

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.476/Kol/2022
Assessment year: 2015-16

Mohammed Meraj (Legal Heir of Ayub Mohammad).....Appellant
6, Circus Avenue,
Park Circus, North Range,
Kolkata- 700017.
[PAN: AEXPA6266K]

vs.

ACIT, Circle-40, Kolkata.....Respondent

Appearances by:

Shri Manoj Kataruka, AR, appeared on behalf of the appellant.

Smt. Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : May 04, 2023

Date of pronouncing the order : July 04, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 04.09.2019 of the Commissioner of Income Tax (Appeals)-12, Kolkata (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has agitated against the addition of Rs.1,49,80,435/- made by the Assessing Officer on account of mismatch of 26AS as compared to the income shown by the assessee in its profit & loss account.

3. The brief facts of the case are that the assessee is showing its income from transport services business. During the assessment proceedings, the Assessing Officer noted that in Form 26AS in respect of receipt from 21 persons, as reproduced in the assessment order itself, that the TDS was deducted on the amount of Rs.1,58,59,982/-, whereas, the assessee in its profit & loss account has taken the income from the said 21 parties at Rs.8,79,547/- only. On being asked to explain in this respect, the assessee explained as under:

“As per enclosed statement of TDS certificate in Form 26AS for the Financial year 2014-15, total payment received/credited Rs.62696580/- from 21 clients and TDS deducted on amount of Rs.15859982/-. Amount of TDS is Rs.294796/- and profit from gross turnover of Rs.1661459/-. Please be noted that under the ledger head of A/c. Transport non-taxable is the reimbursement amount of Rs.45473775/- as cost of fuels, driver’s remuneration, parking charges and others.”

However, the Assessing Officer did not find the aforesaid explanation satisfactory on the ground that the assessee could not prove the above explanation with documentary evidence. He, therefore, made the impugned addition.

4. Before the Id. CIT(A), the assessee reiterated his submissions and submitted that the total turnover/gross receipts of the assessee was much more at Rs.6,26,96,580/- from the aforesaid 21 parties. However, the amount upon which the TDS was deducted was Rs.1,58,59,982/-, whereas, after deducting the non-taxable amount received from *Tata house* as against fuel and driver and parking charges etc. of Rs.4,54,73,775/-, the net taxable income was Rs.16,61,459/-. The assessee also sought to file additional evidence to reconcile the figures and to prove his contention. However, the Id. CIT(A) found that the assessee has failed to explain how the reimbursement has been claimed

and accounted for that there was a wide difference in the turnover figure shown by the assessee also. The ld. CIT(A) therefore confirmed the addition so made by the Assessing Officer. Being aggrieved, the assessee has come in appeal before us.

5. Before us, the ld. counsel for the assessee has submitted that the lower authorities have failed to properly appreciate the reconciliation statement furnished by the assessee.

6. The ld. DR, on the other hand, has relied upon the findings of the lower authorities.

6. We have heard the rival contentions and gone through the record. It is noted that the assessee, as per the reconciliation statement furnished, the copy of which has been placed at page 25 of the paper-book, has tried to demonstrate that the total receipts of the assessee from the aforesaid 21 parties were of Rs.6,26,96,580/-, whereas, the amount on which the TDS was deducted was only Rs.1,58,59,982/-. However, the assessee has claimed the net income at Rs.16,61,459/-. The burden is upon the assessee to explain the difference. The claim of the assessee is that the other receipts were reimbursement of the expenses receipt from Tata House as against fuel and driver and parking charges inside the parking complex amounting to Rs.4,54,73,775/-. Taking into consideration the rival contentions of the parties, the issue is restored to the file of the Assessing Officer for decision afresh with a direction that the Assessing Officer will give proper opportunity to the assessee to furnish the relevant documents to prove his contention and thereafter the Assessing Officer will examine and verify the documents and thereafter pass a speaking order accordingly.

7. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Kolkata, the 4th July, 2023.

Sd/-
[डॉक्टर मनीष बोराड /Dr. Manish Borad]
लेखा सदस्य /Accountant Member

Sd/-
[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य /Judicial Member

Dated:04.07.2023.

RS

Copy of the order forwarded to:

1. Mohammed Meraj (Legal Heir of Ayub Mohammad)
2. ACIT, Circle-40, Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches