

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

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER**

**AND**

**SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**I.T.A. No. 1611/DEL/2021 (A. Y 2014-15)**

Analysys Mason India Pvt. Ltd. First floor, Building 10C, DLF Phase-2, Gurgaon, Haryana. <b>PAN:AADCB0418M</b> <b>( APPELLANT )</b>	Vs.	ACIT Circle-2(2) New Delhi  <b>( RESPONDENT )</b>
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<b>Assessee by :</b>	<b>Shri Tarun Kandhari, Ca &amp; Ms. Renuka Suri, Ca</b>
<b>Department by:</b>	<b>Shri Kanv Bali, Sr. DR</b>

<b>Date of Hearing</b>	<b>29.05.2023</b>
<b>Date of Pronouncement</b>	<b>31.05.2023</b>

**ORDER**

**PER YOGESH KUMAR U.S., JM**

This appeal is filed by the assessee against the order dated 30/10/2018 passed by the office of the Commissioner of Income Tax Appeals-32, New Delhi (hereinafter referred to ('CIT' Appeals) for assessment year 2014-15.

2. The assessee has raised the following grounds of appeal :-
1. *That the order is bad in law and against the fact of the case.*
  2. *That the Ld. Commissioner of Income Tax (Appeals) has erred on facts by considering the foreign revenue account as receipts from customer account and passing the order accordingly.*
  3. *That the Ld. Commissioner of Income Tax (Appeals) has erred by not considering the fact that difference in revenue as per Service Tax Return and Financial Statement is due to human error only and no mens era on the part of the appellant to suppress the income.*
  4. *That the Ld. Commissioner of .Income Tax (Appeals) has erred by ignoring the fact that appellant came to know about the error at the time of audit of books of accounts only and correct depiction was made in the books of accounts. But at that time service tax return cannot be revised because time period for revising the return was expired.*
  5. *That the Ld. Commissioner of Income Tax (Appeals) has erred by ignoring the fact that the service tax return could not be revised online.*
  6. *That CIT (Appeal) has erred in ignoring the fact that the difference with the service tax return could not be the basis of making the addition.*
  7. *On the facts and circumstances of the case and in law the learned C.I.T.(A) ought to have quashed the order of the assessing officer u/s 143(3) which was passed merely on the basis of service tax return.*

3. Brief facts of the case are that, the assessee filed return of income declaring income of Rs.3,40,45,410/- an assessment order came to be passed u/s 143(3) of the Act by making an addition of Rs.10,52,645/- by adding back the same u/s 28 of the Act. Aggrieved by the assessment order, the assessee preferred an Appeal before the CIT(A) the Ld.CIT(A) dismissed the Appeal filed by the CIT(A) vide order dated 30/10/2018. As against the order of the CIT(A) the assessee preferred the present Appeal on the grounds mentioned above.

4. The Ld. Counsel for the assessee submitted that the CIT(A) has not considered the fact that the difference in revenue as per service tax return and financial statement is due to human error only and no mens rea on the part of the assessee to suppress the income. The Ld. Counsel has taken us to the paper book and submitted that the Assessee had tried its level best to rectify the mistakes made while filing the service tax return which could not be done and Assessee also tried to cure the error physically but the same went on vain. Therefore, submitted that the order impugned requires interference at the hands of the Tribunal.

5. Per contra, the Ld. DR relied on the order of the CIT (A) and submitted that the Appeal filed by the assessee is liable to be dismissed.

6. We have heard both the parties and perused the material available on record. During the course of the assessment proceedings, the A.O. noticed that there is a difference in the revenue reported as per the service tax return as per the financial statement which was confronted to the Assessee. It is the

specific case of the assessee before the A.O. that the 'difference of Rs.10,52,645/- between the Revenue and the service tax return and the financial statement of the company arose because of difference rate of exchange taken at the time of filing of service tax return and during the course of the audit, the auditor pointed out the discrepancy in the rate taken, therefore, the reversal entry was passed in the books of account. Since the audit was initiated at the end of July 2014, the service tax return could not be revised as the same was the export income no service tax was due on the account'. The said clarification given by the assessee has not been accepted by the A.O.

7. The Ld. Counsel for the assessee submitted that the difference between the figures reported in service tax return and the financial statement as the financial statement is purely due to exchange rate fluctuation. The details of the difference are as under:-

<i>Revenue as per service tax return</i>	<i>Rs.10,74,92,491/-</i>
<i>Revenue as per Financial Statement</i>	<u><i>Rs.10,64,39,846/-</i></u>
<i>Difference</i>	<u><i>10,52,645/-</i></u>

8. We have gone through the books of accounts of the Assessee wherein reversal entry has been passed. It is the case of the Assessee that since audit was initiated at the end of 2014, the service tax return could not be revised online as 90 days period was over. By going through the paper book produced by the Assessee, it is found that the assessee had also tried to file revised

return by manually to the service tax department which has not been accepted. There is no system of manual return filing/revised return by online due to expiry of limitation period. The assessee had tried to revise the service tax return, but the assessee was not successful in revising the service tax return. Considering the fact that the difference between service tax return and the revenue was occurred due to the wrong exchange rate applied to export income transaction while filing the service tax return, which being a genuine mistake and the Department has not alleged or proved any mens rea on the part of the assessee who has also tried to revise the service tax return. Thus, considering the above facts and circumstances, we are of the opinion that mere mistake in the service tax return does not mean that the income of the assessee has been suppressed. Thus, we find merit in the grounds of Appeal of the Assessee, accordingly we allow the grounds of Appeal by setting aside the order impugned.

9. In the result, the Appeal of the assessee is allowed.

Order pronounced in the open court on : **31/05/2023**.

**Sd/-**  
**( ANIL CHATURVEDI )**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

Dated : 31/05/2023

*\*R.N, Sr. PS\**

Copy forwarded to :-

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI