

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

महनीय श्री मनोज कुमर अग्रवाल, लेखक सदस्य एवं
महनीय श्री मनोमोहन दास, न्यायिक सदस्य का समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM,
AND HON'BLE SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./ ITA No.95/Chny/2020
(निर्धारण वर्ष / Assessment Year: 2013-14)

ITO Corporate Ward-1(2), Chennai.	बनाम/ Vs.	M/s.BSM Infra Private Limited No.72, 1 st Main Road, Sri Ayyappa Nagar, Chinmaya Nagar, Virugambakkam, Chennai-600 092.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAFCEB-2861-C		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

Cross Objection No.3/Chny/2023
(In ITA No.95/Chny/2020)
(निर्धारण वर्ष / Assessment Year: 2013-14)

M/s.BSM Infra Private Limited No.72,, 1 st Main Road, Sri Ayyappa Nagar Chinmaya Nagar, Virugambakkam, Chennai-600 092	बनाम/ Vs.	ITO Corporate Ward-1(2), Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAFCEB-2861-C		
(पीलार्थी/ Cross Objector)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Revenue by	:	Shri P.Sajit Kumar,(JCIT) –Ld. Sr. DR
प्रत्यर्थी की ओरसे/ Assessee by	:	Shri I.Dinesh, (Advocate)- Ld.AR
सुनवाई की तारीख/ Date of Hearing	:	28-02-2024
घोषणा की तारीख / Date of Pronouncement	:	28-02-2024

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by department for Assessment Year (AY) 2013-14 arises out of an order passed by learned Commissioner of Income

Tax (Appeals)-4, Chennai [CIT(A)] on 05-11-2019 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 28-03-2016. The assessee has also preferred cross-objection which is supportive in nature. The grounds taken by the Revenue are as under: -

1. The order of the learned CIT(A) is contrary to law, facts and circumstances of the case.
2. The learned CIT(A) erred in giving relief on the issue of addition on account of mismatch in 26AS receipts as compared to returned income by observing assessing officer has not proved the amount of Rs.3,02,72,000/- being the mismatch amount was credited in any Bank account of the assessee without appreciating the receipts could have been in cash or any other mode?
3. The learned CIT(A) erred in giving relief on the issue. of addition on account of mismatch in 26AS receipts as compared to returned income without appreciating the fact assessee has failed to produce any written contract or sub-contract agreement between the assessee and M/s RCM Infrastructure Ltd despite the fact assessee was having business dealings with M/ s RCM Infrastructure Ltd?
4. The learned CIT(A) erred in giving relief on the issue of addition on account of mismatch in 26AS receipts as compared to returned income by observing the assessee has initiated legal proceedings against M/ s RCM Infrastructure Ltd for the mismatch in 26AS receipts without appreciating the fact that the legal proceedings have not reached finality ? .
5. The learned CIT(A) failed to appreciate the purported contract of the assessee and M/s RCM Infrastructure Ltd are suspicious in the absence of any written agreement?
6. The learned CIT(A) erred in holding the cash deposits in Bank are contra entries of withdrawals from mobilization advance made from cash book without appreciating the fact that the cash deposits and withdrawal of mobilization advance are not in proximity since the mobilization advance was withdrawn immediately?
7. The learned CIT(A) failed to appreciate the assessee has failed to prove the distant cash withdrawal of mobilization advance remained unutilized so as to be the source of cash deposits in Bank at later dates ?
8. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.

As is evident, two issues arises for our consideration i.e., (i) Addition for difference in Form 26AS; (ii) Addition of unexplained cash credit.

2. The Ld. Sr. DR advanced arguments and placed on record assessee's ledger account as appearing in the books of RCM Infrastructure Ltd. (RCM). The assessment order of RCM for AY 2014-15 has also been placed on record. The Ld. AR has supported the impugned order and drew attention to the ongoing litigation between the assessee and RCM. The Ld. AR similarly placed on record ledger of RCM as appearing in assessee's books of accounts for AY 2013-14 and 2014-15. Having heard rival submissions and upon perusal of case records, the appeal is disposed-off as under.

3. Addition for difference in Form 26AS

3.1 Upon verification of Form 26AS statements, Ld. AO noted that the assessee received sum of Rs.302.72 Lac from RCM whereas the assessee only admitted income of Rs.19.52 Lacs from this entity. The assessee submitted that no such payment was received from RCM and it was also submitted that the assessee had initiated legal proceedings against the director. However, Ld. AO held that the assessee had business connection with RCM since it had taken short term loan from RCM. Therefore, the amount reflected in Form 26AS was added to the income of the assessee.

3.2 During appellate proceedings, it transpired that the assessee was engaged in infrastructure business. During the course of business dealing, RCM approached them for undertaking their liaison work in Chennai as they were to undertake the sub-contract for six laning of NH4 in Chennai. Accordingly, they transferred certain amount to the assessee's account with Oriental Bank of Commerce. The amount was to be utilized exclusively for the

liaison work under instructions from RCM. Though the assessee reflected receipts of Rs.55.22 Lacs from RCM, however, as per Form 26AS RCM reflected payment of Rs.302.72 Lacs to the assessee. The assessee also submitted that it corresponded with RCM to rectify the mistake which was not done and the assessee initiated legal proceedings against RCM. The assessee submitted that it did not raise any such bills on RCM. It was also submitted that there was no agreement entered between the parties, in this regard.

3.3 The Ld. CIT(A) observed that there was nothing sacrosanct about the figures reflected in Form 26AS. RCM showed higher amount to defraud revenue by showing higher payment to the assessee. The onus was in AO to prove that the assessee received any amount over and above the amount of Rs.55.22 Lacs as reflected by the assessee. The same was also evident from the fact the Form 26AS was uploaded by the deductor during November, 2013 whereas the assessee filed return of income during September, 2013 and Form No.16A was also not issued to the assessee. The Ld. AO was not able to make out the case that the amount of Rs.302.72 Lacs was found to be credited in assessee's bank account. Therefore, the addition was deleted against which the revenue is in further appeal before us.

3.4 From the fact, it emerges that there is gross difference in ledgers account as maintained by the assessee vis-à-vis ledger account as maintained by RCM. The same is clearly evident from respective ledger accounts as placed on record. The stand of the assessee is that it has not carried out any activity to the extent of

payments which are reflected in Form 26AS whereas the stand of revenue is that said amount is reflected in Form 26AS and this income has accrued to the assessee. We find that this issue require more factual finding considering the fact that the assessee has initiated legal proceedings against RCM. In the legal notice, certain receipts have been mentioned by the assessee. The assessment order in the case of RCM for AY 2014-15 has also been placed in record. In AY 2014-15, certain amount as payable to the assessee has been disallowed in the assessment of RCM. The Ld. AR has placed on record ledger statement of RCM for this year as well as for subsequent years. The Ld. Sr. DR, on the other hand, has placed on record, information supplied by RCM pertaining to the assessee for AY 2014-15 along with ledgers of Assessee for AYs 2013-14 & 2104-15. There is material difference in two ledgers. All these facts / documents would have material bearing to resolve the issue in hand. The findings of Ld. CIT(A) do not throw any light on all these factual aspects. Therefore, considering the entirety of facts and circumstances, we set aside the order of lower authorities on this issue and remit this matter for factual findings and fresh adjudication to the file of Ld. AO. The Ld. AO shall afford reasonable opportunity of hearing to the assessee and frame de-novo assessment on this issue. The assessee is directed to substantiate its case and supply requisite information / documents. The corresponding grounds raised by the revenue stand allowed for statistical purposes.

4. Addition of unexplained Cash Credit

4.1 The assessee deposited cash of Rs.29.51 Lacs in the bank account. The assessee could not furnish any explanation and therefore, the same was added to the income of the assessee as unexplained cash credit u/s 68. This addition was deleted by Ld. CIT(A) without much factual findings. Aggrieved, the revenue is in further appeal before us.

4.2 From the fact, it emerges that the assessee has made certain cash deposits in its bank account. These deposits have been pointed out by Ld. Sr. DR during hearing before us. The case of Ld. AO is that the source of the cash deposit could not be explained. The assessee also did not furnish any explanation during assessment proceedings. The Ld. CIT(A), without rendering any factual finding, deleted the impugned addition. Considering this fact, this issue is also restored back to the file of Ld. AO for fresh adjudication with a direction to the assessee to substantiate the source of cash deposit. The corresponding grounds as well as revenue's appeal stand allowed for statistical purposes. The assessee's cross-objection, being supportive in nature, has been rendered infructuous.

5. The revenue's appeal stand allowed for statistical purposes. The assessee's cross-objection stands dismissed.

Order pronounced on 28th February, 2024

Sd/-
(MANOMOHAN DAS)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 28-02-2024
DS

आदेश की प्रतिलिपि □ प्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF