



IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, PANAJI



BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA Nos. 169/PAN/2023

Assessment Year : 2008-09

Parkkot Maritime Agencies Pvt Ltd.
Parkkot House, Swatantra Path,
Vasco-Da-Gama, Goa-403802
PAN : AADCP1208P

..... *Applicant*

V/s

Dy. Commissioner of Income Tax
Circle-1, Marga, Goa.

..... *Respondent*

Appearances

Assessee by : Mr S V Shivrama Iyer ['Ld. AR']

Revenue by : Capt. Pradeep Arya ['Ld. DR']

Date of conclusive Hearing : 28/01/2025

Date of Pronouncement : 28/01/2025

ORDER

PER G. D. PADMAHSHALI, AM;

The assessee is in appeal against DIN & Order No.

ITBA/NFAC/S/250/2023-24/1055088420(1) dt. 11/08/2023

passed u/s 250 of the Income-tax Act, 1961 [in short 'the Act']

by the National Faceless Appeal Centre, Delhi [in short 'Ld.

CIT(A)/NFAC'] which in turn arisen out of order of regular

assessment dt. 16/03/2015 framed u/s 143(3) r.w.s 147 of the

Act by the Dy. Commissioner of Income Tax, Circle-1,

Margao, Goa [in short 'Ld. AO'].



2. After hearing rival contentions of both the parties; subject to the rule 18 of Income Tax Appellate Rules, 1963 [in short 'ITAT-Rules'] we have examined the material placed on record and we observed that; the assessee company for the year under consideration was engaged in Stevedoring business, which filed its return of income [in short 'ITR'] declaring total income of ₹16,69,57,250/-. The said ITR in first place was processed summarily u/s 143(1) of the Act and later selected for scrutiny assessment. The consequential assessment thereupon was completed u/s 143(3) of the Act determining total income in variation to income returned to ₹16,83,24,088/-. The said regular assessment remained unchallenged by the assessee in appeal. Subsequently, upon the receipt of information the case of the assessee for the year under consideration by service of notice u/s 148 of the Act was reopened after obtaining prior approval from the competent authority. On account of effective failure on the part of the assessee to explain the difference of turnover/income reported in the AFS vis-à-vis ITR with that of



turnover/income reported in Form No 26AS, the Ld. AO added the difference of ₹1,61,18,565/- and taxed the same as the income of the assessee while culminating assessment u/s 143(3) r.w.s. 147 of the Act vide order dt. 16/03/2015.

3. Aggrieved assessee carried the matter in first appeal but remained unsuccessful. Further aggrieved, the assessee came in present appeal on as many as four argumentative grounds. Dispensing the reproduction thereof it is noted that, the substantive issue raised in effective grounds pressed into service hinges around addition made on the basis of figures reported in Form No 26AS over the figures reported in Audited Financial Statement [in short 'AFS'] r.w. return of income filed by the assessee company. The first ground being general calling no adjudication. Fourth ground relating to interest u/s 234B & 243D being premature at this stage not pressed for. The legal ground raised in appeal memo is endorsed as not pressed, therefore adjudication thereof is dispensed with. This leaves us with ground No 3 which assailed the addition on merits.



4. We note that, for the year under consideration the assessee had business transaction with three counter parties namely; (a) MSPL Ltd, (b) MSPL Ltd EOU-I unit & EOU-II unit, and (c) Dena Bank. The collective figures of income/payment reported by these counter parties as reflected in Form No. 26AS where higher than the income figures/transactions entered in the books of accounts by the appellant which eventually travelled to AFS. It is also an admitted fact that, the appellant while filing its ITR in the course of re-assessment proceeding have taken full credit of TDS as appearing therein although the corresponding figure of income/receipt however remained out of its consideration for the purpose of taxation. Though the appellant effectively failed to reconcile the discrepancies of income or transactions with the evidential material when notified to it by the tax authorities below, however during the course of hearing was successful in showcasing that the failure on its part to rectify the notified discrepancy was solitarily attributable to non-cooperation of third party in confirming the ledger account balances.



5. We are mindful to the fact that, in any case, an assessee by virtue of provisions of section 199 is entitled to claim credit of all such TDS deducted by a payer of income in accordance with the provisions of chapter XVII of the Act and paid to the credit of central ex-chequer by a deductor/payer. This credit of TDS is however made available to an assessee only upon filing of periodic TDS statement by a deductor/payer. That is to say unless such TDS credit is reflected in Form No 26AS of a claimant assessee/payee no claim thereagainst can be honoured while assessing the respective corresponding income either u/s 143(1) or u/s 143(3) of the Act.

6. In the instant case, though the business income on which TDS credit is claimed in the ITR, the assessee company neither during the course of assessment proceedings nor in first appellate proceeding could establish to the satisfaction of tax authorities below with any evidential material and reconciliation statement that, the corresponding income relating to TDS credit claimed by it in the ITR was indeed



recorded in its books of account and was travelled to AFS vis-à-vis offered to taxation in the ITR filed by it for the year under consideration. It is also an admitted fact that, at the relevant time of framing of assessment original u/s 143(3) of the Act, the claimed TDS Credit and corresponding figure of business income/receipt was not appearing in assessee's Form 26AS but came updated thereafter.

7. The appellant failed to reconcile the same owing to its failure to furnish reconciled ledger account balances from its audited books/AFS with that of ledger account balance confirmation from the books of third parties. This failure being un-substantive and circumstantial is purely curable in nature if the appellant is given one more opportunity. The Revenue could hardly displace the prayer of the appellant for granting an opportunity to enable it to produce sustainable reconciliation statement and third-party ledger account balance confirmation and thus the request for remanding the matter back to the Ld. NFAC for *de-novo* adjudication.



8. For granting one more opportunity to the assessee to prove its claim with necessary evidential material can only be possible upon setting aside the impugned order. For the reasons, without disturbing the impugned assessment, we set-aside the impugned order and remand this limited issue back to the file of Ld. NFAC with a bullet direction to deal therewith *de-novo* in the light of position of income/figures and corresponding TDS credit as stood in Form No 26AS as on the date of framing the impugned assessment and adjudicate the dispute raised in Form No 35 in accordance with law after according two effective opportunities to the appellant assessee.

The ground No 3 accordingly stands partly allowed.

9. In result, the appeal of the assessee is partly allowed for statistical purposes in aforesaid terms.

In terms of rule 34 of ITAT Rules, 1963 the order pronounced in the open court on date mentioned herein before.

-S/d-

**PAVAN KUMAR GADALE
JUDICIAL MEMBER**

-S/d-

**G. D. PADMAHSHALI
ACCOUNTANT MEMBER**

Panaji/Dt: 04th February, 2025.

Copy of the Order forwarded to :

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| 1. The Appellant. | 2. The Respondent. | 3. The CIT(A)/NFAC Concerned |
| 4. PCIT Concerned | 5. DR, ITAT, Panaji Bench, Panaji | 6. Guard File |

By Order,
Sr. Private Secretary / AR ITAT, Panaji.