

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

Before Sh. Kul Bharat, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 4619/Del/2018 : Asstt. Year : 2014-15

Income Tax Officer, Ward-7(1), New Delhi-110002	Vs.	Delta Foods Pvt. Ltd., 17, Alipur Road, Civil Lines, New Delhi-110054
(APPELLANT)		(RESPONDENT)
PAN No. AAACD1024E		

**Assessee by : Ms. Lalita Krishnamurthy, CA
Revenue by : Sh. Vivek Kr. Upadhyay, Sr. DR**

Date of Hearing: 14.03.2024

Date of Pronouncement: 30.05.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-3, New Delhi dated 02.04.2018.

2. Following grounds have been raised by the Revenue:

"1. "The Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs. 1,83,05,853/- made by the AO u/s 68 of the Income Tax Act, 1961.

2. "The Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs. 58,65,646/- made by the AO on account of salary/Wages u/s 37.

3. "The Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the disallowance of Rs. 14,83,607/- made by the AO u/s 14A of the Income Tax Act 1961 read with Rule 8D of the Income Tax Rules, 1962."

3. The assessee company engaged in the business of manufacturing of biscuits, cakes & other bakery products on behalf of Britannia Industries on job work basis. For the purpose of manufacturing the raw material, packing material and other necessary items were provided by the Britannia Industries Ltd.

Addition u/s 68:

4. The addition u/s 68 of the Income Tax Act, 1961 has been made by the Assessing Officer owing to the difference in the Form 26AS and the income in the return of income of various parties.

5. The relevant part of the Assessment Order is as under:

S. No.	Name of Party	Section	Income in Books and return		Income in 26AS	Difference	Remarks
			Particulars	Amount (Rs.)			
1.	Britannia Industries Ltd.	194C	Conversion income	13,73,31,500	19,65,10,801		
2.			Excise reimbursement	5,80,38,083			
			Total-A	19,65,10,801	19,65,10,801		Reconciled
2.	Dharpal Satyapal Ltd.	194A	Interest on capex Investment	74,38,583	74,38,583		
		194A	Compensation on pre termination	1,00,00,000	1,00,00,000		
		194C	Expenses reimbursement income	11,54,606	11,54,606		
			Project expenses reimbursement income	24,45,332			
			Conversion income	8,45,957	2,77,93,801		

			Received from Dharpal Satyapal	3,34,745			
			Total-B	2,22,19,493	4,63,87,260		
			Less: Taken as income in FY 2012-13		1,83,08,508		
			Less: Received from Dharpal Satyapal		58,59,255		
				2,22,19,493	2,22,19,497		Reconciled
3.	Punjab National Bank	194A		21,29,940	21,31,066		Reconciled
			Total-C	21,31,066	21,31,066		Reconciled
4.	Honey Builders Ltd.	193			2,12,806		
5.	TDI Realcon Pvt. Ltd.	193			54,519		
6.	Orris Infrastructure Pvt.	193			1,05,974		
7.	Transcon Developers Pvt. Ltd.	193			1,63,053		
			Total-D	5,36,352	5,36,352		Reconciled
8.	Reliance Infrateel Ltd.	194IB	Total-D	-	2,55,571	2,55,571	This TDS is wrongly deducted by Reliance in the PAN of the assessee
			Total-A+B+C+D+E	22,13,97,712	24,58,21,050		

The analysis of above mentioned data at serial no. 2, produced by the assessee during the assessment proceedings, with regard to M/s Dharpal Satyapal Ltd., postulates that receipts of Rs.1,83,08,508/- were accounted for in the total receipts of assessment year 2013-14 relevant to financial year 2012-13. As per inputs, available on record, the

TDS of the instant amount was claimed in assessment year 2014-15 relevant to financial year 2013-14. The AR of the assessee contended that instant receipts shown in form 26AS in assessment year 2014-15 have been brought to tax in preceding assessment year viz. 2013-14.

Examination of form 26AS in term of assessment year 2013-14 which was downloaded from the system transpires that receipts of Rs.2,16,02,712/- were received from M/s Dharampal Satyapal Ltd. and also duly accounted for in the total receipts of assessment year 2013-14. The contention of the assessee could not succeed. The assessee, vide order sheet recordings dated 21.10.2016 was asked to controvert the findings.

Vide notice u/s 133(6) of the I.T. Act, 1961, M/s Dharampal Satyapal Ltd. was mandated to furnish the details of business transactions with the assessee company during the year under reference. In compliance, copy of ledger account of the assessee company being maintained in its books of accounts along with TDS certificates were furnished which incorporates that assessee company was credited a sum of Rs. 4,63,87,260/- and TDS was made as per existing provisions as well. The assessee was confronted with the findings and copy of ledger account was provided to the assessee company as well. The assessee company vide no. SRA-LK/2016-17/706 dated 06.12.2016 which is reproduced as under:

Reconciliation of DSL amount

Two year accounts of assessee in the books of DSL have been provided to us for reconciliation with their account in the books of assessee company. The debits and credits are fully matched.

The only difference is that whereas the balance of Rs.1,83,08,500/- was transferred to income account in financial year ended 31st March, 2013 by the assessee company, DSL carried forward the same balance of Rs. 1,83,08,500/- to the next financial year ended 31st March, 2014 and at the time of matching the closing balance of these two accounts dated 31.03.2014 of Rs. 89,76,908/-, they inadvertently again credited the amount of the sum Rs. 1,83,08,500/- by DSL. However the fact is that the amount paid at the time of settlement of account in the financial year ended 31st March, 2014 has matched in both the accounts.

Following is the bifurcation of such credit on 3rd February, 2014 in the books of DSL:

S. No.	Amount	Date	A.Y	Explanation
1.	1,83,08,508	31.03.2013	2013-14	Taken as income by assessee company in F.Y. 2012-13 but carried forwarded by DSL to F.Y. 2013-14
2.	58,59,255	31.01.2014	2014-15	Capital assets sold shown in balance sheet
3.	24,45,336	20.01.2014	2014-15	Shown as income in balance sheet: note 15
4.	3,34,745	20.01.2014	2014-15	Shown as income in balance sheet: note-15
Total	2,69,47,844			

The submission reproduced above were again confronted to M/s DSL Ltd. (Dharampal SatyapaJ Ltd.) and in-compliance M/s DSL Ltd. through e-mail, furnished the details of amount credited in the account of the assessee company which is reproduced as under:

Name of the assessee	Amount Credited 2014-15	A.Y	TDS Made/claimed	Amount credited 2013-14	A.Y	TDS Made
M/s Delta foods (P) Ltd.	4,63,87,260		23,22,853	2,16,70,712		2,49,325
Receipts shown in the ITR by the assessee	2,22,19,493		2,32,28,537	2,16,02,712		2,49,325

We have examined the rival submission carefully and details available on record which categorically demonstrate that assessee company has not accounted for receipts amounting to Rs.1,83,05,853/- in his books of accounts deliberately. Despite providing numerous opportunities, assessee failed to reconcile the receipts and unsuccessfully continued to beat around the bush. The assessee has also claimed the TDS made at the credit amount of Rs. 1,83,05,853/- in his rerun of income, tiled for the year under reference. The assessment proceedings cannot be extended further, in view of repeated blurred response of the assessee. In the light

of above facts & findings, Rs.1,83,05,853/- which remained unexplained, are added back u/s 68 of the Act, 1961 in the total income of the assessee, as additional income to tax for the year under reference.

6. The Id. CIT(A) deleted the addition holding as under:

"2.1 I have carefully considered the submissions of the appellant and the / remarks of AO in the assessment order on this issue. The submissions of the appellant show that the amount paid/credited as per original Form 26AS by the deductor in AY 2014-15 shows an amount of Rs. 4,63,87,260/- paid / credited by the deductor Dharampal Satyapa Ltd. (DSL) from which the amount received from DSL as per balance sheet relevant to AY 2014-15 of Rs. 2,22,19,493/- is reduced and further amount of Rs. 58,59,255/- is reduced on account of sale of capital asset in AY 2014-15, the amount comes to Rs.1,83,08,508/-, less difference due to rounding off. Perusal of the balance sheet final amount of appellant, reveals this amount of Rs. 1,83,08,508/- has already been taken as income by appellant company in AY 2013-14. I hold the impugned addition amount to a duly addition is the same has already been taken as income by the appellant for AY 2013-14. At the para 3.1 of the assessment order assessing officer has given the figure of Rs. 1,83,08,508/-. However, in the last paragraph of the assessment order the figure of Rs. 1,83,05,853/- has been mentioned, which is apparently erroneous.

2.2 The deductor (DSL) has first time deducted tax at source @ 2% on the amount of Rs. 1,80,21,930/- at the time when it give an advance to appellant company in AY 2013-14, and the second time when the appellant company account was credited by DSL in its books for AY 2014-15. The figure of TDS @ 2% on the amount of Rs. 1,80,21,930/- was uploaded by the deductor in the Form 26AS of appellant company for both AY 2013-14 and AY 2014-15. Subsequently, the deductor (DSL) modified the Form 26AS details of appellant company for AY 2014-15 in the income tax website which resulted in the total credit of DSL being reduced from Rs. 4,63,87,260/- to Rs. 2,83,65,330/-. As a result the amount of Rs. 2,69,47,844/- paid / credited by the deductor on February, 03, 2014 now stands modified to Rs. 89,25,914/-. Necessary clarification has also been

issued by DSL which has been reproduced at para 2.1 above. Hence, the addition of Rs. 1,83,05,853/- is reconciled and the addition of Rs. 1,83,05,853/- is hereby deleted.”

7. The reconciliation has been brought before both the parties during the hearing. No contrary findings could be brought to our notice.

8. Since, the decision of the Id. CIT(A) is rightly based on the reconciliation of the amounts, we decline to interfere with the order of the Id. CIT(A).

Ground No. 2

Disallowance on account of salary/wages – Rs.58,64,646:

9. The AO made disallowance on account of salary & wages holding that they were in much difference to the earlier years period.

10. From the details of salaries / wages paid to the employees and the audited accounts, the comparative table below would go to show that the salary / wages paid to workers and the employer contribution towards EPF and ESI had all reduced in the relevant year, contrary to the observation of the AO in the impugned order.

<i>Particulars</i>	<i>AY 2014-15</i>	<i>AY 2013-14</i>
<i>Salary / Wages paid to workers (excluding Director's remuneration)</i>	<i>Rs.30,78,899/-</i>	<i>Rs.36,99,802/ -</i>
<i>Employees contribution towards EPF</i>	<i>Rs.3,88,806/ -</i>	<i>Rs.4,52,246/ -</i>
<i>Employees contribution towards ESI</i>	<i>Rs.3,47,977/-</i>	<i>Rs.3,87,102/-</i>

11. In support of salary / wages account, appellant company had in the assessment proceedings filed the following details:

- (i) Salary summary for March 2014 with copy of salary register for the same month by letter dated 30.11.2016.
- (ii) Details of salary / wages as per audited accounts by letter dated 07.12.2016.
- (iii) Details of salary account (bank account number) of employees and available addresses from the records of the appellant company.

12. It was submitted that the salary were transferred to the employee salary account mainly in Canara Bank. The details of the account number along with their addresses as per the records of the appellant company were given.

13. From the salary reconciliation provided to the AO proves that the employees are registered with the PF / ESI authorities and deductions were duly made. The chart containing the ESI-ID number/ PF-ID number of such employees were submitted to the revenue authorities alongwith their addresses.

14. The Id. CIT(A) deleted the addition after examining the details of the salary of the employees transfer to the salary accounts which were mostly maintained with Canara Bank, Ghaziabad SME Branch. The Id. CIT(A) held that from the salary reconciliation Statement it is apparent that these employees are registered with the PF/ESI authorities and the deductions as shown in the reconciliation statement were being made.

15. The Id. CIT(A) has also examined the chart containing the ESI/ID No. and PF/ID No. was submitted along with addresses of the employees as per the appellant's records. The Id. CIT(A)

held that the appellant made the payments to the outstation temporary workers, by cheque and not by cash as presumed by the Assessing officer. The Id. CIT(A) held that the details of cheque issued to the temporary workers for salary payment were furnished from the bank statement and tallied with list of names of temporary workers on the basis of which disallowance of salary payment was done by Assessing officer of Rs.58,64,646/-.

16. Since, all the details have been categorically examined by the Id. CIT(A) and also available in the paper book filed before us. After verification of the paper book and going through the entire facts and as no contrary evidences were brought before us, we find no reason to interfere with the order of the Id. CIT(A) as the salary payments tallied with the list of the names of the temporary workers from the bank statement.

Dividend:

17. Both the parties fairly submitted that no exempt income earned by the assessee. Hence, keeping in view the decision of the Hon'ble Delhi High Court in the case of Cheminvest Limited vs. CIT (2015) 378 ITR 33, we hold that no disallowance is called for, in the absence of any exempt income claimed by the assessee.

18. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 30/05/2024.

Sd/-

(Kul Bharat)
Judicial Member

Dated: 30/05/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR