

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2000/MUM/2023
(Assessment Year: 2014-15)**

**Assistant Commissioner of Income Tax,
Circle – 4(1)(1), Mumbai,
Room No. 640, 6th Floor, Aayakar Bhavan,
M.K. Road, Mumbai - 400020**

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Appellant

**BBH Communications India
Private Limited,
28, Dr. Ernest Borges Road,
Parel, Mumbai - 400012
[PAN: AADCB7259E]**

Vs

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Respondent

Appearance

For the Appellant/Department : Shri Ashok Kumar Ambastha
For the Respondent/Assessee : Ms. Tejal Saraf

Date : 11.09.2023
Conclusion of hearing : 21.09.2023
Pronouncement of order

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Revenue has challenged the order, dated 01/04/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2014-15, whereby the Ld. CIT(A) had allowed the appeal of the Assessee against the Assessment Order, dated 29/12/2016, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Revenue has raised following grounds of appeal:

1. *"Whether on the facts and circumstances of the case and in law the CIT(A) erred in deleting the addition made by the AO on account of difference between income as per financials and income as per form 26AS.*
 2. *Whether on the facts and circumstances of the case and in law the CIT(A) erred in deleting the addition on account of difference between income as per financials and income as perform 26AS without appreciating the fact that the assessee has failed to furnish documentary evidences to substantiate its claim.*
 3. *Whether on the facts and circumstances of the case and in law the CIT(A) erred in not allowing a reasonable opportunity to the AO before taking into account additional evidences in the form of different reconciliation sheet as per rule 46A of I.T. Rules, 1962 without appreciating the fact that in the Assessment Year 2012-13 in the assessee's own case remand report was called for to verify the submission of the assessee on similar issue.*
 4. *Whether on the facts and circumstances of the case and in law the CIT(A) erred in not appreciating the fact that the reconciliation sheet submitted before the CIT(A) was different from that of submitted before the AO during the course of assessment proceedings.*
 5. *The appellant craves leave to add, amend, alter and/or vary any of the grounds of appeal before or at the time of hearing."*
3. The Assessee, a private limited company engaged in the business of providing advertising agency services, filed its return of income for the Assessment Year 2014-15 on 25/11/2014, declaring 'Nil' income after setting off brought forward business losses and unabsorbed depreciation. The case of the Assessee was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noted that the there is a mismatch between receipts as reflected in Form 26AS as compared to the receipts in the books of accounts. The receipts as per Form 26AS were INR 27,64,90,048/- against which the receipts as per Profit & Loss Account were INR 23,55,75,719/-. The Assessee was, therefore, asked to reconcile the

difference of INR 4,09,14,329/-. The Assessee furnished the reconciliation reproduced in the table contained in paragraph 4.2 of the Assessment Order. The Assessee explained that (a) there were certain incomes which were already offered in the Assessment Year 2013-14 but the tax was deducted at source on the same by the clients in the current Assessment Year 2014-15; (b) large part of the discrepancy was on account of service tax amounting to INR 3,06,24,137/- since the receipts as per Form 26AS were inclusive of service tax and tax at source was deducted on the amount including service tax component, whereas the Assessee was following exclusive system of accounting and the receipts reflected in the Profit & Loss Account were exclusive of the service tax component; (c) there was also income offered to tax by the Assessee reflected in the books of accounts which was not reflected in the Form 26AS as it was received in current year on which no tax was deducted at source; and (d) finally there was a component of income offered to tax in the current year for which tax deduction certificates were received in the subsequent years. However, the Assessing Officer did not agree with this submission of the Assessee. The Assessing Officer concluded that the Assessee had claimed full credit of tax deducted at source in the present year as reflected in Form 26AS but has offered lesser amount to tax. Therefore, the Assessing Officer made an addition of INR 4,09,14,329/- in the hands of the Assessee. In addition, the Assessing Officer also made an addition of INR 70,734/- in the hands of the Assessee being difference between the AIR details available with the Assessing Officer and the receipts reflected in Form 26AS.

4. Being aggrieved by above additions made by the Assessing Officer, the Assessee preferred appeal before CIT(A). The CIT(A) deleted the

additions and allowed the appeal of the Assessee vide order, dated 01/04/2023 holding as under:

- "5.1. *It could be seen from the above explanation of the assessee that this was already presented to the AO at the time of assessment. There are five items of reconciliation which are discussed as follows:*
- (i) *It is seen that the sum of Rs. 3,06,24,137 is a difference on account of service tax which was included in the receipts as per Form 26AS. The clients of the assessee have deducted tax at source on not only the principal amounts paid to the assessee but also on the service tax component. On the other hand, the assessee is following the exclusive system of accounting meaning thereby that the indirect tax component is not routed through the P&L A/c either as income or expense. This being the case, the difference between Form 26AS and the books of accounts to Rs. 3,06,24,137 is duly explained. The other item of difference is Rs. 70,32,178 on account of income offered by the assessee in AY 2013-14 as well as in AY 2015-16 but it was reflected in Form 26AS for the present AY 2014-15. The assessee has filed evidence before me as mentioned in his written submissions to prove the claim that the income amounting to Rs. 70,32,178 has been accounted in the immediately preceding and following AYS. The discrepancy to the extent of Rs. 70,32,178 is therefore duly explained.*
- (ii) *The assessee has also claimed that a sum of Rs. 49,94,940 which is income offered during the year but not reflected in Form 26AS for this year but has been reflected in Form 26AS for AY 2015-16. Similarly, a sum of Rs. 57,90,429 is income offered during the year which is not reflected in Form 26AS. The assessee has provided full details of this amount before me. The explanation of the assessee reproduced above on these two issues is self- explanatory and therefore this reconciliation is in order.*
- (iii) *Lastly, the assessee has pointed out that there was a difference of Rs. 1,40,43,383 which is on account of provisions for expenses created by his clients as well as reimbursement made to him on which TDS has been deducted. In this regard also, the submissions of the assessee are self-explanatory.*

5.2. *It could be seen from the above discussion that the assessee has been able to successfully reconcile the so-called discrepancies between his books and Form 35 and this reconciliation is very specific along with documentary evidences. After due consideration of the submissions before me, reproduced above, I am of the view that the assessee is sufficiently explained the discrepancy of Rs. 4,09,14,329 and therefore this addition is deleted. Ground 3 is accordingly allowed."*

5. The Revenue is now in appeal before us against the order dated 01/04/2023, passed by the CIT(A) on the grounds reproduced in paragraph 2 above.
6. We have heard the rival submissions and perused the material on record. In brief that the contention of the Revenue is that the CIT(A) erred in admitting additional evidence without complying with the requirements of Rule 46A of the Income Tax Rules, 1962. Whereas, the contention of the Assessee is mismatch of income reflected and Form 26AS and Book of Accounts is a recurring issue and the Tribunal has, vide order, dated 27/03/2023, passed in ITA No. 09/Mum/2022 and vide order, dated 28/06/2023, passed in ITA No. 236/Mum/2023, pertaining to Assessment Year 2012-13 and 2013-14, respectively, dismissed appeal preferred by the Revenue for the immediately preceding assessment years and had upheld the order passed by the CIT(A) deleting identical additions.
7. On perusal of the Assessment Order, we find that the Assessee had provided the explanation/reconciliation to the Assessing Officer during the assessment proceedings. The relevant extract of the Assessment Order reads as under:

"4.2 The Assessee vide notice under Section 142(1) of the Act dated 07/12/2016 was asked to reconcile the income as per 26AS. The Assessee has submitted a reconciliation statement dated 19/12/2016 which is reproduced as under:

<i>SNo.</i>	<i>Particulars</i>	<i>Amount (INR)</i>	<i>Amount (INR)</i>
<i>I</i>	<i>Income as per Financials as on 31.03.2014</i>		<i>23,55,75,719</i>
<i>II</i>	<i>Add:</i> <i>Income offered to tax in the A.Y. 2013-14 on which TDS is deducted by the clients in current year i.e. A.Y. 2014-15</i>	<i>70,32,178</i>	
	<i>Income as per Form 26AS is inclusive of Service Tax and as per Financials is exclusive of Services. Service Tax element on income as per Form 26AS</i>	<i>30,06,24,137</i>	
	<i>Other</i>	<i>2,683,82,35,445</i>	<i>6,63,91,760</i>
<i>III</i>	<i>(I + II)</i>		<i>30,19,67,480</i>
<i>IV</i>	<i>Less:</i> <i>Income received in foreign currency, Tax on which is not deducted and hence not reflected in Form 26AS</i>	<i>57,75,180</i>	
	<i>Income offered to tax in A.Y. 2014-15 on which TDS Certificate received in next year i.e. A.Y. 2015-16</i>	<i>49,94,940</i>	
	<i>Others</i>	<i>1,52,07,312</i>	<i>2,54,77,432</i>
<i>V</i>	<i>Amount paid & Credited as per Form 26AS an TDS certificate as on 31.03.2013(III-IV)</i>		<i>27,64,90,048</i>

..."

8. The Assessing Officer rejected the above explanation and made the addition of INR 4,09,85,063/- (INR 4,09,14,329/- + INR 70,734/-) while the CIT(A) accepted the explanation and deleted the addition. We do not find any merit in the contention of the Revenue that the CIT(A) should have called for remand report from the Assessing Officer in terms of Rule 46A in the facts and circumstances of this case. We note that identical contentions raised by the Revenue stands rejected in the appeal preferred by the Revenue for the Assessment Year 2012-13 (ITA No. 09/Mum/2022, dated

27/03/2023) and 2013-14 (ITA No. 236/Mum/2023, dated 28/06/2023). Further, the Revenue has not been able to point out any infirmity in the reconciliation statement furnished by the Appellant before CIT(A). On perusal of order passed by CIT(A), the reasoning given by the Assessee for the mismatch of INR 4,09,85,063/- which has been accepted by the CIT(A) is summarized as under:

	Particulars	Amount (INR)	Reason for differences accepted by CIT(A)
	<i>Income as per Financials (P&L A/c)</i>	23,55,75,719	
Add:	<i>Difference on account of services tax</i>	3,06,24,137	<i>As per accounting treatment consistently followed, service tax is accounted under exclusive method and not routed through P&L account. Amount reported by debtor/service recipient in TDS returns and in Form 26AS is inclusive of service tax whereas receipt reflected in P&L is exclusive of services tax. Reliance is placed on CBDT Circular No. 1 of 2014 dated 13.01.2014</i> <i>[Referred to paragraph 5.1(i) of order passed by the CIT(A)]</i>
Add:	<i>Difference on account of Income offered in return of income of previous year and subsequent year</i>	70,32,178	<i>This amount has been offered to tax in AY 2013-14 and AY 2015-16. However, same is reflected in Form 26AS of current year i.e. AY 2014-15</i> <i>[Referred to paragraph 5.1(i) of order passed by the CIT(A)]</i>
Add:	<i>Difference due to miscellaneous reasons</i>	1,40,43,383	<i>These amounts are due to various reasons such as TDS deducted on reimbursement of expenses, reversal of opening accrual, deferred income, provision for expenses created by customers of the assessee, etc.</i> <i>[Referred to paragraph 5.1(iii) of order passed by the CIT(A)]</i>

Less :	<i>Difference on account of Income offered to tax in current year but reflecting in Form 26AS of subsequent year</i>	<i>-49,94,940</i>	<i>These amounts have been offered to tax during the year, however the same is reflecting in Form 26AS of next year i.e. AY 2015-16</i> <i>[Referred to paragraph 5.1(ii) of order passed by the CIT(A)]</i>
Less :	<i>Different on account of income offered to tax in ROI for the year but not reflected in Form 26AS of the year.</i>	<i>-57,90,429</i>	<i>This amount is offered as income through export of services in books of accounts on which o tax is deducted being foreign billing and hence not reflected in Form 26AS.</i> <i>[Referred to paragraph 5.1(ii) of order passed by the CIT(A)]</i>
	<i>Income as per Form 26AS</i>	<i>27,64,90,048</i>	

9. In view of the above, we do not find any infirmity in the order passed by the CIT(A). Accordingly, consistent with the view taken by the Tribunal in the case of the Assessee for the AY 2012-13 and 2013-14, we decline to interfere with the order passed by the CIT(A). Ground No. 1 to 4 raised by the Revenue are dismissed.
10. In result, the present appeal preferred by the Revenue is dismissed.

Order pronounced on 21.09.2023.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 21.09.2023
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
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