

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "D" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Sandeep Singh Karhail (JM)

I.T.A. No. 1736/Mum/2023 (A.Y. 2014-15)

Delhi International Cargo Terminal Private Limited 801, Godrej Coliseum C-Wingh, Somaiya Hospital Road, Sion East Mumbai-400 022.  PAN : AACCB8054G (Appellant)	Vs.	DCIT-6(3)(1) Room No. 506 Aayakar Bhavan M.K. Road Mumbai-400 020.  (Respondent)
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Assessee by	Shri Nishit Gandhi & Smt. Usha Dalal
Department by	Smt. Mahita Nair
Date of Hearing	08.08.2023
Date of Pronouncement	09.08.2023

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 22.3.2023 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2014-15. The grounds urged by the assessee give rise to following issues :-

- a) Addition made under section 40A(7) of the I.T. Act.
- b) Non-granting of TDS credit claimed by the assessee.
- c) Addition of income on the basis of Form 26AS.

2. The assessee is company is engaged in the business of providing logistic services. The assessment was completed in the hands of the assessee under section 143(3) of the Act by making various additions. The appeal filed by the assessee before the learned CIT(A) challenging those additions was

partly allowed. Still aggrieved, the assessee has filed this appeal before the Tribunal.

3. The first issue relates to the addition of Rs. 14,33,555/- confirmed by the learned CIT(A) under section 40A(7) of the Act. The Assessing Officer noticed that the tax auditor has reported that the assessee had debited its Profit and Loss account with "Provision for payment of gratuity" amounting to Rs.28,56,581/-, which was not allowable as deduction under section 40A(7) of the Act. Accordingly, the Assessing Officer disallowed the same. Before the learned CIT(A) the assessee submitted that it has already disallowed a sum of Rs. 14,23,024/- in the income tax return. Accordingly, the learned CIT(A) granted partial relief and confirmed the balance addition of Rs. 14,33,827/-.

4. Before us, learned AR submitted that the assessee has voluntarily disallowed the remaining sum of Rs.14,33,557/- also. Accordingly, he submitted that there is double disallowance of the same amount, once by the assessee and again by the Assessing Officer. We notice that the assessee has claimed before the AO that it has already disallowed a sum of Rs.14,23,024/- only and it is now being contended that the remaining amount of Rs.14,33,557/- has also been disallowed. In any case, it is well settled proposition that the double disallowance of the same item is not permissible under the income tax Act. In view of the confusion discussed above, we are of the view that this contention of the assessee requires fresh examination with the relevant records. Accordingly, we restore this issue to the file of the Assessing Officer for examining the above said claim of the assessee. Accordingly the order passed by the learned CIT(A) on this issue would stand modified.

5. Second issue relates to non-granting of TDS credit of Rs. 3,25,052/- . Learned AR submitted that the Assessing Officer did not allow TDS credit on the ground that the assessee did not offer corresponding income to tax

during the year under consideration. The Learned AR submitted that the assessee has offered corresponding income in the immediately preceding year. He further submitted that the assessee did not deduct corresponding TDS amount, since the payee has deducted TDS during the year under consideration. Since the TDS amount was omitted to be claimed in the earlier year, the assessee was constrained to claim the same during the year under consideration.

6. We heard learned DR on this issue and perused the record. We noticed that the Assessing Officer has disallowed the claim of credit for TDS of Rs.3,25,052/- by observing that the same is not allowable in terms of section 199 of the Act read with Rule 37BA(3) of I.T. Rules. We notice that, as per Rule 37BA(3)(i) of the Rules, credit of TDS shall be allowed for the assessment year for which such income is assessable. It is the submission of the assessee that the corresponding income has been offered in the immediately preceding year and it has been accepted by the Revenue. In that case, the corresponding TDS credit is allowable in that year only. The Ld A.R prayed before us that a suitable direction may be given to the AO to allow the TDS credit in the year in which the income was offered to tax.

7. There should not be any doubt that the TDS deducted from the income of the assessee should be given credit to the assessee. In the instant case, the assessee has claimed the TDS credit in this year, while the corresponding income has been offered in an earlier year. As per Rule 37BA(i) of I T Rules, the TDS credit shall be given in the year in which the corresponding income is assessable. Accordingly, this TDS credit is allowable in that year only. Accordingly, we direct that the assessee may move appropriate petition before the Assessing Officer in this regard, so that TDS credit may be allowed by the Assessing Officer in the year in which income was offered by the assessee. We order accordingly.

8. Next issue relates to the addition of Rs. 79,55,515/- being the income of the assessee reflected in the Form 26AS, but not offered to tax in the income tax return. The Learned AR submitted that the payee has deducted TDS from the income estimated by him, while the actual income turned out to be lower than the estimate. Hence there was excess deduction of TDS and the AO has assessed the difference of Rs.79.55 lakhs as income of the assessee. The Learned AR submitted that the assessee would be in a position to explain the above said point by furnishing reconciliation statement before the Assessing Officer. Accordingly he sought one more opportunity and prayed for setting aside this issue to the file of the Assessing Officer.

9. We heard learned DR on this issue and perused the record. Having heard the submissions made by the learned AR, we are of the view that this issue also requires fresh examination at the end of the Assessing Officer. Accordingly, we set aside the order passed by the learned CIT(A) on this issue and restore the same to the file of the Assessing Officer for examining it fresh in accordance with law.

10. Needless to mention that the assessee should be provided with adequate opportunity of being heard.

11. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Pronounced in the open court on 9.8.2023.

Sd/-  
(Sandeep Singh Karhail)  
Judicial Member

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

Mumbai.; Dated : 09/08/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS