Oriental Insurance Company Ltd.) has deducted TDS on the Gross amount including the service Tax resulting into higher receipt to the tune of Rs.9,29,021/-

Since the company is following the mercantile system of accounting, it had included a sum of Rs. 6,77,465/- received as Rent, Air-Conditioning charges and other charges in respect of March 2013 on 17th April,2013. The company has rightly included this sum in the income of the previous year ended on 31.03.2013 on accrual basis. Copies of confirmation letters dt. 02.12.2016 received from Oriental Insurance Company Ltd.are enclosed for your perusal. ”

10.1 The AO by considering the submission of the Assessee found that the Assessee has not furnished any reconciliation statement regarding its claim. From the submission it is not clear, in which year the difference amount was considered in P & L account and to what extent. The Assessee also failed to submit the details as called for and filed no proper explanation regarding the issue. The Assessee did not file any proof regarding the consideration of discrepancy (ledger etc.). Moreover the Assessee was also requested to give explanation for not considering the gross bill amount as revenue during this year. The AO finally held that the Assessee failed to give satisfactory explanation and also failed to justify the revenue as shown in the accounts.

Therefore the contention of the Assessee is not acceptable. The difference amount of Rs.31,39,695/-(Rs. 9,23,41,724/— Rs. 8,92,02,029/-) as occurred between 26AS and P&L account is therefore added to the total income of the Assessee.

11. On appeal, the learned Commissioner considering the reconciliation of 26AS and P&L receipts filed by the Assessee though gave substantial relief to the Assessee by deleting the major part of addition, however, affirmed the disallowance to the tune of Rs. 1,85,013/- for A.Y. 2014-15.

12. The Assessee being aggrieved against the partial affirmation of the disallowance to the tune of Rs. 1,85,013/- on the receipts amounting to Rs. 18,50,133/- credited in the FY 2011-12 is in appeal before us .

13. The Assessee before us in order to substantiate its claim placed various judgments including of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Abbott Agency (2014) 224 Taxmann 350 (P&H), wherein the Assessee claimed that TDS certificate received in FY 2007-08 relates to amounts received and shown in its account books for FY 2005-06. Therefore, the Hon'ble High Court considering the peculiar facts that the amounts received are duly reflected in the account books in the relevant assessment years, the Assessee having

proved the TDS certificates issued late in FY 2007-2008 pertained to receipts reflected in the account books for the assessment year 2006-07, held that the Assessee is entitled to claim the benefit of the same.

13.1 We have given thoughtful consideration to the facts and circumstances. It is too the case of the Revenue Department here that the Assessee has already claimed the TDS to the tune of Rs. 1,85,013/- during the relevant assessment year in respect of amount of Rs. 18,50,133/- credited in the FY 2011-12 or any other assessment year. Hence, in view of the judgment of the Hon'ble Punjab & Haryana High Court, which was also relied upon by the Coordinate Bench of the Tribunal in the case of M/s Kema India Private Ltd. Vs. ITO [ITA no. 1616/Del/2020 for A.Y. 2015-16 dated 31.03.2022], we are inclined to allow the claim of TDS in the year under consideration. Consequently, the addition of 1,85,013/- made by the AO and sustained by the learned Commissioner, which is under consideration stands allowed.

13.2 Consequently **Ground-2** is allowed.

14. Grounds no 3 and 4.

As we have already deleted the addition of Rs. 1,85,013/- qua TDS as sustained by the Ld. Commissioner, consequently **Grounds no 3 and 4** become infructuous and therefore dismissed .

15. In the result appeal of the Assessee stands allowed for statistical purposes.

Order pronounced in open court on 07/02/2023.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-
(N.K. CHOUDHRY)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI