

आयकर अपीलिय अधिकरण
मुंबई पीठ "एच", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
सुश्री पद्मवती. एस, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " H", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
MS. PADMAVATHY.S, ACCOUNTANT MEMBER

आसं. 1135/मुं/2023 (नि. व. 2014-15)
ITA NO.1135/MUM/2023 (A.Y.2014-15)

Kaushik Laxmidas Popat,
17, Ratnadeep, S.L.Road,
Mulund (West), Mumbai – 400 080.

PAN: AAQPP-6733-M

..... अपीलार्थी/ Appellant

बनाम Vs.

ITO, Ward 29(2)(1),
201, Prtyakshkar Bhavan,
C-10, BKC, Bandra (East),
Mumbai – 400 051

..... प्रतिवादी/ Respondent

Assessee by : Shri Rajesh Athavale
Revenue by : Ms. Usha Gaikwad

सुनवाई की तिथि/ Date of hearing : 04/07/2023
घोषणा की तिथि/ Date of pronouncement : 22/09/2023

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals) National Faceless Appeal Center, Delhi [hereinafter referred to as "the CIT(A)"] dated 13.02.2023, for the assessment year 2014-15.

2. The solitary issue raised by the assessee in appeal is with respect to addition of ₹ 70,64,630/- on account of difference between books of the assessee and Form 26AS/AIR data.

3. Shri. Rajesh Athavale appearing on behalf of the assessee submitted that, the assessee is engaged in the business of advertisement under the proprietary concerns Om Shakti Outdoors. During the course of scrutiny assessment for the impugned assessment year, the Assessing Officer observed that the total receipts as per Form 26AS were ₹ 1,47,89,008/-, whereas, the assessee in return of income had shown gross receipts of ₹ 77,24,378/-. Thus, the AO held that the assessee was required to get its accounts audited u/s 44AB of the Income Tax Act, 1961 [hereinafter referred to as the Act']. The assessee during scrutiny assessment proceedings explained that the assessee had received sum of ₹ 60,10,840/- only from the Tirupati Balaji Builders & Developers Pvt. Ltd.[In short 'TBG']. TBG fraudulently with an intention to claim excessive advertisement expenditure deducted TDS on higher amount and deposited the same in the account of assessee. Thus, ₹ 1,41,98,100/- shown as payment to the assessee is excessive. The assessee had never received payment to that extent from TBG. The Ld. AR raised multiple prepositions in the defence.

3.1 The Ld. AR submitted that before making addition, the AO did not reject books of the assessee, hence, without rejecting books no addition could have been made.

3.2 Another argument made by Ld. AR is that addition cannot be made merely on the basis of Form 26AS. In support of this argument, he placed reliance on the decision in the case of ITO v/s Star Consortium 127 taxmann.com 681 (Kolkata Trib.).

3.3 The Ld. AR further submitted that it is only real income which should be taxed. To support this contention reliance was placed on the decision of

Hon'ble Calcutta High Court in the case of PCIT v/s Paharpur Cooling Towers Ltd. 150 taxmann.com 238 (Calcutta).

3.4 The. Ld. AR made alternate prayer that instead of making addition of entire alleged receipts from TBG only the profit element should be added. The Ld. AR submitted that the GP of the assessee for the impugned assessment year is 10%. He placed reliance on Sohan Lal Aggarwal v/s ACIT circle 62(1), 130 taxmann.com 380 (Delhi Trib.) to buttress his alternate prayer.

4. Per contra, Ms. Usha Gaikwad representing the department vehemently defended the impugned order and prayed for dismissing the appeal of the assessee.

5. We have heard the submissions made by rival sides and have examined the orders of lower authorities. We have also considered the decisions on which reliance has been placed by the Ld. AR of assessee. The short issue in present appeal for our consideration is addition on account of difference between receipts declared in profit and loss account and 26AS statement. The assessee in his return of income has declared receipts of ₹ 77,24,378/- during the period relevant to the Assessment year under appeal, whereas 26AS statement shows that the assessee has received ₹ 1,41,98,100/- from TBG alone. It is an undisputed fact that the assessee has taken credit of entire TDS i.e. ₹ 1,41,981/- that has been deposited by TBG to the credit of assessee. This fact itself shows that the assessee has received payment in respect of which TDS was deducted and deposited in assessee's PAN. Thus, in so far as argument of the assessee that TBG has deposited higher amount of TDS to claim higher expenditure and other peripheral arguments, we find no merit in the same. The AO has made addition of difference between amount reflected in 26AS statement and the amount disclosed by the assessee i.e. ₹70,64,630/- (₹147,89,008/- - ₹ 77,24,378/-). We are of considered view that the entire receipts cannot be added in the hands of the assessee as his income. It is only the profit element

embedded in the receipts from TBG that can be brought to tax. We deem it appropriate to restore this issue to the AO to re-examine the issue and determine the profit element embedded in the receipts from TBG. The AO shall grant reasonable opportunity to the assessee to make submissions in accordance with law.

6. Consequently, the appeal of the assessee is allowed for statistical purpose in the terms aforesaid.

Order pronounced in the open court on Friday the 22nd day of September, 2023.

Sd/-

(PADMAVATHY. S)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 22/09/2023

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)/Sr. Private Secretary ITAT,
Mumbai