

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 176/RPR/2023
निर्धारण वर्ष / Assessment Year : 2014-15

Dutta Engineering Works
18K, Heavy Industrial Area, Bhilai
Dist. Durg (C.G.)

PAN : AAHFD0741J

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax-1(1),
Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rahul Jain, Advocate
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 22.08.2023
घोषणा की तारीख / Date of Pronouncement : 19.10.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee firm is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 21.03.2023, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 29.12.2016 for the assessment year 2014-15. The assessee has assailed the impugned order on the following grounds of appeal:

“1. That on the facts and circumstances of the case the learned A.O. has erred in making addition of Rs.10,08,710/- on the grounds of alleged difference in receipts as per books of accounts and Form No.26AS, which is wrong contrary to the facts & evidences on record and arbitrary and the learned C.I.T.(A) NFAC has erred in maintaining the addition, which is wrong, unjustified and without appreciation of the reconciliation statement submitted.

2. That the addition of Rs.10,08,710/- in A.Y. 2014-15 is bad in law & fact as the same has already been taxed in A.Y.2013-14.

3. That the appellant craves leave to add, amend or alter the grounds of appeal at the time of hearing.”

2. Succinctly stated, the assessee firm, which is engaged in the business of erection, machining, and fabrication works, had filed its return of income for A.Y.2014-15 on 31.03.2016, declaring an income of Rs.50,51,650/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

3. During the assessment proceedings, it was observed by the A.O. that while the gross receipts of the assessee from M/s. Thermax Ltd., as per Form 26AS, was shown at Rs.60,74,715/-, but the assessee firm had credited the same in its books

of accounts at Rs.43,23,770/-. On being queried about the aforesaid discrepancy, the assessee, based on a detailed reconciliation statement, stated that the receipt in books was more than the receipt disclosed in his Form 26AS. Elaborating on his aforesaid claim, it was submitted by the assessee, viz. (i). that part of the receipts was accounted for as mobilization advance: Rs.7,32,229/-, on which tax had been deducted at source; and (ii) that the amounts of Rs.8,35,790 and Rs.1,72,920/- forming part of receipts were accounted for as its income in the immediately preceding year i.e. F.Y.2012-13. In order to fortify his aforesaid claim that part of receipts was accounted for in the preceding year, the assessee placed on record a copy of his ledger account for F.Y.2012-13, as per which receipts were credited on 28.03.2013 of Rs.9,28,656/- and Rs.1,92,135/-. However, the aforesaid explanation of the assessee did not find favor with the A.O for the following reasons:

- a. The amounts mentioned in the ledger account and the amounts mentioned in the reconciliation statement and in 26AS are not matching.
- b. The assessee has booked income on 28/03/2013 and the date of credit mentioned against amount displayed in 26AS is 28/05/2013. i. e. after two months from the date of entry in your accounts.
- c. The assessee has not furnished any external evidence in support of his claim. Like confirmation of accounts or certificate from the party.
- d. The assessee might having the knowledge of difference in accounts at the time of finalization of accounts and at the time of audit of accounts, as accounts are audited and finalized long back and there must be some correspondence regarding difference and request for rectification of the same with the party but no such correspondence is furnished by the assessee.
- e. The assessee has furnished only copy of ledger account from their own accounts which cannot be treated as credible evidence in case of difference.
- f. The assessee has also accepted in reply that there is difference of Rs 6/-. It is arrived even after assuming the figures mentioned in 26AS.”

As the time limitation for framing of the assessment was fast approaching, therefore, the A.O without making any further inquiry, held the amount which the assessee claimed to have been accounted for in the immediately preceding year, i.e. Rs.10,08,710/- i.e. [Rs.8,35,790/- (+) Rs.1,72,920/-] as income of the assessee for the year under consideration. Accordingly, the A.O. vide his order passed u/s.143(3) dated 29.12.2016 determined the income of the assessee at Rs.60,61,030/-.

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. The CIT(Appeals) observed that it was the claim of the assessee before him that the impugned difference of Rs.10,08,710/-, viz. (i) pertaining to P.O No.29102 of M/s. Thermax Ltd.: Rs.8,35,790/-; and (ii) pertaining to P.O No.29010 of M/s. Thermax Ltd: Rs.1,72,920/- had emerged for the reason that while he had accounted for the said receipt on 28.03.2013, i.e., the date of billing but M/s. Thermax Ltd. had booked the said amount on 28.05.2013, i.e., during the year under consideration A.Y.2014-15, and deducted tax at source on the same. For the sake of clarity, the claim of the assessee explaining the aforesaid deficiency before the CIT(Appeals) is culled out as follows:

“Receipt of Rs. 8,38,790/- pertains to P.O.No.29102 against which the assessee has already declared receipt of Rs. 9,28,656/- in A.Y.2013-14 and the receipt of Rs.1,72,920/- pertains to P.O.No.29010 of Thermax Ltd; Pune against which receipt of Rs. 1,92,135/- has already been declared in A.Y.2013-14. We are enclosing herewith ledger copy of Thermax Ltd; P.O.No.29012 & P.O.No.29010 and Erection and Fabrication A/c from our books of accounts for A.Y 2013-14 which is marked as ANNEXURE-A-1 (Collectively) Page No.4 to 9.”

However, the explanation filed by the assessee did not find favor with the CIT(Appeals), who upheld the view taken by the A.O by observing as under:

Decision:

5. I have carefully examined the facts of the case, finding of AO in assessment order, submission filed by the appellant and material available on record.

5.2 The brief facts of case relevant to purpose of appeal are that the appellant filed its return of income for the A.Y. 2014-15 on 31.03.2016 declaring total income at Rs. 50,51,650/-. The case of appellant was selected for Scrutiny under CASS. The Assessment u/s 143(3) of the Act was finalized by AO vide order dated 29.12.2016 at an assessed income of Rs. 60,61,030/- wherein, an addition of Rs. 10,09,380/- has been made on account of difference in gross receipts as per Form 26AS and books of the appellant. Being aggrieved by the above, the appellant is in appeal against the said order u/s 143(3) of the Act. The appellant has challenged only the addition of Rs. 10,08,710/- in appeal.

5.3 During the year under consideration, the appellant has declared gross receipts of Rs. 43,23,770/- from M/s Thermax Ltd in its books of account. However, as per Form 26AS, the total receipts from M/s Thermax Ltd is Rs. 60,64,715/-. The appellant was required by AO to reconcile the difference of Rs. 17,40,945/- in gross receipts as per Form 26AS and books of the account. In response, the appellant has accepted the minor difference of Rs. 6 in gross receipts as per Form 26AS and books and further stated that gross receipts on which tax was deducted at source included mobilization advance of Rs. 7,32,229/- from Thermax Ltd. The AO has considered the claim of the appellant. In respect of remaining difference of Rs. 10,08,710/-, the appellant has filed submission along with documents. The submission filed by appellant was found not acceptable by the AO. Accordingly, difference of Rs. 10,08,710/- has been added to the income of the appellant on the basis of finding recorded in para 2 of the assessment order.

5.4 During the course of appellant proceedings also, the same plea has been taken that difference in gross receipts from M/s Thermax Ltd as per Form 26AS and books of the account is on account of the fact that Rs.8,35,790/- & Rs.1,72,920/- reflecting in Form 26AS, has already been booked as income in previous year 2012-13 (A.Y. 2013-14). The appellant has filed ledger copy of M/s Thermax Ltd for the FY 2012-13, invoices raised, Erection and Fabrication ledger receipt account and reconciliation statement.

5.5 On perusal of entries pertaining to Thermax Ltd for the FY 2012-13 in Erection and Fabrication ledger, the following picture emerges:

Amount as per Form 26AS (in Rs.)	Gross amount booked as per Erection and Fabrication ledger (in Rs.)	Net Amount booked as per Erection and Fabrication ledger (in Rs.)
8,35,790	9,28,656	8,26,500
1,72,920	1,92,135	1,71,000

On perusal of details above, it is clear that the amount reflected in Form 26AS for the FY 2013-14 does not match with either gross amount or net amount booked by the appellant in FY 2012-13. As per reconciliation statement filed by the appellant 1% of gross amount has been added to net amount to reach the figure appearing in Form-26AS. However, no confirmation has been filed by the appellant from M/s Thermax Ltd to justify its contention. **Therefore, addition of Rs. 10,08,710/- is hereby confirmed. Ground of appeal is dismissed.**

6. In the result, the appeal is **Dismissed**.

5. The assessee, being aggrieved with the order of the CIT(Appeals), has carried the matter in appeal before us.

6. We have heard the Id. Authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

7. Controversy involved in the present appeal lies in a narrow compass, i.e., sustainability of the addition of Rs.10,08,710/- made by the A.O. towards suppressed contract receipts accounted for by the assessee firm as against those reflected in its

Form 26AS. As observed by us hereinabove, it is the claim of the assessee that the impugned variance/difference in receipts disclosed in its books of account as against that gathered by the A.O as per Form 26AS was on the fact that while the assessee firm had accounted for the said short receipts in its books of account on 28.03.2013, i.e., date of billing but M/s. Thermax Ltd. (supra) had booked the same in its books of account on 28.05.2013, i.e., during the year under consideration, A.Y.2014-15, and deducted tax at source on the said amount.

8. The Ld. Authorized Representative (for short 'AR') of the assessee firm drew our attention towards the reconciliation of the aforesaid discrepancy, Page 32 of APB, which reads as under:

DUTTA ENGINEERING WORKS, BHILAI ASS.YR.2014-15 RECONCILIATION STATEMENT SHOWING GROSS & NET RECEIPT AS PER BOOKS & FORM 26AS IN R/O THERMAX LTD:PUNE										
S.NO	P.O. NO.& BILL NO.OF DUTTA ENG.WORKS	DATE OF BILL	BILL AMT (NET)	SERVICE TAX	CESS 2%	H.E.CESS 1%	GROSS AMT(AS PER BOOKS)	NET BILL AMT.	1% TAX ON GROSS AMT	TOTAL (AS PER 26AS)
1	29012/001	25.03..2013	826500	99180	1984	992	928656	826500	9290(R.OFF)	835790
2	29010/001	25.03.2013	171000	20520	410	205	192135	171000	1920(R.OFF)	172920

NOTE:- In our books of A/c gross amount including service tax,cess & HEC are accounted for in Receipt account in the ledger but in Form No.26As net amount with 1% T.D.S. is appearing ,but while paying the tax Thermax Ltd.has deposited the TDS @ 2% as appearing in Form 26AS.
Thus the entire difference stands explained .

On the basis of the aforesaid facts, it was submitted by the Ld. AR that now, when the impugned discrepancy in the receipts had duly been reconciled, and the entire amount had been offered for tax by the assessee firm, therefore, the addition made by the A.O. without appreciating the correct factual position was liable to be vacated.

9. Admittedly, it is a matter of fact borne from the assessment order that the assessee firm had maintained its accounts as per the mercantile system of accountancy. Based on the aforesaid method of accountancy followed by the assessee firm, the accounting for the aforesaid amount of contract receipts of Rs.10,08,710/- (supra) on the date on which the bill was raised by it on M/s. Thermax Ltd. is found to be in order. As the A.O., while framing the assessment, had admittedly, due to paucity of time, not deliberated upon the aforesaid explanation of the assessee, therefore, in our considered view, the matter in all fairness requires to be restored to his file. Needless to say, the A.O. shall, in the course of the set-aside proceedings, afford a reasonable opportunity of being heard to the assessee firm, which shall remain at liberty to substantiate its claim on the basis of fresh documentary evidence. Thus, the **Grounds of appeal No.1 & 2** raised by the assessee firm are allowed for statistical purposes in terms of our aforesaid observations.

10. Before parting, we may herein observe that in case the A.O is of the view that the aforesaid amount of Rs.10,08,710/- (supra), i.e., as claimed by the assessee firm to have been offered for tax in the immediately preceding year, i.e., A.Y.2013-14 is to be subjected to tax during the year under consideration, i.e., A.Y.2014-15, then he shall carry out appropriate adjustments in respect of the taxes realized by the department on the said amount in the aforesaid preceding year, i.e., A.Y.2013-14. Our aforesaid view is fortified by the judgment of the **Hon'ble Supreme Court** in the case of **Income-tax Officer V/s. Bachu Lal Kapoor [1966] 60 ITR 74 (SC)**.

11. The **Ground of appeal No.3**, being general, is dismissed as not pressed.
12. In the result, the appeal of the assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in open court on 19th day of October, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 19th October, 2023

**#SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT, Raipur-1 (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.