

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,
MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI S RIFAUR RAHMAN, AM

आयकर अपील सं/ I.T.A. No.2960/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2022-23)

Shailaja Lalit Kotian B/25, 6 th Floor, Namaskar Maas CHS, Poonam Nagar, Mumbai-400093.	बनाम/ Vs.	Central Processing Center, Income Tax Department, Bengalure Kautilya Bhavan, BKC, Bandra (E) Room No.615, Mumbai-400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AGIPK3192M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Jeetan Nagpal/Shri Sujit Kotian/Shri Ali Sayyed	
Revenue by:	Shri S. N. Kabra (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 28/11/2023

घोषणा की तारीख /Date of Pronouncement: 13/12/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/(NFAC), Delhi dated 29.06.2023 for the assessment year 2022-23.

2. The grounds of appeal of the assessee are as under: -

“1. That on the facts and circumstances of the case and in law, the appellate order dated 29.06.2023 [‘the impugned order’] passed by the National Faceless Appeal Centre (NFAC), Delhi [‘the Hon'ble CIT(A)’] is based upon conjectures, surmises and assuming incorrect facts and therefore, is bad in law.

2. That on the facts and circumstances of the case and in law, the impugned order has been passed by the Hon’ble CIT(A) without



ITA No.2960/Mum/2023

A.Y. 2022-23

Shailaja Lalit Kotian

application of mind in as much as the Hon'ble CIT(A) has erred in -

2.1. Incorrectly assuming that the total receipts reflecting in the Appellant's Form 26AS were not offered to tax

2.2. Not appreciating the submissions made by the Appellant and disregarding the fact that a part of receipts reflecting in Form 26AS were rather reimbursement of expenses on actual basis.

3. That on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in drawing inference to Section 199 and Rule 37BA in as much as the Hon'ble CIT(A) has erred in:

3.1. Concluding that the impugned receipts was appearing in the C Appellant's Form 26AS but not included in computing the total income in the return filed by the Appellant

3.2. Not appreciating the Profit & Loss A/c submitted by the Appellant before the Hon'ble CIT(A) showing the entire receipts of Rs. 3,09,87,509/- as reflecting in its Form 26AS as being credited and corresponding expenses being reduced thereof.

3.3. Not appreciating the details and reconciliations filed by the Appellant before the Hon'ble CIT(A) during the course of proceedings

4. That on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the allowability of proportionate TDS credit only to the tune of Rs. 2,66,160 as against eligible credit of Rs. 4,20,066 in accordance with Rule 37BA inter alia because:



ITA No.2960/Mum/2023

A.Y. 2022-23

Shailaja Lalit Kotian

4.1. The Appellant had reported the entire receipts in its Return of Income as were reflecting in Form 26AS in respect of which the TDS credit was claimed

5. That on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the levy of interest u/s 234A, 234B and 234C of the Act.”

3. Brief facts are that the assessee is engaged in business of providing International Freight Broking Service through Sea & Air Mode with Local Transport for various Importers & Exporters in the country. According to the assessee, the business receipts of assessee consist of two parts i.e. first part relates to Recovery of Freight Charges and Second part relates to Commission & local charges; and as per the prevalent industry practice, assessee incur these Freight Charges upfront on behalf of their customers, and subsequently recover them at actuals from their customers (*reimbursement*). For providing these services, (*wherein reimbursement is received*), assessee recover Agency Commission & other local charges from their customers. Therefore, assessee's income in such an event is restricted only to such Agency Commission & other local charges. In other words, assessee's income is only to the extent of Commission & other local charges, and not the reimbursement of Freight charges incurred by assessee on behalf of their customers and recovered at actual, which is not in the nature of income. In such a backdrop, the income of assessee should be appreciated. And assessee filed her return of



ITA No.2960/Mum/2023
A.Y. 2022-23
Shailaja Lalit Kotian

income declaring total income of Rs.31,141,810/- by filing ITR-3. According to the assessee, the return was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter “the Act”) by the CPC, and the CPC had issued defect notice dated 15.11.2022 which reads as under: -

“Error Description

The gross receipts shown in Form 26AS are higher than the total of the receipts shown under all heads of income, on which credit for TDS has been claimed, in the return of income filed. Thus, while credit for TDS is being claimed in the return of income, the corresponding receipts are not fully disclosed in the respective income schedules. Hence, the return of income filed is regarded as defective, as per clause (a) of the Explanation under section 139(9).

Probable Resolution

The correction of this defect has to be made by filing a corrected return and disclosing the complete receipts, as per Form 26AS. Alternatively, the claim of TDS may be made corresponding to the extent of income/receipts disclosed in the return. Please note that Credit for the TDS is allowable to the person in whose hands the income is assessable and in the year (AY) in which such income is assessable (Rule 37BA).

4. And the assessee filed her reply vide letter dated 23.11.2022 which is reproduced as under: -

“Disagree

Reason for disagreeing with the defect

We give Custom Clearing Services. As per Industry practice gross receipts of Agency Charges and reimbursement of



ITA No.2960/Mum/2023

A.Y. 2022-23

Shailaja Lalit Kotian

expenses incurred on Customer's behalf recovered without any profit. These recoveries are recorded as net expenses in Profit & Loss A/e. Some Customers deduct TDS on such reimbursement. Hence difference between 26AS & Revenue from operation. Observation incorrect. All Income accounted. Return correct, Permit reconciliation physical filing as space less, Personal Hearing required."

5. However, CPC did not bother to look into the submission of assessee and gave credit of TDS only to Rs.2,66,160/- whereas assessee had claimed TDS credit of Rs.4,20,066/-. Thus, assessee was saddled with tax demand of Rs.1,53,906/- along with interest of Rs.1,62,350/-. Aggrieved, assessee filed rectification u/s 154 of the Act, which didn't evoke any response. Assessee filed appeal before the Ld. CIT(A), which was dismissed by Ld. CIT(A) by passing the impugned order.

6. We have heard both the parties and perused the records. We note that the assessee is engaged in business of providing International Freight Broking Service through Sea & Air Mode for various Importers & Exporters in the country. According to the assessee, the business receipts of assessee consist of two parts i.e. first part *relates to Recovery of Freight Charges* and Second part *relates to Commission & local charges*; and as per the prevalent industry practice, assessee incur these Freight Charges *upfront* on behalf of their customers, and subsequently recover it at actual from their customers (*reimbursement*). For providing these services, assessee



ITA No.2960/Mum/2023

A.Y. 2022-23

Shailaja Lalit Kotian

recover Agency Commission and other local charges from their customers. Therefore, according to assessee, it's income is restricted only to such Agency Commission and other local charges. In other words, assessee's income is only to the extent of Commission & other local charges and *not the reimbursement of Freight charges* incurred by them on behalf of their customers, which is recovered at actual. According to the assessee, it filed its return of income declaring total income of Rs.31,141,810/- by filing ITR-3. Thereafter, the assessee's return was processed u/s 143(1) of the Act, wherein CPC found discrepancy/mismatch in income vis-à-vis 26AS, and issued defect notice (supra), pursuant to which assessee denied there being any defect and pointed out that she was engaged in providing custom clearing services and as per the prevalent Industry practice, assessee incurs upfront expenses of freight charges on behalf of clients, which are later reimbursed by them. According to assessee at times, the client while reimbursing the expenses (*freight charges*) deducts TDS on it; therefore, there is a mismatch between the income vis-à-vis receipt as per 26AS statement. According to assessee, assessee had declared total income of Rs.31,14,810/- and disclosed revenue from operation in profit & loss account for Financial Year (FY) 2021-22 amounting to Rs.1,90,13,167. And on the other hand, receipt as per Form 26AS was Rs.3,09,87,509/- which included receipt towards reimbursement of freight charges incurred on behalf of their customers. The assessee further submitted that since some of these customers had deducted TDS on these reimbursements, the corresponding amount became part



ITA No.2960/Mum/2023
A.Y. 2022-23
Shailaja Lalit Kotian

of receipts in Form 26AS. Therefore, this is the only reason for variation between receipts reflected in Form 26AS and revenue from operations.

7. Assessee has filed a re-conciliation statement found placed at page no. 114 of PB which is reproduced as under: -

M/s. Talash Shipping & Transport Service Income Reconciliation Statement (FY 2021-2022) (Amount in INR)		
Particular	Amount	Amount
A. Receipt As per 26AS		3,09,87,509
B Revenue from operations		1,90,13,167
C Interest income offered for tax as other income in profit & loss account		1,76,700
D Difference (A-B-C)		1,17,97,642
E Recovery of Freight Charges as credited to Profit & Loss Account	1,77,90,489	
F Recovery of Freight Charges as credit to profit & loss account on which TDS not deducted by Customer	59,92,847	
G Difference (E-F)		1,17,97,642
Variation (D-G)		

8. We note that CPC while processing the return of assessee gave credit of TDS only to Rs.2,66,160/- whereas assessee had claimed TDS credit of Rs.4,20,066/-. Thus, assessee was saddled with tax demand of Rs.1,53,906/- along with interest of Rs.1,62,350/-. 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 her contention and



ITA No.2960/Mum/2023

A.Y. 2022-23

Shailaja Lalit Kotian

thereafter, the Assessing Officer will examine and verify the documents and thereafter pass a speaking order accordingly.

9. No other grounds have been argued before us. However, we note that the assessee by raising ground no. 5 has assailed the action of the Ld. CIT(A) upholding the levy of interest u/s 234A, 234B and 234C of the Act. So need to be adjudicated.

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

Order pronounced in the open court on this 13/12/2023.

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 13/12/2023.
Vijay Pal Singh, (Sr. PS)

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai