

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "D" BENCH : MUMBAI

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL
MEMBER

AND

SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA.Nos.195 & 190/Mum./2024
Assessment Years 2012-2013 & 2015-2016

The Income Tax Officer, Ward-11(1)(1), Room No.201, 2 nd Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400 020. Maharashtra.	vs.	Qais Constructions Private Limited, C-102, Lotus Park Aqsa MasjidRO, Near 24 Karat Multiplex, Jogeshwari West, Mumbai. Maharashtra. PIN 400 102. PAN AAACQ1681J
(Appellant)		(Respondent)

For Revenue :	Smt. Mahita Nair, Sr. DR
For Assessee :	Shri Sachin Sarawagi

Date of Hearing :	11.07.2024
Date of Pronouncement :	22.07.2024

ORDER

PER SATBEER SINGH GODARA, J.M.

These Revenue's twin appeals ITA.Nos.195 & 190/Mum./2024, for assessment years 2012-2013 & 2015-2016, arise against the order of the learned CIT(A)-National Faceless Appeal Centre ["NFAC"], Delhi's as many DIN &

Order nos. ITBA/NFAC/S/250/2023-24/1058258956(1) & 1058259413(1), both dated 28.11.2023, in proceedings u/s.147 r.w.s.144 and sec.147 of the Income Tax Act, 1961 (in short "the Act"); assessment year-wise, respectively.

Heard both the parties. Case files perused.

2. The Revenue's "lead" appeal ITA.No.195/MUM./2024 for the former assessment year 2012-2013 raised the following substantive grounds :

(1) "Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition made on gross receipt as the assessee company never filed the Return of Income for the A.Y. 2012-13"

(ii) "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was right in adopting income @ 20% of the gross receipts without any cogent reasons call basis."

The Appellant craves leave to add, amend and/or vary the grounds of Appeal before or during the course of hearing.”

3. We next note with the able assistance coming from both the parties that the learned CIT(A)-NFAC has restricted the Assessing Officer's action adding the entire alleged undisclosed receipts of Rs.98,94,960/- to the extent of 50% on the ground of double addition, coming to Rs.49,47,480/- followed by GP estimation @ 20% thereupon, resulting in re-computation thereof to Rs.9,89,496/-only as under:

“10. Ground No. 2 is owing to whether the AO considered 26AS receipts twice and ascertained the gross receipts based on the same is correct or not. It is observed from the impugned assessment order that the case on hand was re-opened after verification of 26AS details from ITS (Individual Transaction Statement) details that the appellant was recipient of contractual receipts to the tune of Rs.98,94,960/-. During the course

of appellate proceedings, the appellant submitted that the appellant was engaged in providing contractual services and to conduct specialized research for commercial projects for new constructions, remodeling, specialized works for repairs and additions, interior designing, all kinds of civil works, heritage restoration projects, fabrication and installation of cast iron installations, fabrication of signage. The appellant furnished Form No. 26AS wherein it is noticed that the appellant received Rs.49,47,480/- from Darabshaw B Curestjee s Sons (Bombay) Pvt Ltd (TAN: MUMD10241A) and TDS deducted to the tune of Rs.98,950/-.

10.1. *During the course of appellate proceedings, it is observed that the documents furnished by the appellant on 11.02.2021 are nothing but additional evidences which were not filed earlier before the AO. On 30.05.2022, communication was made to the appellant regarding the allow ability of additional avidences under rule 46A of the Income-tax Rules, 1962. The appellant furnished its submission in this regard on*

09.06.2022. Thereafter, the additional evidences had been forwarded to the AO for his examination in terms of rule 46A of the Income-tax Rules, 1962 and to submit a 'Remand Report' vide communication letter dated 17.11.2022. The AO submitted Remand Report on 13.12.2022. The appellant furnished its reply to Remand Report on 28.02.2023.

10.2. It is observed from the letter of the appellant dated 28.02.2023 that the appellant had submitted the copy of 26AS to the AO during the course of 148 proceedings which is entirely wrong as the assessment was completed u/s 144 rws 147 of the Act due to non compliance on the part of the appellant. On contrary, it is seen from the impugned assessment order that O had stated that the appellant received contractual receipts to the tune of Rs.98,94,960/- after verification of 26AS details from ITS though the AO had neither provided any details/ bifurcation therefore, nor discuss at length. In view of the above, it is amply evident that the AO considered the contractual receipts twice, i.e.,

(Rs.98,94,960/- Rs.49,47,480/- x 2). In short, it is evident that the appellant had received contractual receipts of Rs.49,47,480/- instead of Rs.98,94,960/- which is duly reflected in Form No. 26AS as submitted by the appellant during the course of appellate proceedings.

10.3. On verification of additional evidences, remand report submitted by the AO and apply to the remand report submitted by the appellant during the course of appellate proceedings, it is observed that the appellant had submitted cost of material consumed of Rs.10,76,869/-, Salary Expenses of Rs.27,02,760/-, Financial Cost of Rs.3,55,989/-, Bank Charges of Rs.13,517/-, Office Expenses of Rs.1,06,649/-, Rent Expenses of Rs.96,000/-, Staff Welfare Expense of Rs.1,72,230/-, Travelling Expenses of Rs.83,263/-, Telephone Expenses of Rs.35,932/-. The appellant furnished ledger copies of Material Purchase, Sales and Consumables, copy of invoices on sample basis, copy of month wise Salary Register, copy of Rent agreement in

support of its claim. On perusal of the submissions of the appellant, it is observed that the appellant has failed to furnish any corroborative evidences in support of expenses, viz., Office Expenses, Staff Welfare Expenses, Travelling expenses. Telephone Expenses. Further, some pages of bank statement and some copy of invoices as submitted by the appellant are not legible. However, it is a known fact that earning of income is not possible without incurring expenses therefore, assessable income is estimated @ 20% of the total receipts.

10.4. For what has been outlined above and for the reasons stated above, it is held that on the pertaining facts and circumstances of the case, the AO has, thus, fallen into error by adopting contractual receipts to the tune of Rs.98,94,960/- as assessable income u/s 144 r.w.s. 147 of the Income-tax Act instead of considering the same to the tune of Rs.49,47,480/-. The action of the AO is, therefore, disapproved of and the AO is, directed to re-compute the addition made by adopting

20% of undisclosed receipts of Rs.49,47,480/- instead of Rs.98,94,960/-, Thus, the addition is restricted to Rs.9,89,496/- [20% of Rs. 49,47,480/-] instead of earlier addition of Rs.98,94,960/-.

11. In the result, the appeal of the appellant is Partly Allowed.”

This leaves the Revenue aggrieved.

4. Learned DR vehemently reiterated the assessment findings dated 26.11.2019 before us that the assessee herein has neither filed any return for the impugned assessment year nor had he disclosed the turnover in question which saw light of the day only as per verification of 26AS details.

5. The assessee on the other hand has drawn strong support from the CIT(A)-NFAC's foregoing detailed discussion terming the impugned addition is as a case of double assessment, than estimating GP @ 20% only.

6. We have given our thoughtful consideration to the foregoing vehement rival stands and find no merit in Revenue's arguments. We wish to make it clear that neither there is any rebuttal from the department side that the Assessing Officer had made double addition of the impugned alleged undisclosed receipts of Rs.49,47,480/- nor could it deny the involvement of the corresponding expenditure incurred at the assessee's behest regarding the contractual services provided to the payee concerned i.e., Darabshaw B Curestjee Sons (Bombay)Pvt. Ltd. Faced with this situation, we are of the considered view that the learned Assessing Officer could not have simply brushed aside the assessee's claim of corresponding expenditure which has been duly considered in the above extracted para-10.3 in the lower appellate discussion. We further wish to highlight the fact that even the Revenue's grounds are fair enough in not disputing correctness of the said expenditure items in it's instant "lead" appeal. Rejected accordingly.

7. Same order to follow in the Revenue's latter appeal ITA.No.190/MUM./2024 for the assessment year

2015-2016 since raising identical issues. Ordered accordingly.

8. These Revenue's twin appeals ITA.Nos.195 & 190 /Mum./ 2024 are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 22.07.2024

Sd/-
[GIRISH AGRAWAL]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Mumba, Dated 22nd July, 2024

VBP/-

Copy to

1.	The applicant
2.	The respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "D" Bench, Mumbai.
5.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Mumbai Benches,
Mumbai.